UNIVERSITY OF
COLORADO LAW REVIEW
Volume 80, Issue 3 *2009*

THE OTHER LEGAL PROFESSION AND THE ORTHODOX VIEW OF THE BAR: THE RISE OF COLORADO'S ELITE LAW FIRMS

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The current generation of legal profession scholarship has explored the rise and organization of large law firms. A "standard story" has developed regarding the structure of large firms, their hiring and promotion patterns as well as their discriminatory culture, past and present. This Article shows that the "standard story" may offer too narrow an understanding of large firms and the challenges they and the legal profession in general face. It documents the rise of Colorado's largest law firms, examining the background conditions that enabled their emergence, how they came to occupy a dominant position atop the Colorado legal profession, and their organization, culture and growth patterns. Contrasting the Colorado experience with the "standard story," the Article offers new insights about the organization of large firms, in particular regarding the operation of various discriminatory mechanisms in that setting.

INTRODUCTION

The "standard story" of the American legal profession has gradually developed over the past century, maturing into conventional orthodoxy by the early twenty-first century. The

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"standard story" includes historical chapters, such as the colonial period, the antebellum era, the Civil Rights era, and the internationalization, even globalization of the legal profession as of late.[1] Sociological sections include New Deal lawyers and the expansion of the administrative arm of the legal profession, the ascent of the Wall Street lawyer, and the enormous growth of the legal profession and, in particular, the rise of the large law firm. Critical components of the "standard story" include challenges to the Bar's claim for professional status and a monopoly over the provision of legal services; analyses of the growing heterogeneity of the legal profession as of the 1960s; and studies of its early discriminatory composition in terms of race, ethnicity, and gender, as well as subsequent increased diversity.[2]

A closer examination reveals, however, that there is nothing standard about the so-called "standard story" of the American legal profession. Rather, the story is biased on multiple levels. It is Northeast centered, heavily influenced by the experiences of the Bars of Pennsylvania and New York. It is focused on attorneys in large cites such as New York City and Chicago as opposed to reflecting rural and other practice areas. Further, the "standard story" is preoccupied with the practice of law by and at large law firms, to the relative exclusion of solo, small firm, and non-private practice. And finally, it is corporate-law specific, to the point of marginalizing other fields of practice. In other words, rather than the story of the American legal profession, it is the tale of only certain segments of the legal profession.[3]

The biases of this "standard story" have significant and troubling consequences. Once installed as orthodoxy, the "standard story" inhibits the development of alternative rich contextual and nuanced accounts. It marginalizes the stories,

1. *See infra* Part I.B. The "chapters" are meant to be illustrative and representative, not exhaustive (for example, the story omits a "chapter" on cause lawyering, *see*, *e.g.*, CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold, eds., 1998)) nor dispositive (for example, with regard to the timing of the in-house counsel chapter; while the rise of the in-house legal department is commonly traced to the 1970s and 1980s, Friedman notes the growing respectability of in-house lawyers as of the early twentieth century, LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 490 (3d ed. 2005)).

2. *See infra* Part I.B. While the "standard story" is by now entrenched, its orthodoxy is not to be confused as conservative. To the contrary, many of the authors of the story are critical thinkers and scholars.

3. *See infra* Part I.C.

voices, and experiences of other segments of the American legal profession, including solo and small-size law firm attorneys, rural lawyers, and practitioners outside of the corporate law sphere. The point, to be clear, is not merely to make an egalitarian claim on behalf of neglected segments of the Bar.[4] Rather, the biases and particular fixations of the "standard story" cement and frame our understanding of practice realities and of the challenges facing the American legal profession, and consequently limit the range of contemplated solutions to what amounts to merely a subset of the actual problems encountered by the profession.

The goal of this Article is to shake the conventional orthodox understanding of the American legal profession in the hopes of broadening the scope of legal profession scholarship. It does so by challenging a key chapter of the "standard story": the rise of the American legal elite. The Article tells the story of the formation and rise of Colorado's legal elite and explores the ways in which its rise differed from the "standard story" of the emergence of the American legal elite.[5]

The inherent risk in developing an overbearing orthodoxy is that it tends to simplify and standardize more complex accounts and reduce them to the "standard story." For example, one might be tempted to conclude that the rise of the legal elite is characterized by large, male-dominated White-Anglo-Saxon-Protestant ("WASP") law firms and that Colorado's legal elite essentially followed this pattern because its legal elite consisted of the largest law firms in the jurisdiction (even if not large by national measures) and featured male WASP attorneys.

The experience of the elite Colorado Bar, however, does not "fit" the "standard story." Whereas the "standard story" of the legal elite tells of large law firms specializing in corporate law which established their elite professional status by relying on elite cultural and religious characterizations (the firms were inherently white-shoe and WASP), discriminating against ethno-religious minorities (namely Catholic and Jewish attor-

4. Not an unimportant goal in and of itself. *See, e.g.*, Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, 26 LAW & SOC'Y REV. 697, 707 (1992).

5. A motivation for writing this Article was the recent publication of a detailed descriptive work by David Erickson on the formation years of the Colorado legal profession. DAVID L. ERICKSON, EARLY JUSTICE AND THE FORMATION OF THE COLORADO BAR (2008).

neys), establishing alliances with elite law schools, and forming strategic relationships with bar associations as means of excluding "undesirables," the legal elite in Colorado did not feature any of these traits. Instead, Colorado's largest firms developed diverse practice areas, their lawyers were members of the elite establishment (and not servants of it), they recruited attorneys from the two non-elite law schools in the state, and they did not use bar associations as platforms of furthering discrimination.

Most strikingly, Colorado's legal elite utilized a different mechanism of discrimination in support of its elite status. Pursuant to the New York City-based "standard story," discrimination was overt, wide-spread, and institutionalized. Wall Street's elite firms announced a meritocratic hiring and promotion system, explicitly rejecting nepotism, only to discriminate based on ethno-religious grounds against lawyers who met their merit standards. Colorado's elite firms, on the other hand, embraced nepotism as a near exclusive method of hiring and promotion. A web of ties connected Colorado's elite law firms and allowed them to exclude outsiders who were not born into or married into elite status. Consequently, though discrimination in Colorado was never as pronounced as it was in New York City, nepotism nonetheless resulted in class-based discrimination.[6]

The story of, and lessons from, the establishment of a "different" legal elite in Colorado—different not in simplistic terms of institutional form and identity of its lawyers (large law firm, WASP males), but rather in terms of the conditions that led to its successful rise to elite status and the mechanism of discrimination it employed to enhance its status—is exactly the kind of nuanced insight foreclosed by the "standard story." Thus, understanding the experience of the "other" legal elite in Colorado as well as the reasons for its rise and dominance may not only be revealing in its own right but may also help highlight issues obscured by the "standard story" more generally.

The Article is organized as follows: Part I explores the seemingly intuitive concept of the American Legal Profession, introduces its so-called "standard story," and exposes its biases. Part II tells the story of the rise of the Colorado legal elite, stressing the ways in which the experiences of the Colorado Bar differed from the "standard story" of the rise of the Ameri-

6. *See infra* Part II.B.

can legal elite. It argues that attention to the details of this "other" legal story informs a richer account of the American legal profession and, in particular, broadens our understanding of the various facets of discrimination.

I. THE "STANDARD STORY" OF THE AMERICAN LEGAL PROFESSION

A. The American Legal Profession

Seemingly a self-explanatory term, the "American legal profession" is in fact an elusive concept. One straightforward interpretation is the American Bar, that is, American lawyers.[7] But, of course, there are no *American* lawyers per se, no more than there are American contracts, American torts, or American criminal law.[8] While there is state law and federal law, as well as common law, there are no "common law lawyers." Rather, there are various American states granting licenses for certain individuals to practice law within their respective jurisdictions.[9] And while there is a "federal Bar," it means either (state) lawyers who are licensed to appear before federal courts or (state) lawyers who specialize in federal law. Indeed, there is nothing inherently American about the American legal profession in the sense that American lawyers need not be American citizens or even American residents.[10] Rather, American lawyers are "American" only in the sense that they are licensed to practice law in an American jurisdiction and practice American law (state or federal).

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7. More accurately, one should refer to United States of America lawyers as opposed to American lawyers: a term that may include Canadian, Mexican, and South American attorneys. Nonetheless, to avoid confusion, the Article follows the loose yet common reference to American lawyers. *See, e.g.*, MAXWELL BLOOMFIELD, AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776–1876 (1976); RICHARD L. ABEL, AMERICAN LAWYERS (1989).

8. *See* FRIEDMAN, *supra* note 1, at xiii.

9. On multi-jurisdictional practice initiatives, see AM. BAR ASS'N, REPORT OF THE COMMISSION ON MULTIJURISDICTIONAL PRACTICE (2002), *available at* http://www.abanet.org/cpr/mjp/intro-cover.pdf.

10. *See In re Griffiths*, 413 U.S. 717, 728–29 (1973) (rejecting the claim that U.S. citizenship could be a requirement for admission to the Bar because of the status of lawyers as officers of the court). Other countries do require citizenship as condition for admission. *See* Kelly Charles Crabb, *Providing Legal Services in Foreign Countries: Making Room for the American Attorney*, 83 COLUM. L. REV. 1767, 1772–79 (1983).

Narrowly defined, the "American legal profession" means nothing more than the aggregate of state lawyers across American jurisdictions. This is, for example, the sense in which one can meaningfully say that the American legal profession consists of more than one million lawyers.[11] This definition of the American legal profession does not easily lend itself, however, to concepts such as the organization of the legal profession, the ideology of the Bar, or the history of the profession.[12] It would suggest that such notions are nothing more than the aggregate of the organization of state legal professions, ideologies, and histories.[13]

In the alternative, the "American legal profession" may refer to common features across jurisdictions, similar rules of law, and shared ideologies. Examples include: nationwide voluntary professional associations such as the American Bar Association ("ABA"); shared codes, such as the Restatement of the Law Governing Lawyers, American Law Institute and Practicing Law Institutes publications, and the American Bar Association Model Rules of Professional Conduct; as well as multijurisdictional initiatives and reciprocal bar admissions arrangements. These embody not only common rules of conduct, but also shared ideology and role-morality. Similar forms of practice such as the law firm—in particular, the large law firm—also embody in their cross-jurisdictional existences a meaning of an American legal profession beyond state lines. While law firm lawyers in any specific jurisdiction are licensed

11. BARBARA A. CURRAN & CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE LEGAL PROFESSION IN 2000, at 1 tbl.1 (2004) (showing that, in 2000, there were 1,066,328 lawyers in the United States).

12. *See, e.g.*, LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION (Robert L. Nelson et al. eds., 1992). Similarly, historical, sociological, cultural, and economic accounts of the American legal profession are, in one sense, nothing but an aggregate of the history, sociology, culture, and economics of the various American legal professions. But they also mean identifying common themes, trends, and characteristics shared by all, or most, American lawyers across jurisdictions.

13. While conceptually plausible, the concept of specific legal professions' ideologies and organizations has not been thoroughly explored. *But see, e.g.*, Tom Lininger, *Should Oregon Adopt the New ABA Model Rules of Professional Conduct?*, 39 WILLAMETTE L. REV. 1031, 1034–35 (2003) (arguing that examination of Oregon's specific rules of professional conduct and ideology is justified because Oregon is the only jurisdiction to have mandated malpractice insurance coverage as a condition-precedent for the practice of law). Similarly, California's legal profession, known for marching to its own drummer with its unique rules of professional conduct, may warrant specific studies. *See* Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 NOTRE DAME J. L. ETHICS & PUB. POL'Y 75, 75 n.1 (2000).

(at least) in that jurisdiction, the sum is greater than its individual parts, such that the law firm is not only an entity with offices in multiple cities; rather, it is an American law firm.

In this sense, the "American legal profession" is a convenient fiction, a way to refer to similarities and shared convictions among American lawyers.[14] Yet, exactly because the American legal profession is a fiction, the scholarship of the American legal profession is also a fiction. To an extent, it is bound to be, by its nature, a scholarship of a construct, an abstract theoretical legal profession rather than an actual one. Naturally, over time, a standard conception of this fictional American legal profession may develop. And while such a standard conception may be useful, allowing for insightful generalizations, it is important never to forget that the American legal profession is a fiction and its standard conception, or "standard story," is nothing more than a shortcut.

B. The "Standard Story" of the American Legal Profession

The story of the American legal profession is an ongoing collective work-in-progress of numerous scholars across generations, representing diverse doctrinal, historical, sociological, economic, and cultural viewpoints. Whereas the American legal profession itself is approximately three centuries old, its tale lags behind, in part for obvious reasons—historical accounts require perspective and hindsight,[15] canonization is time consuming[16]—and in part because of the idiosyncrasies of

14. This is exactly the sense in which J. Willard Hurst and Lawrence Friedman talk about the history of American law. *See* JAMES WILLARD HURST, THE GROWTH OF AMERICAN LAW—THE LAW MAKERS (1950); FRIEDMAN, *supra* note 1; READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSION (Dennis R. Nolan ed., 1980). It is also the sense in which Bloomfield and Abel explore the sociological, cultural, and economic underpinnings of the American legal profession. *See* BLOOMFIELD, *supra* note 7; ABEL, *supra* note 7.

15. *See* MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW 1870–1960: THE CRISIS OF LEGAL ORTHODOXY 9–31 (1992).

16. David Hoffman and George Sharswood are considered the founding fathers of American legal profession thought and scholarship. DAVID HOFFMAN, A COURSE OF LEGAL STUDIES (Baltimore, Coale & Maxwell 1817); GEORGE SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS (Phila., T. & J.W. Johnson 1854). *See also, e.g.*, Stephen L. Carter, *The Emperor of Ocean Park: The Quintessence of Legal Academia*, 92 CAL. L. REV. 585, 602 n.52 (2004); Carrie Menkel-Meadow, *The Lawyer as Consensus Builder: Ethics for a New Practice*, 70 TENN. L. REV. 63, 63 n.2 (2002). On the canonization of American legal thought, see generally THE CANON OF AMERICAN LEGAL THOUGHT (David Kennedy & William W. Fisher III eds., 2006).

the legal profession as a modern scholarly field, in particular its relative young age and slow development.[17]

By the early twenty-first century, a consensus, or a "standard story," has emerged.[18] Notably, the development of the "standard story" is the product of story-tellers. For quite a while, perhaps as a function of the small size of the field, a small group of scholars authored the "standard story." J. Willard Hurst was the "near official" historian of the American legal profession, followed by Lawrence Friedman and Robert Gordon.[19] Richard Abel and William Simon were its critics.[20] David Luban was its philosopher, and Marc Galanter its sociologist.[21] Deborah Rhode was the "standard story's" public sphere conscience.[22] And Geoffrey Hazard, Andrew Kaufman, and Charles Wolfram were its black-letter law authors.[23] Cu-

17. The legal profession and legal ethics emerged as recognized fields of study in the early 1970s following Watergate, the role of lawyers in it, and the subsequent adoption of a legal ethics course requirement in all ABA-approved law schools. *See* AM. BAR ASS'N, 2008–2009 STANDARDS FOR APPROVAL OF LAW SCHOOLS, http://www.abanet.org/legaled/standards/standards.html (last visited May 12, 2009). Earlier scholarly contributions are relatively scarce. Founding works include ABEL, *supra* note 7; MONROE H. FREEDMAN, LAWYERS' ETHICS IN AN ADVERSARY SYSTEM (1975); THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS (David Luban ed., 1983); GEOFFREY C. HAZARD, ETHICS IN THE PRACTICE OF LAW (1978); DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY (1988); THOMAS D. MORGAN & RONALD D. ROTUNDA, PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (1976); DEBORAH RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000); THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER (1981); Robert W. Gordon, The *Independence of Lawyers*, 68 B.U. L. REV. 1 (1988); William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29 (1978). The scholarship has "appropriated" at least three non-lawyer professionalism scholars as "honorary" members of the field: MAGALI SARFATTI LARSON, THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS (1977); TALCOTT PARSONS, *The Professions and Social Structure*, *in* ESSAYS IN SOCIOLOGICAL THEORY 34 (rev. ed., 1954); Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975).

18. Early contributions to the "standard story" predate the development of legal ethics as scholarly field of study. *See* HOFFMAN, *supra* note 16; SHARSWOOD, *supra* note 16; HURST, *supra* note 14.

19. FRIEDMAN, *supra* note 1, at 490; *see also* HURST, *supra* note 14; Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57 (1984); Robert W. Gordon, *Historicism in Legal Scholarship*, 90 YALE L. J. 1017 (1981).

20. *See* ABEL, *supra* note 7; WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS (1988).

21. *See* LUBAN, *supra* note 17; DAVID LUBAN, LEGAL ETHICS AND HUMAN DIGNITY (2007); Marc Galanter, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).

22. *See* RHODE, *supra* note 17.

23. *See* Geoffrey C. Hazard, Jr., *Triangular Lawyer Relationships: An Exploratory Analysis*, 1 GEO. J. LEGAL ETHICS 15 (1987); Andrew L. Kaufman, *A*

rious and worthy of future investigation are the thin ranks of the "next generation" that followed this line of giants of the legal profession field.[24] While the work of telling the story of the American legal profession is ongoing, the number of contributors is fairly small.[25]

Historically, the "standard story" of the American legal profession consists of several "chapters." It begins with diffused legal professions in the various colonies[26] and comes into its own following the American Revolution with the return of

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Critical First Look at the Model Rules of Professional Conduct, 66 A.B.A. J. 1074 (1980); Charles W. Wolfram, *Client Perjury,* 50 S. CAL. L. REV. 809 (1977).

24. Talk about the importance of legal ethics instruction as a fundamental component of the curriculum is both common, *see, e.g.*, WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (the recent Carnegie Report), and cheap. Quite possibly the small number of legal ethics scholars is a function of the fact that law schools fail to hire legal ethics professors.

25. While the list of scholars is relatively short, it is nonetheless impossible to identify all those who have contributed to the field. Leading "next generation" scholars include Norman Spaulding, David Wilkins, Brad Wendel, Bill Henderson, and Scott Cummings. *See, e.g.*, Norman W. Spaulding, *Constitution as Counter Monument: Federalism, Reconstruction, and the Problem of Collective Memory*, 103 COLUM. L. REV. 1992 (2003); David B. Wilkins, *Legal Realism for Lawyers*, 104 HARV. L. REV. 468 (1990); David B. Wilkins, *Who Should Regulate Lawyers*, 105 HARV. L. REV. 799 (1992); Bradley Wendel, *Civil Obedience*, 104 COLUM. L. REV. 363 (2004); William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691 (2006); Scott L. Cummings, *After Public Interest Law*, 100 NW. U. L. REV. 1251 (2006). The doctrinal ranks are particularly thin, including Bruce Green, Andrew Perlman, and Eli Wald, and there are, of course, the economists, Richard A. Posner and Dan Fischel. *See, e.g.*, Bruce A. Green, *The Criminal Regulation of Lawyers*, 67 FORDHAM L. REV. 327 (1998); Andrew M. Perlman, *A Bar Against Competition: The Unconstitutionality of Admission Rules for Out-of-State Lawyers*, 18 GEO. J. LEGAL ETHICS 135 (2004); Eli Wald, *Lawyer Mobility and Legal Ethics: Resolving the Tension Between Confidentiality and Contemporary Lawyers' Career Paths*, 31 J. LEGAL PROF. 199 (2007); Eli Wald, *Taking Attorney-Client Communications (and Therefore Clients) Seriously*, 42 U.S.F.L. REV. 747 (2008); RICHARD A. POSNER, THE PROBLEMATICS OF MORAL AND LEGAL THEORY 185–211 (1999); Daniel R. Fischel, *Lawyers and Confidentiality*, 65 U. CHI. L. REV. 1 (1998). Other notable legal profession scholars include Liz Chambliss, Leslie Levin, Russ Pearce, Tanina Rostain, Susan Carle, and Eli Wald. *See, e.g.*, Elizabeth Chambliss, *The Professionalization of Law Firm In-House Counsel*, 84 N.C. L. REV. 1515 (2006); Leslie C. Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 GEO. J. LEGAL ETHICS 1 (2007); Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229 (1995); Tanina Rostain, *Sheltering Lawyers: The Organized Tax Bar and the Tax Shelter Industry*, 23 YALE J. ON REG. 77 (2006); Susan D. Carle, *Power as a Factor in Lawyers' Ethical Deliberation*, 35 HOFSTRA L. REV. 115 (2006); Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 STAN. L. REV. 1803 (2008) [hereinafter Wald, *WASP and Jewish Law Firms*].

26. *See* FRIEDMAN, *supra* note 1, at 3–61.

loyalists to England and the gradual development of American law and American lawyers.[27] It continues in the eighteenth and nineteenth centuries with the tradition of the great circuit-riding litigators, who also act as lawyer-statesmen,[28] and with the expansion of the law out West.[29] Following the Civil War, the story continues with the transformation of the lawyer paradigm—the decline of the great litigators and the rise of corporate attorneys—alongside the rise of the large law firm.[30]

The twentieth century begins with the rise to dominance of the large law firms and their establishment as the elite of the legal profession, followed by the Great Depression and the New Deal, bringing with them the development of administrative law and significant increase in the number of governmental lawyers.[31] After the Cold War, the 1960s feature an exponential growth in the size of the American legal profession,[32] the civil rights movement,[33] the rise of the in-house counsel,[34] and, in particular, the exponential growth of the large firm, first strictly following the "Cravath Model,"[35] then later departing from it.[36]

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27. *See id.* at 65–104; Robert W. Gordon, *Legal Thought and Legal Practice in the Age of American Enterprise*, *in* PROFESSIONS AND PROFESSIONAL IDEOLOGIES IN AMERICA 70 (Gerald L. Geison ed., 1983).

28. *See* ANTHONY T. KRONMAN, THE LOST LAWYER 2–3, 12 (1993).

29. *See* FRIEDMAN, *supra* note 1, at 105–119; READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSION, *supra* note 14, at 113–131.

30. *See* MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS (1991) (empirical study of the emergence and evolution of large American law firms); Robert W. Gordon, *The Ideal and the Actual in the Law: Fantasies and Practices of New York City Lawyers 1879–1910*, *in* THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA 64 (Gerald W. Gawalt, ed., 1984); ROBERT T. SWAINE, THE CRAVATH FIRM AND ITS PREDECESSORS: 1819–1947 (1946) (chronicling the rise and growth of the Cravath firm, one of the first large law firms).

31. RONEN SHAMIR, MANAGING LEGAL UNCERTAINTY: ELITE LAWYERS IN THE NEW DEAL (1995) (studying the relationship between elite lawyers, capitalism and the state).

32. ABEL, *supra* note 7, at 3–6, ; CURRAN & CARSON, *supra* note 11, at 1 tbl.1.

33. Stephen C. Yeazell, Brown*, the Civil Rights Movement, and the Silent Litigation Revolution*, 57 VAND. L. REV. 1975 (2004).

34. Robert Eli Rosen, *The Inside Counsel Movement, Professional Judgment and Organizational Representation*, 64 IND. L.J. 479, 479 (1989).

35. *See* GALANTER & PALAY, *supra* note 30; SWAINE, *supra* note 30; Wald, *WASP and Jewish Law Firms*, *supra* note 25; David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking Seeding and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998). For a discussion of the "Cravath Model," see *infra* Part II.A.2.

36. Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1873–1882 (2008).

Critical chapters of the "standard story" explore the rise and profitable campaign of the organized Bar for professional status,[37] the successful bid of law schools for monopoly over the production of lawyers,[38] and the campaign of a subset of schools, aligned with the large law firms, for exclusive elite status.[39] While the organized Bar failed in its attempt to close the door and effectively control entry,[40] it did succeed in helping the large law firm establish itself as the elite of the profession.[41] Also in the 1960s and 1970s, a male WASP Bar begins to disintegrate gradually, with increased numbers of women and minority lawyers entering the profession.[42] While the Bar eventually lost the battle over *exclusion* of minorities, racial minorities still face significant challenges.[43] Moreover, women-

37. ABEL, *supra* note 7, at 18–30; MICHAEL J. POWELL, FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION 141–44 (1988).

38. ABEL, *supra* note 7, at 40–73.

39. *Id.*

40. *Id.* at 102–11.

41. *See* JEROLD S. AUERBACH, UNEQUAL JUSTICE 4 (1976); ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 1 (1988); Wayne K. Hobson, *Symbol of the New Profession: Emergence of the Large Law Firm, 1870–1915*, *in* THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA 3, 3 (Gerard W. Gawalt ed., 1984).

42. Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U. L. REV. 923, 941 n.60 (2002) ("While the overall population of lawyers increased, the proportion of women lawyers ranged from 1-3% until the 1960s. It was not until the 1972 passage of Title IX of the Education Amendments Act forbid discrimination in educational programs receiving federal money that the numbers of women in law schools began to change significantly. However, the proportion of women lawyers continued to increase slowly. Until the 1970s women were less than 5% of lawyers."); Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 U. KAN. L. REV. 733, 736–37 (2001) ("From filling a mere 3.3% of law school slots and about the same percentage of the legal profession in the 1960s (there were even fewer in earlier decades), women's representation in the total number of law school applicants rose to just above one-half (50.1%) in 2000. This steady increase contributed to a steep rise in the number of women lawyers.") (citations omitted); Kathy L. Cerminara, *Remembering Arthur: Some Suggestions for Law School Academic Support Programs*, 21 T. MARSHALL L. REV. 249, 252 (1996) ("In an effort to increase the number of minority attorneys in the market, many law schools in the late 1960s developed 'special minority admissions programs designed to insure that a pre-designated portion of entering classes would consist of Blacks and, later, representatives of other racial minority groups indigenous to the American culture.' ") (quoting Alfred A. Slocum, *CLEO: Anatomy of Success*, 22 HOW. L.J. 335, 337 (1979)).

43. *See generally* Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367 (2004) (arguing that affirmative action admission policies at law schools have been ineffective in improving the practice experiences of minority attorneys); David B. Wilkins & G. Mitu Gu-

attorneys to this very day face a glass ceiling at large law firms and continue to dominate certain less prestigious segments of the profession.[44] Indeed, the success story of the legal profession in terms of overcoming discrimination is limited to the ethno-religious experiences of Jewish and Catholic attorneys.[45]

C. The Bias in the "Standard Story"

The so-called "standard story" is, in significant ways, an account not of the American legal profession but first of the legal profession in the Northeast, and subsequently of the practice of law in large American cities. This story is further concentrated on the experience of large law firms and on the practice first of litigation and later of corporate law.

In terms of the story's geographical bias highlighting the Northeast, while the colonies' chapter includes the significant experience of the southern colonies,[46] even the early experiences were somewhat skewed. The federal Bar was dominated by Philadelphia lawyers, in part because the United States Supreme Court sat in Philadelphia.[47] After the Civil War, the focus of the research turned to large American cities. The New Deal chapter was, to a significant degree, a Washington, DC, story.[48] Illinois, a frontier state, emerged after the Civil War as a key legal center and the seat of the American Bar Association.[49] In fact, even the now commonly accepted insight of the "two hemispheres" of lawyering—the stratification of American

lati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493 (1996) (exploring the reasons for the low representation of black partners and associates at large law firms).

44. *See* Reichman & Sterling, *supra* note 42, at 928 (citing NAT'L ASS'N FOR LAW PLACEMENT FOUND. FOR RESEARCH & EDUC., PERCEPTIONS OF PARTNERSHIP: THE ALLURE ACCESSIBILITY OF THE BRASS RING 139–141 (1999).

45. *See generally* Wald, *WASP and Jewish Law Firms*, *supra* note 25; Eli Wald, *The Rise of the Jewish Law Firm or Is the Jewish Law Firm Generic*?, 76 UMKC L. REV. 885 (2008) [hereinafter Wald, *Rise of the Jewish Law Firm*]; David B. Wilkins, *If You Can't Join 'Em, Beat 'Em! The Rise and Fall of the Black Corporate Law Firm*, 60 STAN. L. REV. 1733 (2008); Wilkins & Gulati, *supra* note 43.

46. *See* FRIEDMAN, *supra* note 1, at 113–119.

47. *See id.* at 226–249; David T. Bazelon, *Portrait of a Business Generalist*, 29 COMMENTARY 277, 279 (1960) ("There is a nice vignette to be written about the popular displacement in the past few decades of the historic phrase 'Philadelphia lawyer' by the new and more magical 'New York lawyer.' ").

48. *See generally* SHAMIR, *supra* note 31.

49. *See* Am. Bar Ass'n, History of the American Bar Association, http://www.abanet.org/about/history.html (last visited May 12, 2009) (noting that the association is headquartered in Chicago).

lawyers along representation of either entity or individual clients—was coined in a study not of American lawyers, but rather of Chicago lawyers.[50] Other large cities featured prominently in the "standard story" have been New York City, Boston, Los Angeles, San Francisco, and Atlanta.

The large law firm, known as the Wall Street law firm, embodies the narrow-focus bias in the "standard story." Erwin Smigel's classical study of large law firm organization, structure, and culture is entitled *The Wall Street Lawyer*,[51] and Jerold Auerbach's seminal work, *Unequal Justice*, is grounded in the experiences of New York City law firms.[52] The "standard story" is, to a significant extent, the story of New York City and its attorneys practicing corporate law on behalf of corporate clients.[53] Indeed, the large law firm model is known as the Cravath Model[54] after one of New York City's oldest and most respected law firms.[55]

To the extent that significant developments in the life of the American legal profession took place first in the Northeast and later in large cities, there is no reason to worry about the so-called bias of the "standard story." The problem is that in an age of information overflow,[56] the "standard story" gets set in stone and becomes resistant to change. Worse, there is the risk that subsequent information would be assumed to conform to the "standard story" and would be measured against the yardstick of the "standard story." Consequently, the "standard story" tends to foreclose on the possibility of other, different accounts of the American legal profession, which is unfortunate because contextual experiences are insightful regardless of whether they tend to confirm the "standard story" or disprove

50. JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 319 (1982).

51. ERWIN O. SMIGEL, THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? (1964).

52. AUERBACH, *supra* note 41. And a leading account of the rise of bar associations is that of the New York City Bar Association. POWELL, *supra* note 37.

53. *See, e.g.*, AUERBACH, *supra* note 41; JEROME E. CARLIN, LAWYERS' ETHICS: A SURVEY OF THE NEW YORK CITY BAR (1966); SMIGEL, *supra* note 51.

54. *See* discussion *infra* Part II.A.2.

55. Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1807–09. *See generally* SWAINE, *supra* note 30.

56. FRIEDMAN, *supra* note 1, at ix ("In the preface to the second edition, I said that the literature had expanded like a balloon, and that it was becoming harder and harder to keep up. This is even more true today, as I write this preface, in the early years of the twenty-first century. It has become almost impossible—perhaps it *is* impossible—to master the whole literature.").

it. Just as disconcerting is the risk that the development of such a rigid orthodoxy would lead to narrow framing of challenges facing the profession and, as a result, to the development of a limited set of solutions.

A phenomenon akin to what Gillian Hadfield has called the "crowding out" of individual litigants by corporate ones, and the gradual displacement of the justice game by greasing the wheels of the economy,[57] seems to be taking place in the telling of the story of the American legal profession. For example, in the twenty-first century, scholars are hard at work addressing the concerns of large law firms—the rise of global firms,[58] large firms going public,[59] the unheard-of firing or detenuring of partners,[60] and the outsourcing of legal services[61]—as opposed to exploring in detail the needs of millions of underrepresented and nonpaying clients.[62]

The consequences of this bias are three-fold. First, the "standard story" ends up neglecting non-large law firm lawyers (such as solo practitioners, small-size law firms, public interest lawyers, and private sector lawyers),[63] non-corporate law prac-

57. Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 MICH. L. REV. 953, 999–1000 (2000); *see also* Galanter, *supra* note 21.

58. *See, e.g.*, STEPHEN MAYSON, COLL. OF LAW OF ENG. & WALES, GLOBAL LAW FIRMS: A STRATEGY LOOKING FOR A MARKET? (2008), http://www.law.georgetown.edu/LegalProfession/documents/MaysonWebsiteArticle.pdf.

59. *See, e.g.*, Chandler N. Hodge, *Law Firms in the U.S.: To Go Public or Not To Go Public?*, 34 U. DAYTON L. REV. 79 (2008); Bret Adam Beldt, Student Commentary, *The Inevitable Change of America's Archaic Limitations on Public Ownership of Law Firms*, 33 J. LEGAL PROF. 117 (2008).

60. *See, e.g.*, Karen Sloan, *Midsize New Jersey Firm Lays Off 8% of Its Attorneys*, NAT'L L. J., Feb. 27, 2009, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202428626270; Emma Sadowski & Sofia Lind, *A&O to Cut Partners, Associates and Freeze Pay*, LEGAL WEEK, Feb. 19, 2009, http://www.legalweek.com/Company/273/Navigation/18/Articles/1197361/AO+to+cut+partners,+associates+and+freeze+pay.html; Amanda Royal, *800 Law Firm Layoffs in One Day*, RECORDER, Feb. 13, 2009.

61. *See, e.g.,* James I. Ham, *Ethical Considerations Relating to Outsourcing of Legal Services by Law Firms to Foreign Service Providers: Perspectives from the United States*, 27 PENN. ST. INT'L L. REV. 323 (2008). *See generally* Carole Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*; 45 VA. J. INT'L L. 897 (2005); Laurel S. Terry et al., *Transnational Legal Practice*, 42 INT'L LAW. 833 (2008).

62. *But see, e.g.*, Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027 (2008).

63. *But see, e.g.*, JOEL F. HANDLER, THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE-SIZED CITY (1967).

titioners,[64] and the practice of law outside of big metropolitan areas.[65] Second, the "standard story" creates path dependencies that frame the issues explored by legal profession scholars in a particular fashion. Racial and gender discrimination, for example, are studied in the context of the large law firm, and proposed solutions to related challenges are limited to that context.[66]

Finally, and perhaps most troubling because it is the most subtle, the "standard story" obscures our understanding of issues it purportedly addresses, such as the rise of the large law firm, the relevance of socioeconomic and cultural considerations to the notion of merit, the relationship between the legal elite and the rest of the Bar, and the experiences of minority lawyers at large law firms. Rather than study large American law firms, the "standard story" focuses on the experience of the large Wall Street law firms and then attempts to superimpose its insights on other large firms outside of New York City. The "Cravath Model" becomes the yardstick for understanding the organization and structure of all large law firms, and the discrimination against minority lawyers by Wall Street firms frames studies of discrimination nationwide. While subtle, the consequences of the orthodoxy of the "standard story" are nonetheless astounding. For example, instead of studying discrimination in its various contexts, the scholarship focuses on discrimination by large law firms, and instead of studying the varying discriminatory experiences across different types of large law firms, the scholarship focuses on the Wall Street model. As a result, its insights and recommendations for overcoming discrimination are often ill-suited and not sophisticated enough to address the complex and nuanced problems faced by minority lawyers.

The rest of this Article attempts to challenge the "standard story" by telling the story of the Colorado legal profession, which differs from the "standard story" in meaningful ways. Specifically, by studying the rise of the Colorado legal elite, the Article focuses on the part of the "standard story" that deals

64. *But see, e.g.,* AUSTIN SARAT & WILLIAM L. F. FELSTINER, DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS (1995).

65. *But see, e.g.*, DONALD D. LANDON, COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON PROFESSIONAL PRACTICE (1990).

66. *See, e.g.*, David B. Wilkins, *From "Separate Is Inherently Unequal" to "Diversity Is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548 (2004).

with the rise of the large law firm and its establishment as the legal elite.[67]

The story of Colorado's legal elite—its largest law firms—is quite different from the "standard story" of the rise of the Wall Street law firm as the legal elite. In particular, Colorado's elite firms employed a mechanism of discrimination—nepotism—explicitly rejected by Wall Street's elite firms. The Colorado experience sheds a new light on current discriminatory challenges facing the profession today, in and out of Colorado. Understanding the workings of nepotism is important because while explicit discrimination violating adopted merit standards based on ethno-religious, racial, and gender grounds may be (mostly) a thing of the past, nepotism is very much a practice reality for many attorneys.

II. THE COLORADO LEGAL ELITE

The story of the Colorado legal profession, let alone of its elite, is mostly untold,[68] in part because of the exclusionary power of a "standard story."[69] Prima facie, the Colorado experi-

67. This Article does not address the neglect of non-large law firm lawyers, although by exploring the experience of the Colorado legal profession, it does address the neglect of lawyers practicing outside of the usual large American cities. Instead, the Article focuses on the other two evils of the "standard story"—its suppression of contextual experiences different than the standard tale and the narrow framing of problems and solutions that follows. Not only is the large law firm chapter of the "standard story" still an important part because of the role of large law firms in today's legal profession, but experiences of and within large law firms dominate conceptions of discrimination in the American legal profession.

68. The literature includes two works that are part history, part advertisement (and thus self-serving and somewhat suspect), ALAN J. KANIA & DIANE HARTMAN, THE BENCH AND THE BAR: A CENTENNIAL VIEW OF DENVER'S LEGAL HISTORY (1991); GEORGE E. LEWIS & D. F. STACKELBECK, BENCH & BAR OF COLORADO (1917); anecdotal treatment of the profession in broader accounts of Colorado; and one vanity press history of Colorado's largest law firm, WILLIAM H. HORNBY, THE LAW OUT WEST: HOLLAND & HART 1947–1988 (1989). A recent addition is the detailed descriptive work of David Erickson on the formation years of the Colorado legal profession. ERICKSON, *supra* note 5.

69. Other factors besides the exclusionary power of the "standard story" also contribute to the absence of meaningful research into the history and experiences of the Colorado legal profession. In absolute terms, at approximately 20,000 licensed attorneys, Colorado's legal profession is not considered large, which may explain why it is not an object of interest to scholars outside of the region. *But see* Reichman & Sterling, *supra* note 42 (studying women attorneys' mobility and career patterns in Colorado); Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27 (2004) (examining three dimensions of gender disparity at play in Colorado's legal profession: compensation, promotion, and retention/attrition).

ence seems to fit the "standard story" of the rise of the legal elite, consisting of WASP male attorneys practicing in large law firms.[70] As such, there appears to be little reason to explore the Colorado experience. And yet, the absence of research demonstrates the dangerous impact of the "standard story." As this Article demonstrates, in numerous and significant ways the story of the rise of the Colorado legal elite does not follow the "standard story." This very contextual richness, foreclosed by a simplified "standard story," is instrumental in forming a better understanding of phenomena such as general practice orientation versus specialized corporate practice, the size and growth patterns of elite law firms, the organization and functions of bar associations, the role of law schools and their relationships with the practicing Bar, and, most strikingly, the complex operation of various mechanisms of discrimination.

A. 1858–1914—Background: Formation of the Colorado Legal Profession

The experience of the Colorado Bar in its formative era, between 1858 and World War I, was significantly different than the "standard story." Unlike its "standard" paradigmatic counterpart in New York City, the Colorado legal profession was not dominated by the emergence and growth of large law firms, corporate law practice as the leading specialized practice area, and WASP white-shoe establishment as its elite. These important differences opened the door for the development of an "other," more diverse and egalitarian legal elite.

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70. Pursuant to the "standard story," in the late nineteenth and early twentieth centuries, large, corporate law firms constituted the elite of the American legal profession. *See* AUERBACH, *supra* note 41, at 4 ("Corporate lawyers . . . emerged around the turn of the century as self-appointed guardians of professional interests . . . . [d]ominating major professional associations and institutions . . . . They constituted a professional elite: a group able to define the terms of admission 'to the circle of the . . . influential.' " (last omission in original)); Hobson, *supra* note 41, at 3 ("[T]he corporation lawyer in the large law firm seems to symbolize what has become of the legal profession in modern America."); NELSON, *supra* note 41, at 1 ("The large law firm sits atop the pyramid of prestige and power within the American legal profession. Although comprising but a small fraction of lawyers, through its impact on patterns of recruitment, styles of practice, and the collective institutions of the bar, the large law firm has a significance that far exceeds the number of lawyers it employs.") (citation omitted). These elite law firms had a distinctive WASP ethno-religious and cultural identity. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1810–25.

1. The Story of the Colorado Legal Profession

The Gold Rush of 1858 to 1859 brought many adventurers to the banks of Cherry Creek, and with them, the region's first practicing attorney, David C. Collier,[71] who was soon followed by about a dozen more attorneys.[72] Jurisdiction in the twin towns of Denver and Auraria was in flux.[73] The settlers, exercising self-governance, administered crude pioneer justice. Civil matters were handled in "Miners' Courts," and criminal matters were handled by the "People's Courts."[74] Erickson details the organic growth of these courts and their gradual replacement by state and federal courts,[75] noting that "[d]espite the formation of a state court system in 1876, rough justice persisted."[76] The *Rocky Mountain News*, established in 1859,[77] decried in 1860 the lack of law and visible government in the region.

Congress responded and, with the Civil War looming, created the Territory of Colorado.[78] Shortly thereafter, President Lincoln appointed Colorado's first Supreme Court Justice.[79] Chief Justice Hall appointed a committee to examine the qualifications of candidates seeking admission to the Bar and, on July 11, 1861, admitted twenty-nine men as Colorado's first attorneys.[80] Consistent with the characteristics of the local pioneer population in the new Territory, Colorado's first lawyers

71. ERICKSON, *supra* note 5, at 4.

72. Today's Colorado was, in 1859, still part of the Territory of Kansas. KANIA & HARTMAN, *supra* note 68, at 17–20; ERICKSON, *supra* note 5, at 15.

73. "Swifte justice was meted out to the horse thief, to the hold-up and the cheat. More often than not, those assembled to hear the trial acted as court, judge, and jury." KANIA & HARTMAN, *supra* note 68, at 18–19 (quoting a 1923 Denver Bar journal article on pioneer law).

74. ERICKSON, *supra* note 5, at 9–12; KANIA & HARTMAN, *supra* note 68, at 19; LEWIS & STACKELBECK, *supra* note 68, at 17–20. "Because there was no established judicial system, the settlers creatively improvised a means of dispute resolution by forming 'People's Courts,' " or "Miners' Courts." JOHN SUTHERS & TERRI CONNELL, THE PEOPLE'S LAWYER: THE HISTORY OF THE COLORADO ATTORNEY GENERAL'S OFFICE 8 (2007).

75. ERICKSON, *supra* note 5, at 9–12, 35–48, 83–90.

76. *Id.* at 92.

77. *Id.* at 5. The first issue of the *Rocky Mountain News*, dated April 23, 1859, included Colorado's first legal advertisement, Collier's business card. *Id.*

78. Congress was reacting not only to local pleas for law and order but also operating in the looming shadow of the Civil War, and acting to ensure that the new Territory would not secede and join the Confederation. ERICKSON, *supra* note 5, at 23, 30–34.

79. *Id.* at 24.

80. *Id.* at 24–25.

were generally young adventurers, seeking gold and fortune.[81] Colorado became a state in 1876. Following the growth of the state and its economy, the profession gradually increased in size.[82]

This account, both in terms of the identity of Colorado's first lawyers and the gradual growth of the Bar, is consistent with a chapter of the "standard story"—that of law and lawyers on the frontier. Frontier lawyers were typically young adventurers and fortune seekers.[83] Attorneys had little to do until people had accumulated sufficient wealth to give rise to legal disputes. Once this happened, a functioning legal system was established and a pioneer culture of rough justice was replaced with legally sanctioned dispute resolution.[84] Criminal cases were common and ranged from assaults to horse stealing.[85] When the practice of law could not support the frontier lawyers, supplementing one's income with real estate investments was common.[86] With the exception of these frontier characteristics, however, Colorado's legal profession did not follow the "standard story."

2. The Colorado Legal Profession and the "Standard Story"

The "standard story" of the American legal profession highlights two characteristics of the typical lawyer of the mid-nineteenth century.[87] He was a litigator, often a circuit-riding

81. *Id.* at 207 ("Most of the state's pioneer lawyers arrived at a young age and were generally adventuresome . . . .").

82. In 1873, only about seventy lawyers practiced in Denver. *Id.* at 99. By 1900, there were 1616 lawyers in Colorado (with a population of 539,700). *Id.* at 207. By 1910, there were 1634 lawyers (population 779,024), and by 1920, there were only 1517 lawyers (population 939,629). *Id.* at 207–08.

83. *See, e.g.*, Elizabeth Gaspar Brown, *Frontier Justice: Wayne County 1796–1836*, 16 AM. J. LEGAL HIST. 126 (1972); Robert J. Sheran & Timothy J. Baland, *The Law, Courts, and Lawyers in the Frontier Days of Minnesota: An Informal Legal History of the Years 1835 to 1865*, 2 WM. MITCHELL L. REV. 1 (1976).

84. *See, e.g.*, William F. English, *The Pioneer Lawyer and Jurist in Missouri*, U. MO. STUD., Apr. 1947, at 1.

85. *See* JOSEPH G. BALDWIN, *The Bench and the Bar, in* THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI: A SERIES OF SKETCHES 47 (D. Appleton & Co., 1854), *available at* http://docsouth.unc.edu/southlit/baldwin/baldwin.html#bald47; Maxwell Bloomfield, *The Texas Bar in the Nineteenth Century*, 32 VANDERBILT L. REV. 261 (1979).

86. KANIA & HARTMAN, *supra* note 68, at 18.

87. Another characteristic of the typical lawyer of the nineteenth century was his gender. Not until the 1970s did women begin entering the legal profession in significant numbers, and not until the 1990s did women regularly constitute ap-

orator.[88] He was also a lawyer-statesman, in the sense that the practice of law was not only a steppingstone to a career in politics but embodied a commitment to live a professional career as a public citizen—a problem-solver, not only for his clients' specific interests but for the community at large, helping spread justice and address issues of concern to society.[89]

Colorado's experience did not follow this pattern. First, in the late 1850s, 1860s, and 1870s, Colorado did not feature litigation front and center as the paradigm for law practice. Nor was there a great tradition of orator-litigators as leaders of the Bar. To be sure, there were certainly prominent litigators in the state,[90] but the circuit-riding, orator-litigator did not develop as the predominant paradigm and symbol of the Bar as it did in the East. Instead of a practice spearheaded by litigation, early leading Colorado lawyers' general practice featured mining, real estate, banking, and water law.[91]

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proximately fifty percent of the national law student population. *See* Thomas O. White, *A Retrospective Examination of Law School Admissions, The Law School Admission Council, and Law School Admission Services*, *in* LAW SCHOOL ADMISSIONS, 1984–2001: SELECTING LAWYERS FOR THE TWENTY-FIRST CENTURY 13, 28 (Walter B. Raushenbush ed., 1986) ("Between 1972–73 and 1982–83, the number of women grew from 11.8 percent to 36.8 percent of all law students."). In 1986, women constituted approximately forty percent of law students nationwide. *See Twenty Years of Legal Ethics: Past, Present, and Future*, 20 GEO. J. LEGAL ETHICS 321, 338 (2006) (transcript of panel discussion at the Georgetown Journal of Legal Ethics 2006 Symposium). By 1990, women comprised fifty percent of law students. MONA HARRINGTON, WOMEN LAWYERS: REWRITING THE RULES 15 (1994).

88. *See*, *e.g.*, DANIEL H. CALHOUN, PROFESSIONAL LIVES IN AMERICA: STRUCTURE AND ASPIRATION: 1750–1850, at 60–66, 70–71, 80 (1965) (discussing the nature and decline of circuit-riding in Tennessee); Fannie Memory Farmer, *Legal Practice and Ethics in North Carolina: 1820–1860*, 30 N.C. HIST. REV. 329, 335 (1953). *See generally* Barry R. Vickrey, *Lessons in Leadership from Lincoln the Lawyer*, 45 S.D. L. REV. 334 (2000); KRONMAN, *supra* note 28, at 2–3, 12.

89. *See* Louis D. Brandeis, *The Opportunity in the Law*, 39 AM. L. REV. 555, 555–58 (1905) (an address before Harvard Ethical Society urging a graduating class of law students to stand their professional ground and practice as lawyers for the people instead of as servants of corporate interests); L. Ray Patterson, *Legal Ethics and the Lawyer's Duty of Loyalty*, 29 EMORY L.J. 909, 912, 946–47 (1980); Michael Schudson, *Public, Private, and Professional Lives: The Correspondence of David Dudley Field and Samuel Bowles*, 21 AM. J. LEGAL HIST. 191, 201, 206 (1977); Mark DeWolfe Howe, Book Review, 60 HARV. L. REV. 838 (1947) (reviewing ROBERT T. SWAINE, THE CRAVATH FIRM AND ITS PREDECESSOR, 1819–1947, VOLUME I (1946)).

90. Such as William R. Kelly, Carl Cline, Benjamin C. Hilliard, Robert W. Steele, and Farrington Reed Carpenter. *See* Lee G. Norris et al., *Six of the Greatest: A Tribute to Outstanding Lawyers in Colorado History*, 13 COLO. LAW. 1173 (1984).

91. "[L]awyers congregated in the booming mining towns of Leadville and Lake City . . . . Lawyers also gathered in Central City and Black Hawk."

The practice realities and needs of clients dictated a legal profession of general practice orientation. In 1874, in the "waning days of the Colorado Territory, the legal community continued to be mainly centered in the mining towns of Leadville, Central City, Black Hawk, and Georgetown. These were bustling communities with thousands of people and high level of commerce."[92] Litigation, when it did occur, dealt with frontier affairs, mostly criminal related and not business oriented. "Trial dockets show that most of the focus of the territorial courts during the early 1860s involved rudimentary law and order concerns."[93] Moreover, litigation did not evolve as a leading practice area in Colorado because many of the Territory's newcomers could not afford it. "Only the largest corporations could bear the expenses of the extensive litigation that followed, allowing Colorado lawyers and judges to play a leading role [in settling mining disputes]."[94] The practice of the Colorado Bar reflected these realities. As opposed to the orator-litigator paradigm in the East, Colorado lawyers were more generalists, pursuing mining, real estate, banking and water law as well as litigation.

Second, whereas members of the legal profession in the East were, and aspired to be, lawyer-statesmen, Colorado lawyers were part-time land investors and real estate speculators. Indeed, some lawyers came looking for gold; others made their fortune off gold seekers.[95] Following the collapse of the econ-

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ERICKSON, *supra* note 5, at 71. "Leadville was booming. Money was plenty, and everyone who didn't have a sideline suit had an apex affair, and precedents were being created every few days, and lawyers were making records and judges rulings for all time." *Id.* at 76 (quoting THE DENVER EVENING POST, May 22, 1900, at 12).

92. SUTHERS & CONNELL, *supra* note 74, at 23; *see also*, CHARLES HOWARD SHINN, MINING CAMPS, A STUDY IN AMERICAN FRONTIER GOVERNMENT (1965).

93. SUTHERS & CONNELL, *supra* note 74, at 12.

94. ERICKSON, *supra* note 5, at 76. The identity of Colorado's first lawyers in the formative era provides a background against which to evaluate the rise of the legal elite in the state. Erickson describes the development of the railroads in Colorado and their impact on the practice of law and the role of lawyers: "railroad development within Colorado commenced, creating an abundance of legal work for lawyers." *Id.* at 58. He describes disputes between railroad companies, such as the Colorado Central litigation between Colorado stockholders and Union Pacific, which are somewhat reminiscent of the Erie litigation. *Id.* at 60–61. While Erickson describes the rise of some prominent attorneys representing the railroads, such as Edward Wolcott, it is unclear whether the presence of railroads led to the rise of large law firms or zealous advocacy by lawyers. *Id.* at 64–66.

95. "[G]old seeking was not altogether outside the professional purposes of those who constituted it in pioneer times . . . ." KANIA & HARTMAN, *supra* note 68,

omy and the Silver Panic of 1893, "many mining lawyers moved their practices to the large urban centers of Denver, Colorado Springs, and Pueblo."[96] Members of the Bar proved resilient, not unlike their brethren in the Northeast,[97] and adapted by turning to real estate law and practice. "With the collapse[ ] [of the] economy, real estate foreclosures were common . . . . Nearly all lawyers became involved in real estate speculation."[98]

To be sure, some Colorado lawyers were active politicians, and some lawyers in the East were businessmen. The point is one of emphasis, orientation, and professional ideology. The paradigmatic successful lawyer of the Northeast was a lawyer-statesman—a part-time litigator, part-time politician whose two roles were complimentary and reinforcing. In particular, an attorney's private practice enhanced his role as a public servant. On the other hand, the typical early thriving Colorado attorney was a part-time generalist, part-time real estate speculator; and while those two roles were often interrelated, they were both grounded in the private sphere.[99]

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at 17. Members of the pioneer Bar "made a scant living as lawyers and often resorted to moonlighting among the miners." *Id.* at 18.

Rather than lawyer-statesmen, some of Colorado's leading lawyers limited their public service, in order to resume their private practices. For example, Samuel Browne, a prominent lawyer of his day and Colorado's second Territorial Attorney General, resigned as U.S. Attorney and Attorney General three years following his appointment and entered full time private practice. SUTHERS & CONNELL, *supra* note 74, at 17. He was disbarred by the Supreme Court in 1874 for failing to pay a client. *Id.* at 18. Henry Calvin Thatcher of Pueblo, Colorado's fourth Attorney General, served for only a year before resuming representation of the Atchison Topeka and Santa Fe Railroad. His successor, Lewis C. Rockwell, later become a prominent mining claims attorney. *Id.* at 21.

96. ERICKSON, *supra* note 5, at 82.

97. *See, e.g.*, Carroll Seron, *New Strategies for Getting Clients: Urban and Suburban Lawyers' Views*, 27 LAW & SOC'Y REV. 399 (1993) (exploring the ability of lawyers to adapt to increasingly competitive practice realities by developing new strategies for getting clients); Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the "New Public Interest Law,"* 2005 WIS. L. REV. 455, 461 (2005) (discussing the adaptability of public interest lawyers). *See generally* Pearce, *supra* note 25 (arguing that lawyers adopt new professional ideologies in response to changing practice realities which allow them to assert their dominant position and maintain their elevated socioeconomic status in society).

98. ERICKSON, *supra* note 5, at 82. This was very different than in New York City, where real estate lawyers were the bottom-feeders, practicing in an area considered unbefitting respectable members of the Bar. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1833–36.

99. During the formation era, many Colorado lawyers, including leading members of the Bar, were part-time attorneys, supplementing their income by doing business. For example, "[Carpenter's] law business began as something of a sideline; most of his early fees were made from notarizing documents for the local

In the late nineteenth century, pursuant to the "standard story," the legal profession experienced a client-driven paradigm shift, a transformation that saw the gradual decline of litigation as the embodiment of the practice of law and the rise of corporate law and corporate lawyers as leading members of the Bar.[100] Correspondingly, the profession experienced the emergence and subsequent growth of the large law firm.[101] This growth was based on the Cravath Model of teamwork, featuring partners and associates, increasingly specialized corporate law, law school recruitment and in-office training, and an "up-or-out" promotion policy. Large law firms quickly established themselves as the legal elite, relying on the WASP and white-shoe status of their attorneys and clients.[102]

The Colorado legal profession did not experience the paradigm shift from litigation to corporate law at the end of the nineteenth century. As previously mentioned, litigation never developed as the paradigm of legal practice. Rather, Colorado lawyers were generalists who practiced mining and water law, as well as real estate, banking, and litigation. Colorado had no exclusive litigation base to transition from. Further, Colorado did not experience the rise of great corporate clients demanding growing expertise in corporate law.[103] Instead, until the early 1950s, Colorado's economy (and in turn its business law practice) was dominated by a local power elite, consisting of a select

bank." Rebecca Love Kourlis, *Six of the Greatest: Farrington Reed Carpenter*, 13 COLO. LAW. 1181, 1181 (1984). Throughout his life, Carpenter remained active in the livestock industry. *Id.* at 1182. Additionally, "[l]ife wasn't easy for a young attorney. In 1915 Carr moved to Trinidad where he worked for the local paper while trying to practice law . . . ." Bill Hosokawa, *Six of the Greatest: Ralph L. Carr*, 14 COLO. LAW. 1168, 1170 (1985). Carr went on to serve two terms as Colorado's governor between 1938 and 1942. *Id.* at 1170, 1172. *See also* Richard Downing, Jr., *Six of the Greatest: Warwick M. Downing*, 14 COLO. LAW. 1178, 1178 (1985) (Warwick Downing, a "genuine Seventeenth Street character," was a "residential real estate promoter."); John L. J. Hart, *Six of the Greatest: Henry McAllister*, 12 COLO. LAW. 1072, 1072 (1983) ("There was not much well-paying legal business in Colorado a half century ago [in 1933]. Most members of the Bar involved themselves in the growing economy of Colorado—investing in real estate and business ventures, being the backbone of politics and holding most political offices.").

100. *See generally* KRONMAN, *supra* note 28, at 53–108.

101. *See generally* GALANTER & PALAY, *supra* note 30; SWAINE, *supra* note 30.

102. Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1810–25.

103. Indeed, the one attempt, by David Moffat, to make Colorado a strategic railroad location failed and led to the collapse of his bank, one of Colorado's only leading financial institutions. *See* PHIL GOODSTEIN, DENVER IN OUR TIME: A PEOPLE'S HISTORY OF THE MODERN MILE HIGH CITY, VOL. 1: BIG MONEY IN THE BIG CITY 39–40 (1999).

few families and their interests (that is, Colorado did not feature a corporate law emphasis to transition into).[104]

As a result, in yet another stark departure from the "standard story," in the late nineteenth century and early twentieth century, Colorado did not experience the rise of the large law firm based on the Cravath Model.[105] In particular, because large law firms did not rise in Colorado, large law firm lawyers did not establish themselves atop the practice of law as the elite. In sum, during its formative era, the Colorado legal profession deviated in significant ways from the "standard story." Its practitioners were generalists (as opposed to first litigators and later increasingly corporate law specialists) and part-time private real estate speculators (as opposed to part-time public statesmen). Weak corporate client demand did not lead to the rise of large corporate law firms, let alone the rise of large WASP white-shoe discriminatory entities as its elite.

These departures from the "standard story" seemed to have left the door open for the development of a "different," "other" legal profession in Colorado, one with a more egalitarian and equal legal elite. Such an expectation was captured by Erickson, describing the prospects of a newcomer to the profession during the formation years of the Colorado legal profession: "In the East, the business is controlled mainly by a few old firms, and the new men labor up the ladder very slowly, if they rise at all. In Denver, however, a young man who combines pluck with industry and brains can make room for himself very soon."[106] In other words, whereas the profession in the East was dominated by WASP, white-shoe large firms, the Colorado Bar during its formative era did not feature a similar hierarchy based on ethno-religious and cultural considerations. Rather, hard work played a greater role in determining success and high status in Colorado, suggesting the possibility of the development of a more equal elite structure.

Two additional departures from the "standard story," regarding the organization and function of bar associations and law schools, further supported the possibility of the development of an "other" legal elite in Colorado. First, the "standard

104. *See infra* Part II.B.1.

105. *See generally* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1806–10 (describing the development and structure of the Cravath System).

106. ERICKSON, *supra* note 5, at 156 (quoting HISTORY OF THE CITY OF DENVER, COUNTY OF ARAPAHOE AND COLORADO 300 (Denver, O.L. Baskin & Co. 1880)).

story" locates the rise of bar associations within a broader, two-pronged effort. One, shared by the entire practicing Bar, was to restrict entry into the profession of undesirables.[107] The second, led by the aspiring new legal elite—the large law firm—was to use bar associations as a platform for establishing its status, in part by belittling and putting down others.[108] Erickson echoes the first prong of the "standard story" in describing the organization of the Colorado Bar Association ("CBA"):

> During Colorado's boom years, 1885 to 1893, there was: "a constant influx of new lawyers from all over the world, and some of them got to going pretty strong. At the time the [CBA] was organized public opinion made it quite apparent that it was up to the bar to clean house."[109]

As evidence of the early Bar's regulatory projects, Erickson notes that at the first annual meeting of the CBA, in July, 1898, a code of ethics was adopted, based on the Alabama

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107. In Colorado, as was the case elsewhere, the growing number of lawyers as well as the concentration of many attorneys in urban areas made informal control of the profession less effective and led to the rise of bar associations. William T. Gallagher, *Ideologies of Professionalism and the Politics of Self-Regulation in the California State Bar,* 22 PEPP. L. REV. 485, 514 (1995) (explanations for the rise of bar associations include "growth in the number of lawyers, an increase in the heterogeneity of the profession, the concentration of many lawyers in large urban areas, and a shift in the dominant type of practice from courtroom to office work").

108. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1823–25. Auerbach argues that bar associations' development and assertion of self-regulation during their formative era was orchestrated by elites within the profession, motivated by ethno-religious bias, to control the burgeoning immigrant Bar. *See* AUERBACH, *supra* note 41, at 95–129. Hobson asserts that the elite's ethno-religious campaign identified a convenient low-status scapegoat for the profession (namely Jewish and Catholic attorneys), allowing elite lawyers to establish their superior professional status. WAYNE K. HOBSON, THE AMERICAN LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY, 1890–1930, at 301–04 (1986); *see also* Andrew Abbott, *Status and Status Strain in the Professions*, 86 AM. J. SOC. 819 (1981). *But see generally* TERENCE C. HALLIDAY, BEYOND MONOPOLY: LAWYERS, STATE CRISES, AND PROFESSIONAL EMPOWERMENT, at xiii (1987) (empirical study suggesting that while elites were dominant in some bar associations, they generally did not control them).

109. ERICKSON, *supra* note 5, at 148–49 (quoting remarks of George C. Manly, Transactions of the Thirty-Sixth and Thirty-Seventh Annual Meeting, Colorado Bar Association 67 (Sept. 14–15, 1934)). In an interesting account of the early stages of attorney regulation, Erickson details early licensing requirements, a mandatory bar exam as of 1897, and negative public attitude about lawyers reflected in a sarcastic poem published in the *Rocky Mountain News*. *Id.* at 146, 153. In a chapter on "conflicts with the press," Erickson explains that the uncertain economy of the early 1890s and the Populist sentiments of the times led to a contentious, acrimonious interaction between the Bar and the press. *Id.* at 163–73.

Code.[110] Further, "[d]uring the first 2½ years of its existence, the CBA considered 31 lawyer complaints, authorized disbarment proceedings in 18 cases, and commenced them in 15 cases."[111] As a result, " '50 or 60 fellows took the hint, and got out before the proceedings were started. . . . They moved to Nevada and California, where the pastures appeared to be greener.' "[112]

On the other hand, it appears that the formation of the Denver and Colorado Bar associations (unlike bar associations in New York City) was not primarily designed to block competition from undesired newcomers along ethno-religious lines.[113] Rather, the DBA was motivated as much by concerns for legal reform and socializing as it was a vehicle to block entry into the profession.[114] CBA's activities were centered upon court delays, the administration of justice, and advancing the science of jurisprudence[115] and the state of the judiciary.[116]

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110. *Id.* at 149.

111. *Id.*

112. *Id.* (quoting remarks of George C. Manly, Transactions of the Thirty-Sixth and Thirty-Seventh Annual Meeting, Colorado Bar Association 69 (Sept. 14–15, 1934)).

113. To the contrary, several early leaders of Colorado's bar associations were of Jewish descent. Ernest Morris, for example, was chairman of the Denver Bar Association's ("DBA") House Committee and chairman of the CBA's Legislative Committee. *See* Willis V. Carpenter, *Six of the Greatest: Ernest Morris*, 19 COLO. LAW. 1286, 1286–87 (1990). Morris was subsequently elected president of the DBA. *Id.* at 1287. Similarly, in 1926, Ira L. Quiat was elected to the Colorado State Senate, serving for eight years as chairman of the Judiciary Committee and authoring, among other statutes, Colorado's "Blue Sky" law preceding the federal securities statutes. *See* Gerald M. Quiat & Marshall Quiat, *Six of the Greatest: Ira L. Quiat, Jr.*, 20 COLO. LAW. 1351, 1351 (1991). During the Depression, Quiat worked for the federal government and later returned to private practice. *Id.* For years, he served as chairman of the DBA Legislative Committee, and, in 1957, Quiat received the DBA's first annual Award of Merit. *Id.* The following year, he became the president of the DBA. *Id.* at 1352. *See also* DVD: AND JUSTICE YOU SHALL PURSUE: EARLY COLORADO JEWISH LAWYERS (Rocky Mountain Jewish Historical Society 2003) [hereinafter AND JUSTICE YOU SHALL PURSUE] (detailing early Jewish leadership of the bar associations). That is not to say that ethno-religious bias did not exist in Colorado. Charles Traylor, who became a prominent Colorado attorney, recalled returning to Colorado with his wife after WWII in 1946. Warwick Downing, *An Oral History: Charles Traylor*, COLO. LAW., Sept. 1997, at 27, 29. Both were from small towns and decided he would look for a job in a small town. *Id.* "A lawyer in Eastern Colorado—I won't name the town—offered me a job, and I was serious about taking it. But he asked me about my religion. I said, 'Catholic.' Well, he said he had no objection to Catholics, but it may be held against me in his town." *Id.* Rather, the point is that Colorado's bar associations were not exclusionary and explicitly discriminatory on ethno-religious grounds.

114. ERICKSON, *supra* note 5, at 148–49.

115. *Id.* at 167–174.

Of course, such accounts are self-serving. Indeed, the associations were concerned with the low public esteem of lawyers and the self-interest of the profession,[117] but early bar associations in Colorado do not seem to have been a cover for systematically excluding attorneys based on ethno-religious and gender grounds, perhaps because none were present in significant numbers in Colorado.[118] In other words, Colorado's "undesirables" were very much different than New York's "undesirable" lawyers. In particular, newcomers to New York were first and second-generation immigrants, eastern-European Jews and Catholics. While regulation of undesirables in the East was a cover for discriminating against religious and ethnic minorities, there was no such pretext in Colorado. While the bar associations did feature hierarchy,[119] a professional pecking order did not mean systematic discrimination and exclusion along ethno-religious lines.[120]

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116. The DBA reorganized in 1891 and incorporated in 1903, by which time the CBA was already formed. Yet, "[b]y 1910, the DBA, with 294 members, was the largest in the state." ERICKSON, *supra* note 5, at 162.

117. *Id.* at 169.

118. The first black member of the Denver Bar Association, James C. Flanigan, joined in 1947. As late as 1971 there were fewer than fifteen black lawyers in Colorado, and in 1991 there were approximately 175 black lawyers in the state. KANIA & HARTMAN, *supra* note 68, at 74–75. In 1991 there were 13,618 attorneys in the state, CURRAN & CARSON, *supra* note 11, at 49, thus black lawyers constituted a little over one percent of the state's lawyers. Similarly, in 1991 there were approximately three hundred Hispanic lawyers in Colorado, KANIA & HARTMAN, *supra* note 68, at 75, or two percent of the state's lawyers.

Mary Lathrop, "that damn woman," joined the DBA in 1918. KANIA & HARTMAN, *supra* note 68, at 76. But in 1952, women constituted barely two percent of all lawyers in Colorado (48 out of 2122). AM. BAR ASS'N, SURVEY OF THE LEGAL PROFESSION 13 (1952). By 1991, women attorneys accounted for 21.2% of all lawyers in the state (2883 out of 13,618). CURRAN & CARSON, *supra* note 11, at 49.

119. ERICKSON, *supra* note 5, at 172.

> The organizers [the second time around for the CBA] were respected older and experienced attorneys, longtime citizens, tried in the profession and on the bench. . . . The organizers also flattered about a dozen younger lawyers by inviting them to join . . . . "[T]hose old pioneer lawyers knew that when you go out to regulate things . . . you want to be very careful to select the people that are going with you . . . ."

Id. (quoting remarks of George C. Manly, Transactions of the Thirty-Sixth and Thirty-Seventh Annual Meeting, Colorado Bar Association 60–61 (Sept. 14–15, 1934)).

120. Other bar associations were not established until much later. The Sam Cary Bar Association (honoring attorney Samuel Cary, who was admitted to the Colorado Bar in 1919) was founded in 1971 by seven black lawyers, about half of the black lawyers then practicing in Colorado. KANIA & HARTMAN, *supra* note 68, at 74–75. The Hispanic Bar Association (formerly the Chicano Bar Association)

The other prong of the rise of bar associations according to the "standard story"—as a platform for the large law firms' campaign for elite status—was not part of the Colorado experience. Not only did large law firms not rise in Colorado until the second half of the twentieth century, but as we shall see, the legal elite in Colorado, a group of small Seventeenth Street law firms, was very much part of the powerful establishment of Colorado.[121] By default, the legal elite was a part of Denver's elite sctucture and had no need to establish itself as the elite within the legal profession. In particular, it did not use bar associations to push its agenda. Some leading members of the Seventeenth Street elite law firm club certainly became involved with the bar associations.[122] However, whereas Wall Street's legal elite *worked the bar associations* to secure its elite professional status and exclude ethno-religious undesirables, members of Colorado's Seventeenth Street law firms *worked with bar associations*. This important departure from the "standard story" seems to suggest that Colorado bar associations could have developed and played a role not as agents of exclusion and discrimination, per the example of their counterparts in the Northeast, but as agents pushing for a more egalitarian and equal legal profession.[123]

Second, Colorado's law schools did not develop as elite institutions which, in the Northeast, played a role in constituting the elite Bar.[124] Harvard, Yale, and Columbia, later joined by other elite schools, established a reciprocal relationship with the Wall Street law firms. The law firms recruited associates directly from these law schools in lieu of the traditional apprenticeship, helping establish the elite status of the schools, and the law schools in turn supported the law firms' claim of

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was founded in 1977. *Id.* at 75. The Colorado Women's Bar Association was started in 1978. *Id.* at 76.

121. *See infra* Part II.B.2.

122. For example, Henry Toll was Vice-President of the CBA and President of the DBA. Frank H. Shafroth, *Six of the Greatest: Henry Wolcott Toll*, 14 COLO. LAW. 1177, 1177 (1985). Morrison Shafroth was an active member of the American, Colorado, and Denver Bar Associations. Frank H. Shafroth & Virginia S. Newton, *Six of the Greatest: Morrison Shafroth*, 18 COLO. LAW. 1300, 1301 (1989).

123. On the rise of the Colorado Bar Association, as well as some of its affiliates, see generally EDWARD H. ELLIS, HISTORY OF THE BOULDER COUNTY BAR ASSOCIATION (1959); Christopher R. Brauchli, *The Colorado Bar Association: A Brief History*, COLO. LAW., June 1997, at 1; *Histories of Local Bar Associations in the Colorado Bar Association*, COLO. LAW., June 1997, at 17.

124. Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1823–35; Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 918–28.

meritocracy by providing the firms with graduates boasting top academic and law review credentials.[125] While by 1908 both the University of Colorado Law School ("CU") and the University of Denver College of Law ("DU") raised their standards of admissions and increased their programs from two to three years—and as late as 1947, Colorado was one of only thirteen states requiring applicants to the Bar to graduate from a law school[126]—CU and DU did not self-identify as, and were not considered, elite law schools.[127] In particular, these schools did not feature discrimination and exclusion, possibly because there were few early applicants to discriminate against.[128] To the contrary, CU and DU regularly admitted Jewish applicants, women were among the first students at both law schools, and the first class at DU included a black student as well as a foreign Japanese student.[129]

In the East, the alliance between elite law schools and large law firms was important for establishing the large firms as the elite. The point, therefore, is not that there is something important *per se* about being considered an elite law school and that Colorado's law schools failed to gain that status. Rather, the point is that Colorado's largest law firms did not attempt to build their elite status by recruiting exclusively from elite law schools, which in turn discriminated based on ethno-religious

125. Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1823–35; Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 918–28.

126. ERICKSON, *supra* note 5, at 195.

127. Until the deanship of Edward C. King between 1940 and 1963, CU was considered a "parochial Western institution." Clyde O. Martz, *Six of the Greatest: Edward C. King*, 14 COLO. LAW. 1165, 1166 (1985); *see also* Edward C. King, *A History of the University of Colorado School of Law*, 36 DICTA 139 (1959). For example, in the mid 1930s, "[t]he school was very small. There were fifteen in my graduating class . . . in-state tuition was $8 a quarter." Michael Reidy, *An Oral History: Fred Winner*, COLO. LAW., Aug. 1997, at 43, 43. Judge Winner graduated from CU in 1936. *Id.* CU's push in national rankings into the top tier took place in the 1980s. DU, for a century a regional school, broke into the top 100 law schools in the 1990s. *See generally* PHILIP E. GAUTHIER, LAWYERS FROM DENVER, A CENTENNIAL HISTORY OF THE UNIVERSITY OF DENVER COLLEGE OF LAW, 1892–1992 (Barbara N. Greenspan & Arthur Best eds., 1995); Philip Gauthier, *Six of the Greatest: Lucius Warner Hoyt*, 22 COLO. LAW. 1419 (1993); Philip Gauthier, *Six of the Greatest: George Culley Manly*, 22 COLO. LAW. 1423 (1993).

128. Further evidence that CU was not an "elitist" institution discriminating on the basis of ethno-religious grounds was the close working relationship between Dean King and Ira Rothgerber. Martz, *supra* note 127, at 1166 (a relationship resulting in the initiation of an appellate moot court competition and a reputed library for the law school). *But see* Richard Delgado & Jean Stefancic, *Home-Grown Racism: Colorado's Historic Embrace—and Denial—of Equal Opportunity in Higher Education*, 70 U. COLO. L. REV. 703, 793–802 (1999).

129. GAUTHIER, *supra* note 127.

grounds resulting in effective discrimination by the elite firms, notwithstanding their formal merit-based hiring standards.

This, however, does not necessarily mean that Colorado's law firms were more egalitarian than their counterparts in the East. It is possible that they did not recruit from elite law schools because doing so would have been costly and possibly unsuccessful. On the other hand, it appears that Colorado's elite firms did not consider elite law school credentials important, evidenced by the fact that a significant percentage of their recruits graduated from Colorado's law schools. Many of these recruits either attended elite schools but chose to graduate from CU and DU or could have attended elite law schools but decided to forgo the experience.[130]

Indeed, the two law schools in the state tend to contradict the "standard story" in interesting ways. Whereas the elite law schools in the East collaborated with the large law firms, supplying the ranks of associates at the large firms and, in return, benefiting from the growing reputation of these law firms as the elite, in Colorado, DU, by some measures the second-ranked law school in the state, has had a long history of supplying the ranks of lawyers for the leading law firms in Denver.[131] That is, the more prestigious school in the state, CU, did not come to predominate as the main supplier of elite lawyers.

3. The Opportunity for the Development of a Different Legal Elite

Large law firms did not emerge and dominate early Colorado law practice and, in particular, did not establish, as the status quo, discriminatory hiring and promotion practices vis-à-vis ethno-religious minority attorneys. Colorado lawyers were more generalist and not greatly dependent on corporate law and, in turn, on large corporate clients as a source of income. Bar associations were not an avenue for furthering cam-

130. Peter Hagner Holme Jr., for example, attended Harvard Law School but graduated from the University of Colorado Law School in 1942. Ted P. Stockmar, *Six of the Greatest: Peter Hagner Holme, Jr.*, 21 COLO. LAW. 1372, 1372 (1992). Stephen Hart also spent a year at Harvard Law School but disliked the "cut-throat competition" and graduated from DU in 1933. Joseph W. Halpern, *Six of the Greatest: Stephen H. Hart*, COLO. LAW., July 2003, at 19, 19.

131. Including leading lawyers such as Gerald Hughes of Hughes & Dorsey; Frederick S. Titsworth of Pershing, Nye, Tallmadge; Golding Fairfield and James Woods of Fairfield & Woods; and Henry Toll of Grant, Ellis, Shafroth & Toll. *See infra* Part II.B.2.

paigns for elite status and discrimination. The law schools in the state did not develop discriminatory admission policies. For all of these reasons, by 1914, which marked the end of its formation era, Colorado presented an opportunity for the development of a different, other, legal profession.

The significant differences between the experience of Colorado lawyers during its formation era and the "standard story" created an expectation of, and an opportunity for, the development of a different legal profession in Colorado: a profession not dominated by large, discriminatory law firms, increasingly specialized corporate law practice, and a WASP white-shoe legal elite. It was a profession potentially different than the "standard" profession that developed in the Northeast. It could have developed into a profession that was more equal with regard to ethnic and religious minority lawyers (and subsequently with regard to women attorneys), less influenced by cultural and socioeconomic considerations, less dominated by large law firm culture, and healthier in terms of lawyers' satisfaction with their careers and role in society.

Examples of optimistic expectations regarding the development of a more equal legal profession are ample in Erickson's study. With regards to the experience of minority attorneys, Erickson argues that Hispanic lawyers "played a significant role in the judicial, executive, and legislative branches of the territorial government."[132] Moreover, by 1873, a Spanish printing of the territorial laws became available in Colorado, and in 1877, several Hispanic probate judges were appointed.[133]

Similarly, a short chapter on black lawyers during the formation years mentions that Colorado's law schools began to admit blacks in the late 1890s and that black lawyers were admitted on motion in Colorado as early as 1883.[134] Erickson's account is by no means naïve. In describing the career of Samuel Cary, who was admitted in Colorado in 1919, Erickson writes: "His clientele consisted of people whom the white lawyers shunned: African-Americans, Asians, Indians, and poor whites, who could ill afford to pay him."[135] Further, Thomas Campbell, who was vice-president of the National Bar Association, is quoted to have opined that "the black lawyer in Denver

132. ERICKSON, *supra* note 5, at 49.
133. *Id.* at 50.
134. *Id.* at 101.
135. *Id.* at 106.

was being patronized by black property owners as well as by non-property owners of the city."[136]

Nonetheless, Erickson's tone is optimistically suggestive. Addressing the experience of women lawyers, Erickson writes that when DU opened its doors in 1892, among its forty students were a black and a woman.[137] CU also opened its doors in 1892 and admitted a woman in its first class.[138] The first woman attorney in Colorado was admitted to the Bar in 1891. Others were subsequently admitted.[139] The first woman graduate of DU was admitted to the Bar in 1894.[140] "In 1897, state legislation was finally enacted specifically providing for the admittance of women and minorities," amending the Rules of the Colorado Supreme Court which were written with masculine pronouns.[141]

To be clear, a realistic expectation regarding the development of such an "other" legal profession in Colorado following World War I encompassed greater equality along class, socioeconomic, and cultural lines, and not necessarily along racial, gender, and religious characteristics, if only because the numbers of black, Hispanic, women, Jewish, and Catholic lawyers in Colorado were negligible in 1918. Nonetheless, the story of the legal profession in Colorado and, in particular, its significant departures from the "standard story" did seem to warrant cautious optimism regarding the opportunity for the development of another legal profession.

B. 1918–1945—The Rise of Colorado's Legal Elite

In the decades that followed its formative era, in spite of promising conditions different from the ones in the "standard

136. *Id.* at 107 (quoting J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844–1944, at 491 (1993)). Campbell went on to criticize the few wealthy blacks and organizations that did not have the confidence in the integrity and skill of the black attorneys to give them consideration in the matter of legal work. *Id.* Interestingly, some wealthy Jewish clients in mid twentieth century New York City hired WASP law firms as opposed to their Jewish counterparts. The move was not necessarily a show of no confidence in the skills of Jewish lawyers. Rather, the Jewish clients were seeking to share the reputation and status of the WASP firms. *See* Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 906–09.

137. ERICKSON, *supra* note 5, at 104.

138. *Id.* at 115–16; *see also* King, *supra* note 127, at 139.

139. ERICKSON, *supra* note 5, at 120–33.

140. *Id.* at 122–24.

141. *Id.* at 119.

story," the Colorado Bar did not develop as an "other," more equal legal profession and, in particular, its elite did not turn out to be more egalitarian. Understanding the experience of the Colorado legal profession in the decades following World War I requires situating it within two significant developments in the history of the state: the resurgence of the Ku Klux Klan as a powerful social force in the 1920s and the rise of an established cultural and business elite following the formative years. The former reflected socioeconomic, cultural, and racial anxieties in Colorado, which were shared by members of the Bar and impacted its development, and the latter set the stage for the major development in the Colorado legal profession between the two World Wars: the emergence of Colorado's legal elite—the Seventeenth Street law firms.

1. Understanding the Colorado Context

a. The Klan

In the 1920s Colorado became a stronghold of the resurgent Ku Klux Klan. Rather than being explained merely by economic hard times or nationalism post World War I, Goldberg argues that, in Colorado "[f]or many Klansmen and Klanswomen membership was an idealistic commitment to a goal beyond the self. The Klan offered Protestants an opportunity to enlist in a cause to save a nation, a faith, and a way of life from their detractors."[142] In addition, the Klan took advantage of a crime surge in Colorado, campaigning to rid the state of its increased lawlessness and holding itself out as an alternative to the failing promise of the government to provide law and order.[143]

The Denver mayoral election of 1923 reflected the Klan's growing power. Benjamin F. Stapleton, a former Denver Judge and police magistrate, campaigning on a platform of a war on crime and vice, beat the Republican incumbent Dewey Bailey.

142. ROBERT ALAN GOLDBERG, HOODED EMPIRE: THE KU KLUX KLAN IN COLORADO 165 (1981) [hereinafter GOLDBERG, HOODED EMPIRE].

143. Robert A. Goldberg, *Denver: Queen City of the Colorado Realm*, *in* THE INVISIBLE EMPIRE IN THE WEST, TOWARD A NEW HISTORICAL APPRAISAL OF THE KU KLUX KLAN OF THE 1920S, at 39, 44 (Shawn Lay ed., 1992) [hereinafter Goldberg, *Queen City*] ("The Klan's most effective draw was its pledge to clean up Denver and rid the city of its criminal element."). "The Denver Klan's law and order emphasis reflected its drawing strength and the needs of its membership." *Id.* at 46.

Stapleton benefited from the support of the hooded order,[144] yet the mayor was never an open or enthusiastic Klansman.[145] Regardless of the reasons, following his election, "[a]lthough Stapleton appointed a few Catholics and Jews to office, the Klan's mark was very much in evidence."[146]

The Klan's power continued to expand. The hooded order infiltrated and captured the Republican Party. District Court Judge Clarence Morley was elected Governor in 1924.[147] Morley, a member of the Denver Klavern, made no attempt to disguise his secret ties. Klansman Rice Means, Denver's City Attorney, was elected to the U.S. Senate.[148] "Klan supporters were elected to both Senate seats, and the offices of governor, lieutenant governor, and attorney general, among others."[149] Moreover, "Klan-backed Republicans and Democrats won legislative and judicial offices in Boulder, Pueblo, Weld, and in many other Colorado counties. Returns were equally gratifying in Denver, where only three district judgeships and the juvenile court escaped Klan nets."[150]

At the height of the Klan's era, nearly ten percent of Denver's population briefly joined the organization.[151] The Klan's membership in Colorado was highly diversified,[152] and "[e]xcept for the elite, Klansmen were drawn from all sections of the socioeconomic class spectrum."[153] Klan joiners were "one

144. Goldberg, *Queen City*, *supra* note 143, at 47.

145. Mayor Stapleton ended up regretting his association with the "invisible empire." LYLE W. DORSETT & MICHAEL MCCARTHY, THE QUEEN CITY: A HISTORY OF DENVER 204 (2d ed. 1986). Goodstein argues that Stapleton joined the group for pure political reasons and broke with the Klan as the organization's power was in decline and it interfered with his control over city hall. GOODSTEIN, *supra* note 103, at 8.

146. Goldberg, *Queen City*, *supra* note 143, at 48.

147. *Id.* at 54–56.

148. *Id.* at 54–57.

149. *Id.* at 56.

150. *Id.*

151. GOODSTEIN, *supra* note 103, at 7–8.

152. Indeed, because the official Roster of Members as well as the 1924 Membership Applications Book have been preserved, the widespread appeal of the Klan is documented. *See* Goldberg, *Queen City*, *supra* note 143, at 50. As in other western states, "the Klan was composed primarily of average citizens representing nearly all parts of America's white Protestant society." Leonard J. Moore, *Historical Interpretations of the 1920s Klan: The Traditional View and Recent Revisions*, *in* THE INVISIBLE EMPIRE IN THE WEST, *supra* note 143, at 17, 33.

153. GOLDBERG, HOODED EMPIRE, *supra* note 142, at 174. *See also* Moore, *supra* note 152, at 29–30 ("[T]he Klan may have been a relatively conventional social movement appealing to a wide cross section of America's white Protestant society."). As a consequence, "[a] man did not fear his minister's censure or neighbor's scorn when he enlisted in the hooded society." Goldberg, *Queen City*, *supra* note

step below Denver's elite,"[154] and while "[t]he Klan's complex appeal, rooted in a shared Protestant identity and cache of symbols, was designed to attract men from every station on the socioeconomic spectrum," the Klan's reach did not extend to the elite.[155]

While Goldberg argues that the elite did not join or endorse the Klan, his emphasis may be misguided. The Klan represented a threat to the established elite power structure, and members of the elite may have been less then enthusiastic about it for that reason alone, as opposed to having liberal or ideological opposition. The Colorado elite, while unsupportive of the Klan, was far from liberal. Mayor Stapleton, in office until 1947,[156] and his conservative business backers wanted to remain in control.[157] In part, the elite, consisting of white Protestant men, resisted the Klan because it was threatening the elite's power and status. Moreover, there was no reason for the elite to formally join or endorse the Klan. Instead, when opportunities presented themselves, such as the endorsement of Mayor Stapleton and U.S. Senator Lawrence Phipps, the elite endorsed candidates who were also supported by the Klan.[158]

The Klan's dominance over Colorado's political landscape was short-lived. It was plagued by internal divides which led prominent members and sympathizers, such as Senator-elect Means and Mayor Stapleton, to distance themselves from the Klan.[159] Revelations that Klan members participated and were implicated in criminal bootlegging seriously damaged the Klan's reputation as the community's protector.[160] Similarly damaging was the downfall of its Colorado leader, John Galen

143, at 47. The Denver Klan "was a movement of mature men and not an uprising of callow, thrill-seeking youths. . . . Stability and maturity are also reflected in marital status statistics." *Id.* at 50–51.

154. *Id.* at 53.

155. *Id.* ("Excluding the elite and the unskilled, the Klan rank and file was a near occupational cross section of the local community.").

156. With the exception of one term between 1931 and 1935. GOODSTEIN, *supra* note 103, at 8.

157. *Id.* ("The city was closed to outsiders who did not have links with the leading bankers, real estate developers, and business interests.").

158. DORSETT & MCCARTHY, *supra* note 145, at 205 (discussing the Klan's endorsement of Phipps).

159. *See* Goldberg, *Queen City*, *supra* note 143, at 57.

160. *Id.* at 58.

Locke, who was implicated in tax fraud.[161] Klansman Senator Means and Klansman Governor Morley lost reelection bids.[162]

The Klan's impact on the Colorado Bar, as opposed to its political dominance, was more complex. On the one hand, discriminatory ordinances were rarely passed once the Klan attained power.[163] Apparently, the presence of Klan public officers was usually sufficient to tip the balance in the Protestants' favor and keep Jews, Catholics, and blacks in their places.[164] This may have been because minorities were not present in significant numbers.[165]

While the Klan did not use its growing power to pass discriminatory legislation, its dominance did impact the Colorado legal profession and law practice in terms of both political appointments and elections to key legal positions.[166] In other

161. *Id.* at 59.

162. *Id.*

163. GOLDBERG, HOODED EMPIRE, *supra* note 142, at 169.

164. *See id.* at 168 ("Despite Klan heterogeneity, a common theme emerges from the Colorado pattern. Viciousness and cruelty marked the personalities of few Klansmen and women. Instead, they were concerned citizens reacting to local problems left festering and untended by government authorities. Local government officials had failed to respond to grievances concerning an actual breakdown in law and order . . . ."); *see also* Moore, *supra* note 152, at 24 ("There can be no argument that the Klan's racist, anti-Catholic, anti-Semitic ideology was offensive and threatening to many Americans during the 1920s. To describe such ideas as extremist and pathological, however, is to paint a rather distorted picture of mainstream racial and ethnic attitudes. . . . [W]hen the Klan gained political power in [Colorado and other western states], it all but ignored the local populations of ethnic minorities that did exist."). To be sure, "[t]he Colorado Klan did appear to be motivated in part by hostility toward ethnic minorities, and there were instances of Klan violence in the state. . . . [However,] isolated vigilante episodes did not change the fact that the Klan was generally oriented toward peaceful political reform." Moore, *supra* note 152, at 31.

165. During the 1920s, Denver's "256,000 inhabitants were predominantly white and Protestant. Only 6,175 Blacks, 37,748 Catholics, and 17,000 Jews made their homes in the community. Aside from a few immigrant neighborhoods, the city was ethnically and culturally homogeneous." Goldberg, *Queen City*, *supra* note 143, at 40–41. "Denver's Jewish population had increased almost nine-fold between 1916 and 1926, to 17,000 persons. The Jews were primarily concentrated around West Colfax Avenue, an area derisively referred to as 'Little Jerusalem' or 'Jew Town.' " *Id.* at 45.

166. "The common Klan remedy for unresponsive government was the election of reliable men who could be depended upon to enforce the law and to protect rights." GOLDBERG, HOODED EMPIRE, *supra* note 142, at 169. Mayor Stapleton named a fellow Klansman as Manager of Safety and later City Attorney, named another Klansman as Chief of Police, "and the department was heavily infiltrated with seven sergeants and dozens of patrolmen, all card-carrying members." Goldberg, *Queen City*, *supra* note 143, at 48. Moreover, the Klan's "influence on the municipal court system was readily apparent. Kluxers served as justices of the peace and district court judges." *Id.*

words, Klan political dominance manifested itself not in discriminatory laws or explicit violence against minorities,[167] but rather in attempts to consolidate political power and in a shift from a pioneer, egalitarian, public frame of mind to somberness and anxiety.[168]

Yet the few minority lawyers practicing in Colorado did experience the Klan's impact. For example, Charles Rosenbaum, a Jewish attorney and founder of what would become a large Colorado law firm, recalled that when he "first entered the Denver courts as a young Jewish attorney in the early 1920s, he could only try a case if he hired a Ku Klux Klan lawyer as co-counsel."[169] That is not to say, however, that the Klan completely dominated the profession. While some members of the Bar sympathized with and were endorsed by the Klan, others opposed the hooded empire. "In Denver, one hundred prominent Republicans led by District Attorney Philip Van Cise formed the Visible Government League to fight the Ku Klux Klan."[170] Goldberg's account reveals that some leading lawyers did not endorse the Ku Klux Klan. Indeed, some of the leaders of the "revolt" which contributed to the decline of the Klan in Colorado were lawyers and judges.[171]

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167. Possibly because racial minorities were not present in Colorado in substantial numbers. Religious minorities, namely Catholics and Jews, were represented. Regarding the growing Jewish presence in Colorado, see generally JEANNE E. ABRAMS, HISTORIC JEWISH DENVER (1982) (describing historical Jewish temples, hospitals, business, and other notable sites); JEANNE E. ABRAMS, JEWISH DENVER: 1859–1940, at 8 (2007) ("By 1907, Colorado's Jewish population numbered 6500 . . . ."); ALLEN DUPONT BECK, THE CENTENNIAL HISTORY OF THE JEWS OF COLORADO 1859–1959 (1960); IDA LIBERT UCHILL, PIONEERS, PEDDLERS & TSADIKIM (1957). The experiences of early Jewish lawyers in Colorado, while certainly reflecting cultural and ethno-religious bias, did not reveal systematic blatant discrimination. *See* AND JUSTICE YOU SHALL PURSUE, *supra* note 113.

168. Goldberg captures the influence of the hooded brotherhood on Colorado lawyers and law, concluding, "Klan control encouraged militancy. Klansmen burned crosses at will throughout the city." Goldberg, *Queen City*, *supra* note 143, at 48. The fact that Klan supporters were able to burn crosses throughout Denver without fear of official persecution illustrates the extent to which the Klan successfully infiltrated the ranks of the legal profession and profoundly impacted the practice of law, administration of justice, and perception of the Rule of Law in the state.

169. Isaacson Rosenbaum P.C., A Brief History of the Firm, http://www.ir-law.com/?p=1045 (last visited Mar. 11, 2009).

170. Goldberg, *Queen City*, *supra* note 143, at 55.

171. For example, when Mayor Stapleton faced a recall challenge, Juvenile Court Judge Benjamin Lindsey spoke out against the successful mayor, assailing Stapleton's ties to the Klan. Frederic B. Rodgers, *Six of the Greatest: Benjamin Barr Lindsey, Jr.*, 22 COLO. LAW. 1427, 1429 (1993). Mayor Stapleton won by a margin of 55,130 votes to 23,808, winning all sixteen election districts. He was

While the Klan's political dominance lasted for less than a decade,[172] its rise exemplified the prevailing sentiment in Colorado at the time and set the background for the development of the legal profession and its elite. The rise and widespread popularity of the Klan reflected socioeconomic, cultural, and religious anxiety, which was bound to be reflected in the legal profession. Indeed, it represented a counterforce to the egalitarian frontier spirit, which was supposed to drive the development of a "different" legal profession.

b. Denver's Business Elite

Denver's "aristocracy," known as the "Seventeenth Street Crowd," rose to prominence during the state's formative era, between the 1860s and 1914.[173] Denver's founding fathers were land speculators, businessmen, and bankers. "Most of the fortunes of post-World War II Denver stemmed from pre-World War I ventures," often in the hands of second and third generation Colorado families. Notably,

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routed only in the West Colfax Jewish precincts. The *Denver Post* remarked: "The victory yesterday proves beyond any doubt that the Ku Klux Klan is the largest, most cohesive and most efficiently organized political force in the State of Colorado today." Goldberg, *Queen City*, *supra* note 143, at 50 (quoting DENVER POST, Aug. 13, 1924). Judge Lindsey, in part because of his anti-Klan stand, was subsequently disbarred and left Colorado. *See* People *ex rel.* Colo. Bar Ass'n v. Lindsey, 283 P. 539 (1929) (decision disbarring Lindsey); People *ex rel.* Colo. Bar Ass'n v. Lindsey, 23 P.2d 118 (1933) (reinstatement petition denied); People *ex rel.* Colo. Bar Ass'n v. Lindsey, 52 P.2d 663 (1935) (reinstatement of Lindsey, on a motion by the court, six months after the previous denial; the decision offers no explanation). *See generally* BEN B. LINDSEY, THE BEAST (1970).

172. Some argue that the Klan left a lasting imprint on Colorado. "There was a fear in the air: a fear of change, of foreigners, of new ideas." GOODSTEIN, *supra* note 103, at 8. By 1945, Denver was a deeply troubled community: "Far from being on the cutting edge of American urban life, it withdrew into a provincial shell." *Id.* at 7.

173. By the 1920s, entry into the elite was severely limited:

> The era of the carpetbagger was only a colorful memory . . . . There were no more instant fortunes to be made in the mines, no more public utilities to be pioneered, and the railroad network . . . was complete. As a consequence, no more rags-to-riches dreamers such as Moffat drifted into town, and no more well-heeled speculators such as Duff and Wolcott, flush with eastern capital, arrived to win the overnight veneration of the builders of the new western emporium. The age of high-stakes gambling was gone. The gateway to power, status, and wealth was a narrow one by the 1920s, and those who passed through it usually did so by circumstances of birth or clever marriages.

DORSETT & MCCARTHY, *supra* note 145, at 188.

> [T]he "17th Street Crowd" ran the city. This referred to the largest bankers, bond dealers, utilities, fixer attorneys, and real estate interests. The individual members of the 17th Street Crowd often had close family ties dating from the 19th century. Frequently, members of Denver's leading families . . . intermarried . . . [and] socialized together at such places as the Denver Club, Denver Country Club, and Denver Athletic Club.[174]

"During the heyday of the 17th Street Crowd, business and social clubs were . . . visible, well advertised, and highly influential [bodies] [p]racticing blatant sexual, racial, and religious discrimination."[175] The Denver Club "embodied 17th Street. Established in 1880, [it] made no secret it was a bastion of big money. Setting the pace for a racist, intolerant community, it permitted no Jews, blacks, or Hispanics to besmirch its elite four-story clubhouse."[176] "[T]he Denver Club functioned as a nerve center for the corporate community."[177] Similarly, the University Club was established in 1890.[178] It excluded self-made men by requiring at least two years of college education.[179] At the Denver Athletic Club "not only were Jews banned from membership, but they were not allowed to attend prominent social functions at the building or swim in the pool."[180] With the Denver Club, the Denver Athletic Club, and the University Club, the Denver Country Club formed the heart of an old-boy network.

Led by such men as Charles Boettcher Sr. and his son Claude, John Evans II, Frederick Bonfils, and Gerald Hughes, Colorado's elite power club consisted of a group of old boys' clubs that had been entrenched in power since the early twentieth century.[181] No one better embodies Colorado's elite than the Boettchers. Charles Boettcher came to Colorado from Germany in 1869.[182] "In the 1870s [he] moved to Leadville and made a fortune in hardware, utilities, banking, and mining be-

174. GOODSTEIN, *supra* note 103, at 38. "The leaders of the banks, businesses, and commanding law firms—often graduates of Ivy League schools . . . served on the board of the University of Denver." *Id.*

175. *Id.* at 94.

176. *Id.* at 42.

177. *Id.*

178. *Id.* at 94.

179. *Id.*

180. *Id.* at 95.

181. *Id.* at 8.

182. DORSETT & MCCARTHY, *supra* note 145, at 188–89.

fore moving to Denver in 1890."[183] Boettcher anchored Denver's power structure investing in real estate, banks. and the Tramway Company.

In 1901, with other leading investors, he organized the Great Western Sugar Company.[184] "Interlocking of families and businesses soon became the natural order of Denver's economy," until eventually the nucleus of the region's economy was controlled by a few families.[185] Gerald Hughes, John Porter, Chester Morey and his son John, and Charles and Claude Boettcher became directors of the Great Western Sugar Company.[186] The same individuals were involved with the Leadville banks and became directors or officers in the Denver National Bank and First National Bank.[187] The same crowd also controlled the utilities, and the investment business reflected the same inter-family relationships, with the investment firm of Boettcher, Porter and Company as its flagship.[188] Colorado's elite thus consisted of a cohesive number of privileged Protestant families who dominated Colorado's economy and leading industries including the legal profession or, at least, the elite segment of the Bar.[189]

2. The Rise of Colorado's Legal Elite: the Seventeenth Street Law Firms

The "Seventeenth Street Crowd" included several powerful attorneys. "Politically well-connected attorneys have played vital roles in getting the business community's agenda enacted. In terms of specific power and influence—as well as membership in social clubs and serving on the boards of groups such as the Chamber—they have been a central part of the power elite."[190] The previously untold story of the Seventeenth Street law firms—Hughes & Dorsey; Lewis & Grant; Newton & Davis;

183. *Id.* at 189.
184. *Id.*
185. *Id.*
186. *Id.*
187. *Id.*
188. *Id.*
189. But "[d]espite the longtime anti-Semitism of the ruling elite, Jews have been part of the big-money scene." GOODSTEIN, *supra* note 103, at 71. Attorney Micky Miller collaborated with Marvin Davis. *Id.* at 72. "During this epoch, Davis was sure Denver was a wide-open town. He reportedly claimed he would buy it as necessary. Even with the city's sell-out spirit, his brazen style was too much for parts of old Denver." *Id.* at 73.
190. *Id*. at 97.

the Hodges firm; Pershing, Nye, Tallmadge, Bosworth & Dick; Dines, Dines & Holme; Fairfield & Woods; and Grant, Ellis, Shafroth & Toll—is the story of the rise of Colorado's legal elite.

a. Hughes & Dorsey

At the center of Denver's elite was attorney Gerald Hughes, one half of Hughes & Dorsey, which was considered the "dean" of the Seventeenth Street law firms during the first half of the twentieth century.[191] His father, Charles Hughes Jr. moved to Colorado in the late nineteenth century and established himself as one of Denver's prominent politicians and lawyers. Charles Hughes successfully built a formidable law office, representing some of the state's most prominent individuals and corporations, including David Moffat's The First National Bank of Denver, the International Trust Company, The Denver Union Water Company, Denver Tramway, the Adolph Coors Company, the Great Western Sugar Company, as well as several railroads.[192] In 1899 Hughes was joined by his son, Gerald, a DU graduate.[193]

Charles Hughes was also active in Denver politics, and in 1909 was elected to the United States Senate, at which point he turned his prestigious law firm over to his thirty-four-year-old son.[194] Two deaths in 1911 played a significant role in vaulting Gerald Hughes into the center of Denver's circle of elite power. Senator Hughes died in January, and Gerald invited Clayton Dorsey to join him, forming Hughes & Dorsey.[195] Two months later David Moffat, president and principal owner of The First National Bank of Denver, passed away, leaving the bank in disarray over the failed financing of the Denver-Northwestern and Pacific Railway, which was to connect Chi-

191. *Id.*

192. George C. Gibson, *Six of the Greatest: Gerald Hughes*, 18 COLO. LAW. 1304, 1304 (1989).

193. *Id.*

194. DORSETT & MCCARTHY, *supra* note 145, at 191.

195. Gibson, *supra* note 192, at 1304.

> Few people realized that the formation of Hughes and Dorsey in 1911 was, in effect, the establishment of a command post which would direct the economy and polity of Colorado for another generation. Dorsey was as influential in Republican circles as Hughes was in the Democracy, and both men were viewed by clients and competitors alike as "legal geniuses."

DORSETT & MCCARTHY, *supra* note 145, at 192.

cago and the West Coast via Denver.[196] Hughes assembled and actively led a group of leading bankers and investors to save First National and subsequently lead it through a forty-year period of solid growth.[197] The men ended up owning additional substantial financial interests together, including the International Trust Company.[198]

By the early 1920s, Hughes and Dorsey were not only recognized as leading attorneys, but were well established as dominant power brokers.[199] They, along with the Evans family, elevated their friend and client, Lawrence Phipps, to the United States Senate, and Gerald Hughes endorsed Benjamin Stapleton for mayor in 1923.[200] Assessing the political clout of Hughes & Dorsey, one commentator noted that "Once Hughes had made his decision, it was tantamount to election."[201] The law firm exercised its influence on behalf of its clients and in order to maintain its own dominance. Party affiliations took a back seat as Democrat Hughes and Republican Dorsey endorsed Republican Phipps just as eagerly as they backed Democrat Stapleton.[202] "The important thing to those men was to elect the right kind of man—that man's party affiliation was irrelevant."[203]

b. Lewis & Grant

Another member of the Seventeenth Street law firm club that embodies its elite status was Lewis & Grant. The firm was established in 1915 by James Benton Grant and Mason Avery Lewis, both descendents of prominent Denver families: Lewis, the son of a federal judge; and Grant, the son of a former Colorado governor.[204]

196. Gibson, *supra* note 192, at 1304–05.
197. *Id.* at 1305; *see also* DORSETT & MCCARTHY, *supra* note 145, at 194–95.
198. DORSETT & MCCARTHY, *supra* note 145, at 194–95.
199. *Id.* at 195.
200. *Id.* at 197, 199; *see also,* Gibson, *supra* note 192, at 1305.
201. DORSETT & MCCARTHY, *supra* note 145, at 199.
202. Mayor Stapleton "turned out to be an ideal candidate and precisely the kind of mayor Hughes[, Dorsey and their] associates wanted . . . Stapleton directed Denver's government . . . in a conservative, constructive, and efficient manner . . . serv[ing] the interests of the power elite, freeing them to tend to business." *Id.*
203. *Id.*
204. Davis, Graham & Stubbs, Firm History to 1980, at 1 (1989) (on file with Denver Public Library) [hereinafter DGS (1989)].

Tellingly, the firm's offices for the first sixty years of its existence were located in the First National Bank Building on Seventeenth Street and Stout.[205] The firm did not rely heavily on "walk-in" business. Instead, its early clients were large business interests that paid retainers, such as Denver National Bank, the American Crystal Sugar Company, the Potash Company of America (a mining company), the Colorado Milling & Elevator Company, as well as Prudential Insurance Co. and W. H. Kistler Company.[206] The firm's early reliance on retainer, as opposed to walk-in fees, is an important indication of its professional status and financial security. This, along with the identity of its clients, all of whom were drawn from within the business interests of Denver's power elite, further supports the inference regarding the firm's elevated professional status.

Lewis & Grant represented the Boettcher family interests, Henry Van Schaack's affairs, the Tammens, the Humphreys, the Bonfils, and later the Bonfils' Estate.[207] Indeed, not only did the firm represent the Boettcher family interests, but it also was involved with negotiations in the infamous Charles Boettcher II kidnapping case.[208] The firm's third attorney, Robert Stearns, eventually became president of the Boettcher Foundation in 1955.[209]

Significantly, like Gerald Hughes and Clayton Dorsey, Lewis and Grant were not only lawyers for the business elite, they were members of the business elite, which in turn elevated their law practice. Lewis and Grant, with others, founded the Potash Company of America, which become a client of the law firm.[210] The firm's practice areas also demonstrated the general practice orientation of Colorado's Seventeenth Street large law firms, as opposed to the corporate emphasis of Wall Street's elite firms. Lewis and Grant were tax attorneys, and Stearns was a litigator.[211] Subsequent hires established the firm's securities practice following the Great Depression and the establishment of the Securities and Ex-

205. DAVIS GRAHAM & STUBBS LLP, DGS THROUGH THE YEARS 3 (2004), http://www.dgslaw.com/documents/history.pdf [hereinafter DGS THROUGH THE YEARS].

206. DGS (1989), *supra* note 204, at 1–2.

207. *Id.* at 1*; see also* DGS THROUGH THE YEARS, *supra* note 205, at 1.

208. *See* TIMOTHY W. BJORKMAN, VERNE SANKEY: AMERICA'S FIRST PUBLIC ENEMY 22–23 (2007).

209. DGS THROUGH THE YEARS, *supra* note 205, at 1.

210. DGS (1989), *supra* note 204, at 2.

211. DGS THROUGH THE YEARS, *supra* note 205, at 1.

change Commission.[212] The firm represented military and industrial interests after 1948 and, following economic forces, expanded its practice into the fields of natural resources, telecommunications, and later, real estate.[213]

A third example of a Seventeenth Street elite law firm, and one that is intimately related to Lewis & Grant, is Newton & Davis. Quigg Newton and Richard Davis had been roommates throughout preparatory school and Yale, graduated together from Yale Law School, and, after a brief stint with Lewis & Grant, founded their own firm in 1938.[214] Early retainer clients, an elite characteristic, were the University of Denver and Continental Airlines.[215] Following the election of Quigg Newton to the office of Mayor of Denver in 1947 (replacing Ben Stapleton) and Jim Grant's death, Newton & Davis merged with Lewis & Grant, creating the law firm of Lewis, Grant, Newton, Davis & Henry.[216]

c. The Hodges Law Firm

Attorney George L. Hodges moved to Colorado around 1879, practiced in Leadville, and moved to Denver in 1887.[217] His son, William, graduated from Columbia Law School and joined his father's firm, Hodges & Wilson, in 1899.[218] In 1904, William left Hodges & Wilson to establish the firm of Dorsey & Hodges with Clayton Dorsey.[219] When Dorsey left to form the firm of Hughes & Dorsey, William established Hodges, Wilson & Rogers,[220] which, in 1932, was Colorado's second largest law firm, with eight attorneys.[221]

Hodges had a life-long interest in the railroad industry.[222] He represented the Midland Terminal Railway and the Cripple Creek Central Railway, was the Colorado attorney for the Rock

212. *Id.* at 1–2.
213. *Id.* at 2.
214. DGS (1989), *supra* note 204, at 2.
215. *Id.*
216. *Id.* Mason Lewis died in 1963. After his death, the firm changed its name to Davis, Graham & Stubbs. *Id.* at 4. *See generally* MARK S. FOSTER, CITIZEN QUIGG, A MAYOR'S LIFE OF CIVIC SERVICE 59–84 (2006).
217. Harry S. Silverstein, *Six of the Greatest: William V. Hodges*, 14 COLO. LAW. 1174, 1174 (1985).
218. *Id.*
219. *Id.*
220. *Id.*
221. *See infra* Appendix tbl.1.
222. Silverstein, *supra* note 217, at 1176.

Island Railroad, and participated in the reorganization of the Denver and Rio Grande Railroad.[223] In 1921, his ties to Clayton Dorsey paid off. Hughes & Dorsey represented the Moffat estate,[224] and Hodges was appointed as successor trustee for certain creditors of the estate, which had an interest in the East Washington Railway Company.[225] Over the years, the firm saw several changes in partners (and consequently its name) until its merger with Davis, Graham & Stubbs (formerly Lewis & Grant) in 1972.[226]

d. Pershing, Nye, Tallmadge, Bosworth & Dick

Next on the list of the Seventeenth Street elite is Pershing, Nye, Tallmadge, Bosworth & Dick. On November 3, 1891, James Pershing moved to Denver from Pennsylvania and was admitted to the Colorado Bar in January of 1892.[227] Consistent with the small firm practice pattern of Hughes & Dorsey, Lewis & Grant, Newton & Davis, and the Hodges firm, Mr. Pershing spent his first eighteen years of practice, between 1892 and 1910, as a solo practitioner with an office in the Equitable Building. From the outset, Pershing's practice focused on real estate, a prosperous field at the time.[228] Having no western connections, Pershing gradually developed an expertise in municipal securities.[229] "The 1900s saw the beginning of a lifelong friendship between Pershing and John Evans, the businessman and banker."[230] The Evans and Cheesmans (John Evans' wife's family) became not only personal friends, but also business clients, with their extensive Denver real estate interests.[231]

In 1910, Frederick S. Titsworth, another solo practitioner in Denver, and Pershing formed a partnership.[232] "Mr. Titsworth, too, was a graduate of Princeton, and had earned his

223. *Id.*
224. Gibson, *supra* note 192, at 1304–05.
225. Silverstein, *supra* note 217, at 1176.
226. *Id.*
227. ERICKSON, *supra* note 5, at 82.
228. Sherman & Howard, Firm History—1892 to Present, http://www.shermanhoward.com/AbouttheFirm/History (last visited Apr. 18, 2009) [hereinafter Sherman & Howard].
229. Thomas B. Faxon, *Six of the Greatest: James H. Pershing*, 17 COLO. LAW. 1268, 1269 (1988).
230. *Id.*
231. *Id.*
232. Sherman & Howard, *supra* note 228.

law degree at the University of Denver."[233] John H. Fry, a generalist, joined the firm in 1916,[234] followed by George L. Nye, a specialist in litigation involving mining and corporation law, and Myles P. Tallmadge, a leading municipal bonds attorney, in 1917.[235] In 1925, Robert G. Bosworth achieved partnership after rising through the ranks of the firm's associate pool.[236] Bosworth's practice concentrated on corporation and insurance law along with general business law. "He also initiated the firm's entry into the field of labor law, following the passage of the National Labor Relations Act of 1935."[237] Lewis A. Dick became a partner in 1930, "the first attorney to climb to partner after having started with the Firm as an office-boy. He concentrated his practice in the areas of estate and trust administration work, as well as mining law, the practice of which was left to him after the departure of Mr. Nye."[238]

Samuel Sherman and Winston Howard joined the firm as associates in 1936.[239] Practicing during the Great Depression, both attorneys began their practices essentially as generalists.[240] In later years, Winston Howard focused on real estate, and played a role in the planning of the Denver Technological Center. Samuel Sherman remained a generalist throughout his career.[241] In 1941, Sherman and Howard were admitted to the partnership.[242]

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233. *Id.* The educational background of Mr. Titsworth reflects a trend among the Seventeenth Street law firms. DU, considered the less prestigious law school in the state, regularly produced lawyers who would end up as partners in Colorado's elite law firms. This practice reality was in contrast with the "standard story" in the East pursuant to which partners at the elite law firms graduated near exclusively from Harvard, Yale, and Columbia. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1823–25.

234. Sherman & Howard, *supra* note 228. Once again, this addition was consistent with Colorado's Seventeenth Street law firms' general practice orientation and may be contrasted with the corporate law focus of Wall Street's elite firms.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.* The promotions of Bosworth and Dick were consistent with the Cravath Model's "up-or-out" policy. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1806–10.

239. Sherman & Howard, *supra* note 228.

240. *Id.*

241. *Id.*

242. *Id.* In 1956, the names of Pershing, Bosworth, and Dick "were removed, leaving Dawson's name the only to withstand the alteration. The additions were Nagel, Sherman, and Howard." *Id.* In 1980, "Nagel's name was removed from the letterhead, leaving it Sherman & Howard, the Firm name which has persisted to this day." *Id.*

e. Dines, Dines & Holme

A survey of the Seventeenth Street elite law firms must include Dines, Dines & Holme. In 1898, Tyson Dines, Sr., "a prominent trial lawyer who had come from St. Louis teamed up with Elmer F. Whitted, the lawyer for Colorado and Southern Railroad, to form Dines and Whitted."[243] The partnership grew with the addition of Dines's cousin, Orville Dines, and Peter Hagner Holme, a Harvard Law School graduate,[244] in 1906 and 1908 respectively, and became known as Dines, Dines & Holme.[245]

In the early years, the partnership concentrated much of its practice in mining, oil, and railroad issues.[246] Harold D. Roberts joined the firm in 1919, a year before becoming the main draftsman of the Mineral Leasing Act, which regulated the federal government's leasing of oil, gas, and other mineral rights to companies.[247] J. Churchill Owen, Sr. joined the law firm in 1926. Importantly, and consistent with the practice habits of the elite firms, "[i]n the 1920s the firm became more involved in banking issues and in representing Denver's stock brokerage firms."[248] For example, Holme and Dines Jr. helped found the U.S. National Bank of Denver in 1921 and served on its board of directors.[249]

f. Fairfield & Woods

Golding Fairfield graduated from DU in 1911 and opened a law office on Seventeenth Street.[250] In 1913, he married Ula King, daughter of pioneer Colorado lawyer Rufus King and the

243. Funding Universe, Holme Roberts & Owen LLP, http://www.fundinguniverse.com/company-histories/Holme-Roberts-amp;-Owen-LLP-Company-History.html (last visited Mar. 15, 2009) [hereinafter Holme Roberts & Owen].

244. Stockmar, *supra* note 130, at 1372.

245. Holme Roberts & Owen, *supra* note 243.

246. For example, Dines Sr. represented Verner Reed, a member of Denver's elite establishment, in oil claims in the Salt Creek fields of Wyoming. The firm was also involved in mining litigation in Cripple Creek, a mining community west of Colorado Springs, as well as in railroad litigation in the early 1900s. *Id.* Once again, this is consistent with Colorado's elite law firms' general practice orientation.

247. *Id.*

248. *Id.*

249. *Id.*

250. Mary E. Brickner, *Six of the Greatest: Golding ("Bob") Fairfield*, 18 COLO. LAW. 1293, 1293 (1989).

sister of CU Dean Edward King.[251] In 1922, Fairfield was retained by Denver real estate entrepreneur Aksel Nielsen, later the principal shareholder of The Title Guaranty Company. The relationship lasted over forty years and helped establish Fairfield as one of Colorado's leading real estate lawyers.[252] In 1925, James A. Woods, another DU graduate,[253] became associated with Fairfield, the two formed Fairfield, Gould & Woods with Albert Gould in 1932.[254] Two years later, Gould left the firm and the present-day Fairfield & Woods was formed.[255] Over the years, the firm's client base has consistently featured locally held companies in the region.[256] Consistent with the general practice orientation common among the Seventeenth Street law firms, Fairfield & Woods practiced in three core areas: real estate, litigation, and corporate work.[257]

g. Grant, Ellis, Shafroth & Toll

Finally, Grant, Ellis, Shafroth & Toll was founded in 1927 by W. W. Grant, Erl Ellis, Morrison Shafroth, and Henry Toll, Sr.[258] In 1912, when Governor "Honest John" Shafroth was elected to the U.S. Senate, his son Morrison joined his father's law firm, Rogers, Shafroth & Gregg.[259] After serving in the U.S. Army during WWI, Morrison resumed his practice with the firm and was active in politics, losing a 1924 U.S. Senate

251. *Id.*
252. *Id.*
253. 1 MARTINDALE-HUBBLE LAW DIRECTORY 135 (1935).
254. Brickner, *supra* note 250, at 1294.
255. *Id.*
256. In 1935, the firm's clients included the Title Guarantee Co., Fox Colorado Theatre Co., and W. W. Myer Drug Stores, Inc. *See* 1 MARTINDALE-HUBBLE LAW DIRECTORY 135 (1935). In 1950, the firm represented such clients as Eaton Metal Products Co., the Colorado Builders' Supply Co., and the Water Development Association of Southeastern Colorado. *See* 1 MARTINDALE-HUBBLE LAW DIRECTORY 280 (1950).
257. Karen Sloan, *A Small Firm's Rare Story of Growth*, NAT'L L.J., Feb. 2, 2009, at 10. Notably, Mary Brickner joined Fairfield & Woods as an associate in 1958 and was made a partner in 1964. Brickner, *supra* note 250, at 1293.
258. Shafroth, *supra* note 122, at 1177–78. Grant was very active in the Democratic Party as was Morrison Shafroth, who later served in the Roosevelt cabinet in Washington. Robert Hawley, *An Oral History: Don Molen*, COLO. LAW., Apr. 1998, at 13, 16. Shafroth hailed from one of Colorado's "aristocrat" families: he was the son of John Shafroth, a former Colorado governor who also served in the House of Representatives and the U.S. Senate. *See generally* STEPHEN J. LEONARD ET AL., HONEST JOHN SHAFROTH: A COLORADO REFORMER (2003).
259. Shafroth & Newton, *supra* note 122, at 1300.

campaign to Rice Means, who was backed by the Klan.[260] In 1927, Morrison co-founded Grant, Ellis, Shafroth & Toll.[261] A Colorado native, Toll graduated from DU and was admitted to the Colorado Bar in 1912.[262]

After serving in the Army during WWI, Toll returned to Colorado and served in the Colorado State Senate from 1922 to 1930. In 1925, when the Klan controlled the Colorado legislature, Toll

> was one of six members of the Colorado Senate who refused to meet with the Klan-dominated Republican caucus which would have thereby bound him to vote for its caucus decisions. . . . [T]hose six senators joined [a] Democratic group to block the Klan's program. This move was one of the turning points in the Klan's Colorado history[263]

and the beginning of its decline. In 1927, Toll, who developed an expertise in real estate and probate law, co-founded the law firm of Grant, Shafroth & Toll.[264] By 1932, the firm had nine attorneys and was the largest in Colorado.[265] Its impressive roster of clients included many of Colorado's leading interests in the banking, mining, insurance, and public utilities.[266]

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260. *Id.*; *see also* Goldberg, *Queen City*, *supra* note 143, at 54–57.

261. Shafroth & Newton, *supra* note 122, at 1301.

262. Shafroth, *supra* note 122, at 1177.

263. *Id.*

264. *Id.* at 1177–78. Toll served as the president of the Denver Bar Association in the 1920s and was instrumental in bringing the American Bar Association to Denver for its annual meeting. Hawley, *supra* note 258, at 16. He also founded the American Legislators Association in 1925, which, in 1933, helped form the Council of State Governments. Shafroth, *supra* note 122, at 1178.

265. *See infra* Appendix tbl.1. In fact, until 1950, the firm was among the largest in Colorado, ranking first in 1932 and 1935, second in 1940, second in 1945, and fourth in 1950. *See infra* Appendix tbl.1.

266. 1 MARTINDALE-HUBBLE LAW DIRECTORY 130 (1932). Other leading firms included Ireland, Stapleton, Pryor & Pascoe, P.C., which was founded in 1926. Clarence L. Ireland and Roy Blackman formed their law firm in downtown Denver. Clarence's cousin, Gail L. Ireland, soon joined the firm which was named Ireland & Ireland. Both Clarence and Gail Ireland turned to public service, each winning elections to serve as Attorney General for the State of Colorado. Benjamin F. Stapleton Jr. and Wilbur M. "Wib" Pryor joined the firm after World War II. *See* IrelandStapleton.com, Firm History, http://www.irelandstapleton.com/about/firm (last visited Dec. 9, 2008). Hutchinson, Black, and Cook is another example of a typical Colorado firm (albeit in Boulder, not Denver). For years, the firm was a two to three person operation of general practice. As late as 1958, it had three attorneys, and, while in 1991 it grew to eighteen attorneys, it remained the same size by 2008. *See* JAMES ENGLAND, THE HISTORY OF HUTCHINSON, BLACK, HILL AND COOK (1991); Hutchinson Black and Cook, History, http://www.hbcboulder.com/history.html (last visited Dec. 10, 2008).

3. The Seventeenth Street Law Firms and the "Standard Story"

The "standard story" of the American legal profession between 1918 and 1945 consists of two chapters: one on the novel brand of New Deal administrative lawyers,[267] the other on the rise and growth of the large law firm and its establishment as the elite of the American legal profession. Pursuant to the "standard story," the legal elite consisted of large Wall Street law firms, which practiced predominantly corporate law on behalf of large, elite, corporate clients. The large law firm established its elite professional status by working bar associations to exclude "undesirables" and elevate its own status, by recruiting exclusively from elite law schools, and by explicitly and systematically discriminating against ethno-religious minority lawyers. Specifically, while formally adopting meritocratic hiring and promotion standards, Wall Street law firms hired and promoted WASP lawyers nearly exclusively, refusing to hire and promote Jewish attorneys who met their merit-based standards.[268]

Colorado's elite Seventeenth Street law firms share two characteristics with their Wall Street counterparts. First, as was the case for the white-shoe law firms on Wall Street, Protestant ties played a significant role in the emergence, growth, and success of the elite Colorado law firms. Indeed, Colorado elite lawyers were not merely servants of elite clients, they were part of the very same elite establishment they represented.[269]

Second, and, once again, consistent with the "standard story," Colorado's largest law firms exhibited relative stability. Just as Wall Street firms atop the *American Lawyer 50* list hardly changed until the 1950s,[270] the size of Colorado's large firms, as well as their relative order on the "largest law firm" list, were more or less a constant. The largest law firm in 1932, Grant, Ellis, Shafroth & Toll (with nine lawyers), remained atop the list in 1935 (still with nine lawyers), and was one of

267. *See generally* SHAMIR, *supra* note 31 (studying the relationship between elite lawyers, capitalism, and the state).

268. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25; Wald, *Rise of the Jewish Law Firm*, *supra* note 45.

269. *See supra* Part II.B.2.

270. Wald, *Rise of the Jewish Law Firm, supra* note 45, at 937 n.243.

the four largest firms until 1950.[271] Other leading firms consistently among the ten largest firms between 1932 and 1950 were Pershing, Nye, Tallmadge, Bosworth & Dick (predecessor to today's Sherman & Howard, which became the largest law firm in 1940, surpassing ten lawyers for the first time that year);[272] Hodges, Wilson & Rogers; Lewis & Grant; and Dines, Dines & Holme.[273]

In other regards, however, the experience of Colorado's largest firms significantly differs from the "standard story." Most strikingly, Colorado's Seventeenth Street firms employed a different mechanism of discrimination compared with their Wall Street counterparts—nepotism. Nepotism was generally accepted and prevalent among Colorado lawyers. Unlike New York City, where the emerging elite law firms purported to explicitly abandon nepotism in favor of meritocratic hiring and promotion,[274] on Seventeenth Street, nepotism was not perceived to be inconsistent with merit and was common among the emerging elite.

Nepotism manifested itself in both intra-firm and inter-firm forms. Intra-firm nepotism was present at nearly every Seventeenth Street law firm. Gerald Hughes, co-founder of Hughes & Dorsey, joined his father's firm upon graduation from DU; following Senator Hughes' passing, he took over the leadership of the firm.[275] Furthermore, while Gerald Hughes had no children,[276] Montgomery Dorsey joined his father at Hughes & Dorsey upon his graduation from law school in 1925.[277] Similarly, both James Benton Grant and Mason Avery Lewis, founders of Lewis & Grant, were from second-generation prominent Denver families—Lewis, the son of a federal judge, and Grant, the son of a former Colorado governor.[278]

The same pattern of nepotism was evident at Newton & Davis. When Mr. Newton and Mr. Davis became brothers-in-law, family, business, and pleasure intertwined and played a

271. *See infra* Appendix tbl.1.
272. *Infra* Appendix tbl.1.
273. *Infra* Appendix tbl.1.
274. Wald, *WASP and Jewish Law firms*, *supra* note 25, at 1806–10.
275. Gibson, *supra* note 192, at 1304.
276. *Id.* Perhaps because he had no children, Gerald Hughes "is not known to the general public and is not well known among Colorado lawyers," *id.* at 1306, an amazing fact given his immense influence and counsel to Denver's leading citizens, influential financial interests, and political elite.
277. *Id.* at 1305. Clayton Dorsey retired in 1936, and Gerald Hughes passed away in 1956. *Id.* The firm was still in existence in 1989.
278. DGS (1989), *supra* note 204, at 1.

role in explaining the success of the firm.[279] Long after Lewis & Grant and Newton & Davis merged and subsequently evolved into Davis, Graham & Stubbs, family ties continued to enhance the firm's strength: Donald S. Graham, who joined the firm in 1940, and Donald S. Stubbs, who joined the firm in 1942, later became brothers-in-law.[280]

At the Hodges law firm, Luther Hodges and his son George Hodges were both attorneys in Leadville in 1879.[281] Luther became a county judge in Garfield County, and George Hodges later moved to Denver and formed the firm of Hodges & Wilson.[282] William Hodges, George's son, started practice with his father at Hodges & Wilson and, after affiliating with Clayton Dorsey, started the firm of Hodges, Wilson & Rogers, which later hired both his sons, Joseph G. Hodges and William V. Hodges Jr.[283] Joseph Hodges graduated from Harvard Law School in 1933 and, after serving as a Denver Deputy District Attorney, joined his father's law firm (then called Hodges, Wilson & Davis).[284] His son, Joseph G. Hodges Jr., also became an attorney,[285] the fifth-generation Colorado attorney in the Hodges family. Tellingly, Arthur Otten was hired as an associate by the Hodges firm in 1959, the first non-Colorado native hired by the firm.[286]

Dines and Whitted became Dines, Dines & Holme when Dines's cousin, Orville Dines, joined the firm.[287] Peter Hagner Holme's second son, Peter Hagner Holme Jr., "was raised to be a lawyer."[288] He attended Harvard Law School and graduated from CU in 1942. After spending four years with the Denver District Attorney's Office, Holme Jr. joined Dines, Dines & Holme in 1946 and was promoted to partner in 1948.[289] Strikingly, Holme Jr. "never accepted the charge that the reason that his law firm later adopted a rule against nepotism was his

279. *Id.* at 2.
280. *Id.* at 3.
281. Arthur E. Otten, Jr., *Six of the Greatest: Joseph G. Hodges*, 24 COLO. LAW. 1515, 1515 (1995).
282. *Id.*
283. Silverstein, *supra* note 217, at 1174.
284. Otten, *supra* note 281, at 1515.
285. *Id.*
286. *Id.*
287. Stockmar, *supra* note 130, at 1372.
288. *Id.*
289. *Id.*

own association with the firm, although others leveled that charge—in jest—for many years."[290]

Finally, the Shafroth law firm epitomizes Colorado's intra-firm nepotism. In 1912, when Governor "Honest John" Shafroth was elected to the U.S. Senate, his son Morrison joined his father's law firm, Rogers, Shafroth & Gregg.[291] In 1927, Morrison founded Grant, Ellis, Shafroth & Toll,[292] a firm that subsequently promoted both of Morrison's sons, John and Frank, as well as Henry W. Tool Jr.[293]

The firm of Pershing, Nye, Tallmadge, Bosworth & Dick was the only exception to Denver's intra-firm nepotism.

> [Pershing] was firmly convinced that no lawyer could successfully learn what he should in [any specialty], unless, at the least, he surrounded himself in practice with those with a wider exposure. His son once said that this was part of his father's belief in growing "outwardly," valuing education almost above all else. For his father, "education was a way of life, not a preparation for life."[294]

Consequently, Pershing's son, John Sr., an attorney,[295] did not become a partner at his father's firm. John graduated from Harvard Law School in 1924, practiced in Denver until 1934, and spent the bulk of his career as a partner in the law firm of Mitchell & Pershing in New York City, specializing in public works finance.[296] It is also telling that Pershing's firm seemed to follow the Cravath Model of meritocracy, with Robert Bosworth making partner in 1925 after rising through the ranks of the firm's associates, and Lewis Dick in 1930, "the first attorney to climb to partner after having started with the Firm as an office-boy."[297] Pershing, Nye, Tallmadge, Bosworth & Dick's merit-based, anti-nepotist culture, instituted by Pershing himself, was so unusual given practice realities on Seventeenth Street that it can be regarded as the exception that proves the nepotist rule.

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290. *Id.*
291. Shafroth & Newton, *supra* note 122, at 1300.
292. *Id.* at 1301.
293. *Id.*; Shafroth, *supra* note 122, at 1177–78.
294. Faxon, *supra* note 229, at 1270.
295. *Id.* at 1268.
296. *See* John Pershing, Papers (1920–1982) (on file with the Harvard Law School Library), *available at* http://oasis.lib.harvard.edu/oasis/deliver/~law00006.
297. Sherman & Howard, *supra* note 228.

Seventeenth Street's extensive nepotism was prevalent not only in intra-firm form, but also common as an inter-firm phenomenon, linking the elite firms via a web of lateral moves, mergers, marriages, and cross-hires of sons of partners at other elite firms. Hughes & Dorsey and the Hodges firm were linked in the person of Clayton Dorsey, a Hodges' firm partner who left the firm to join Gerald Hughes and form Hughes & Dorsey.[298] In addition to linking Hughes & Dorsey and the Hodges firm, the aftermath following the collapse of Moffat's bank also ended up furthering the ties between Hughes & Dorsey and Pershing, Nye, Tallmadge, Bosworth & Dick. Among the leading investors put together by Gerald Hughes to save First National was John Evans,[299] Pershing's good friend.[300] The two law firms thus shared a powerful client, a member of Denver's power elite.

Lewis & Grant's merger with Newton & Davis illustrates the importance of elite ties as well as the interplay between inter-firm nepotism, politics and the representation of Denver's powerful elite. Following the election of Quigg Newton to the office of Mayor of Denver in 1947 and Jim Grant's death, Claude Boettcher and Henry C. Van Schaack, "friends of both firms," urged the two firms to merge.[301] The merger took place on September 1, 1947, creating the law firm of Lewis, Grant, Newton, Davis & Henry.[302] Similarly, seven years after the passing of William Hodges, the firm, known then as Hodges, Silverstein, Hodges & Harrington, merged with Davis, Graham & Stubbs, the successor firm of Lewis & Grant.[303]

Cross-hires and marriages brought together Lewis & Grant, Fairfield & Woods, and Dines, Dines & Holme: two of Holme Jr.'s sons became lawyers, Richard Holme a senior partner with Davis, Graham & Stubbs, and Howard a partner with Fairfield & Woods.[304] Cross-hires also linked the Shafroth firm to other elite firms. While Morrison Shafroth's two

298. Gibson, *supra* note 192, at 1304. In 1921, the Hodges firm's ties to Clayton Dorsey paid off when Hodges was appointed as trustee for certain creditors of the Moffat estate, represented by Hughes & Dorsey. *See* Silverstein, *supra* note 217, at 1176.

299. Gibson, *supra* note 192, at 1305.

300. Faxon, *supra* note 229, at 1269.

301. DGS (1989), *supra* note 204, at 3.

302. *Id.* at 3. Mason Lewis died in 1963. After his death, the firm changed its name to Davis, Graham & Stubbs. *Id.* at 4. *See generally* FOSTER, *supra* note 216, at 59–84.

303. Silverstein, *supra* note 217, at 1174.

304. Stockmar, *supra* note 130, at 1372.

sons joined his law firm, by marriage the firm was connected to Lewis & Grant (subsequently Davis, Graham & Stubbs) and to Holland & Hart:[305] Morrison's daughter Virginia married Denver's two-time mayor Quigg Newton, and his daughter Ellen married William Embree, a Holland & Hart partner.[306] With one exception,[307] all of Colorado's elite law firms hired and promoted partners based on nepotist principles and were interrelated to each other by lateral moves, mergers, marriages, cross-hires, and service of the same powerful clients. In fact, nepotism was common in all ranks of the Colorado profession, even outside of the elite club.[308]

Importantly, while nepotism was common in the legal profession, in and outside of Colorado, it was explicitly and formally rejected by the Wall Street firms, which constituted the basis for the "standard story" regarding the rise of the legal elite. In a speech at Harvard Law School in 1920, Paul D. Cravath, who instituted the Cravath Model, specifically stated that a person's family connections or social class were irrelevant to success in the law:

> He advised his hearers that for success at the New York bar "family influence, social friendships and wealth count for little" and he emphasized the large number of successful lawyers who had come to New York from small places and "worked up from the bottom of the ladder without having any advantage of position or acquaintance."[309]

Similarly, Arthur Dean of Sullivan & Cromwell, another elite Wall Street law firm, opined:

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305. A newcomer elite law firm established in 1947. *See infra* Part II.C.2.

306. Shafroth & Newton, *supra* note 122, at 1301 n.3.

307. Pershing, Nye, Tallmadge, Bosworth & Dick. *See supra* notes 294–97 and accompanying text.

308. Take, for example, Phillip Van Cise, the leading district attorney who led the fight against the Klan. Edwin P. Van Cise, *Four of the Greatest: Philip S. Van Cise*, 15 COLO. LAW. 1165, 1166 (1986). Himself the son of a prominent attorney, Van Cise established a law firm with his former assistant, Kenneth Robinson, in 1925. *Id.* at 1166. The firm included Robinson's father and later hired Van Cise's son as an associate. In 1946, Van Cise and his son Edwin set up their own separate partnership. *Id.* Similarly, L. Ward Bannister, the son of an attorney, graduated form Harvard Law School in 1896 and moved to Denver in 1902, following his marriage. Diane L. Hartman, *Four of the Greatest: L. Ward Bannister*, 16 COLO. LAW. 1179, 1179 (1987). A well-known Colorado attorney, Bannister practiced in a small firm employing many associates until his son joined as a partner in 1939, after which the firm grew gradually. *Id.* at 1180.

309. SWAINE, *supra* note 30, at 265.

> In today's larger legal partnerships advancement is by and large by competence alone. Those who achieve positions of influence and leadership in such firms tend to be those who have manifested their ability to relate into a more comprehensive picture diverse fields of specialization and to view the major problems of clients in a broad social perspective.[310]

In part as a function of their nepotism, Colorado's largest law firms did not follow the Cravath Model. While a minority of the Seventeenth Street law firms did hire associates out of law school and subsequently promoted them,[311] the "up-or-out" merit-based model was never adopted by Colorado's elite firms. Intra-firm nepotism, rejected at least formally, by Wall Street firms, was the rule of thumb on Seventeenth Street. Lateral hiring[312] was common, in part as a function of the general practice orientation of the Colorado law firms. Unlike their Wall Street counterparts, as the Seventeenth Street firms moved into new practice areas and expanded their specialties, they simply could not draw on their own associate ranks, for such pools did not exist. Promotion to partnership in Colorado did not follow a set probation period, in part because intra-firm nepotism dictated that relatives were promoted relatively fast.

Another significant difference between the "standard story" and the Colorado experience, a corollary of Seventeenth Street's nepotism, was that, while systematic and explicit discrimination against minority attorneys was a distinctive feature on Wall Street,[313] the Seventeenth Street elite law firms generally did not systematically and explicitly discriminate against minority attorneys, for two inter-related reasons.

First, the law firms' hiring needs, given their relative small size, were moderate.[314] Their networks of intra and in-

310. ARTHUR H. DEAN, WILLIAM NELSON CROMWELL 1854–1948: AN AMERICAN PIONEER IN CORPORATION, COMPARATIVE AND INTERNATIONAL LAW 85 (1957).

311. Namely, the firm of Pershing, Nye, Tallmadge, Bosworth & Dick. *See supra* text accompanying notes 294–97.

312. Another practice formally rejected by the Wall Street elite. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1806–10.

313. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1810–25, 1836–39; Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 918–28.

314. Lewis & Grant had six attorneys in 1932, five in 1940, and six in 1945. *Infra* Appendix tbl.1. Hodges, Wilson & Rogers had eight lawyers in 1932 (making it the second largest firm in Denver at the time), nine in 1935, only five in 1940 (as Hodges, Vidal & Goree), and eight in 1960 (as Hodges, Hodges, Silverstein & Harrington), prior to its merger with Davis, Graham & Stubbs. *Infra* Appendix tbls.1–2. Newton & Davis was a two person firm in 1938, had four lawyers

ter-firm nepotism were more than able to meet the needs of the growing law firms. Until 1940, the largest law firm on Seventeenth Street employed less than ten attorneys.[315] The law firms were too small to evidence any patterns of explicit discrimination. Unlike their New York counterparts who grew in the early and mid twentieth century and reached about fifty lawyers by 1945, Colorado's "large" law firms remained relatively small. The hiring of few, if any, Jewish and Catholic lawyers by Wall Street's large WASP law firms over a long period demonstrated discrimination because the firms officially adopted anti-nepotism meritocratic standards, faced a large pool of Jewish candidates who met those criteria, and still refused to hire them.[316] The hiring of few, if any, Jewish and Catholic lawyers by a handful of small Seventeenth Street law firms proved little, as the hiring of one or two WASP attorneys could have been as easily the product of old-boys' club networking and nepotism as it was the product of direct discrimination.[317] In other words, whereas nepotism, combined with implicit discrimination in the form of reliance on cultural, ethnic, and socioeconomic features for purposes of hiring and promotion, did certainly take place, contrary to the practice realities on Wall Street, the Seventeenth Street firms did not systematically and explicitly discriminate against minority attorneys.

Second, unlike in New York City, where Jewish lawyers constituted a significant percentage of the Bar,[318] there were relatively few Jewish and Catholic attorneys in Denver.[319] Whereas in New York City, the large Wall Street WASP firms ignored a large pool of Jewish attorneys, Denver did not feature a comparable pool of qualified recruits. Thus, the fact that

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by 1940 (as Newton, Davis, Drinkwater & Henry), diminished in size during WWII when most members were serving in the military, and, after hiring Byron White in 1947, merged with Lewis & Grant in 1947. *See* DGS (1989), *supra* note 204, at 2–3. Byron White married Robert Stearns' daughter. DGS THROUGH THE YEARS, *supra* note 205, at 2.

315. *See infra* Appendix tbl.1. Hughes & Dorsey, the so-called "Dean" of the Seventeenth Street law firms had three lawyers in 1932, five in 1935 (when it was the seventh largest law firm in Denver), four in 1940 (when it was the tenth largest firm), six attorneys in 1945 (when it was the seventh largest), and still six attorneys in 1950 (when it fell back to number ten on the largest firms list).

316. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1810–25, 1836–39; Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 918–28.

317. *See* Wilkins & Gulati, *supra* note 35, at 1582–1601 (on mentoring as a function of cultural affinity and networking).

318. *See* CARLIN, *supra* note 53, at 19.

319. Yet the number of Jewish lawyers certainly was not insignificant. *See* AND JUSTICE YOU SHALL PURSUE, *supra* note 113.

ethnic and religious minorities were not hired by the "large" firms was in part the result of lack of candidates, not of discrimination.

While the evidence does not support an inference of explicit and systematic discrimination, it is the case that Jewish attorneys tended to practice in small Jewish law firms. This may be explained, especially given the small size of the firms, by nepotism, as well as by professional and cultural affinity and by self-selection by Jewish attorneys, rather than by explicit discrimination by non-Jewish law firms.[320]

One such firm was Rothgerber & Appel. Childhood friends Ira Rothgerber and Walter Appel grew up in Denver in the 1890s and in 1898 enrolled together at the University of Colorado. Rothgerber went straight for a law degree, graduating from CU in 1901, and Appel graduated the following year. Rothgerber spent his first two years as a lawyer working for T.J. O'Donnell, who was regarded as one of the "Titans of the Bar." Appel went to work for the Denver law firm of Bixler Bennett & Nye, a leading bankruptcy practice of the time. After gaining some experience, the young men joined forces and opened their own firm in 1903.[321]

Seventeenth Street's pattern of nepotism was as evident at Colorado's Jewish firms. Rothgerber & Appel remained a two-person firm for more than thirty years until Ira Rothgerber Jr. followed in his father's footsteps in 1935 and was made partner in 1941. In 1950, Walter's son, Robert Appel, started working as a clerk at the firm while attending law school. He passed the Bar in December 1951, graduated in May 1952, and was immediately named a partner.[322]

A second example of an early "Jewish" firm was the Rosenbaum firm. For many years, Rosenbaum was a solo prac-

320. *See id.*; *see also* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1836–39; Wald, *Rise of the Jewish Law Firm, supra* note 45, at 923–24 (on Jewish lawyers self-selecting out of applying for jobs with Wall Street law firms and opting to join Jewish firms instead).

321. Rothgerber Johnson & Lyons LLP, Firm History, http://www.rothgerber.com/firmprofile.aspx?Show=803 (last visited May 12, 2009).

322. Doug McQuiston, *Six of the Greatest: Walter Appel*, COLO. LAW., July 2005, at 37, 38. By its own account, as late as the 1950s, the firm still had no strategic plan. Rothgerber, Johnson & Lyons LLP, Firm History, *supra* note 321. Walter Appel saw other firms growing and became concerned. *Id.* He cautioned the younger partners to start thinking about the future: "If you fellows don't start growing, you're going to die." *Id.* His advice was followed. In 1959, the firm hired Bill Johnson and began a period of significant growth, climbing from six to more than fifty attorneys within twenty years. *Id.*

titioner litigating before the Colorado Supreme Court. On August 19, 1951, Governor Thornton appointed him to the Denver District Court. Rosenbaum handed his clients to his good friend Sam Goldberg, and when Rosenbaum left the court, the two men continued to practice together, thus establishing the practice of Rosenbaum & Goldberg.[323]

Prima facie, it may appear that the experience of the Jewish law firms in Colorado was consistent with the "standard story." Until 1945, not one of New York City's large law firms was Jewish, and the vast majority of Jewish lawyers were excluded from the large WASP firms.[324] Similarly, Denver's Jewish firms were small and were established because Jewish lawyers were not being hired by the Seventeenth Street firms.[325]

This, however, is where the similarities end. In New York City, Jewish law firms exploded on the scene and by 1963 were not only comparable in size to the old WASP firms, but also matched them in attaining elite professional status.[326] The rise of the Jewish law firms in New York City was a function of systematic discrimination against Jewish lawyers by the WASP firms, the existence of a large pool of highly qualified Jewish lawyers, strong client demand which the old WASP firms could not satisfy, and the positive consequences of the "flip side of bias."[327]

None of these factors were present on Seventeenth Street. First, Colorado's largest law firms did not systematically discriminate against Jewish lawyers. Certainly, nepotism discouraged the hiring and promotion of Jewish attorneys by the elite firms, but the bias did not amount to systematic discrimination, was not as pronounced, and perhaps most importantly, was not perceived as an impossible hurdle. Consequently, aspiring Jewish lawyers in Denver, unlike their brethren in New York City, did not turn nearly exclusively to the Jewish firms.

Second, as a function of the relative small size of the Colorado Jewish community, a large pool of qualified Jewish lawyers did not emerge. Moreover, because elite law schools did not rise in Colorado, Jews who attended elite law schools out

323. Isaacson Rosenbaum P.C., *supra* note 169.

324. Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 885.

325. *See* AND JUSTICE YOU SHALL PURSUE, *supra* note 113.

326. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25 at 1828–29, 1833–52; Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 914–33.

327. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25 at 1844–47, 1860–61; Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 929–33.

East were likely to stay and practice there. Consequently, Colorado's small Jewish law firms did not benefit from the ability to recruit talented Jewish lawyers free of competition.

Third, Colorado's law firms, elite and Jewish alike, did not experience a significant growth in client demand for corporate law services immediately following 1945. The great corporate impetus for growth was not present. Finally, Colorado's less competitive and more collegial style of practice, compared with practice realities in New York City, limited the positive consequences of the "flip side of bias." As a result, Denver's Jewish law firms did not grow exponentially after 1945, did not quickly gain elite status, and did not threaten the dominant status of the elite Seventeenth Street law firms.

That discrimination in Colorado was class-based and manifested itself in nepotism, rather than in explicit ethno-religious bias, was evidenced by the Ernest Morris ordeal. Ernest Morris graduated from CU in 1898.[328] Morris opened an office at the Symes Building and, with no clients and little connections, struggled for several years, subsequently teaming up with William W. "Will" Grant to form Morris & Grant. Following Grant's departure for service in WWI, Morris continued to practice solo for the rest of his career,[329] and Grant would later establish the firm of Grant, Ellis, Shafroth & Toll.

Morris gradually established an excellent reputation as a trial lawyer. As chairman of the DBA's House Committee he worked with John Pershing on a plan to select judges on a nonpartisan basis,[330] and as chairman of the CBA's Legislative Committee he worked closely with Judge Platt Rogers (a former partner with Rogers, Shafroth & Gregg) on a bill authorizing the Colorado Supreme Court to adopt rules of procedure.[331] The elite would not make Morris a partner but would work with him closely on professional issues.

Throughout his career, Morris had an acrimonious relationship with two of Denver's most powerful elite businessmen, Frederick Bonfils and Harry Tammen, owners and publishers of the *Denver Post*.[332] The feud began when Morris sued Denver's chief of police Patrick Delaney, a favorite of *The Post*, for beating an elderly man. Chief Delaney was forced to resign his

328. Carpenter, *supra* note 113, at 1286.
329. *Id.*
330. *Id.* at 1286–87.
331. *Id.* at 1287.
332. *Id.*

post and was hired by Bonfils as a personal bodyguard.[333] Next, the firm of Morris & Grant successfully sued a subsidiary of *The Post* on behalf of a client.[334] *The Post* appealed the judgment all the way to the U.S. Supreme Court and, after losing the battle, still refused to pay the judgment until Morris garnished *The Post*'s account at the Denver National Bank to collect.[335]

The last chapter in the relationship took place when Morris was appointed chairman of the Denver County Council of Defense during WWI.[336] *The Post* went on a personal smearing campaign and Morris sued for libel. A committee of twenty-three of Denver's most distinguished lawyers, among them William V. Hodges, volunteered their services to vindicate Morris' reputation.[337] The libel complaint was signed by all twenty-three volunteer lawyers. The elite lawyers of Seventeenth Street took on two of their own in Bonfils and Tammen. As striking was the support Morris received from Henry A. Buchtel, Chancellor of the University of Denver,[338] because the University of Denver was the pet project of Denver's elite, benefiting from the patronage of the likes of Gerald Hughes, Golding Fairfield, and Henry Toll. After its demurrer, opposed by Platt Rogers and Horace Hawkins, was rejected, *The Post* sought a settlement. It printed a full retraction of its allegations against Morris and contributed $10,000 to charities selected by Morris and *The Post*.[339]

The strong stand of Seventeenth Street's elite lawyers with Morris against Bonfils, Tammen, and *The Post* suggests that discrimination in Denver at the time was not ethno-religious based. Hodges, Rogers, and the other volunteer lawyers stood with a fellow attorney who was Jewish against powerful members of their own elite structure. Morris was a fellow member of the legal profession, a former president of the DBA,[340] who was smeared by *The Post* as the result of animosity that grew out of his professional successes as a lawyer against *The Post* and its owners. Denver's elite's lawyers closed professional

333. *Id.*
334. *Id.*
335. *Id.*
336. *Id.* at 1287–88.
337. *Id.* at 1288.
338. *Id.*
339. *Id.* at 1288–89. Subsequently, Morris represented *The Post* and was a pallbearer at Tammen's funeral. *Id.* at 1289.
340. *Id.* at 1287.

ranks in support of Morris and breached ethno-religious and class ranks with Bonfils and Tammen.

4. The Rise of Legal Elites: The "Standard Story" and Alternative Tales

Colorado's Bar did not develop an "other," more equal, legal elite. The promise of a more egalitarian legal elite along ethnic, religious, and even racial lines was quashed early on by the rise and legacy of the Klan. Furthermore, the opportunity for a more equal Bar along socioeconomic and cultural lines was squandered, given the dominance of the Seventeenth Street elite law firms, which not only served leading local interests but were themselves an integral part of the elite. The experience of the Colorado legal profession in the 1920s with the Klan and the rise of its legal elite in the form of the Seventeenth Street firms certainly indicates that the Colorado Bar was not immune from the prevalent cultural, ethnic, religious, and racial discriminatory tendencies present elsewhere in the country at the time and reflected in the "standard story."

Table 1

The "Standard Story" (New York City)	**An Alternative Story (Denver)**
Large Law Firms	(Relatively) Small Firms
Corporate Law Practice Orientation	General Practice Orientation
Elite Law Schools Hiring and Promotion	Regional Law Schools Hiring and Promotion
Working Bar Associations to Exclude Minorities	Working with Bar Associations
Serving the Elite	Part of the Elite
Explicit Discrimination (Formally adopting a meritocracy but failing to apply it to minorities)	Nepotism (Hiring and promotion based on familial, marital and social connections)

Table 1 summarizes the important differences between the "standard story" regarding the rise of the elite and the experience of Colorado's Seventeenth Street law firms, demonstrating the danger inherent in orthodoxy and its tendency to foreclose alternative stories. While a cursory examination of the legal elite in Colorado might suggest that it followed the "standard story" in establishing the largest WASP law firms in the jurisdiction as its elite, a closer study reveals that the Seventeenth

Street law firms were organized differently than their Wall Street counterparts (they were relatively small and featured a general practice orientation) and utilized a different mechanism of discrimination to sustain their elite status (nepotism).

The lessons from Colorado's experiences with nepotism ought to be assessed within the context in which they took place. First, presentism must be avoided.[341] While a contemporary perspective deems nepotism inappropriate and discriminatory,[342] it was not viewed in such light at the time by the Seventeenth Street law firms. To the contrary, nepotism was well accepted as an appropriate, even desirable, avenue of growth.[343] Nepotism was not perceived to be in tension with merit. No doubt, it tended to entrench in place the elite and its progeny, yet it was not perceived to be to the exclusion of minorities.

Second, explicit systematic discrimination and nepotism were not mutually exclusive mechanisms. Notwithstanding Wall Street's formal rejection of nepotism, it practiced it to an extent. Moreover, its ethno-religious discrimination against Jewish and Catholic lawyers correlated and enhanced class-based and cultural discrimination against the same attorneys. Similarly, Seventeenth Street's widespread use of nepotism does not mean that Colorado's elite firms, and some of their partners, did not harbor ethno-religious bias. Indeed, different mechanisms of discrimination were interrelated and reinforcing. Nonetheless, appreciating the different manifestations of discrimination is important in terms of understanding the organization and culture of large firms and the experiences of those discriminated against, and for purposes of crafting solutions for discrimination.

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341. Presentism is the attempt to explain historical phenomena from a contemporary perspective, thus failing to appreciate considerations that were important at the time but are not today. *See, e.g.*, Morton J. Horwitz, *The Rise of Legal Formalism*, 19 AM. J. LEGAL HIST. 251 (1975).

342. *See*, *e.g.*, Richard A. Posner, *Professionalisms*, 40 ARIZ. L. REV. 1, 7 (1998) (characterizing law firms' use of nepotism in hiring and promotion as "non-rational employment practices").

343. Discrimination is commonly defined as differential treatment of people depending on their group affiliation. *See*, *e.g.*, Chaim Fershtman et al., *Discrimination and Nepotism: The Efficiency of the Anonymity Rule*, 34 J. LEGAL STUD. 371, 371 (2005). One can draw a distinction between "discrimination against" and "discrimination in favor," that is, nepotism, *id.* at 371–74, and, furthermore, between "good" nepotism and "bad" nepotism. ADAM BELLOW, IN PRAISE OF NEPOTISM 15 (2003).

C. The Growth of Colorado's Elite Law Firms

The "standard story" of the large law firm after World War II features four interrelated characteristics. First, the large law firm grew exponentially. Second, it experienced increased competition for the provision of legal services to corporate entities. Third, it underwent a gradual transformation of its culture resulting in a decline in discrimination. Finally, it continued to benefit from a relatively stable claim for elite status.[344] Colorado's Seventeenth Street law firms tended to follow the "standard story."

1. The Exponential Growth of the Seventeenth Street Law Firms

In 1950, the largest Seventeenth Street law firm had eleven attorneys.[345] Holland & Hart was the first to pass the fifty-lawyer mark in 1970, followed closely by Sherman & Howard; Holme, Roberts & Owen;[346] and Davis, Graham & Stubbs.[347] By 1980, the largest law firm had more than one hundred lawyers.[348] Sherman & Howard, the largest firm in 1980, grew by 900%, Holme, Roberts & Owen grew by 750%, Davis, Graham & Stubbs by 600%, and Holland & Hart by an astounding 1200%.[349] As was the case in New York City,[350] the growth is explained in large part by increased demand for legal services resulting from the growth of new industries and new clients.[351]

344. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1852–62; Wald, *Rise of the Jewish Law Firm*, *supra* note 45, at 933–935.

345. *See infra* Appendix tbl.1.

346. Dines, Dines & Holme's successor law firm.

347. *See infra* Appendix tbl.2.

348. *See infra* Appendix tbl.2.

349. *See infra* Appendix tbl.2.

350. *See* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1825–26.

351. *See, e.g.*, DGS THROUGH THE YEARS, *supra* note 205, at 2 ("Much of this growth [in Colorado's economy in the 1950s and 1960s] was funded, for the first time, by money that came from outside Denver.").

2. Increased Competition—The Rise of New Law Firms

As a function of their small number (merely three law firms),[352] and the relative small number of their lawyers (as of 1950, the three law firms had a total of thirty-one attorneys),[353] the old elite could not and did not prevent newcomer firms from entering the large law firm market. The playing field was open for new firms to emerge, and indeed law firms such as Holland & Hart and Gorsuch & Kirgis grew rapidly.

Stephen Harding Hart, Holland & Hart's founder and a former associate at Lewis & Grant, was reportedly frustrated by the dead-end atmosphere faced by many young associates on Seventeenth Street.

> In those days (though there were conspicuous exceptions) the legal profession in Denver was very monopolistic, establishment oriented, dominated by the old firms which had established relationships with the major banks and corporations. *Nobody could expect to become a partner in most 17th Street firms unless he was born into it or married into it . . .* the life of an associate was a futile, servitude situation, where if one wanted anything more than a survival wage there was no place to go but out.[354]

Hart's words are consistent with the nepotist practice realities at the elite Seventeenth Street firms in the 1930s and 1940s, and Hart spoke from personal experience. He joined Lewis & Grant as an associate in 1935, working closely with James Grant until Grant's passing in 1947, at which time the firm did not promote him to partnership.[355] Stephen Hart was by no means an outsider to Denver. The son of Richard H. Hart, a prominent Denver attorney and law professor, and a graduate of Yale, he spent a year at Harvard Law School and two years at Oxford before returning to Denver.[356] Importantly, while Hart was of privileged background, he was not, in his own words, a member of Denver's elite power structure.[357]

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352. Namely, Sherman & Howard; Holme, Roberts & Owen; and Davis, Graham & Stubbs.

353. *See infra* Appendix tbl.1.

354. HORNBY, *supra* note 68, at 2 (quoting interview with Hart, Mar. 1982) (emphasis added).

355. *Id.* at 5–6.

356. *Id.* at 3–5.

357. *Id.* at 2.

Hart left Lewis & Grant and established a partnership with Josiah G. Holland, a family friend and colleague, and two associates, William D. Embree Jr. and Peter Hoyt Dominick.[358] Stephen Hart's brother, Jerry, joined shortly thereafter.[359] Like Stephen Hart, the other founding members were all of distinguished background, but not members of Denver's elite club: Jerry, a graduate of Harvard University and a Rhodes Scholar at Oxford, was "closely linked to Denver and the mountain West's social, cultural, and economic establishments."[360] Joe Holland practiced first with Hodges, Wilson & Rogers, one of Seventeenth Street elite firms, followed by eight years with another elite law firm, Grant, Ellis, Shafroth & Toll but, like Stephen Hart, was not promoted there.[361] Peter Dominick, of a prominent New York investment banking family, went on to become a U.S. Senator. William Embree Jr. was a graduate of Yale and Yale Law School.[362]

Like Holland & Hart, Gorsuch & Kirgis was founded after World War II, in 1945.[363] The firm's founding partners were John Gorsuch, a native of Denver and graduate of DU, and Fred Kirgis, a graduate of Yale Law School.[364] Embodying the "typical" Colorado law firm's diverse practice orientation, Gorsuch was a real estate attorney and Kirgis was a natural resources and Indian Affairs expert. The firm doubled in size in 1946 with the arrival of Leonard Campbell, a graduate of CU and the firm's "go-fer," and Roscoe Walker, John Gorsuch's nephew.[365] Campbell gradually established a reputation in the public utilities area and Walker in the oil and gas field. Charlie Grover, an experienced litigator, joined the firm in 1948.[366] The firm grew consistently thereafter, employing fourteen attorneys by 1955, twenty-five lawyers by 1970, fifty in 1980, and peaked at seventy-six lawyers five years later.[367]

Importantly, and in contrast to the experience of the old Seventeenth Street elite, the firm's history notes that in the

358. *Id.* at 2, 6.
359. *See id.* at 2.
360. *Id.* at 9.
361. *Id.* at 7.
362. *Id.* at 16.
363. ANDREW COHEN, GORSUCH KIRGIS LLC: FIFTY YEARS OF EXCELLENCE 1945–1995, at 1 (1995).
364. *Id.*
365. *Id.* at 4. The firm thus grew by resorting to intra-firm nepotism.
366. *Id.*
367. *See infra* Appendix tbls.2–3.

early 1950s it relied on "walk-up" business, and had a general practice, including divorces, trusts, wills, and criminal matters, as well as corporate affairs.[368] In the 1950s and 1960s the firm's growth was driven by its expanding natural resources practice, as well as its municipal and real estate law.[369] The firm grew laterally in the 1960s and 1970s,[370] and in the early 1970s hired its first woman attorney.[371] The firm continued to rely on Denver's oil and gas boom in the late 1970s and early 1980s as impetus for growth.[372]

Other Colorado firms benefited from the economic boom following World War II and the increased demand for legal services. For example, Rothgerber, Appel & Powers, which initially relied on its real estate and probate practices, expanded its litigation and banking practices.[373] Jim Lyons, hired in 1971, led the growth of the litigation department. Dick Clark was hired in 1973 and is credited with building the firm's prominent real estate litigation practice.[374]

Consistent with the "standard story," the relative small number and size of the old Seventeenth Street law firms prevented them from meeting the increased demand for legal services.[375] Yet this is where the similarities between the "standard story" and the Colorado experience end. While the old WASP law firms on Wall Street grew rapidly, newcomer firms, predominantly Jewish firms, grew even faster, benefiting from the existence of a large pool of discriminated-against Jewish lawyers.[376] While Colorado's elite law firms did not systematically discriminate against minority lawyers, the lack of a similar pool of minority lawyers in Colorado prevented the local Jewish law firms from similarly exploding on the scene.

368. COHEN, *supra* note 363, at 5.
369. *Id.* at 6–9.
370. *Id.* at 9.
371. *Id.* at 10. John Mullins, a fixture on the firm's hiring committee in the 1960s and 1970s, notes that during his stewardship, only three female law students or attorneys applied for employment at the firm. *Id.*; *see* Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1836–39; Wald, *Rise of the Jewish Law Firm, supra* note 45, at 923–24 (on self-selection by minority lawyers out of the elite law firms on Wall Street).
372. COHEN, *supra* note 363, at 10–11; *see infra* Appendix tbl.2.
373. Rothgerber Johnson & Lyons LLP, Firm History, *supra* note 321.
374. *Id.*
375. Wald, *WASP and Jewish Law Firms*, *supra* note 25, at 1842–43.
376. *Id.* at 1828–52.

3. The Gradual Decline of Discriminatory Nepotism

Old cultural and professional habits die hard. The decline of the culture of nepotism on Seventeenth Street was a slow and gradual process, both in terms of hiring and promotion practices and in terms of severing the ties to Denver's elite client base. Perhaps most revealing of all is the experience of Holland & Hart. Because it was a newcomer, one might have expected it to adopt anti-nepotist culture, and while the new firm was described in its own history as breaking away from the "older legal clan,"[377] it would be a significant error to underestimate the ties of the new firm to the established power elite.

The firm was founded only after it had received the blessing of Claude Boettcher. In Stephen Hart's own words:

> The key to success was when I went to Cris Dobbins who was then running the Ideal Cement Co. . . . [H]e said he personally would like to come with me but that he'd have to talk to C. K. Boettcher, [Ideal's leader] . . . . This recognition by C. K. Boettcher put over the whole thing . . . it was my golden key on 17th Street.[378]

Boettcher's imprint on the firm's success continued when he referred his friend Robert Young and the Missouri Pacific Railroad to Holland & Hart, describing its lawyers as "very young and fighters and I think they will be just what you want."[379]

To Boettcher and Denver's elite power club, Holland & Hart was exactly that: a firm of up-and-coming, qualified attorneys, but nonetheless a group of outsiders. Good enough to recommend to colleagues dissatisfied with their elite lawyers, but not quite good enough to make partners in the Seventeenth Street old guard firms. By referring to the firm as "young," Boettcher meant, of course, that its lawyers were not members of the old elite, but still, on account of their respectable upbringing, backgrounds, and training, welcome to the Seventeenth Street leftovers. The business of the Potash Company of America and the American Sugar Crystal Company was handled by Seventeenth Street elite law firms. But when a merger

377. HORNBY, *supra* note 68, at 2.

378. *Id.* at 6. The fact that Stephen Hart handled all of Ideal's work personally indicates the importance of Ideal as a client to the firm. *See id.* at 62.

379. *Id.* at 11.

between Ideal and Potash was challenged and some of Denver's prominent members of the elite club were dragged into court as defendants—among them the president of the First National Bank of Denver, Eugene Adams, and Davis, Graham & Stubbs' own Don Stubbs—Holland & Hart represented the defendants.[380]

Furthermore, Holland & Hart also exhibited intra- and inter-firm nepotism, consistent with the culture prevalent among the Seventeenth Street elite.[381] Stephen Hart, founder of Holland & Hart, was himself a third generation Colorado attorney. His maternal grandfather, John L. Jerome, was a lawyer who helped organize the Colorado Fuel & Iron Corporation of Pueblo, and his father, Richard H. Hart, was a prominent Denver attorney.[382] Furthermore, Stephen Hart considered three leading Colorado attorneys to be the most influential persons in his life: James B. Grant of Lewis & Grant, James Grafton Rogers of Rogers, Shafroth & Gregg and his father, Richard Hart.[383] He married Lorna Rogers, daughter of James Grafton Rogers,[384] a partner in Rogers, Shafroth & Gregg (the named partners were Judge Platt Rogers, no relation to James Grafton, and "Honest" John Shafroth).[385] Another tie between Holland & Hart and the Shafroth firm was via Hart's partner William Embree, who was married to Ellen Shafroth, daughter of Morrison Shafroth.[386] Steve and Lorna had three children, one of whom, Richard H. Hart, joined Holland & Hart and later became a judge in Eagle County, Colorado.[387]

Nonetheless, Holland & Hart was ahead of the curve compared to Seventeenth Street's establishment in terms of breaking away from Denver's web of nepotism. It had transformed itself from a small, collegial firm into a large organization ready to serve the interests of newcomers to Denver. Steve Hart personified and celebrated this aggressive "get-the-business" approach,[388] an approach too aggressive for the old elite. "Steve Hart never made any bones about the fact that

380. *See id.* at 62–63.
381. So did Gorsuch & Kirgis. COHEN, *supra* note 363, at 4.
382. Halpern, *supra* note 130, at 19.
383. *Id.*
384. S*ee* Stephen H. Hart, *Six of the Greatest: James Grafton Rogers*, 18 COLO. LAW. 1294, 1296 (1989).
385. Shafroth & Newton, *supra* note 122, at 1300.
386. *Id.* at 1301 n.3.
387. Halpern, *supra* note 130, at 20.
388. *Id.*

the acquisition of business was, as far as he was concerned, Holland & Hart's prime necessity in these formative years."[389] After all, Holland & Hart was the only large firm on Seventeenth Street which had no large bank as an exclusive client. "This lack of a 'big bank' client was a source of regret and much comment in Holland & Hart in the early years."[390]

In lieu of establishment clients, the firm cultivated a "go-go" aggressive approach.[391] Out of necessity, it adapted faster than its elite competitors to new practice areas, such as the public utilities practice,[392] mining law,[393] natural resources,[394] transportation,[395] and sports and entertainment.[396] The firm also welcomed the arrival of new, "outside" business interests in town, especially because the elite firms had a near monopoly over the representation of old Denver interests.[397]

In particular, the firm did not hesitate, possibly out of necessity—Denver's old establishment business interests were represented by the old guard of Seventeenth Street elite law firms—to represent outside interests against Denver's elite. When, for example, the Phipps family decided to sell its holding in the Denver Broncos, the local professional football team, Holland & Hart represented the buyer, Edgar Kaiser.[398] In the banking arena, without a major bank as a client, the firm represented a consortium of smaller banks, the Colorado Bankers Association.[399] Three decades later, the firm became general counsel to a major bank, First National Bank of Denver, but only after it was sold to First Interstate Bancorp of Los Angeles and the firm represented the buyer.[400] Holland & Hart's expansion reflected the "changing structure of business ownership in Denver, as western regional businesses became more

389. *Id.* at 21.

390. HORNBY, *supra* note 68, at 27. *See generally* THOMAS JACOB NOEL, GROWING THROUGH HISTORY WITH COLORADO: THE COLORADO NATIONAL BANKS, THE FIRST 125 YEARS 1862–1987 (1987).

391. HORNBY, *supra* note 68, at 20.

392. *See id.* at 63–65.

393. *See id.* at 66–68.

394. *See id.* at 68–70.

395. *See id.* at 71–72.

396. *See id.* at 72–76.

397. Boettcher's Potash business, for example, was sold in 1986, and Ideal underwent a massive reorganization and also was sold. *Id.* at 63.

398. *Id.* at 75–76.

399. *Id.* at 27.

400. *Id.* at 80–82.

integrated with the national and global markets."[401] That is, the firm grew when Denver's elite establishment, represented by the old guard of Seventeenth Street law firms, was in decline and selling out to business interests outside of Denver. Holland & Hart became the largest law firm in Denver with seventeen attorneys in 1955, a mere eight years after it was founded, and has essentially remained the largest firm in Colorado ever since.[402]

The old Seventeenth Street law firms followed a similar path of disassociation from nepotism, although at a slower pace. In the early 1950s, Lewis, Grant, Newton, Davis & Henry (as it was then known) grew by recruiting lateral talent,[403] as well as by expanding into new practice areas such as natural resources.[404] But in the 1960s, it settled, for two decades, into the internal growth model of the Cravath Model and elected partners from within its associate pool,[405] nearly quadrupling its size to eighty-three lawyers between 1964 and 1980.[406]

Importantly, "Lewis, Grant & Davis successfully made the gradual transition from a law firm that had made its reputation serving established Denver families and their investments to one that could also attract the attention of new businesses flocking to post-war Denver."[407] That is, the firm gradually moved past its commitment to Denver's old elite, outgrew nepotism, expanded its practice areas, and reinvented itself as meritocratic service provider. For example, in the 1960s, Davis, Graham & Stubbs (as the firm was by then known) started recruiting "heavily from the Top Ten law schools."[408] The period was also characterized by stability and continuity within the ranks of the senior partners.[409]

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401. *Id.* at 86–87.

402. *See infra* Appendix tbls.1–3.

403. *See* DGS (1989), *supra* note 204, at 4.

404. *See id.* In 1962, Clyde Martz left the CU faculty and joined the firm as head of its natural resources group. Four years later, the group hired John Sayre of Boulder. *Id.* at 4–5.

405. *Id.* at 5.

406. DGS THROUGH THE YEARS, *supra* note 205, at 3; *infra* Appendix tbl.2.

407. DGS THROUGH THE YEARS, *supra* note 205, at 2.

408. *Id.*

409. DGS (1989), *supra* note 204, at 6. With the exception of the departure of Byron White to serve on the U.S. Supreme Court and Clyde Martz's and Don Hoagland's brief periods of public service, there was no attrition at the top senior partners' level. *Id.*

Dines, Dines & Holme underwent a similar transformation (in 1950 the firm's name was changed to Holme, Roberts, More, Owen & Keegan). It grew consistently, initially relying on nepotism, hiring Peter Holme Jr. in 1955 and James C. Owen Jr. in 1957.[410] With seventeen lawyers in 1955, the firm moved into a larger office space, symbolically moving from its original offices in the old First National Bank Building to a new building on the corner of Seventeenth and Broadway.[411]

The firm expanded its areas of practice to include oil practice, tax issues, natural resources, water rights, real estate, and international law.[412] As more companies moved to Denver, the firm abandoned nepotism both as a preferred avenue of growth and in terms of relying on Denver's established elite business interests as its client base.[413] The firm's growth led to the opening of regional offices in Colorado Springs and in Salt Lake City.[414] Symptomatic of the changing times, as well as the firm's expanding client base and the diminished reliance on the old Denver elite, Holme, Roberts & Owen helped the United States National Bank merge with the Denver National Bank (the firm's old client) to create the Denver U.S. National Bank.[415] Eventually, Colorado's largest old elite law firms were able to gradually sever their links to, and reliance on, Colorado's old business elite and build upon their established reputation to transform themselves successfully into large, modern-era, competitive law firms.

The transformation at Pershing, Nye, Tallmadge, Bosworth & Dick (subsequently Sherman & Howard) was less dramatic as the firm, under the guidance of Pershing, developed an early distaste for nepotism, instead relying on lateral hires and promotion of home-grown talent.[416]

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410. Holme Roberts & Owen, *supra* note 243.

411. *Id.*; *infra* Appendix tbl.2

412. The Denver Water Board retained Roberts in 1952, seeking to divert water from the Blue River on the Western Slope of Colorado. The Board prevailed after a prolonged litigation, and the city honored Roberts by naming the diversion tunnel that brought water to Denver "The Harold D. Roberts Tunnel." Holme Roberts & Owen, *supra* note 243.

413. *Id.*

414. *Id.* Since it was larger than any of the historic Utah law firms, which had at most about one hundred attorneys, Holme, Roberts & Owen offered higher salaries; the lateral hires era began.

415. *Id.*

416. Fritz Nagel graduated from Harvard Law School in 1915 and joined Fillius, Fillius & Winters. John W. Low, *Six of the Greatest: Fritz A. Nagel*, COLO. LAW., July 2001, at 14, 14. In 1920, he was offered a position as trust officer with

4. The Relative Stability of Elite Status

According to the "standard story," the 1980s, 1990s, and first decade of the twenty-first century are the era of increased, even hyper, competition in the market for legal services. Large law firms continued to grow in number and in size nationally, internationally, and then globally, easily passing the five hundred lawyer mark, then one thousand.[417] Previously unheard-of conduct became commonplace: mergers and consolidations in the industry occurred on the one hand, and bankruptcies and attorney firing on the other.[418] There was increased explicit pressure on the financial bottom line and increased lawyer mobility.[419] The Cravath Model disintegrated in terms of new

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the American National Bank of Denver (a predecessor of Wells Fargo), became a director in 1928, and, upon returning to the practice of law in 1933, continued to represent the bank for three more decades. *Id.* In 1943, Nagel's partner, George Winters, retired, and Nagel joined Sherman & Howard as a partner. *Id.*

Robert G. Bosworth graduated from Harvard Law School in 1915 and joined Pershing & Titsworth as an associate; soon after he made partner, and, in 1925, he became a name partner. John W. Low, *Six of the Greatest: Robert G. Bosworth*, COLO. LAW., July 1997, at 7, 7. Many of the prominent corporate clients represented by Bosworth and the firm were also represented by Bosworth, Chanute, Loughridge & Co., a prominent brokerage firm in which Bosworth's older brother was a principal. *Id.* Similarly, Lewis Dick graduated from DU in 1915. John W. Low, *Six of the Greatest: Lewis A. Dick*, 24 COLO. LAW. 1523, 1523 (1995). While at law school, he worked part time at Pershing as an office boy, and, following his admission to the Bar, he joined the firm as an associate, becoming a partner after WWI and a named partner in 1930. *Id.*

417. *See, e.g.*, John Flood & Fabian Sosa, *Lawyers, Law Firms, and the Stabilization of Transnational Business*, 28 NW. J. INT'L L. & BUS. 489, 503 (2008); Elizabeth Chambliss & David B. Wilkins, *A New Framework for Law Firm Discipline*, 16 GEO. J. LEGAL ETHICS 335, 342 (2003).

418. *See*, *e.g.*, Lindsay Fortadoa, *Dewey Ballantine, LeBoeuf Agree to Merge Law Firms*, WASH. POST, Aug. 28, 2007, at D2; John Flood, *Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice*, 3 INT'L J. LEGAL PROF. 169 (1996) (exploring the changing landscape of the global market for legal services). Attorney firing intensified following the economic meltdown of 2008 to 2009. *See*, *e.g.*, Martha Neil, *March Mayhem: Law Firm Layoffs in 1 Week Total Nearly 1,500*, ABA J., Mar. 4, 2009, http://www.abajournal.com/weekly/march_mayhem_law_firm_layoffs_top_500_today_over_1200_since_friday.

419. *See generally* Robert W. Hillman, *The Hidden Costs of Lawyer Mobility: Of Law Firms, Law Schools, and the Education of Lawyers*, 91 KY. L.J. 299 (2002); Robert W. Hillman, *Law Firms and Their Partners: The Law and Ethics of Grabbing and Leaving*, 67 TEX. L. REV. 1 (1988) (exploring the destabilizing effects of lateral movements on law firms); Robert W. Hillman, *Loyalty in the Firm: A Statement of General Principles on the Duties of Partners Withdrawing from Law Firms*, 55 WASH. & LEE L. REV. 997 (1998) (providing an overview of lawyer mobility); Robert W. Hillman, *Professional Partnerships, Competition, and the Evolution of Firm Culture: The Case of Law Firms*, 26 J. CORP. L. 1061 (2001) (addressing the emergence of lawyer mobility based on the law granting "supremacy" to a

types of associates (contract and temporary lawyers) and new partners (non-equity partners) as well as the de-equitization of partners and departure from the "lock-step" compensation structure.[420] And finally, there has been increased outsourcing of legal work.[421]

The Seventeenth Street law firms experienced some of these changes, but to a lesser extent. The old elite power structure had completely collapsed by the 1980s, replaced by out-of-state, corporate interests. Symbolically, Colorado's three largest banks, First National, Colorado National, and Denver National all disappeared as local interests, and a similar fate has befallen the local bond dealers.[422] The Boettcher empire eventually was bought out by a Chicago-based entity in 1985.[423]

The 1980s and 1990s were a period of marked upheaval for Colorado's legal community because they saw national law firms begin to establish branch offices in town.[424] Many of these offices recruited seasoned Colorado attorneys and so a raiding period took place. Gorsuch & Kirgis suffered, losing several partners to, among others, Kirkland & Ellis, a large national law firm based in Chicago, which opened a regional office in Denver.[425] "[T]hese departures damaged the Firm more than financially. They also affected its sense of tradition and loyalty," as well as commitment to mentorship.[426] The 1990s continued the retrenchment of the 1980s. In 2000, the firm

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client's right to choose counsel, as well as the costs and effects of lawyer mobility); Eli Wald, *Lawyer Mobility and Legal Ethics: Resolving the Tension between Confidentiality and Contemporary Lawyers' Career Paths*, 31 J. LEGAL PROF. 199 (2007).

420. *See generally* Galanter & Henderson, *supra* note 36 (studying various destabilizing departures from the Cravath Model). Previously, most partners came up through the ranks and were paid on a seniority "lockstep" method. However, after U.S. Supreme Court rulings opened the way for professional advertising, *American Lawyer* magazine began, in 1979, to feature information about partner salaries in different firms. Lateral hires, or raiding other firms for experienced partners who usually specialized in one area of the law, became standard practice.

421. *See generally* sources cited *supra* note 61.

422. GOODSTEIN, *supra* note 103, at 48.

423. *Id.*

424. *See*, *e.g.*, *infra* Appendix tbl.3.

425. *See* Companies.jrank.org, Kirkland & Ellis Llp Business Information, Profile, and History, http://companies.jrank.org/pages/2398/Kirkland-Ellis-Llp.html (last visited Apr. 18, 2009). Gorsuch & Kirgis was not an old elite firm, and its somewhat compromised status vis-à-vis the old elite may have made it a more appealing target to Kirkland & Ellis.

426. COHEN, *supra* note 363, at 11.

had forty-five lawyers.[427] The firm dissolved in 2005, citing continued instability and defections by numerous attorneys.[428]

The decline of Gorsuch & Kirgis is telling because in 1980 it was the fifth largest law firm in Colorado.[429] Colorado's large law firms were particularly vulnerable to outside competition because in national, let alone international and global, terms they were considered small and regional. As late as 2008, only one law firm, Holland & Hart with 229 attorneys, had more than 200 attorneys.[430] In fact, only the largest six firms in Colorado employed more than one hundred lawyers, and only the largest thirteen law firms had at least fifty attorneys in the state.[431]

Nonetheless, the Seventeenth Street elite four law firms were not targets for raiding in a similar way but continued to grow. As the economy slowed down in the late 1990s so did the Colorado market for legal services. The pressure to grow nationally or risk becoming a target for a national law firm looking for presence in Denver had passed.[432] In a revealing interview in the January 17, 1999, *Denver Rocky Mountain News,* Holme, Roberts & Owen's Executive Committee Chairman Dean Salter described the firm's future strategic plans. Despite the consolidation of small firms into huge firms, he observed, "[W]e are not looking for a merger partner." He added, "There will be a place for us—a good strong regional firm—for a long time."[433]

CONCLUSION: LEARNING FROM ALTERNATIVE STORIES

In significant ways, the story of Colorado's legal elite does not follow the "standard story" of the American legal profession. While the conventional story explains elite professional status in terms of explicit institutionalized discrimination and the size of growing large law firms, the Colorado experience

427. *See infra* Appendix tbl.3.

428. *Gorsuch Kirgis Law Firm Dissolving*, DENVER BUS. J., Jan. 19, 2005, http://www.bizjournals.com/denver/stories/2005/01/17/daily42.html.

429. *Infra* Appendix tbl.2.

430. *Law Week Colorado's Largest Colorado Firms Ranked by Number in Colorado*, L. WEEK COLO., Sept. 22, 2008, at 8.

431. *Id*.

432. Kirkland & Ellis, which opened a Denver office at the expense of Gorsuch & Kirgis, ended up closing it a few years later. *See* Kirkland & Ellis Llp Business Information, Profile, and History, *supra* note 425.

433. Holme Roberts & Owen, *supra* note 243.

suggests that emphasizing a particular mechanism of discrimination and the size of the firm misses important cultural and socioeconomic insights. Colorado's elite Seventeenth Street law firms did not employ systematic discrimination, instead utilizing nepotism as a screening device for hiring and promotion purposes. Furthermore, the firms were not large as late as 1950 in national terms and continue to be much smaller than their counterparts on the East and West Coasts.

The different Colorado experience teaches insightful lessons regarding the formation of legal elites and the possibility of addressing some of the ailments plaguing the American legal profession such as discrimination against minority attorneys and the glass-ceiling effect experienced by women attorneys. First, in relative terms, Colorado's largest law firms represent the realization of a more equal legal profession. Women attorneys, especially at the largest of the large firms, face little, if any, glass-ceiling effect. A *Law Week* 2008 study showed that 21.9% of partners in Colorado are women, slightly better than the national average of 18.3%.[434] Furthermore, at the largest six firms (the only firms with at least one hundred attorneys), twenty-six percent of partners are women, and at four out of these six firms, female attorneys are at least thirty percent of the partner pool,[435] approximately the percentage of women lawyers in Colorado.[436] Moreover, at the largest thirteen firms (the only firms with at least fifty attorneys), women attorneys constitute twenty-four percent of partners.[437]

This achievement is explained in part by the different story of the rise of the Colorado elite relative to the "standard story" of Wall Street's elite firms. The Seventeenth Street law firms did not systematically and institutionally discriminate against minority lawyers in the 1950s. Consequently, neither those discriminated against nor the discriminators had to overcome a culture and a legacy of discrimination. This benefited women lawyers when they began entering the firms in significant numbers in the 1970s and 1980s and explains, in part, the

434. Matt Masich, *Glass Ceiling Bumped, Not Shattered*, L. WEEK COLO., Sept. 22, 2008, at 7 (2008).

435. *Law Week Colorado's Largest Colorado Firms*, *supra* note 430, at 8; Masich, *supra* note 434, at 7.

436. Masich, *supra* note 434, at 7.

437. *Law Week Colorado's Largest Colorado Firms*, *supra* note 430, at 8. *See generally* Reichman & Sterling, *supra* note 42.

higher percentage of women attorneys at large Colorado law firms.[438]

Second, whereas explicit discrimination is mostly a thing of the past at large law firms, discriminatory nepotism is still a common practice reality, at both large law firms and in the legal profession generally. Understanding the operation of nepotism is therefore key to addressing contemporary discrimination. For example, if one believes explicit discrimination was the underlying cause for the under-representation of minorities and women as large law firm partners, then given the decline of explicit discrimination, increasing the size of the minority and women candidate pool may sufficiently address discrimination because, over time, minority and women associates will rise to the partnership rank. However, if one believes that nepotism was, and still is, a concern, then increasing the size of the minority and women lawyer pool will not do as a solution. In addition, one would have to worry about overcoming nepotism by fostering mentoring and addressing bias and stereotyping.

Finally, the different story of Colorado's elite law firms illustrates the limiting impact of the "standard story" on legal profession scholarship. Following the "standard story" the literature has focused its attention on instances of explicit institutionalized discrimination: first against Jewish and Catholic lawyers, then against black and women lawyers, and, more recently, against Hispanic and gay and lesbian attorneys. Consequently, it fails to explore alternative mechanisms of discrimination, such as nepotism, and their impact. Overcoming discrimination, however, requires accounting for not only the categories of the discriminated against but also for the methods of discrimination used against them. This is exactly the kind of insight foreclosed by the orthodox view of the legal profession. Addressing existing challenges such as discrimination creatively, as well as paying attention to neglected problems facing the Bar, requires reexamining the explicit and implicit assumptions and convictions underlying the "standard story" of the legal profession.

438. One ought not conflate ethno-religious, class, and gender discrimination. The point is not that the absence of explicit and institutionalized ethno-religious and class discrimination at Seventeenth Street firms directly improved the experience of women attorneys later on. Rather, Colorado's elite did not develop an overt discriminatory firm culture and organization, which, in turn, contributed to their ability to better integrate women attorneys.

APPENDIX: COLORADO'S LARGEST LAW FIRMS, 1932–2005[439]

Table 1

Year / Firm	1932	1935	1940	1945	1950
Grant, Ellis, Shafroth & Toll	9	9	7	10	9
Hodges, Wilson & Rogers	8	9	5	5	7
Pershing, Nye, Tallmadge, Bosworth & Dick	8	5	10	11	11
Lewis & Grant	6	6	5	6	10
Dines, Dines & Holme	4	8	7	7	10
Hughes & Dorsey	3	5	4	6	6
Fairfield, Gould & Woods	3	4	2	2	5
Newton, Davis, Drinkwater & Henry			2	4	
Holland & Hart					7
Gorsuch & Kirgis					6

Table 2

Year / Firm	1955	1960	1965	1970	1975	1980
Grant, Ellis, Shafroth & Toll	10	15	18	20	21	19
Hodges, Wilson & Rogers	5	8	8	9		
Pershing, Nye, Tallmadge, Bosworth & Dick (subsequently Dawson, Nagel, Sherman & Howard)	15	26	31	46	57	106
Lewis, Grant & Davis (subsequently Davis, Graham & Stubbs)	11	20	22	34	55	70
Holme, Roberts, More, Owen & Keegan	16	22	27	26	50	85
Hughes & Dorsey	6	6	7	8	11	10
Fairfield, Gould & Woods	5	5	9	8	11	17
Holland & Hart	17	33	39	54	68	96
Gorsuch & Kirgis	14	19	21	25	33	50
Rothgerber, Appel & Powers	7	8	8	10	17	31

439. Source: Martindale-Hubbell Law Directory.

Table 3

Year / Firm	**1985**	**1990**	**1995**	**2000**	**2005**
Sherman & Howard	137	156	97	117	152
Davis, Graham & Stubbs	127	174	110	102	112
Holme, Roberts & Owen	155	166	188	180	162
Fairfield, Gould & Woods	30	36	35	25	30
Holland & Hart	136	215	173	212	194
Gorsuch & Kirgis	76	67	53	45	40
Rothgerber, Appel & Powers	41	60	65	56	69
Brownstein, Hyatt, Farber & Strickland	24	43	48	80	109
Faegre & Benson (Denver)	2	27	28	46	75
Hogan & Hartson (Denver)			7	37	49