

# Betrayal as Market Barrier: Identity-Based Limits to Diversification among High-Status Corporate Law Firms<sup>1</sup>

Damon J. Phillips  
*Columbia University*

Catherine J. Turco and Ezra W. Zuckerman  
*Massachusetts Institute of Technology*

Why are some diversified market identities problematic but others are not? We examine this question in the context of high-status corporate law firms, which often diversify into one low-status area of work—family law (FL)—but face a barrier (strong disapproval from existing clients) that prevents diversification into another such area—plaintiffs’ personal injury law (PIL). Drawing on a qualitative study of the Boston legal market, we argue that this barrier reflects a situation where loyalty norms have been violated, and it surfaces because service to individual plaintiffs is tantamount to betraying the interests of corporate clients. Our analysis clarifies identity-based limits to diversification, indicating that they are rooted in concerns about the firm’s commitments as well as its capabilities, and suggests a more general refinement of theory on status and conformity.

Interviewer: How would you react if you learned your outside law firm was doing personal injury law?

Respondent: That’s bad. . . . They’d lose credibility instantly. . . . It’s just the feeling, like they’re taking the other side, like they’re disloyal.

<sup>1</sup> Authorship is alphabetical. We benefited greatly from the comments of Bill Barnett, Matthew Bothner, Joel Brockner, Ron Burt, Rodrigo Canales, Peter Cebon, Barry Co-

Interviewer: How would you react if you learned your outside law firm was doing family law?

Respondent: I don't really care. . . . That's more of just an optics issue. These high-end law firms market themselves as being premium firms. . . . [Family law] just doesn't really fit in.

—Excerpt from author's interview with the general counsel of a publicly traded health-care company, June 2009

## INTRODUCTION

One of the distinctive observations of contemporary economic sociology is that there are identity-based limits to how diversified a firm may become and that these limits are driven by audience expectations and evaluations. Such limits are straightforward in contexts where the audience necessarily evaluates the firm as a whole and the firm's pattern of diversification hinders valuation due to the absence of a clear frame of reference. The canonical context is the stock market, where investors are oriented toward the firm as an asset and must make sense of all of its components (Zuckerman 1999, 2000, 2004). By contrast, in contexts where the audience (e.g., customers) can consider, evaluate, and select just one of a firm's diverse offerings (e.g., products or services), it seems puzzling why the audience would consider the broader set of activities in which the firm is engaged and devalue those firms that are diversified. That such devaluation often occurs even when a firm's diversification has no effect on its capability to deliver valued offerings (e.g., Carroll and Swaminathan 2000) is especially puzzling.

Existing lines of theory provide some direction in accounting for such tendencies, though each faces theoretical and empirical difficulties. First, central to Hannan and colleagues' theoretical reconstruction of organizational ecology is the argument that diversification is problematic because "membership in multiple (unnested) categories likely confuses the audience and makes a producer appear to fit poorly to any of the schemata that an [audience member] applies to the categories" (Hannan, Carroll, and Pólos 2007, p. 108; see also Hannan 2010; Hsu, Kocak, and Hannan 2009). This theory

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assumes that audiences necessarily attend to the identity of the firm as a whole (“producer” rather than merely “products”) and that they find a diversified firm to be cognitively confusing. Yet while it is straightforward to expect that an audience will avoid an *offering* that it cannot understand, it is not clear why an audience might resist the (clearly defined) offering of a *firm* whose pattern of diversification it does not understand; nor is it clear why an audience for one offering might care about the extent of a firm’s diversification into other offerings. Indeed, as suggested by the epigraph to this article and as elaborated further below, in the case of corporate law firms’ diversification into family law (FL) an audience may not care about the firm’s other activities even when its pattern of diversification looks confusing. Meanwhile, the same audience may find another pattern of diversification—for example, into (plaintiffs’) personal injury law (PIL)—deeply disturbing. What accounts for such variation?

The literature on status in markets can provide some direction on this question, but it also raises theoretical and empirical difficulties. Research in this tradition does not regard a diversified identity to be problematic per se but only when the diversifying firm crosses boundaries between market segments that vary in status or prestige. Since it seems relatively unproblematic to expect identity constraints on “upward” diversification (i.e., where low-status firms face difficulty entering high-status market segments; see, e.g., Carroll and Swaminathan 2000), there has been a focus on cases of “downward” diversification, whereby high-status firms attempt to move into low-status market segments. For elite corporate law firms, both FL and PIL represent such downward diversification since the U.S. legal market has long had a sharp division between a high-status “corporate hemisphere” and low-status “personal-plight hemisphere.”<sup>2</sup> Yet each of the two main theoretical traditions in this area has difficulty explaining the full pattern of diversification into these areas—specifically, why high-status firms sometimes diversify into FL but almost never into PIL.

According to Podolny’s (1993, 2005) status-based theory of market competition, the advantages enjoyed by high-status firms do not allow them to extend their dominance to lower-status market segments and thereby take over markets. The problem is “status leakage”—namely, the tendency for the firm to lose status as a result of the low-status associations that necessar-

<sup>2</sup> See Heinz and Laumann (1982) and Heinz, Sandefur, and Laumann (2005). In short, the corporate hemisphere draws on graduates of elite, nationally competitive law school and serves corporate and wealthy clients in such practice areas as securities, tax, intellectual property, and international law. By contrast, the personal-plight hemisphere draws on graduates of regional law schools and serves individual clients in such areas as landlord/tenant, immigration, consumer protection, criminal defense, personal injury law, and family law.

ily result from downward diversification. To explicate this process, Podolny assumes that audiences select firms on the basis of their perceived capability of providing high-quality offerings and that this capability is inferred from the firm's status. He reasons that since a firm's status derives in part from the status of its associations, and since downward diversification necessarily involves the firm in low-status associations, it therefore lowers an audience's estimate of the firm's capabilities. This argument is reasonable and seems potentially suited to explaining why high-status corporate law firms avoid PIL: perhaps their existing clients interpret involvement in the personal plight hemisphere as signaling that the firm now has lower capabilities in the corporate hemisphere. Yet this theory cannot explain why these same clients would find diversification into FL unproblematic. Moreover, we show below that even in the case of PIL where downward diversification is indeed problematic for clients, the reason has nothing to do with their perceptions of a firm's capabilities.

Phillips and Zuckerman (2001) offer an alternative approach, which is promising but also runs into difficulties. Their theory provides a theoretical restatement of the long-standing conjecture that conformity is highest in the middle of a status hierarchy ("middle-status conformity" or "high-status deviance"; see Alvarez 1968; Becker 1970; Blau 1960; Dittes and Kelley 1958; Goffman 1961; Hollander 1958; Homans 1961; Hughes 1946; Kelley and Shapiro 1956; Menzel 1960). The theory is based on three observations: (a) that audience valuation takes place in two stages—*categorization* of those candidates who merit consideration and *selection* from among such candidates (see Shocker et al. 1991; Urban, Weinberg, and Hauser 1993); (b) that insofar as low-status actors face no chance of consideration, they have no incentive to conform to those practices that the audience "generally uses to ascertain who is a" category member (Phillips and Zuckerman 2001, p. 390); and (c) that insofar as high-status actors enjoy a high degree of security in their categorical membership, they will feel free not to conform. This last point can thus explain why, as in the Silicon Valley legal market examined by Phillips and Zuckerman (2001), high-status law firms are able to diversify into FL. But it cannot explain why the same high-status law firms that successfully diversify into FL would face a sharp negative reaction were they to diversify into PIL.<sup>3</sup> In other words, whereas Podolny's theory has difficulty explaining cases of successful downward diversification (e.g., into FL), Phillips and Zuckerman's theory has difficulty explaining cases of problematic downward diversification (e.g., into PIL).

<sup>3</sup> We discuss below that this reaction cannot be explained by the low status of PIL (in fact, FL is lower status) or by the fact that PIL violates ethical norms.

Through a rich qualitative analysis of the Boston legal market, this article leverages the contrasting pattern of diversification into FL and PIL to advance theory about when high-status actors can successfully diversify into low status and when they cannot. As suggested in this article's epigraph, the key theme that emerges from our analysis of the Boston case is that corporate clients perceive PIL to be an act of profound *disloyalty* or *betrayal* on the part of high-status firms, and thus they will not tolerate it, whereas FL is not similarly viewed. While past work has not typically focused on such loyalty-based barriers (but see Hirsch 1986; cf. Carroll and Swaminathan 2000), a familiar example that evokes the present case is the pressure experienced by political polling and consulting firms in the United States (whose services are presumably valued due to their provision of objective data) to align themselves with one or the other major political parties (see Grossmann 2009). In such contexts, each market segment acts as a "greedy institution" (Coser 1974) in that producers must choose and remain committed to one side or the other.<sup>4</sup> But why is diversification into PIL regarded as an act of betrayal and FL not? And how can we incorporate a resolution of this puzzle to clarify both when downward diversification is tolerated or rejected and, more generally, which norms high-status actors can and cannot violate?

This article's within-industry analysis holds constant many potentially relevant factors, thereby providing crucial analytic leverage for addressing these questions and isolating the mechanisms underlying identity constraints on (and opportunities for) downward diversification. As we proceed with this agenda, our objectives are to (a) demonstrate that the contrasting repercussions of downward diversification into PIL versus FL reflect the different implications for a high-status corporate law firm's identity; (b) clarify the specific nature of these identity implications; and (c) incorporate this clarification into a more general theory that makes progress on the questions framed above. The article is organized as follows: First, we discuss our data and methods, first documenting the contrasting pattern of high-status law firm diversification to be explained and then introducing our qualitative study. Then, in the following section, we deepen the puzzle by using both our qualitative data and existing literature on the U.S. legal services market to consider and cast doubt on several existing explanations of the contrasting

<sup>4</sup> By "commitment," we mean the sinking of substantial and visible costs or "side bets" that make it cognitively, emotionally, or materially more attractive to pursue a particular line of action (e.g., service to one audience) rather than others (see Becker 1960; Kanter 1968; Schelling 1956; Selznick 1957, p. 40). See Correll and Benard (2006), Ridgeway (1982), and Turco (2010) for the importance of commitment for employees and task-group members, and see Azoulay, Repping, and Zuckerman (2010) for an example of how commitments to employees make it difficult to commit to contractors.

diversification pattern. After that, we present our key findings, which suggest that the diversification pattern pertains directly to high-status law firms' identities, and we use these data to probe the specific mechanisms underlying this. Finally, we conclude by using lessons from the Boston legal market to suggest revisions to existing theory. We clarify that audiences do not care about categorical membership per se but rather that they seek to identify the category of candidates who are capable of, *and committed to*, serving them. A key implication of the revised theory is that even the highest-status actor does not enjoy "unquestioned membership" such that it is free to engage in actions that suggest commitments antithetical to its audience's interests.

#### DATA AND METHODS

##### The Pattern to Be Explained: Diversification into FL, Avoidance of PIL

We begin by documenting a contrasting pattern of diversification among high-status firms in the Boston legal market. Our data are based on lists of elite Boston law firms from two independent sources, which we then analyzed for the extent of firms' diversification into FL and PIL. The 2010 U.S. News list of "Best Law Firms" is based on reputational data collected from a large-scale national survey of law firm corporate clients ( $N = 9,514$ , including every Fortune 100 company and 587 of the Fortune 1000 companies), lawyers ( $N = 8,842$ ), and law firm marketing officers and legal recruiters ( $N = 1,859$ ).<sup>5</sup> The Vault Law 2012 List of Best Law Firms is based on reputational data from a national survey of law firm associates ( $N = 15,864$ ).<sup>6</sup> Both sources present national rankings as well as rankings by major U.S. metropolitan regions. We combined their respective lists, creating a sample of 19 firms.

We ascertained a firm's extent of diversification through two methods. First, because law firm websites typically list a firm's major practice areas (including descriptions of the legal matters handled and of past representative cases), as well as individual biographies of their lawyers (which specify lawyers' particular areas of expertise and past case work), we analyzed each of the top firms' websites looking for indications that the firm performed FL and/or PIL. Second, we verified and updated our coding through direct discussions with either law firm personnel or key informants in the Boston legal market. We found that 14 of the 19 top Boston firms performed some FL

<sup>5</sup> For more on this survey's methodology: <http://bestlawfirms.usnews.com/methodology.aspx> (Accessed July 20, 2011).

<sup>6</sup> For more on this survey's methodology: <http://www.vault.com/wps/myportal/usa/rankings/methodology?rankingId1=2&rankingId2=2&rankingYear=2012&rankings=1> (Accessed July 20, 2011).

services. While several firms advertised dedicated FL practice groups on their websites, more often a law firm doing FL would note its work in this area (e.g., divorce, prenuptial and postnuptial issues, custody, etc.) more indirectly, for example, on individual lawyer biographies or in descriptions of its “Trusts and Estate,” “Wealth Management,” or “Private Client” practice groups. In contrast, only two of the 19 firms appeared to offer plaintiffs PIL services. Importantly, those two firms were “trial firms” that do no corporate transactional work (we discuss the importance of this distinction below), and not one of the 17 top Boston corporate firms said that it performed plaintiffs’ PIL work. To the contrary, in online descriptions of their litigation practices (e.g., around employment matters, products liability, mass tort, etc.) the majority of these firms explicitly emphasized that they defended companies in these matters (vs. representing individual plaintiffs).

Before describing our qualitative study of Boston, it is worth noting that these contrasting patterns of diversification are not just limited to this one geographic market. For one, the U.S. News and Vault “Best Boston Law Firms” are mostly large, national firms. Sixteen have offices not just in Boston but around the country and, in many cases, around the world. Two are actually large, New York–based international firms that have large enough Boston offices to have been included on the rankings. In light of this, we believe the pattern of diversification is representative of not only high-status Boston firms but also large, elite law firms generally. Furthermore, additional evidence for the generality of this pattern is presented in Phillips, Turco, and Zuckerman (2012), which presents a systematic reanalysis and extension of Phillips and Zuckerman’s (2001) original study of diversification among Silicon Valley law firms. The data for that study were all Silicon Valley partnerships listed in the Martindale-Hubbell law directory across 50 years. Our reanalysis shows that, consistent with the findings in Boston, high-status Silicon Valley corporate law firms are considerably more likely to diversify into FL than PIL, and this pattern is robust to a range of firm, market, and temporal controls.

### Interview Study of the Boston Legal Market

To understand this pattern of diversification, we conducted 36 interviews in the Boston legal market between December 2008 and September 2009. The sample includes 18 lawyers from law firms of varying status, two legal recruiters, and 16 corporate clients of high-status law firms. Corporate clients include C-level executives and general counsels who identified themselves as being responsible for their company’s selection of outside legal counsel. Their companies were large corporations with offices not just in Boston but around the country; further, two general counsels in the sample ran national advisory organizations serving the broader general counsel community and

TABLE 1  
SAMPLE CHARACTERISTICS

Characteristic	Lawyers from Boston-Area Law Firms	Corporate Clients of High-Status Law Firms	Legal Recruiters
Total number of respondents ( $N = 36$ ) . . . .	18	16	2
Lawyers:			
From high-status corporate firms . . . . .	9		
From middle- and low-status firms . . . . .	9		
Corporate clients: <sup>a</sup>			
Title:			
C-level executive (CEO, CFO, or COO) . . . .		6	
General counsel . . . . .		8	
Industry:			
Technology . . . . .		7	
Health care . . . . .		7	
Capital structure:			
Public . . . . .		6	
Private . . . . .		8	

<sup>a</sup> Two general counsels are excluded from these counts. Though formerly corporate clients, they are not currently working in-house but instead run advisory organizations supporting the broader general counsel community.

who were selected to verify whether our findings generalized beyond the Boston market.

The sample was built using Trost’s (1986) theoretical sampling technique. To create a sampling frame for law firms, we listed variables that were potentially relevant, such as firm status, presence of an FL practice, and presence of PIL practice. Then, using Martindale-Hubbell, the ranked lists noted above, and firm websites, we assembled a list of firms that varied along those dimensions. To create a sampling frame for corporate clients, we identified two industries that we expected (based on initial interviews with law firms) would vary in how strongly they felt about PIL: (a) health-care companies, which, given industry-wide concerns over mass tort and medical malpractice lawsuits, we expected to be especially opposed to PIL, and (b) technology companies that sell to business end-users, which we expected to be less motivated to oppose PIL. We also believed that clients would vary in their reaction to PIL depending on whether they were publicly traded or privately held corporations, and so we also sought variation along that dimension. Sample characteristics are presented in table 1.

Where possible, we used personal contacts to make introductions to law firms and corporate clients meeting our desired criteria. Half of our sample resulted from such introductions, while the other half resulted from cold



calls to randomly selected law firms and corporations meeting our criteria. The overall response rate was 92%. We stopped adding to our sample when additional interviews were no longer contributing new insight and we believed we had reached theoretical saturation (Glaser and Strauss 1967). Interviews were conducted in person ( $N = 17$ ) or by phone ( $N = 19$ ) by one of the authors and lasted between 30 minutes to over two hours, the majority lasting approximately an hour.<sup>7</sup> Interview transcripts were coded and analyzed using the qualitative data analysis software HyperResearch.

In our interviews with law firms, we asked lawyers how their firms had decided to specialize in the practice areas they did, why their firms did or did not have FL or PIL practices, and how they viewed the prestige of different legal practice areas. In interviews with corporate clients of high-status firms, we probed what criteria they used to select outside counsel, how they managed their outside counsel relationships, and how they would react if they learned their outside counsel engaged in FL, PIL, or other practice areas. Crucially, interviews confirmed the diversification pattern of interest that we had identified from our earlier review of top-ranked Boston firms: that is, both respondents from within law firms as well as corporate clients of high-status law firms confirmed that although high-status firms often conduct some FL work, they almost never take plaintiffs' personal injury cases.

#### DEEPENING THE PUZZLE

As reviewed in the introduction, high-status firms' successful diversification into FL is problematic, both for Hannan and colleagues' argument that diversified identities are confusing (Hannan et al. 2007; Hannan 2010) and for Podolny's argument that downward diversification should occasion "status leakage" (Podolny 1993, 2005). Diversification into FL can seemingly be explained by a theory that sees high-status actors as unquestioned category members who are given leeway to deviate from actions that the audience "generally uses to ascertain who is a" category member (Phillips and Zuckerman 2001, p. 390). But this theory cannot explain why diversification into PIL is apparently so problematic that it is avoided by most high-status corporate law firms. In the next section, we use our qualitative data to explain high-status firms' avoidance of PIL and elaborate on the implications of this for these specific identity-based theories of diversification. But before doing so, we first consider three other potential explanations for high-status firms' avoidance of PIL. The first two pertain to potential threats to these firms' high-status identity, while the third pertains to their objective capabilities.

<sup>7</sup> Findings did not differ by either sampling strategy (introduction or cold call) or data collection method (in-person or phone).

Neither Status nor Ethics

One possibility is that PIL is lower status than FL and, thus, more threatening to a firm's claim to a high-status identity. The problem with this explanation, however, is that it is based on a faulty premise: FL has in fact been consistently found to be a *lower*-status practice area than PIL, and this difference is readily understood when we carefully consider the nature of the work involved in each area. The relative status of the two fields is documented most clearly in Sandefur's (2001, pp. 386–87) analysis of the second Chicago Lawyer Study conducted in 1995 (see Heinz et al. 2005), which shows that divorce (the main line of work within FL) was the lowest status field among 42 fields of law while personal injury (plaintiffs) was 32nd. Whereas 14% of the sample thought that PIL had "above average" prestige or higher, only 4% of the sample thought this of divorce law. This tendency for lawyers to rate PIL above FL is likely because the former involves more challenging and purer legal work. That is, the low status of FL derives from the fact that it involves skills that are "not necessarily legal." As Abbott (1981, p. 824) writes

The problems that fundamentally challenge basic professional categories are impure and professionally defiling. It is at once clear why Laumann and Heinz (1977) find that legal practice involving corporations in nearly all cases stands above that of private individuals. The corporation is the lawyers' creation. The muck of feelings and will is omitted from it *ab initio*. Where feelings are highest and clients are most legally irrational—in divorce—intraprofessional status is lowest.

Abbott's view is supported by more recent research and our own interview data. For example, Mather, McEwen, and Maiman's (2001) survey of divorce lawyers shows that they regard "the ability to listen sensitively to clients and to effectively negotiate problems" (p. 66) to be the two most important skills required to be successful, with expertise in divorce law ranking a distant third. As several of their respondents put it, "there just isn't much law' governing divorce, and such law is 'not that complicated'" (p. 72).<sup>8</sup> Echoing this sentiment almost verbatim, a lawyer in our sample explained why he felt FL was low status within the profession: "Family law is not that complicated. It is rarely in front of a judge. It's more negotiated. There is not much law involved."

By contrast, PIL is typically viewed as a purer form of law than FL. To be sure, both the solicitation process involved in PIL and the adjudication

<sup>8</sup> Accordingly, Pearson (1993, pp. 281–82) documents that even when (divorcing couples) hire attorneys, they often use them only to resolve some issues, while handling the divorce themselves. For example, a 1990 survey of Los Angeles County divorces showed that cases were divided into three equal-sized groups, where one-third of the cases involved two attorneys, one-third involved one attorney, and one-third involved no attorney at all. Surveys in other localities produced very similar results (Pearson 1993).

of its cases by juries rather than lawyers or jurists (cf. Sandefur 2001) call upon skills that are not “specifically legal.” Yet, unlike FL, PIL law is a practice area that is completely monopolized by lawyers and transpires in courtrooms. Accordingly, PIL attorneys often claim to do *purer* and more challenging legal work than even corporate lawyers because PIL attorneys regularly argue cases in court, while the latter do not. In our interviews, personal injury lawyers adopted precisely this line of interpretation, criticizing even high-status corporate lawyers for not doing “real” legal work, asserting that such lawyers were just “good at pushing papers but not really trying cases” and “don’t even have the experience to go to trial if they want.”

A second possible explanation for high-status firms’ avoidance of PIL is that perhaps it involves intolerable breaches of professional ethics. Indeed, in the past PIL was accused of “giv(ing) a stinking aroma to the bar” (corporate lawyer quoted in Reichstein 1965, p. 12), so there is reason to suspect that it may involve the violation of certain ethical norms. This reputation stemmed principally from its association with two practices that were historically held in low repute and were in fact criminalized under common law and at various times and states in the United States (for an elaboration see Karsten 1998 and Marcushamer 2005): (1) the use of contingency fee, in which lawyers in PIL cases earn a share of the civil penalty awarded to their clients (Kritzer 2004, p. 29); and (2) direct solicitation of business, for example, with the use of “runners,” “ambulance chasers,” and even policemen, doctors, and nurses to identify accident victims and recruit them as clients (see Bergstrom 1992; Karsten 1998). These practices have been said to “corrupt lawyers to have an interest in the outcome of the case” (Bergstrom 1992, p. 90) and even select clients for their earnings potential, as well as to exploit the blurry boundary between what is and is not a subject of litigation (Felstiner, Abel, and Sarat 1980–81), thereby being responsible for the various “explosions” in torts experienced in the United States (Bergstrom 1992; Kritzer 2004).

But while it is certainly true that high-status actors cannot publicly violate ethical norms with impunity, this constraint is largely irrelevant to the case of downward diversification into PIL. In particular, despite the problematic history of the contingency fee and direct soliciting, each of these practices has been decriminalized in the United States, and there has been increasing use of the contingency fee and advertising throughout the U.S. bar.<sup>9</sup> Accordingly, PIL (and the plaintiffs’ bar more generally) has risen in income and in legitimacy during the latter half of the 20th century (Parikh and Garth 2005; Sugarman 2000). And even historically, the contingency fee

<sup>9</sup>A 2011 industry survey of 218 of the top U.S. law firms on alternative fee arrangements found that 74% were using “contingent fees” with at least some of their clients, where a contingent fee is when a “law firm gets paid only if it achieves a financial recovery or other result for the client” (ALM 2012).

and advertising tended to elicit public ambivalence rather than outright condemnation, with positive aspects of these practices often recognized (e.g., Bergstrom 1992; Galanter 1998; Karsten 1998; Reichstein 1965). After all, while these practices may generate frivolous lawsuits, they also help indigent and/or unsophisticated (potential) claimants bring legitimate suits and earn justified recompense for negligence on the part of others, particularly powerful corporations. For example, payment via contingency fee allows a lawyer to represent the many indigent claimants who would otherwise face significant pressure to settle for small sums, especially given long delays before trial and when the claimants' earnings power has been diminished or eliminated by the injury (e.g., Bergstrom 1992; Reichstein 1965). Similarly, the corrupting associations with ambulance chasing are considerably mitigated when we consider that such chasing is a race against insurance adjusters (or representatives of other defendants) who are seeking to minimize or eliminate claims entirely. Accordingly, the two reasons for disapprobation of PIL law also represent reasons for their approbation—the contingency fee and ambulance chasing mobilize *both frivolous and legitimate claims* on behalf of the portion of society that is least able and knowledgeable in using the legal system. Thus, if the public regards PIL law as an evil, it is as “a necessary evil” (Monaghan 1936, p. 498).

This interpretation was confirmed in our interviews with corporate clients. In particular, none of the 16 corporate clients of high-status firms that we interviewed cited ethical concerns when explaining their (highly negative) reaction to PIL. Moreover, 10 of these informants *volunteered* their opinion: (a) that PIL was a legitimate area of the law and (b) that while they might object to the firms they work with becoming involved in PIL, they did not object to PIL in the abstract. As a CEO of a publicly traded health-care company explained:

I readily acknowledge that there's a role for personal injury lawyers. If people are hurt, they have a right to recover from the people who are to blame. Tobacco litigation is a good example. [And] toxic tort cases. If people are getting hurt, then we as a society should be able to collectively stop that bad behavior, and class action law suits is how we can do this as a society. . . . So, I generally have no problem with that.

Furthermore, of the nine lawyers from high-status law firms we interviewed (and who have no reason to hold back on condemning PIL), only three said that PIL's tainted reputation was a consideration motivating them not to diversify into it; and, importantly, not one said it was the primary consideration.<sup>10</sup> As a partner at a high-status firm explained:

<sup>10</sup> Unsurprisingly, the plaintiffs' lawyers we interviewed described their work as quite ethical due to the role of the plaintiffs' bar in defending indigent clients against the rich and powerful. It is tempting to dismiss this claim as self-serving. But some neutral val-

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Sure. There'd be some worry about the cocktail party reaction. But let's face it. If a firm thought it would make itself stronger by doing that type of work . . . they'd do it. The fact is, this work just puts your corporate relationships at risk and that's more important than it being tainted because it's seen as slimy.

In sum, the low status of and ethical questions surrounding PIL are not the reason why high-status corporate firms do not diversify into PIL. Rather, the issue, which we will examine in detail in the discussion section, is that it puts their "relationships at risk."

### Casting Doubt on Capabilities-Based Explanations

One additional possibility must first be contemplated, however. It is that the observed pattern of diversification may simply reflect high-status corporate firms' objective capabilities—namely, their ability to perform different types of legal services that clients desire and at reasonable cost. In particular, perhaps PIL is avoided because it fits poorly with high-status firms' existing capabilities or even degrades them, whereas FL complements them. Phillips et al. (2012) provide a detailed quantitative analysis of the Silicon Valley legal market that incorporates an array of characteristics associated with differential capabilities and finds they cannot explain high-status firms' contrasting diversification into FL and PIL in that market. Here we extend that analysis by using our qualitative data from Boston to consider and cast doubt on three specific capability-based explanations: (a) incompatibility of the revenue model of PIL and corporate law, (b) direct conflicts of interest between PIL and corporate law, and (c) greater complementarity in the demand for corporate law and FL than for PIL.

First, because it is billed by the hour, one might reason that FL is more easily integrated into corporate firms' typical revenue model based on "billable hours" than is PIL, which tends to be billed on a contingency basis. Our qualitative data do not support this conjecture. Specifically, only two of nine lawyers from high-status corporate law firms offered the contingency nature of PIL as even a partial explanation for their firms' avoidance of the practice area; and neither of these two described it as the primary factor. In fact, high-status firms occasionally do work for their corporate clients on a contingency basis (and it can be quite lucrative for them), so clearly they have already found a way to combine the two fee structures unproblematically. When asked directly if the contingency fee structure was driving firms not to engage in PIL, one partner at a high-status corporate firm answered:

There are two issues. One is big firms doing contingency work. And two is doing contingency personal injury work. Certainly there are plenty of [high-status]

idation is provided by the fact that legal aid societies have traditionally not engaged in PIL representation in part due to their contention that this area is well served by PIL lawyers (Bergstrom 1992, p. 92).

firms that do contingency corporate work but that don't do personal injury work. . . . We've represented franchisees of [a major company] on a contingency basis. . . . It is a good way to bring in cases that are potentially economically advantaged. . . . But that's just contingency fees on commercial litigation, where we're working for commercial clients. A different matter is the contingency personal injury work.

In short, while something is driving high-status corporate firms to avoid PIL, our interviews—and the fact that high-status firms do actually perform some contingency work for corporate clients—indicate that the barrier does not derive from the difficulty of integrating clients paid by contingency fee into their business model.

A second reason that downward diversification into PIL might be avoided is if it degraded a high-status law firm's capabilities by creating direct conflicts of interest with existing corporate clients. (FL does not pose this risk since both litigants are individuals.) However, while we will argue below that a different form of conflict of interest (known as "positional" or "issue" conflicts; see Shapiro 2002) is central to what makes PIL problematic, our informants indicated that *direct* conflicts of interest are not an important factor. In particular, only two of the nine lawyers from high-status firms said that direct conflicts of interest were among the reasons their firm avoided PIL, and neither offered it as the main reason. Furthermore, while corporate clients of high-status firms had strong negative reactions to the idea of their high-status firm diversifying into PIL, only three of the 16 interviewed said that their objections were even partially related to concern over direct conflicts, and for none was it the main objection (which we detail below).

Several lawyers in our sample did note that conflicts of interest would largely preclude a firm from both defending insurance companies (the typical defendant in PIL matters) and representing individual PIL plaintiffs. However, these lawyers noted that most high-status law firms do not do insurance defense work, as they instead leave this to specialized middle-status firms. Also, lawyers at high-status firms acknowledged that they routinely encounter conflicts of interest issues among their corporate clients but have developed formal processes and structures (e.g., conflicts committees) to manage these. Consistent with these observations and the implication that high-status firms could find a way to manage potential conflicts of interest if they so desired, Shapiro's work demonstrates that legal work is rife with potential conflicts of interest, yet lawyers regularly and skillfully navigate them through formal and informal mechanisms that "eschew, jettison, disclose, neutralize, or blind interests" (2002, pp. 14–15).

A third and final capabilities-based reason why high-status corporate firms might engage in FL but not PIL is if demand for the former is more complementary with corporate law than is demand for the other. For example, high-status law firms are often said to engage in FL because it is a

service they can offer to the individual executives associated with their corporate clients and because they reason that helping executives on their personal legal matters may cultivate goodwill and deepen the firm's more lucrative corporate relationships. Of course, the same could be said for handling the PIL matters of corporate executives; but perhaps wealthy plaintiffs make unsympathetic claimants before a jury, thus making such demand unprofitable. Studies on the role of plaintiff's income do not support this contention, however (Miller and Sarat 1981; Kritzer et al. 1991; Abraham and Leibman 1993), and neither this specific issue, nor the broader issue of greater demand-complementarity with FL than PIL, were ever offered as an explanation by lawyers in our sample for why high-status firms often diversified into the former but never into the latter.

Moreover, even if there are some ways in which demand for corporate work and FL are complementary, there are two ways in which demand for PIL and corporate law may also be complementary. First, several lawyers from lower-status firms noted that PIL tends to be much less affected by economic cycles than corporate law, suggesting it might serve as a buffer during a slow economy for firms that also do transactional work, known for being quite tied to broader economic cycles. And while FL may also be somewhat immune to economic slowdowns and offer a similar buffer, there is no reason to believe FL would provide a greater benefit than PIL in this regard. A second complementarity was noted by lawyers at middle-status litigation (or "trial") firms (i.e., firms that specialize in both plaintiffs' and defense-side litigation but do no corporate transactional work; we will discuss these firms below and what they tell us about audience-loyalty dynamics). These lawyers report that their firms are better able to represent their corporate clients in litigation because their PIL work gives them a deeper understanding of the opponent and the legal process as a whole. Indeed, this is often core to their business pitch to prospective clients and something touted on firm websites. By contrast, FL offers no comparable benefit since both parties are individuals. One partner from a middle-status litigation firm that does both PIL and corporate litigation explained this logic:

The best thing I can do for a client is to know exactly how the person on the other side is thinking. And it's not just best for the claimant. It's the best thing for the system as a whole. If I don't know the true value of a case when it comes in—and if the other side doesn't—then the costs of the system will be higher. There will be unnecessary litigation, wasted money and time. 98% of these cases settle anyway and if you have sophisticated people on both sides . . . if you really know the value of a case because you can fully see both sides, then it benefits everyone.

In sum, it seems very unlikely that high-status firms' diversification can be explained by differences in the implications for the firms' capabilities, or

even the perception of such capabilities. We turn now to our interviews with the primary audience of high-status firms (i.e., their corporate clients), and, by examining this audience's differing reactions to diversification into FL versus PIL, we gain insight into the contrasting diversification pattern of interest.

#### BETRAYAL AS A MARKET BARRIER

##### Audience Tolerance of Family Law: Confusing but Irrelevant

Interviewer: How would you react if you learned your outside law firm was also doing family law?

Respondent: Weird, but I wouldn't care.

—General counsel, publicly traded health-care company

As noted earlier, two of the three existing identity-based theories of diversification—those that emphasize status leakage (Podolny 1993, 2005) and classificatory confusion (Hannan et al. 2007)—predict that corporate clients of a high-status law firm will devalue a firm for diversifying into a low-status practice like FL. Quantitative analysis of the Silicon Valley legal market (cf. Phillips and Zuckerman 2001; Phillips et al. 2012) has shown that high-status firms do in fact diversify into FL and that they seem to suffer no penalty (at least in the labor market) for doing so. Our qualitative data, however, provide crucial direct evidence on client reactions to high-status firms' diversification into FL: when asked how they would respond if they learned their high-status law firm was doing family law, each of the 16 corporate clients interviewed said they would not be bothered by it. The majority stated that they felt that FL was irrelevant to their company's business interests and thus not troubling, with numerous clients echoing this general counsel's sentiment: "That wouldn't give me any reason for concern whatsoever. . . . I don't care about that." Most importantly, none said they would consider penalizing the firm by moving their business elsewhere, and most used phrases like "I couldn't care in the least" and "It doesn't bother me" to articulate their reaction to a firm's diversification into FL. What is more, their responses directly challenge the hypothesized mechanisms that underlie theories of status leakage and classificatory confusion.

The status leakage hypothesis (Podolny 1993, 2005) predicts that clients will devalue a firm because they interpret its downward diversification as signaling a decline in the firm's capability to serve them. Despite clearly recognizing FL as a low-status area of the law, corporate clients in our sample appeared to make no such inference. Instead, they explained their lack of concern with FL by noting explicitly that they did *not* perceive FL to diminish a firm's capability to serve them on corporate matters. For one, they consistently used the word "irrelevant" to describe how they viewed a law



firm's FL practice, suggesting they drew no connection between a firm's lower-status work in FL and the quality of its other offerings. Also, they noted that one reason for their lack of concern was that law firms were able to operate effectively at multiple status levels because they operationally segregated this work: asked how he felt about his high-status law firm's FL practice, the CEO of a large technology company explained, "I don't care. So long as the guy showing up to do my work is not from the family law practice and is an expert on what I need him to be, I'm fine." In fact, given that it is often in an organization's interest to operate differently in high-status and low-status market segments (i.e., to erect what is known in American business parlance as a "Chinese wall" between them) there is reason to think that many audiences—not just corporate clients of high-status law firms—might similarly believe that downward diversification has no implication for the quality of the organization's other offerings, thus undermining a key assumption underlying the status leakage hypothesis (see also Pontikes, Negro, and Rao 2010)—namely, that mere association with a low-status actor or action invites problematic inferences.

Our interviews also challenge the mechanisms underlying Hannan and colleagues' conjecture that audiences devalue a firm when they are confused by its diversification pattern. To be sure, six clients did note that they would find a firm's diversification into FL somewhat confusing since FL was not a specialization typically associated with top corporate firms. These clients said FL would not "seem to mesh" or "would look strange" within high-status firms known for their sophisticated legal practices. Despite finding it odd, however, they did not revise their estimation of the firm's value. The general counsel of a publicly traded health-care company responded that he would see such diversification as "weird, but I wouldn't care." Another general counsel quoted in this article's epigraph explained, "That's more of just an optics issue. These high-end law firms market themselves as being premium firms. They charge premium prices because they deliver premium services, or so they say. It's harder to claim that if you're doing family law because it just doesn't really fit in. . . . Divorce law just would stick out. . . . [But] I don't really care."

While diversification into FL does not appear to cause corporate clients to worry about status leakage or classificatory confusion, their reactions were consistent with Phillips and Zuckerman's (2001) argument that the achievement of high status gives an actor freedom to deviate from membership norms. In that framework, valuation occurs in two stages—categorization and selection (see Shocker et al. 1991; Urban, Weinberg, and Hauser 1993)—and high-status actors can deviate without risk of being excluded at the categorization stage because their status has already established them as a legitimate category member. The CEO of a privately held technology firm articulated this logic as follows: "[The prospect of diversification into

FL] doesn't bother me at all. My decisions about choice of law firms have been very binary. . . . First is the general reputation of the firm and what I know of it as a whole. Secondly, the expertise they have on the particular issue I'm needing help with." A general counsel similarly noted, "If you're looking for a firm, an outside counsel, you first ask yourself: how is the firm characterized?" Given this approach to evaluating firms, clients were in effect willing to give high-status law firms the benefit of the doubt when it came to FL. It may have puzzled them why a high-status corporate law firm would enter that practice area, but it did not motivate them to reassess their estimation of the firm's value and remove it from the set of corporate firms with which they would consider doing business.

### Audience Rejection of Plaintiffs' Personal Injury Law: An Act of Betrayal

Interviewer: How would you react if you learned your outside law firm was also doing personal injury law?

Respondent: That would be horrible. We'd think of them as scumballs.  
—General counsel, publicly traded technology company

Respondent: I'd find other representation. . . . You can't do things that are contrary to the best interests of your customer base.  
—CFO/COO, privately held technology company

In sharp contrast to their indifference toward FL, corporate clients responded extremely negatively to the possibility of their high-status law firm diversifying into PIL. Crucially, 13 of the 16 corporate clients in our sample said they would consider taking their legal business elsewhere if they learned their current law firm was doing PIL. And when the hypothetical was expanded to include not only PIL but also other specializations involving the representation of individual plaintiffs suing corporations (such as plaintiffs' side employment or securities litigation), all 16 clients expressed such concerns about at least one of these practice areas. Moreover, there was a consistent theme in all such reactions—namely, the tendency to regard involvement in PIL (and/or plaintiffs' work that targeted the interests of the client's industry) as an act of disloyalty or betrayal. As one general counsel said, "In-house counsels are going to question a firm's loyalty if they're on the opposite side. So it's a perception of loyalty." Another general counsel explained that he only works with law firms that explicitly state that they will not represent individuals suing corporations because, "It signals loyalty. . . . They're saying 'we don't represent your opponents, your amorphous opponents, someone that would sue a company.'"

This issue of loyalty did not surface in clients' responses to FL. In fact, because we asked clients about FL and PIL in the same interviews, they often volunteered comparisons of the two practice areas; and, when they did,

they consistently highlighted this issue as the salient distinction between them. The general counsel of a large, publicly traded health-care company explained, "If a firm wants to do FL, that's not going to have a hugely adverse affect on us. . . . It's not the same issue [as PIL] as being adverse to my company's interests, so I don't really care." The COO/CFO of a privately held technology company said that he would change law firms immediately if he learned his high-status corporate firm was engaging in PIL because "they can't build a business suing companies." But when it came to FL, he said tongue-in-cheek, "I couldn't care in the least. Unless they were representing my wife against me." This joke, however casual, points to why FL was generally not an issue for corporate clients: only when they stretched to come up with some reason for why FL might raise issues of loyalty like PIL did clients express any concern about the practice area. For example, one CEO said, "I'd think that a divorce practice was somewhat irrelevant. It wouldn't matter. . . . I might get concerned if their family law practice got into issues of FMLA [Family and Medical Leave Act] claims. An individual suing a company for an FMLA issue that might bother me. A divorce practice wouldn't."

Corporate clients cited several related reasons for why involvement in PIL constituted an act of betrayal. First, clients explained that they would feel vulnerable if their outside counsel began taking on PIL cases because the law firm could use knowledge gained from representing them to become more skilled at suing corporations, thereby creating a more hostile legal environment overall for corporations like their own. One such general counsel characterized the issue as "taking your trade secrets and using them against you." Note that this "you" cannot be taken literally since such law firms could not (due to direct conflict of interest) sue their own clients. Rather, as another general counsel explained, the specific problem is that "there would be a possibility of [information] bleeding over and helping them to get better at suing companies like me. . . . They'd be developing a knowledge base by doing my defense work that would . . . make them better at plaintiffs' work and that would cause real problems for me."

A second reason mentioned by corporate clients is what Shapiro (2002, pp. 147–148) refers to as "positional" or "issue" conflicts that "violate [clients'] sense of loyalty, and [lead] many to redistribute their legal business accordingly." In particular, clients noted that, because a law firm must represent their company in front of the company's own primary audiences (e.g., the public, judges), participation in PIL was especially problematic. One general counsel explained, "Listen, if one of our lawyers did [a PIL case] . . . he'd be going into a court room and saying things like 'punitive damages are important'. . . . How could he compellingly go into the courtroom the following week, representing us, and say 'punitive damages are bad'? You simply can't have it both ways. . . . They'd be talking out of both sides of their

mouth and they'd lose credibility." Note again that this scenario cannot be taken too literally since the scenarios we discussed were not ones where the same lawyer was involved both in PIL and in corporate litigation (and so might appear before the same judge) but where the same law *firm* (but likely different lawyers from different practices) was involved in these two practices. But the interpretation of the firm as if it is an individual is noteworthy, and we will return to it in the discussion.

More generally, clients felt that there were deep philosophical differences between lawyers who defended corporations and those who represented the individual plaintiffs suing them, and so they worried that their outside counsel's commitment to protecting their interests would be compromised if the law firm began suing companies on behalf of individuals as well. As one CEO explained, "You are either on my side of the fence or you're on the other side. . . . I'm looking for someone who can go in there and represent me and is a full believer that I'm right and the other side is wrong." Echoing this, one general counsel said she feared her firm would "lose the ability to see things from [our] side." In fact, some clients perceived corporate defense and PIL work to be so incompatible that, when asked how they would react if their outside counsel began doing PIL, they could not even imagine the possibility and stumbled over the question. After a long pause, one general counsel said, "You just don't see that. It's just not done. It wouldn't happen." Another said, "It's really hard to imagine" and then went on to explain:

Here's an analogy. On a football team if you play defense, you only play defense. If you play offense, you only play offense. You don't switch sides. Plaintiffs' and defense bar have a similar psychological tension as that. I really like that [my outside firm] has its head completely in defense work all the time. If they had [us] in the morning and a plaintiffs' case in the afternoon, I don't think they'd keep their head in it in the same way.

And consistent with these doubts that it is possible to be committed to both "teams," many clients reported that their high-status corporate firms had signaled a deep commitment to corporate interests through their previous behavior, such that representing individuals suing companies in PIL matters constituted a reneging on that earlier commitment:

When they come in and pitch business to you, [high-status corporate firms] tell you up front 'We are only management side lawyers. . . . We don't represent individuals. We don't represent plaintiffs.' When partners come in and tell you about their practices, they tell you that very proudly. . . . It signals a loyalty to representing the company side of things.

Finally, it is important to note that when asked why their firms did not engage in PIL, all the lawyers from high-status corporate firms reported that they believed their corporate clients would interpret it as a lack of com-

mitment to their interests. A partner at a high-status firm summed up the comments of many when he said:

We don't want to bite the hand that feeds us. . . . It's only human nature that if [a client] sees that [our firm] has been on the other side of the type of case we normally defend them in, they're going to be angry. . . . These corporate clients will look at us and in their minds they'll see that we are bringing a frivolous suit against someone like them.

#### Isolating the Mechanism Underlying Charges of Disloyalty

To this point, our data suggest that among high-status firms, PIL signals a betrayal of their commitment to corporate client interests and, as such, is not tolerated. In addition, our interviews indicate that this reaction to PIL was not uniform but pertained specifically when PIL was regarded as threatening to the interests of their type of corporation. Clients of high-status firms were more likely to oppose those types of plaintiffs' side litigation that were directly relevant to their business. That is, when a law firm's action signaled commitment to an audience directly hostile to the client's own interests, clients responded most negatively; commitment to audiences less immediately relevant to the client's interests could often be ignored. For example, when asked how they would respond if their outside counsel began doing plaintiffs' side medical malpractice or product liability work, clients from the health-care industry whose companies sell medical devices or pharmaceuticals to consumers were more likely to respond negatively than were those from the technology industry whose companies sell products to business end-users (cf. Macaulay 1979). One general counsel who had previously worked for a medical device company but now worked for a technology capital equipment manufacturer explained how his reaction to our hypothetical (about his outside law firm doing plaintiffs' side product liability work) would have differed when he was at his prior job:

[Product liability law] bothers me less now. . . . We don't have product liabilities issues here. We make huge equipment sold to businesses. We haven't faced any product liabilities issues like that. . . . So, if [our outside firm] did it, I'd still want to have a conversation and ask 'Where are you going? What's your thinking?' I'd want to know how they were approaching it, but because of the nature of our company, it doesn't bother me. Now, I'll go back to my prior history and say that when I was at [a medical device company], if an established firm that represented management decided to do plaintiffs product liabilities, that would have been a huge issue. Huge. It really depends on the business you're in, the liabilities you're facing, the types of claims people can make against you. I think that drives how important these issues are.

Two additional themes in the interviews reinforce the sense that objections to involvement in plaintiffs' work pertained specifically to situations where the litigation targeted the corporations' interests. First, several law-

yers pointed to tobacco litigation as an instance where some corporate firms had been able to take on a plaintiffs' side matter without alienating their base of corporate clients. These lawyers explained that because other corporations did not identify with the tobacco companies by the time the lawsuits arose, firms could "get away with it." Commenting on a corporate firm that had represented plaintiffs suing tobacco companies, one lawyer said, "It was the rare exception. But from a law firm perspective, I can see why they did it. . . . The defendants were big tobacco companies. . . . It wasn't your typical plaintiffs' suit. Who wants to defend tobacco companies?"

And finally, we must clarify why it is feasible for litigation specialist—or "trial"—firms (that are mostly middle status) to do both corporate defense work and plaintiffs' side litigation where they represent individuals against corporations. The key point was summarized by one lawyer as follows: "The characteristic that all [these] firms . . . share is that they are all basically litigation-only firms. That is, they don't have to worry about creating conflicts for or pissing off transactional clients." Corporations engage such litigation firms for one-off litigation matters and generally do not maintain long-term, ongoing relationships with them. As a result, corporations do not feel like the firm has made a commitment to them beyond the particular matter for which they are engaged and thus do not expect the firm to grant them any loyalty beyond that matter. Explaining how her trial firm was able to do both PIL and corporate defense, one lawyer explained:

In the case of our firm, big corporations don't care unless you've sued them specifically. If [bank A] hires me, I don't think they give a hoot if I sued [bank B] a few years ago. They're just looking for a tough lawyer. But that's because they're looking for real litigation when they come to us. In the big firms, litigators become service providers for their corporate partners. And you simply can't have a vibrant litigation practice if your hands are constantly tied. In a [high-status corporate] firm, if a litigator brought in a case where they were going to sue a company, they'd get shot down.

This statement is striking in that it suggests something that is widely believed in the plaintiffs' bar—namely, that by refraining from engaging in plaintiffs' side work, high-status corporate law firms may in fact *degrade* their capabilities as litigators. But limiting themselves in this way seems necessary to signal loyalty to "the hand that feeds them."

## DISCUSSION

Our qualitative study of the Boston legal market carries several interrelated lessons for existing theory on the identity-based limits on diversification. First, we have seen that, contrary to Hannan and colleagues' (2007; Hannan 2010) theory, diversification is not necessarily problematic even when it is

confusing. This seems to derive from the fact that unlike in the stock market where investors must evaluate all aspects of the firm as an asset (Zuckerman 1999, 2004), customers for one of a firm's offerings (e.g., legal transactional services) can ignore others (divorces for individual clients). Second, contrary to Podolny's (1993, 2005) arguments about status leakage, we have seen that (a) mere association with a low-status activity does not necessarily lead to a decline in a firm's status and (b) when such a downgrade does occur, the cause may not be a lowered estimate of the firm's capability of delivering high-quality offerings. Mere association with a low-status activity is not necessarily problematic because it may be quite clear to all relevant parties that the firm has separate processes for both the high and low-status activities with no risk of one affecting the other. The basis for the downgrade may instead lie in a reassessment of a firm's commitments rather than its capabilities. Finally, and contrary to Phillips and Zuckerman (2001, p. 390), high-status actors do not necessarily enjoy a license to deviate from actions the audience "generally uses to ascertain who is a" category member. Clearly, avoidance of PIL fit this definition, but high-status corporate law firms certainly hold no license to engage in PIL. And the reason stems from the fact that it involves a betrayal of the firm's commitments in a way that engagement in FL does not.

We now elaborate on how and why such commitments are so important and act as a barrier to diversification. We then conclude by restating Phillips and Zuckerman's (2001) theory of status and conformity/deviance in a way that can accommodate each of the above lessons.

#### Audience Conflict and Betrayal in the Market

While it has not been a major theme in research on market dynamics, it seems clear from our research that market audiences are often as "greedy" as other groups and institutions (Coser 1974), in that they do not tolerate hints of disloyalty. In considering cases that resemble the one we study, perhaps the closest is that of U.S. political polling and consulting firms in the United States, which face pressure to align themselves with one or the other major political parties (see Grossmann 2009). Like law firms, such firms are presumably valued on the basis of their objectivity and general capabilities, but the adversarial nature of the system forces them to demonstrate commitment to one or the other side. And Hirsch's (1986) account of the rise of hostile takeovers provides another example that echoes the current case—namely, the refusal of investment banks to represent hostile raiders until major corporations adopted hostile takeovers as a method themselves. Hirsch shows that when it was outsiders making hostile bids, corporations and their representatives used negative moral rhetoric to describe them

(“ambushers,” “pirates,” “sharks,” “rapists”), but that once the raiders were corporate actors, the rhetoric became framed in terms of contests, games, and instrumental rationality.

In related research, several scholars have suggested that audiences for firms judge them on the basis of their commitments to these audiences. For example, Zuckerman and Kim (2003, p. 30; cf. Podolny 2005, p. 34) argue that high-status firms may have trouble breaking into low-status markets because the audiences for the latter suspect that such firms will not be sufficiently committed to them. Phillips and Kim (2009) use the context of early jazz to show that high-status record companies’ participation in jazz was a renegeing on their earlier claims to the cultural elite to morally uplift the masses through the production of classical and operatic music. And finally, it is worth considering in this context the evidence that Carroll and Swaminathan (2000) present, wherein consumers reject microbrews that they learn are made by mass-market beer producers despite the fact there is no difference in quality. Much as corporate law firms regard the plaintiffs’ bar as having commitments that compete with their own and thus see plaintiffs’ work as fundamentally opposed to their interests, microbrew customers regard macrobrews as having commitments that compete with their own.

It is noteworthy that each of these examples of “audience conflict” is drawn either from professional services markets or from consumer-goods markets where the product choice makes a statement of about the consumer’s identity. This suggests that questions of commitment are particularly salient in what might be called markets for agency, or representation. Whereas in many markets the relationship between the buyer and seller ends after purchase and the transfer of the product, this is not the case in markets where the seller’s service is to be a faithful agent of the buyer’s interests or when the buyer uses affiliation with the seller to make a relatively enduring statement about himself or herself. Questions of commitment are well known in the former type of market, when it comes to direct conflicts of interest. Insofar as the firm is committed to act as an agent of the principal, it is impossible to act in the interest of two principals with conflicting interests. In short, the commitment made to one principal conflicts with the commitment to the second principal. Cases of audience conflict are essentially generalizations of the same logic. This generalization occurs because each of the audiences has common interests that are recognized by all parties, such that wins on each side are regarded as having positive externalities on the same side and negative externalities on the other.

Such common perceptions may be critical to explaining why it does not seem possible to erect a Chinese wall and have divisions that are for all intents and purposes like separate organizations, such that the commitments to one (e.g., to corporate clients, to Republicans) do not interfere with the commitments to others (e.g., to plaintiffs, to Democrats). As discussed in re-



cent work on “status advantage” in markets (Correll et al. 2012; cf. Jensen 2006; Uzzi and Lancaster 2004), the key reason high-status professional firms or high-status brands are desirable is because everyone knows (that everyone knows that . . . etc.) these are the most capable and committed actors. Accordingly, the key question for a client in evaluating an unusual form of diversification is not whether it actually lowers a firm’s capabilities or commitments but whether key constituencies for the decision are likely to perceive it in this manner. Accordingly, the public perception that two audiences have opposed interests may be sufficient to induce clients to avoid firms that try to serve both audiences regardless of the firm’s practices or performance. Consistent with this, an important theme in our interviews was that the *visibility* of a law firm’s deviant diversification to the clients’ own audiences was critical. If a client believed that audiences to whom they were accountable would see the law firm’s action and judge the client for it, the client was more likely to react negatively to their law firm doing PIL. One general counsel spoke of how his board would react to learning he hired a law firm that did PIL: “People would think less of my judgment for suggesting we work with a firm like that.” Another noted that she wouldn’t immediately dismiss a law firm that took plaintiffs’ side product liabilities cases, but,

If they were representing individuals versus tech companies and they had the reputation for being a law firm that used low-brow tactics—the kind of the stuff that inflames the press like leaking things so it creates not just a legal problem but a PR problem too for a company—that would bother me. . . . Those types of firms, you’d never do business with, not so much because they are representing individuals but because the way they do it paints corporations into a corner.

This issue of visibility to client’s own audiences was particularly salient for public companies, and public company general counsels and executives were more likely than those from private companies to have especially strong negative reactions to PIL. A CEO of a private technology company explained why he felt less pressure to oppose certain plaintiffs’ side litigation than other CEOs might: “If we’re not a public company—and I haven’t been CEO of a public company before, though I’ve worked at them—then I don’t have a newspaper article to worry about or an angry bunch of shareholders at a meeting.”

Note finally that this logic may help explain the tendency discussed above, whereby the firm is anthropomorphized and treated as if it were an individual who is “talking out of both sides of its mouth” when it takes different sides of an issue (e.g., the merits of punitive damages) before the court. In a legal sense, there would be no contradiction in such cases even if it were the same individual attorney who made inconsistent arguments;

attorneys are duty bound to be advocates for their clients, and thus their arguments in earlier cases are irrelevant. It is as if attorneys in fact have no identities that extend from one case to the next. And if this is true for individual attorneys, it is a fortiori true for law firms, which have no official standing in the court. But in reality, attorneys and law firms maintain continuous identities, as they must in order to maintain their businesses. And in general, actors who engage in inconsistent actions under the same identity will necessarily raise questions about their capabilities and commitments. The tension here reflects the basic tension in the adversarial system of legal representation, between the principle that the attorney should be a neutral "hired gun" for any client who seeks her help, and the reality that the "long-range interests" of the lawyer and law firm dictate specialization in particular types of work and specific clients (Macaulay 1979, pp. 162–66). In short, the adversarial nature of the legal system coupled with the business of legal representation creates permanent adversaries rather than neutral agents.

#### Clarifying the Limits to High-Status Deviance

We conclude by reworking Phillips and Zuckerman's (2001) theory of status and deviance/conformity, so as to incorporate the lessons enumerated above. The key weakness of this theoretical framework, which is shared with that of Hannan and colleagues, is that it assumes that audiences screen candidates on the basis of similarity in their actions or "feature values," but it does not specify why they engage in such categorization, nor how they arrive at a "relevance criterion" to group like and distinguish unlike (Hannan et al. 2007, p. 38). On the basis of prior work and the findings of the present study, it is possible to identify the why and wherefore of such criteria, and this suggests when audiences forgive deviance from such criteria and when they insist on conformity.

In particular, such relevance criteria derive from the more general objectives that an audience seeks when evaluating actors so as to decide who should be preferred for exchange. Such valuation is governed by two considerations: (a) an actor's *capability* for such service (e.g., Zuckerman et al. 2003) and (b) her *commitment* to using (or developing) her capabilities for such service (cf. Correll and Benard 2006; Ridgeway 1982). When audience members believe (that their own audiences believe . . . , etc.) that two candidates are equally capable of, and committed to, serving them, then there is no reason for them to expect differences in the likelihood that each will meet their performance standards. But when audience members observe a sign that one of those actors is either less capable of, or less committed to, serving them, we should expect the audience to downgrade that firm's status, perhaps even screening it out of consideration entirely.

Considered from this perspective, the achievement of status in the eyes of the audience does not eliminate questions about a firm's capability or commitment, so much as it gives the firm the benefit of the doubt when it comes to what we may define as "membership norms"—namely, patterns of behavior that are generally associated with category members and thus serve as indirect, *prima facie* evidence that an actor has the minimum capability and commitment to the audience that uses that category to screen candidates (cf. Phillips and Zuckerman 2001, p. 390). It is crucial to recognize that these indicators are indirect. For any membership norm, it is generally possible to deviate from the norm while meeting—and perhaps even exceeding—the audience's performance standards. For instance, a focal audience will generally regard service to other audiences as a violation of a membership norm. This makes sense because all things equal, it is difficult to serve multiple audiences at the same time. But in many contexts, service to one audience does not *necessarily* mean lower capability or commitment to other audiences. This is certainly true for organizations, which can often expand and set up divisions to handle different audiences. And in many cases, synergies are available such that service to one audience can enhance the actor's capability of serving another audience. Moreover, the ideal performer in many contexts is the Renaissance man who displays skill in many areas of work (see Zuckerman et al. 2003). Thus, while the typical audience's *default* response is to regard a candidate's service to another audience as a reason to doubt its capability or commitment to serving it, and while such doubts may be especially likely when the other audience is regarded as having lower performance standards (such that those who serve it are regarded as lower in status), these doubts can be eliminated by more direct indicators of the candidate's capability and commitment.

And status is such a direct indicator. By definition, high-status actors are those who have been publicly recognized as highly capable of and committed to serving an audience in the past. Accordingly, when they violate membership norms, the default meaning of that action—namely, that they are not minimally committed and capable—is overridden, and more favorable interpretations are generally applied. This is the reason that a high-status actor enjoys a certain leeway for violating membership norms. Insofar as an actor has established its capability and commitment to a given audience, it earns the benefit of the doubt, or an implicit disclaimer that allows for the default, problematic, interpretation to be superseded by a more benign one.<sup>11</sup> In some cases, high-status actors may even benefit from such violations (Sgourev 2012).

<sup>11</sup> Hahl and Gosline (2012) show that in some cases (e.g., a naive audience) the disclaimer must be explicit for the secondary, positive interpretation to be used rather than the default; but that even such an explicit disclaimer is ineffective for lower-status actors since they have not established themselves as committed and capable.

However, in contexts defined by audience conflict (i.e., where two audiences have conflicting interests such that providing service to one audience necessarily implies lack of commitment to the other), membership norms about service to particular other audiences are transformed into loyalty norms. As discussed above in market contexts but perhaps most familiar from accusations of treachery during wartime, service to a rival audience does not merely raise doubts as to an actor's capability and commitment to serving the focal audience. Rather, it constitutes direct betrayal of such commitment. As such, the achievement of high status provides the actor with no leeway in violating loyalty norms. To the contrary, the license for deviance enjoyed by high-status actors does not extend to public violations of loyalty norms because, like ethical norms, loyalty norms protect an audience's "basic" interests (Blau 1963, pp. 201–2; cf. Becker 1970; Menzel 1960).<sup>12</sup> Indeed, scandals disproportionately involve high-status actors because the contradiction between the apparent commitment to an audience and the betrayal of it is increasing in an actor's status (see Adut 2009; Alvarez 1968; Fine 2001; Giordano 1983).

Put in terms of the present study, when a corporate firm engages in family law, it involves no audience conflict and thus constitutes a straightforward membership norm violation. That is, FL involves individuals suing individuals, not individuals suing the firms' existing focal audience, corporations. So while diversification into FL generally signals a lesser capability or commitment to serving one's corporate clients (as it does for middle-status firms, who consequently avoid it [Phillips and Zuckerman 2001]), high-status firms can breach this membership norm with relative immunity since their capability and commitment to serving their corporate clients is already well established. However, a high-status firm's diversification into plaintiff's PIL involves direct audience conflict and thus constitutes a loyalty norm violation. Specifically, the firm is making a commitment to an audience that is directly antagonistic to that which it had previously committed itself, and that original audience can be expected not to tolerate this act of betrayal.

Thus, by beginning with the premise that audiences categorize and evaluate candidates on the basis of both their capabilities and their commitments, we derive two important implications for theory on status and conformity/deviation. First, the achievement of high status (and the demonstration

<sup>12</sup> As discussed by Zuckerman et al. (2013), ethical norms relate to loyalty norms, in that each pertains to violations of commitment to a focal audience. Ethical norms enjoin actors to avoid serving *themselves* while appearing committed to serving the focal audience; loyalty norms enjoin actors to avoid serving *other audiences* while appearing committed to serving the focal audience. We argue that high-status deviance is generally not permitted on these dimensions, but it is worth noting that high-status actors are able to violate ethical or loyalty norms with relative impunity insofar as they have the power to shape how their actions are interpreted and to keep violations out of the public domain.

of past capability and commitment that it implies) provides a benefit of the doubt only when it comes to membership norms—namely, actions whose default meaning is an indirect indicator of minimal capability and commitment, but which often have secondary positive interpretations. Second, insofar as two audiences have conflicting, rather than merely different, interests, service to the second audience violates a loyalty norm rather than a membership norm and leads to a sharp negative reaction. Just as in the case of ethical norms, the violation of loyalty norms constitutes a betrayal of the audience's interests and thus cannot be tolerated. And while both membership and loyalty norms may “generally be used to ascertain who is” a category member (cf. Phillips and Zuckerman 2001), they have vastly different implications for the (high status) actor who might wish to deviate from them.

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