

THE PUZZLE AND PERSISTENCE OF BIGLAW CLUSTERING

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Elite U.S.-based global law firms (“Biglaw” firms) concentrate in the costliest districts of superstar cities, especially two neighborhoods in Manhattan. This pattern has persisted despite both the dispersal of Biglaw clients across less-dense, lower-cost U.S. geographies and the development of telework capacity. It suggests a puzzle: law is among the occupations most conducive to remote work, yet Biglaw prior to the coronavirus pandemic required in-person work in the priciest places—meaning it paid (and continues to pay) a premium on both of its biggest expenses, wages and real estate. How might this equilibrium be explained, and what might lead it to change? This Article contends that Biglaw clustering reflects a management preference for the exploitation of proven strategies over the exploration of novel and uncertain ones—but that the pandemic telework experience is eroding this dichotomy. This analysis has direct implications for private international law (“PIL”) practice, where large-scale transactions and disputes are handled by Biglaw firms and involve significant international travel. This Article contributes to a growing literature on telework’s impacts on cities, labor markets, and industries, and is the first to extend that focus to Biglaw and PIL. A post-pandemic Biglaw embrace of dispersal via telework would destabilize standard accounts of collaboration in agglomeration economies. While the Article expresses skepticism about that outcome, it identifies a mechanism by which it might plausibly come about. Crucially, this mechanism—the replacement of an exploit vs. explore choice with two different exploit options—posits as the key driver not technology but management learning and innovation that quickened during the pandemic.

INTRODUCTION

Elite U.S.-based global law firms (collectively, “Biglaw”) cluster in some of the largest metropolitan areas in the world. Among these areas, they choose the largest financial and legal markets and within them the central business district (e.g., Midtown Manhattan) or submarket (e.g., Silicon Valley) that is home to the biggest, highest-

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margin companies in the metropolitan area. To headquarter in these places, Biglaw firms must pay both elevated real estate and labor costs.

Biglaw's practice of paying this double premium is uncommon relative to other industries. In the postwar era, for example, the corporate headquarters of many of the Fortune 500 companies that make up the Biglaw client base dispersed, relocating out of central cities to suburbs and from high-cost metro areas to lower-cost ones, mirroring a similar shift by the U.S. population. At the same time, technological advances enabled more remote work. Despite the opportunities implied by these developments, Biglaw opted to pay the double premium.

In recent decades, Biglawyers have “prospered [and] demand for corporate legal services, associate salaries and partner profits at large law firms have increased much faster than inflation.”¹ During this time, the spatial footprint of Biglaw's growth has remained highly concentrated and urban:

The nation's largest law firms have added dozens of offices and thousands of attorneys in the nation's most expensive cities. Several cities in the South and West [that experienced high population growth] have emerged from relative obscurity to develop large and relatively lucrative corporate bars. In contrast, despite an established network of historically prominent law firms, the number and size of branch offices in the Midwest and Great Plains States has been relatively stagnant.²

The persistent clustering of Biglaw in the high-end urban commercial core suggests a puzzle. Biglaw's locational strategy generates its highest costs, and lawyers' jobs are among the very easiest to do remotely—a leading study estimates the potential for telework share at 84 to 97 percent³—yet Biglaw has remained an in-person industry that concentrates in prime areas even when doing so is no longer strictly required. The ability of Biglaw firms to work remotely during the pandemic demonstrated that this capability is not merely theoretical.

In recent years, a small literature has sprung up seeking to explain Biglaw's geographic concentration. Common explanations include persistence as a function of the geographic footprint of clients; of agglomeration economies that foster local specialization and face-to-face interaction; and of economies of scale that enhance intrafirm efficiencies and expertise.⁴ This Article considers location and management changes necessitated by the coronavirus pandemic as a way to help understand the phenomenon and its boundaries.

1 William D. Henderson & Arthur S. Alderson, *The Changing Geography of Large U.S. Law Firms*, 16 J. ECON. GEOGRAPHY 1235, 1235 (2016).

2 See *id.*

3 Jonathan L. Dingel & Brent Neiman, *How Many Jobs Can Be Done at Home?*, 189 J. PUB. ECON. 1, 3 (2020). In addition, some of the aspects of legal work, such as appearing in court, which may not be able to be done remotely, also frequently cannot be or are not done in the lawyer's office. The Dingel-Neiman analysis, which has been cited widely, breaks out results based on standardized surveys from the U.S. Department of Labor's Occupational Information Network (O*NET) and manual coding. *Id.* at 1-3. For a methodological discussion including sample survey questions, see *id.* at 1-2.

4 See, e.g., Henderson & Alderson, *supra* note 1, at 1236 (canvassing literature).

In 2020, technology, which had long had the potential to transform the spatial distribution of legal services, suddenly met an imperative for offices to operate on a fully remote basis. “The pandemic was a shock that drastically increased the costs of working in the office,”⁵ including in Biglaw. Scholars and commentators have begun considering this shift from the perspective of urban economics more generally (without specific regard to law practice), and have suggested mechanisms by which it could extend beyond the pandemic.⁶ Law practice entails some important complications, such as professional conduct rules barring the unauthorized practice of law.⁷ But the extreme concentration of Biglaw in big cities also suggests that a long-term shift to telework, if it extends to Biglaw, could have implications for both urban economics and the legal profession. Since private international law (PIL) is an area of legal practice whose private sector is especially concentrated in Biglaw (as opposed to, say, small firms or in-house roles), such changes could be expected to be reflected in the practice, personnel, and perhaps substance of the field itself as well. This may render the clustering-telework tension in Biglaw especially interesting for scholars and practitioners of PIL, while making the possibility of changes in PIL practice flowing from telework instructive for scholars of urban economics.

Ordinarily, firms face tradeoffs between the *exploitation* of proven strategies and the *exploration* of novel and uncertain ones.⁸ When it comes to location decisions, Biglaw has traditionally favored exploitation, i.e., in-person work in the commercial core of global cities. That strategy boasts many advantages, but it is not obviously required by the external factors that are traditionally associated with production location decisions. Compare Biglaw’s situation to that of goods producers locating near freight rail nodes, or iron and steel mills locating near sources of energy such as coal mines. Other elite professional services providers, such as accounting and consulting, do not concentrate in the same way as Biglaw. Even some large, less-profitable law firms exhibit a more diffused footprint than the elite Biglaw firms that are the subject of this Article. A choice of a telework-friendly model, cheaper geographic markets or neighborhoods for HQs, or increased decentralization would all appear to be plausible substitute strategies for an in-person service model centered in prime areas—yet no top firm has defected from the norm or indicated it might

5 See Lukas Althoff et al., *The City Paradox: Skilled Services and Remote Work* 2 (Ctr. Econ. Stud. & Ifo Inst., Working Paper No. 8734, 2020) (discussing in the context of skilled scalable services in general).

6 Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, *Why Working From Home Will Stick* (Becker Freidman Inst., Working Paper No. 2020-174, 2021).

7 See, e.g., MODEL CODE OF PRO. RESP. R. 5.5 (AM. BAR ASS’N 1980). These rules have been relaxed during the pandemic; their status post-pandemic is not yet known. See Melissa Heelan Stanzione, *Covid Pressures Change to Where Lawyers Can Practice (Corrected)*, BLOOMBERG LAW (Aug. 13, 2020), <https://news.bloomberglaw.com/us-law-week/pandemic-pressures-restriction-on-where-lawyers-can-practice>.

8 Gustavo Manso, *Motivating Innovation*, 66 J. FIN. 1823, 1824-25 (2011).

do so.⁹ The increasingly competitive nature of Biglaw suggests some difficulties for a story of mere change-aversion and path dependency.¹⁰

In the first quarter of 2020, COVID-19 upended Biglaw's preferred locational strategy as the exigencies of the pandemic required Biglaw employees to work from home.¹¹ This revealed latent technological and organizational capacity. Pre-COVID, Biglaw work consisted overwhelmingly of in-person labor centralized at headquarters, complemented by periodic telework permitted mostly for the convenience of the employee. During COVID, Biglaw swung overwhelmingly to telework.¹² Particularly because of its mandatory and universal character, this change provides an opportunity to examine the nature of Biglaw's traditional locational "exploit" strategy.

The shift to telework eliminated two barriers to change. First, as compared with a voluntary switch, the mandatory and universal nature of the transition to telework reduced transaction costs of coordination. Details of an elective shift that would otherwise require sensitivity, such as coordinating workflow between in-office and remote team members, were simplified by the public health imperative to disperse everyone to their homes. Second, it allowed firms to avoid problems that might otherwise accompany a partial, voluntary switch to telework, which have long been a fear of companies contemplating telework. High among these is adverse selection. To counteract the difficulties involved in monitoring employees who chose to work from home—a population that would be opting into a work arrangement that is harder to monitor—costly measures would be necessary for the firm to counteract shirking. Similarly, the preferences of managers who would otherwise require inefficient amounts of "face time" were simply overridden. Employee and manager alike were forced into telework.

The mandatory, total nature of the Biglaw shift to telework deprived firms of their favored "exploit" option, forcing them into an "explore" posture. But after prolonged exploration, insights developed during that period can mature into a new normal capable of exploitation—the essence of productivity growth.¹³ Biglaw

9 While some firms have signaled openness to more complementary telework in the long term, as of publication no Biglaw firm has announced plans to *substitute* a telework model for a traditional office-based model (or, for that matter, to decentralize its footprint of offices to avoid paying the double premium).

10 *But cf.* Treb Allen & Dave Donaldson, *Persistence and Path Dependence in the Spatial Economy* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28059, 2020) (presenting simulations that "imply that small variations in historical conditions have substantial consequences" for the geography of economic activity).

11 Professional conduct regulations governing the "location" of a law practice for purposes of state bar rules, as well as the tax implications of telework, are noted periodically in this Article but a fuller analysis is beyond its scope.

12 See Christine Simmons, *Remote Work Has Permanently Altered Law Firm Life, for Better and for Worse*, LAW.COM (Apr. 13, 2021), <https://www.law.com/2021/04/13/business-of-law-remote-work/?sreturn=20211011213618> (noting a "transition to a fully remote operation" that took place "nearly overnight").

13 See, e.g., *The Pandemic Could Give Way to an Era of Rapid Productivity Growth*, THE ECONOMIST (Dec. 10, 2020), <https://www.economist.com/finance-and-economics/2020/12/08/the-pandemic-could-give-way-to-an-era-of-rapid-productivity-growth> (observing that during COVID-19, "[b]usinesses have adopted new processes and technologies—and there are signs that they may pay off").

has now been predominantly remote for over one year. Rather than choose between exploit and explore strategies, firms are now able to choose between two different exploit strategies.

The Biglaw COVID-19 telework experiment sheds light on the attractiveness of two categories of centrifugal shifts that would allow them to cease paying a double premium on salaries and real estate: telework and various lower-cost in-person strategies. Telework is straightforward in theory. Post-COVID, it would also benefit from the elimination of some major challenges associated with the pandemic, such as disruptions to schooling and childcare. A return to in person in lower-cost geographies would constitute a middle ground between telework and the status quo ante. Firms could realize some efficiencies by moving HQs from central business districts to lower-cost neighborhoods in the same metro area; moving to lower-cost metro areas; or decentralizing generally, by expanding their footprint across multiple offices while dispersing headcount, relying on technology to connect office-based Biglawyers (with, presumably, some telework).

This Article explores whether the widespread and prolonged pivot of lawyers to telework compelled by the pandemic might enable a longer-term shift that erodes the spatial concentration of Biglaw. Such a dispersal would scramble scholarly understandings about the centralizing effects of technology and globalization on cities in general and knowledge work in particular. While the Article expresses skepticism about that outcome,¹⁴ it identifies a mechanism—the replacement of an exploit vs. explore choice with two different exploit options—by which such a change might plausibly come about. One advantage of this novel account is that it would also explain why there had been little to no centrifugal movement—whether through telework or a change in office geography—prior to the pandemic.

Large global elite firms are a useful unit for analyzing the context in which skilled scalable services (SSS) firms¹⁵ make decisions. They also constitute essential capital markets gatekeepers¹⁶ and generate a substantial share of PIL transactional and decisional law, e.g., through choice of law drafting and litigation, across multiple practice areas. Client choices of Biglaw firms—and decisions by lawyers about which firms to work for—make up a market for law practice that fits neatly into the “law market” framework developed by Professors Erin O’Hara O’Connor and Larry

14 While predictions are hard (especially about the future), the author’s personal view is that a substantial deconcentration of Biglaw is unlikely and in fact that the opposite—increased concentration—is more likely. Some practice areas may continue to employ elevated levels of remote technology, such as international arbitration practitioners and arbitrators. Regardless of what happens, Biglaw management locational choices following an extended period of telework will be revealing.

15 This category embraces four standard industry classifications: Information (NAICS 51), Finance and Insurance (NAICS 52), Professional Services (NAICS 54), and Management of Companies (NAICS 55). See Fabian Eckert, Sharat Ganapati & Conor Walsh, *Skilled Scalable Services: The New Urban Bias in Economic Growth*, 1 Fed. Rsv. Bank of Minn. Opportunity & Inclusive Growth Inst., Working Paper No. 25, 2020). NAICS stands for North American Industry Classification System.

16 See, e.g., Sung Hui Kim, *Do Lawyers Make Good Gatekeepers?*, in *THE CAMBRIDGE HANDBOOK OF INVESTOR PROTECTION* (Arthur B. Laby ed., forthcoming); Stephen M. Bainbridge, *Corporate Lawyers as Gatekeepers*, 8 J. SCHOLARLY PERSP. 1 (2012).

Ribstein.¹⁷ Effects on the business, personnel, and location of Biglaw firms can be expected to have an effect on the character of elite law practice and perhaps on the development of PIL. If they spread to peer SSS firms, such as investment banks, they may also affect the finances and makeup of cities themselves.

The Article proceeds in four parts. Part I describes the spatial concentration of Biglaw in global megacities—and more specifically, within the most desirable commercial districts. This distinguishes Biglaw both from the large companies that make up its client base, which have a more varied geographic distribution, and from some other elite corporate service providers. It also requires Biglaw to pay a premium on its two largest expenses, wages and real estate. Part II describes the evolution of telework in Biglaw and situates such changes in the context of urban economics. Part III sets forth a framework for understanding Biglaw’s persistent preference for premium locations, and argues that it can be explained in part as a way of avoiding the costs of exploring alternatives. This analysis also suggests a plausible mechanism to explain potential declustering in Biglaw following an extended period of mandatory telework: the elimination of the differential between strategies to “exploit” proven success and “explore” possible improvements. While the Article expresses skepticism about this outcome, the explore/exploit framework sharpens the inquiry: a failure by Biglaw to decluster even after a longtime experience “exploiting” telework would suggest an intense preference for its traditional locational model, despite paying the required premia on wages and real estate. Part IV discusses some possible implications for PIL of a change in Biglaw’s footprint, and incorporates the views of a handful of leading practitioners. The Article then concludes.

I. THE SPATIAL CONCENTRATION OF BIGLAW

This Article is normatively agnostic about a possible declustering of Biglaw, but skeptical about the likelihood of such a dispersion. Notably, this contrasts with at least some of the available evidence regarding the labor market in general and among high-income workers in particular.¹⁸ Based on survey evidence, one study predicted that “major cities will see the biggest out-migration,” finding 14 to 23 million Americans planning to move for remote work and about 20 percent of those currently based in a major city.¹⁹ This skepticism stems in part from the persistence of Biglaw clustering to date notwithstanding an increase in centrifugal pressures from U.S. population dispersion and telework. The extent of that clustering bears examination.

17 ERIN O’HARA & LARRY E. RIBSTEIN, *THE LAW MARKET* (2009).

18 See, e.g., Barrero, Bloom & Davis, *supra* note 6; Adam Ozimek, *Economist Report: Future Workforce*, UPWORK.COM <https://www.upwork.com/press/releases/economist-report-future-workforce> (last visited Sept. 26, 2021). Note: Upwork is a platform for hiring remote workers, but Ozimek is a respected economist.

19 See *id.*

A. Biglaw Clustering: Evidence from Top Law Firms

In the United States, the top Biglaw firms are disproportionately headquartered in the largest cities. The top 25 firms in the AmLaw 100 by revenue per lawyer²⁰ are all based in one of six cities.²¹ If the top 25 Biglaw headquarters were distributed proportionately by population, then the Los Angeles metropolitan area (more precisely, the L.A. metropolitan statistical area (MSA) defined by the U.S. Office of Management and Budget), at 4 percent of national population, would be predicted to have exactly one such headquarters. Instead, it has four, yielding a ratio of 4:1 actual-to-predicted HQs for a “representation score” of four. Although the New York MSA—at a bit under 6 percent of the national population—is the nation’s largest, if New York’s Biglaw HQ share matched its predicted HQ share based on population it would have only one or two such headquarters. Instead, it has 15 of the top 25, for a representation score exceeding 10. Indeed, every MSA that is home to even a single top-25 Biglaw HQ has a representation score greater than one. But even these examples of overrepresentation mask the extent to which Biglaw is concentrated.

The experience of L.A. Biglaw is instructive. Los Angeles is the second-largest city in the United States and the L.A. MSA is the second-largest. Yet for each of the four Biglaw outfits headquartered in Los Angeles, the firm’s largest office is actually located a continent away, in New York. Thus, in addition to the 15 top-25 Biglaw firms that are based in New York, all four top-25 Biglaw firms that are nominally based in Los Angeles operate their largest office in New York, making for a total of 19 top-25 Biglaw firms. This gives New York an *adjusted* representation score of 12.99—meaning, New York contains nearly 13 times as many top-25 Biglaw HQs or largest offices as would be predicted by its population share alone. Table 1 presents these and related data.

20 RPL is a measurement that emphasizes both financial health and productivity. It is also a reasonable proxy for “elite” Biglaw firms. Other measures yield a somewhat more geographically diverse distribution. By gross revenue, for example, the top 24 firms in 2019 (excluding vereins) were all based in large cities, but in 11 rather than six of them. See *The 2020 Am Law 100: Ranked by Revenue Per Lawyer*, LAW.COM (Apr. 21, 2020), <https://www.law.com/americanlawyer/2020/04/21/the-2020-am-law-100-ranked-by-gross-revenue>.

21 *Id.* The top Biglaw firms tend to have additional locations of varying sizes in other cities in the U.S. and abroad, but with limited exceptions these offices are also located in the largest cities and markets.

Table 1

HQ City of Top 25 AmLaw 100 Firms By RPL	HQ of Top 25 (Total N of Largest Offices Regardless of HQ Location)	Share of Top 25 (Share of Total Largest Offices Regardless of HQ Location)	Metropolitan Statistical Area & 2019 Population (U.S. total: 328,239,523) ²²	Metropolitan Statistical Area 2019 Share of U.S. Population	Representation Score (Adjusted Representation Score) Indicating Share of Total HQs (Largest Offices) Divided by MSA Share, With 1 as Perfectly Representative
New York ²³	15 (19)	60% (76%)	New York-Newark-Jersey City, NY-NJ-PA: 19,216,182	5.85%	10.26 (12.99)
Los Angeles ²⁴	4 (0)	16% (0%)	Los Angeles-Long Beach-Anaheim, CA: 13,214,799	4.03%	4 (0)
Boston ²⁵	2 (2)	8% (8%)	Boston-Cambridge-Newton, MA-NH: 4,873,019	1.48%	5.41 (5.41)
Silicon Valley ²⁶	2 (2)	8% (8%)	San Jose-Sunnyvale-Santa Clara, CA: 1,990,660	0.61%	13.11 (13.11)

22 *Metropolitan and Micropolitan Statistical Areas Population Totals and Components of Change: 2010-2019*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-metro-and-micro-statistical-areas.html> (last visited Sept. 26, 2021).

23 These firms are: Wachtell Lipton, Sullivan & Cromwell, Simpson Thacher, Skadden, Cravath, Davis Polk, Deveboise, Fried Frank, Milbank, Paul Weiss, Cahill, Proskauer, Boies Schiller, Weil, and Schulte Roth. In addition, the largest concentrations of lawyers at all four Los Angeles-based firms on this list—Quinn Emanuel, Gibson Dunn, Latham, and Paul Hastings—are in their New York offices. See Dylan Jackson, *Learning From the Pandemic, Quinn Emanuel Will Now Hire Attorneys Outside Its Footprint*, LAW.COM (Dec. 10, 2020), <https://www.law.com/americanlawyer/2020/12/10/learning-from-the-pandemic-quinn-emanuel-will-now-hire-attorneys-outside-its-footprint-405-73048>; *Find a Gibson Dunn Lawyer*, GIBSON DUNN, [https://www.gibsondunn.com/?search=lawyer&s=&office\[\]=1717](https://www.gibsondunn.com/?search=lawyer&s=&office[]=1717) (last visited Sept. 26, 2021) (371 lawyers in New York as against 206 in Los Angeles and 299 in Los Angeles, Orange County, and Orange County combined); *New York*, LATHAM & WATKINS LLP, <https://www.lw.com/offices/newyork> (last visited Sept. 26, 2021); *New York Office*, PAUL HASTINGS, <https://www.paulhastings.com/Office/new-york> (last visited May 14, 2021).

24 These firms are: Quinn Emanuel, Gibson Dunn, Latham, Paul Hastings. However, as noted *supra* note 23, for each of these firms their largest concentration of lawyers is in the New York office.

25 These firms are: Ropes & Gray and Fish & Richardson. WilmerHale, formed through the 2004 merger of firms based in Boston and Washington, DC, is co-headquartered in those cities, but has about 100 more attorneys in Washington. Given the plausible claims both cities enjoy to the “headquarters” title, this difference is deemed a tiebreaker for purposes of this Article. However, if the firm were awarded to Boston instead, its conclusions would be strengthened in that doing so would eliminate another city from the top 25 and would thereby tend to show even greater spatial concentration of Biglaw HQs.

26 These firms are: Fenwick & West (Mountain View) and Cooley (Palo Alto).

HQ City of Top 25 AmLaw 100 Firms By RPL	HQ of Top 25 (Total N of Largest Offices Regardless of HQ Location)	Share of Top 25 (Share of Total Largest Offices Regardless of HQ Location)	Metropolitan Statistical Area & 2019 Population (U.S. total: 328,239,523) ²²	Metropolitan Statistical Area 2019 Share of U.S. Population	Representation Score (Adjusted Representation Score) Indicating Share of Total HQs (Largest Offices) Divided by MSA Share, With 1 as Perfectly Representative
Chicago ²⁷	1 (1)	4% (4%)	Chicago-Naperville-Elgin, IL-IN-WI: 9,458,539	2.88%	1.39 (1.39)
Washington, DC ²⁸	1 (1)	4% (4%)	Washington-Arlington-Alexandria, DC-VA-MD-WV: 6,280,487	1.91%	2.09 (2.09)

Earlier work documents abnormal positive returns to lawyer concentration, but did not “pick[] up a New York City effect, or even a large-city effect”²⁹—meaning, profitability was not tied to concentration in New York City specifically or a large city in general. A closer investigation reveals a high degree of spatial concentration, suggesting not only a New York City-specific effect but a hyperlocal one within a tiny area of a single borough, Manhattan. The Census metropolitan area centered on New York City stretches across 6,685 square miles.³⁰ Yet all 15 New York-headquartered Biglaw firms are located not only in New York City but in Manhattan—and within Manhattan, in one of three neighborhoods—Midtown, nearby Hudson Yards (arguably an emerging submarket of Midtown), and the Financial District—whose land totals just a few square miles. Three of the four L.A. firms whose largest offices are in New York are located in the same neighborhoods.³¹ While articles predicting

27 This firm is Kirkland. Notably, Kirkland’s Chicago headquarters is only barely home to more lawyers than its New York office. *Compare Chicago*, KIRKLAND & ELLIS, <https://www.kirkland.com/offices/chicago> (last visited Sept. 26, 2021); *New York*, KIRKLAND & ELLIS, <https://www.kirkland.com/offices/new-york> (last visited Sept. 26, 2021).

28 This firm is: WilmerHale. This firm is technically co-headquartered in Washington and Boston, but is counted as a Washington firm exclusively for reasons see *supra* note 25.

29 Bill Henderson & Evan Parker, *The Five Strategies of Highly Successful Firms*, BILLHENDERSON.COM (Jan. 3, 2017), <http://www.billhenderson.com/articles/2017/3/27/the-five-strategies-of-highly-successful-firms>.

30 *Census Reporter: New York-Newark-Jersey City, NY-NJ-PA Metro Area*, U.S. CENSUS BUREAU, <https://censusreporter.org/profiles/31000US35620-new-york-newark-jersey-city-ny-nj-pa-metro-area/> (last visited Sept. 26, 2021); *Metropolitan and Micropolitan Statistical Areas Population Totals and Components of Change: 2010-2019*, *supra* note 22.

31 The exception is Quinn Emanuel, whose office sits adjacent to Madison Square Park roughly equidistant to Hudson Yards and Midtown East.

“saturation” in such markets abound,³² elite Biglaw exhibits a close relationship with big cities in general and a handful of Manhattan neighborhoods in particular.

B. Biglaw’s Love Affair with the Big City

While this Article does not seek to explain Biglaw’s historical affinity for large global cities, the proximity of such locations to clients, talent, and to a lesser extent courthouses and regulators is commonly noted.³³ But these are specific cases of a general phenomenon. The wage gap attributable to educational attainment—that is, the difference between wages earned by workers who have college degrees and those who do not—has climbed since 1980.³⁴ Because housing consumes a higher share of income among lower-income workers, one consequence of this “skills premium” has been a spatial sorting of skilled and unskilled workers into cities that have higher and lower housing costs, respectively.³⁵ Professional services providers such as law firms, which employ many workers with advanced degrees, have traditionally exhibited a pronounced version of this phenomenon. Among these, Biglaw displays a particularly extreme distribution as compared with other large, leading professional services firms.

However, Biglaw’s locational preferences come at high cost. Salaries and real estate are the top two expenses.³⁶ Both are higher in prime areas. Biglaw must not only pay a premium for office space in desirable locations, but must then turn around and pay a premium again to recruit labor who can find attractive housing within commuting distance to such locations. Its locational strategy thus requires paying a double premium.

The persistence of this locational strategy, and its universal adherence across Biglaw,³⁷ is somewhat unusual. For example, the headquarters of America’s largest corporations,

32 See, e.g., David Thomas, *Big Law Has Saturated the Biggest U.S. Cities. Where Is the Next Frontier?*, LAW.COM (Mar. 2, 2020), <https://www.law.com/americanlawyer/2020/03/02/big-law-has-saturated-the-biggest-u-s-cities-where-is-the-next-frontier>.

33 For a fuller treatment, see Henderson & Alderson, *supra* note 1.

34 Robert Finlay & Trevor C. Williams, *Housing Demand, Inequality, and Spatial Sorting* 1-2 (Working Paper, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3635035; ANTHONY P. CARNEVALE & STEPHEN J. ROSE, *THE UNDEREDUCATED AMERICAN* (2011).

35 *Id.*; David H. Autor, *The Faltering Escalator of Urban Opportunity*, in *SECURING OUR ECONOMIC FUTURE* 108 (Melissa S. Kearney & Amy Ganz eds., 2020). Literature in economics and allied disciplines uses the terms “unskilled” and “skilled” labor to refer, loosely, to blue- and white-collar workers, respectively. While the negative connotation of the “unskilled” label has recently prompted some introspection within those fields, to align this Article with the existing literature on the subject the author uses the standard disciplinary terminology.

36 See Betsy Kim, *Big Law Requires Big Office Leases*, GLOBEST.COM (Nov. 30, 2017), <https://www.globest.com/sites/betsykim/2017/11/30/the-rule-of-law-means-big-real-estate-leases> (“The greatest expense of law firms is salaries, followed by real estate . . .”). “Salaries” in this context are distinguished from partner profits.

37 Definitions of “Biglaw” are subjective. The reader is reminded that for purposes of this Article, “Biglaw” is defined as “elite U.S.-based global law firms.” This excludes Williams & Connolly, for example—an elite, relatively large firm—because it lacks any non-U.S. offices. Cravath, with two offices (New York and London), meets the definition. For details on the operationalization of Biglaw for this Article, see *supra* Part I.A.

which comprise many of Biglaw's clients, do not exhibit such a distribution. The largest plurality of Fortune 500 companies are located in New York—but that figure is only 70 companies, or 14 percent, a bit over twice the number that would be predicted by population share.³⁸ “Headquarters remain sprinkled across large and small places in the heartland,”³⁹ including those belonging to first-ranked Walmart (Bentonville, Arkansas), CVS Health (#5, Woonsocket, Rhode Island), Berkshire Hathaway (#6, Omaha, Nebraska), AT&T (#9, Dallas, Texas), and Anthem (#29, Indianapolis, Indiana).⁴⁰ By comparison, Biglaw headquarters exhibit very little geographic diversity.

Some firms whose business model is closer to Biglaw—high-margin professional services providers, like large consulting and accounting firms—exhibit a cluster distribution that is somewhat closer to Biglaw. However, elite consultancies still have offices in far more locations than do their Biglaw counterparts. McKinsey & Company, for example, has offices not only in “superstar” cities like New York and San Francisco, but in Cleveland, Detroit, and St. Louis, where few national law firms maintain offices.⁴¹ Consultants also do a considerable share of their work at their clients' offices, yielding a higher functional decentralization than would be suggested by their office footprint alone. Public accounting firms are more decentralized still. Deloitte, for example, has over 80 U.S. locations, including offices in two different Iowa cities, in addition to hundreds more abroad.⁴² A major exception are U.S. investment banks, whose headquarters are concentrated in New York.⁴³ In a leading study measuring telework potential by job category, such firms rank just behind law at 88 to 92 percent telework potential.⁴⁴ This Article may thus be relevant to the geography of investment banking as well.

C. Persistence in the “Biglaw/Big City” Model: The Case of Orrick

In 2012, the legal tabloid *Above the Law* asked, “Why Doesn't Every Biglaw Firm Have an Office in Wheeling, West Virginia?”⁴⁵ The story was based on the experience of a leading Biglaw firm, Orrick, Herington & Sutcliffe, which opened a substantial

38 Richard Florida, *The Geography of Corporate Headquarters*, BLOOMBERG CITYLAB (Nov. 15, 2018), <https://www.bloomberg.com/news/articles/2018-11-15/where-corporate-headquarters-are-located>.

39 *Id.*

40 *Fortune 500 List of Companies 2020*, FORTUNE, <https://fortune.com/fortune500/2020/search> (last visited May 15, 2021).

41 *Locations*, MCKINSEY & COMPANY, <https://www.mckinsey.com/locations> (last visited May 15, 2021).

42 *US Office Locations*, DELOITTE US, <https://www.deloitte.com/us/en/footerlinks/office-locator> (last visited May 15, 2021).

43 *See, e.g., The World's Top 10 Investment Banks in 2021*, INVESTORALIST (Dec. 29, 2020), <https://investoralist.com/top-10-investments-banks> (identifying Goldman Sachs, JP Morgan Chase, Bank of America Merrill Lynch, Morgan Stanley, and Citigroup, all based in New York, as the U.S. investment banks in the top ten; all the foreign-based banks in the top ten—Barclays, Deutsche Bank, Credit Suisse, UBS, and HSBC—have their U.S. headquarters in New York).

44 Dingel & Neiman, *supra* note 3.

45 Elie Mystal, *Why Doesn't Every Biglaw Firm Have An Office In Wheeling, West Virginia?*, ABOVE THE LAW (Aug. 14, 2012), <https://abovethelaw.com/2012/08/why-doesnt-every-biglaw-firm-have-an-office-in-wheeling-west-virginia>.

operation in Wheeling in 2002. While it provides some support services, it also houses some document review attorneys—in other words, it is not purely a back office for non-legal functions.⁴⁶ As noted above, the same question could be asked for elite investment banks, which have a similar spatial distribution to Biglaw.

One reason law firms and other professional services businesses are based in major metropolitan areas is that their clients are. Their clients, in turn, locate there because that's where the talent is. The talent is there in part because that's where the employers are.⁴⁷ This circularity is a feature of agglomeration.⁴⁸ It has been especially pronounced during the information boom in the past few decades.⁴⁹ Even technology firms, which have traditionally permitted more telework than other businesses, cluster in major metropolitan areas.

The disproportionate share of economic activity attributable to urban agglomeration economies has been explained as a function of advantages in labor markets, dating or spousal employment markets, and consumer amenities.⁵⁰ For both businesses and individuals, network effects in the form of low transportation and information costs provide some initial appeal, but it is the cluster that subsequently forms that makes for an efficient matching market. External economies of scale—the conditions outside of a business itself, and beyond its control—traditionally give cities an advantage over other environments and help locations stay sticky beyond what path dependence alone would explain.

Biglaw has proven unusually prone to agglomeration. Many of its clients are in financial services, technology, real estate, and other high-margin, high-skill industries that also cluster in metropolitan areas. But in contrast to top corporations that merely locate in metro areas in general (let alone small towns), top law firms are not only based in big cities but in just a handful of the most expensive ones—and within those, in the most expensive areas. Few national firms even have branch offices in the midsize metropolitan area of Seattle, home to Amazon and Microsoft.

Long before the pandemic, several law firms made conscious efforts to resist the centripetal force of agglomeration to cut costs. Orrick's experience here is instructive. As its West Virginia experiment marks its twentieth anniversary, very few firms have followed its lead in establishing a substantial office far from major metropolitan areas. In 2019, the firm rebranded its outpost the Global Operations & Innovation Center,⁵¹ seemingly a further step towards distinguishing the West

46 *Id.*

47 ENRICO MORETTI, *THE NEW GEOGRAPHY OF JOBS* (2012).

48 *See, e.g., id.*; EDWARD GLAESER, *TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER* (2012).

49 *See* David Autor, *Work of the Past, Work of the Future* (Nat'l Bureau of Econ. Rsch., Working Paper No. 25588, 2019); Jess Gaspar & Edward Glaeser, *Information Technology and the Future of Cities*, 43 J. URB. ECON. 136 (1998).

50 *See, e.g.,* Gilles Duranton & William R. Kerr, *The Logic of Agglomeration*, in *THE NEW OXFORD HANDBOOK OF ECONOMIC GEOGRAPHY* 347 (Clark et al. eds., 2018); Edward L. Glaeser, Jed Kolko & Albert Saiz, *Consumer City*, 1 J. ECON. GEOGRAPHY 27 (2001); Dora L. Costa & Matthew E. Kahn, *Power Couples: Changes in the Locational Choice of the College Educated, 1940-1990*, 115 Q.J. ECON. 1287 (2000).

51 *Orrick Marks Wheeling Transformation With a Renaming: The Global Operations & Innovation Center*, ORRICK (Nov. 26, 2019), <https://www.orrick.com/en/News/2019/11/Orrick-Marks-Wheeling->

Virginia location from its conventional law offices. Of particular note, Orrick continues to be headquartered in San Francisco, by some measures the nation's costliest real estate market, with offices in New York City, Los Angeles, Washington, D.C., Hong Kong, and even premium submarkets like Silicon Valley and Santa Monica. Orrick claims⁵² its Wheeling operation is one reason it was named the *Financial Times*' Most Innovative Law Firm in North America three years in a row, but the firm's simultaneous emphasis on traditional locations—it has 27 around the world, and the Wheeling office is the only one of its kind⁵³—suggests that it views that center as a complement to its 26 traditional offices rather than a substitute for a 27th such office. In other words, Wheeling is a sign of continued spatial concentration, not a new move to dispersal.

The constraints under which Orrick operates are not unique, and are suggestive of the broader persistence of Biglaw clustering. Additional factors may include professional conduct rules that complicate out of state practice⁵⁴ as well as network effects and other sources of stickiness and path dependence.⁵⁵

D. Revisiting the “Death of Distance” During and After the Pandemic

The pandemic returned questions regarding the viability of telework and office decentralization to the fore. Predictions of a shift in these directions became commonplace around the turn of the millennium in the popular press. For example, books by two prominent journalists— Thomas Friedman's “The World is Flat”⁵⁶ and Frances Cairncross' “Death of Distance”⁵⁷ (collectively, the “Death of Distance”)— prophesied a rise of rural, small town, and distanced lifestyles, liberated from the confines of the office and the city. These books contested the claims of urban economists, who argued that urban network and scale advantages, including lower transportation costs and greater knowledge spillovers,⁵⁸ made cities efficient (as well as amenity-rich) places for capital and labor to converge. The Death of Distance held that improvements in information and communications technology (ICT) and transportation technology facilitated commercial and social interactions without physical proximity, reducing the centrality of cities and offices. In the intervening decades, telework ticked up only modestly, offering little support to the Death of

Transformation-With-a-Renaming-The-Global-Operations-Innovation-Center.

52 *Id.*

53 *Locations*, ORRICK, <https://www.orrick.com/en/Locations> (last visited May 15, 2020) (indicating that some of the firm's offices are located in smaller U.S. markets, like Austin and Portland, Oregon, that are tech hubs).

54 See MODEL CODE OF PRO. RESP. R. 5.5 (AM. BAR ASS'N 1980).

55 See, e.g., Michael Klausner, *Corporations, Corporate Law, and Networks of Contracts*, 81 VA. L. REV. 757, 841-47 (1995); see especially *id.* at 847 (“network externalities arising from judicial precedents and legal services help explain Delaware's success” as an incorporation destination).

56 THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* (2005).

57 FRANCES CAIRNCROSS, *THE DEATH OF DISTANCE: HOW THE COMMUNICATIONS REVOLUTION WILL CHANGE OUR LIVES* (1997).

58 See, e.g., Gaspar & Glaeser, *supra* note 49; Paul Krugman, *Increasing Returns and Economic Geography*, 99 J. POL. ECON. 483 (1991).

Distance. A 2011 report funded by Citrix, a major telework company, aptly summed up the gap between interest in telework (by workers) and its actual practice: “Fifty million U.S. employees who want to work from home hold jobs that are telework compatible though only 2.9 million consider home their primary place of work (2.3% of the workforce).”⁵⁹ At the same time, America’s agglomerations continued to grow and take population share from unurbanized areas.⁶⁰ Changes prompted by pandemic health exigencies and lasting a year or more provide some reasons to revisit the value of clustering.

The question whether the pandemic turns out to have a centrifugal impact on high-end services employment is not merely academic or commercial in nature, and Biglaw is a useful lens through which to study it. Biglaw is unusual in its intensity and inelasticity of concentration. In previous eras, when large corporations moved from city centers to suburbs, Biglaw remained concentrated overwhelmingly in the core of the most expensive cities. In the aggregate, its firms pay high incomes to large numbers of employees and generate knowledge spillovers. Their spending also supports many unrelated jobs as well as real estate prices, both commercial and residential. If the experience of telework were to create a dispersive shock in Biglaw, the implications for municipal finances and for cities themselves could be highly consequential. A recent study shows that cities’ specialization in skilled scalable services such as Biglaw “makes them vulnerable to remote work shocks like the pandemic” because of these correlated and external effects: when lawyers telework or relocate, “their spending on consumer services in the local economy decreases or disappears.”⁶¹ On the other hand, if Biglaw’s clustering persists after the pandemic, that would suggest additional robustness to its locational model.

II. DESCRIBING BIGLAW TELEWORK

This Article evaluates telework along several dimensions. First, for many years prior to the pandemic, nearly all Biglawyers engaged in telework that was periodic and complementary. This took the form of responding to emails on their smartphones, for example, as well as drafting and reviewing documents on a computer at home. In prior generations, Biglawyers wrote longhand or reviewed documents at home and used telephones and fax machines to connect with the main office and other lawyers. These practices having long been ubiquitous, we might consider them stage zero telework. This was followed by one generation of telework prior to the

59 KATE LISTER & TOM HARNISH, *THE STATE OF TELEWORK IN THE U.S.: HOW INDIVIDUALS, BUSINESS, AND GOVERNMENT BENEFIT* (2011).

60 See Center for Sustainable Systems, Univ. Mich., *U.S. Cities Factsheet 1* (2021), https://css.umich.edu/sites/default/files/U.S.%20Cities_CSS09-06_e2021.pdf (“It is estimated that 83% of the U.S. population lives in urban areas, up from 64% in 1950.”). Much of the urban economics literature focuses on agglomeration economies and reasons for their growth and persistence. See, e.g., GLAESER, *supra* note 48; Duranton & Kerr, *supra* note 50 (examining the question as a function of the interactive choice of partners).

61 Althoff et al., *supra* note 5.

pandemic and then pandemic era telework. None of these have, to date, prompted a declustering of Biglaw offices; for example, firms have neither vacated their offices nor have they dispersed their locations.⁶² However, a new generation of telework can be expected to follow the pandemic.

A. Remote Work Prior to the Pandemic (“Telework 1.0”)

In recent decades, some Biglawyers negotiated with their firms for permission to work from home (WFH) or work from anywhere (WFA) on a more than occasional basis.⁶³ Key to this period was that WFH/WFA arrangements were negotiated voluntarily on an individual basis. Due to a mix of friction and caution, remote work was underprovided.⁶⁴ At this “telework 1.0” stage, most teleworking Biglawyers were WFH, meaning they still had to come to the office several days a week. WFA, where Biglawyers have no obligation to come to the office with any regularity and could thus live anywhere, was rare. And recruitment of remote-only new lawyers to a firm was possibly rarer still. This era ended abruptly in spring 2020.

The bespoke arrangements and careful negotiations undergirding telework 1.0 were scuttled by COVID, which made Biglaw telework imperative and all but universal. This also made it *substitutional*: no longer did telework merely complement the firm’s (or an individual’s) in-person work; during this telework 2.0 period, it substituted for it. Post-pandemic, it is possible a third generation of telework could arise that has some features of each of its two antecedents. One mechanism for such a shift is developed *infra* in Part III. However, it is important to first understand telework as adopted to date.

Biglaw telework 1.0 was primarily an accommodation of employee preferences rather than being employer-driven. Firms allowed telework as a way to increase employee satisfaction and retention while maintaining round-the-clock reachability. They were by and large not designed to mitigate the double premium, for example by reducing spending on real estate, that constitutes Biglaw’s biggest expense items. Per a Deutsche Bank report, it costs over \$12,000 to properly equip a single remote employee,⁶⁵ but this sum would presumably be dwarfed by the amount that would be

62 Slight variations and exceptions exist; for example, Greenberg Traurig (not among the 25 firms that appear in Table 1) announced in August 2021 that they would expand one small existing office in suburban New York City, open another, and reduce the square footage of their Manhattan office, where they would continue to base the overwhelming majority of their New York lawyers. Dan Roe, *Greenberg Traurig Is Bringing the Office Closer to Home*, N.Y.L.J. (Aug. 2, 2021), <https://www.law.com/newyorklawjournal/2021/08/02/greenberg-traurig-is-bringing-the-office-closer-to-home/?slreturn=20210812165400>. This would appear to decluster the New York City operation slightly, but keeps it anchored in the New York City metro area.

63 See, e.g., Prithwiraj (Raj) Choudhury, Barbara Z. Larson & Cirrus Foroughi, *Is It Time to Let Employees Work from Anywhere?*, HARV. BUS. REV. (Aug. 14, 2019), <https://hbr.org/2019/08/is-it-time-to-let-employees-work-from-anywhere>.

64 Emma Harrington & Natalia Emanuel, “Working” Remotely? Selection, Treatment, and the Market Provision of Remote Work 2-3 (JMP Working Paper, 2021), <https://scholar.harvard.edu/eharrington/publications/working-remotely-selection-treatment-and-market-provision-remote-work>.

65 Zach Abramowitz, Commentary, *Be Careful What You Wish For: Why Remote Work Might Not Be a Long-Term Solution*, LAW.COM (June 28, 2020), <https://www.law.com/americanlawyer/2020/06/28/>

saved per employee on wages and real estate by a true paradigm shift to telework.⁶⁶ The barrier was described as more fundamental by CEO Jamie Dimon, speaking about his business (JP Morgan Chase). Telework is less effective for generating ideas, fostering culture, winning over clients and is generally ill-suited “for those who want to hustle. We want people back at work and my view is some time in September, October [2021], it will look just like it did before.”⁶⁷ The Delta variant threw a wrench in that timeline, but Dimon’s larger point remains open.

Telework 1.0 exploited capital expenditures on technology by law firms and by lawyers themselves during “stage zero” telework that were necessitated by the changing demands of law practice. In the 1990s and 2000s, law firms invested large sums in software, hardware, smartphones, virtual private networks, 24/7 support, and other technology to enable their employees to be reachable anywhere and to work around the clock.⁶⁸ Because employees had to be able to work on short notice, including on weekends, requiring them to come into the office to do it would have undermined not only morale but the efficiency of client service. Individual lawyers often paid a premium for home office setups and fast home internet connections to accommodate always-on expectations; some law firms gave their employees a technology budget to help make these arrangements more comfortable. Having incurred these fixed costs, occasional telework imposed minimal marginal costs. Once Biglawyers had the capability to WFH on a Saturday, granting permission to also WFH on a Friday required only an incremental change.

While firms and departmental managers⁶⁹ differed on the extent to which they allowed telework, prolonged telework was generally conditioned on the approval of managers. This positioned regular telework 1.0 during business hours as a perk of the employee rather than a benefit to, much less a prerogative of, the employer. As a consequence, the resulting equilibrium likely underprovided Biglaw telework relative to efficient levels,⁷⁰ acting as a brake limiting the expansion of telework 1.0. Thus, while up to 97 percent of legal occupational work can theoretically be done

be-careful-what-you-wish-for-why-remote-work-might-not-be-a-long-term-solution.

66 For example, Am Law 100 firms spend an average of \$51.5 million on real estate annually. Patrick Smith, *With Millions in Real Estate Savings on the Table, the Am Law 100 Are Ready to Slim Down*, LAW.COM (Apr. 20, 2021), <https://www.law.com/americanlawyer/2021/04/20/with-millions-in-real-estate-savings-on-the-table-the-am-law-100-are-ready-to-slim-down> (also noting that these firms, on average, spend \$55 per square foot with an office footprint exceeding 900,000 square feet).

67 David Benoit, *Jamie Dimon on Booming Economy and Finally Getting Off Zoom*, WALL ST. J. (May 4, 2021), <https://www.wsj.com/articles/jamie-dimon-on-booming-economy-and-finally-getting-off-zoom-11620138720>.

68 Technology remains a major expenditure in Biglaw. See Center on Ethics & the Legal Pro. at Geo. Univ. L. Ctr. & Thomson Reuters Legal Exec. Inst., *2020 Report on the State of the Legal Market* 13, THOMSONREUTERS.COM (2020), https://legalprof.thomsonreuters.com/LEI_2020_State_of_Legal_Market_LP_010620.

69 For purposes of this Article, “managers” are Biglawyers whose approval must be obtained (whether formally or informally) to permit WFH/WFA.

70 This observation extends Harrington & Emanuel, *supra* note 64, at 3, which reached this conclusion in the context of a Fortune 500 retailer’s call centers, to Biglaw. There is no reason to believe the factors relevant to this tension that are documented by Harrington & Emanuel—adverse selection, necessity of approval, etc.—are unique to call centers or otherwise absent from Biglaw.

remotely⁷¹ and law firms already had the technical capability to engage in WFH/WFA pre-COVID, the dominant form of remote work during telework 1.0 in Biglaw was occasional and complementary, not regular and substitutional.

Biglaw was not alone in this regard. “While many urban jobs can be done from home in theory, practically none were done from home until the emergence of COVID-19.”⁷² This can be described as a revealed preference for exploit over explore strategies. In-person work is said to be preferred in knowledge industries because of its advantages in facilitating informal and non-verbal communication, monitoring, intrafirm knowledge spillovers,⁷³ a sense of shared purpose, and the capacity to adapt quickly in the face of change.⁷⁴ Biglaw was willing to pay a double premium for these benefits pre-COVID.

B. Remote Work During and After the Pandemic (“Telework 2.0” & “Telework 3.0”)

Telework became the Biglaw standard during the pandemic (“telework 2.0”).⁷⁵ Much will be written about this experience. One major change it accomplished is to transform the value proposition of telework from a management perspective. In contrast to its prior function as a negotiated, complementary, and periodic component of Biglaw, telework 2.0 was imperative, substitutional, and constant. It also defied predictions by being extremely successful, at least as measured by short-run profits: in 2020, net income at 130 large law firms grew 9.9 percent,⁷⁶ surging 12.7 percent in the Am Law 50.⁷⁷

Beyond profits, opinion concerning the success of telework 2.0—especially amid diminished availability of in-person schooling and childcare—is far from uniform. “This lack of consensus is evident in the wide range of views, from extremely negative to extremely positive, prominent executives have expressed about working from home,” ranging from “I don’t see any positives” (CEO of Netflix) to the skepticism

71 Dingel & Neiman, *supra* note 3. Notably, this includes work relating to but not performed directly by lawyers, such as work by their assistants and paralegals. *Id.*

72 Althoff et al., *supra* note 5.

73 These spillovers can also extend “within buildings and organizations.” See Stuart S. Rosenthal & William C. Strange, *How Close Is Close? The Spatial Reach of Agglomeration Economies*, 34 J. ECON. PERSP. 27, 27 (2020). It seems reasonable to assume that such positive externalities do not influence behavior in precisely the same way at the individual level as at the firm or industry level.

74 See Benoit, *supra* note 67 (quoting JPMorgan Chase CEO Jamie Dimon on the weaknesses of remote work).

75 Some firms helped underwrite modest capital expenditures in home technology via stipends during the pandemic. See Kathryn Rubino, *COVID-19 Tech Stipends All the Rage In Biglaw*, ABOVE THE LAW (Apr. 2, 2020), <https://abovethelaw.com/2020/04/covid-19-tech-stipends-all-the-rage-in-biglaw>.

76 Debra Cassens Weiss, *After Cutting Lawyers in a Pace Reminiscent of 2009, Law Firms See Net Income Rise Nearly 10%*, ABA J. (Feb. 3, 2021), <https://www.abajournal.com/news/article/law-firms-saw-net-income-growth-in-2020-as-they-cut-lawyers-in-a-pace-reminiscent-of-2009> (noting dire predictions of 15 to 25 percent profit declines that did not come to pass).

77 Andrew Maloney, Editorial, *After Profits Soared in 2020, Firms Optimistic About Revenue Uptick This Year*, AMERICAN LAWYER (Feb. 1, 2021), <https://www.law.com/americanlawyer/2021/02/01/after-profits-soared-in-2020-firms-optimistic-about-revenue-uptick-this-year>.

voiced by Jaime Dimon (CEO of Chase) to full-throated endorsement (CEO of Rite-Aid).⁷⁸ One major change going forward is the quality of information now available to managers making locational choices. With growing experience in operating partly or wholly remotely, Biglaw managers in the future age of “telework 3.0” can choose between two locational exploit strategies—in-office superstar city work vs. WFH/WFA—rather than one exploit and one explore strategy.

This Article is agnostic on the desirability and form of the third generation of telework that takes over once pandemic conditions abate. It may look a lot like telework 2.0. On the other hand, firms could conceivably make not only WFH but WFA genuine options for a larger share of employees, or they could simply relax expectations around in-office work that would allow them to come into the office only a few days a week and otherwise work from home, either of which has the potential to materially change the ways employees work and firms innovate. Confident predictions would be imprudent at this time, but the framework in which telework will develop can be theorized.

III. THE PANDEMIC DISCONTINUITY: AN ELIMINATION OF THE “EXPLORE/EXPLOIT” GAP

As in all love affairs, the reasons underlying the relationship between Biglaw and the big city are overdetermined. But its persistence can be explained as a decision favoring exploitation of the status quo over the exploration of unproven alternatives. This is a type of bandit problem, a situation where the actor in question is “uncertain about the true distribution of the available actions’ payoffs.”⁷⁹ In such a circumstance, innovation is defined as “the discovery, through experimentation and learning, of actions that are superior to previously known actions.”⁸⁰ This discovery comes at a cost, however. Exploration of novel, “untested actions reveals information about potentially superior actions, but is also likely to waste time with inferior actions.”⁸¹ By contrast, “[e]xploitation of well-known actions ensures reasonable payoffs, but may prevent the discovery of superior actions.”⁸² Thus, Biglaw’s persistent decision to pay a double premium for labor and real estate can be explained as a choice by firm leadership to exploit known successes. This is consistent with conventional wisdom⁸³

78 Barrero, Bloom & Davis, *supra* note 6.

79 Manso, *supra* note 8.

80 *Id.*

81 *Id.*

82 *Id.*

83 See, e.g., Jonathan T. Molot, *What’s Wrong with Law Firms? A Corporate Finance Solution to Law Firm Short-Termism*, 88 S. CAL. L. REV. 1 (2014) (contending that law firms maximize short-term profits rather than long-term strategy, and attributing this in part to professional conduct restrictions on non-lawyers owning law firms and on lawyers associating as corporations); *The Innovation Gap Persists*, THOMPSON HINE (Dec. 2, 2020), https://www.thompsonhine.com/uploads/1135/doc/TH_InnovationGapPersists_2020.pdf (presenting survey evidence from Biglaw clients indicating a client preference for a higher level Biglaw innovation). N.B. Biglaw’s continued dominance of corporate legal work may suggest a more

that Biglaw is a risk-averse sector that may be innovative in terms of transactional design or litigation strategy⁸⁴ but is more skeptical of changes to the workplace itself.

Contra the Death of Distance, the potential for a change now lies not in ICT or transportation as such, but rather in the elimination of the gap between explore and exploit strategies. More precisely, what had previously been an explore strategy—telework—is now simply an alternative exploit strategy. After all, firms did it for most of 2020 and much or most of 2021. Now that they have better information on its viability, firms for which telework proved successful may find it (or decentralization) attractive as a long-term strategy. This Part sets forth an alternative mechanism by which a change in the predicted direction could plausibly come about, and is complementary to other analyses offered to date.⁸⁵

A. Limitations on Telework Pre-COVID: Adverse Selection and Transaction Costs

Apart from the opportunity cost of not working in person, two related barriers to remote work predominated during telework 1.0. The first was adverse selection—and the increase in agency costs and bonding costs that it entailed. The second were two types of transaction costs, coordination and switching costs.

1. Adverse selection, agency costs, and bonding costs

Situations where two sides of a market have different levels of information are sometimes characterized by opportunistic exploitation of the differential by the party with superior information to the detriment of the less informed party.⁸⁶ Telework presents such a problem: remote work makes conventional employer monitoring more difficult, and thus a disproportionately high share of those who opt into it can be expected to do so adversely. In other words, “opportunities to go remote attract less productive applicants.”⁸⁷ This has a variety of consequences. One is that “[a]dverse selection into remote work incentivizes marginal workers to go to the office to pool with more productive workers even if they would be more productive working remotely,” which suggests “deadweight losses from the under-provision of remote work.”⁸⁸ The study in question looked at a job—call center attendants

complex picture of client preferences, but the “innovativeness” of Biglaw (however understood) is a somewhat distinct question.

84 See, e.g., Gregory H. Shill, *The Golden Leash and the Fiduciary Duty of Loyalty*, 64 UCLA L. REV. 1246 (2017) (analyzing supplemental compensation schemes for independent directors nominated by activist hedge funds); Gregory H. Shill, *Ending Judgment Arbitrage: Jurisdictional Competition and the Enforcement of Foreign Money Judgments in the United States*, 54 HARV. INT’L L.J. 459, 501-02 (2013) [hereinafter Shill, *Ending Judgment Arbitrage*] (discussing complexities of legal strategy in litigating major foreign judgments).

85 See, e.g., Barrero, Bloom & Davis, *supra* note 6; Vahagn Jerbashian & Montserrat Vilalta-Buffi, *The Impact of ICT on Working from Home: Evidence from EU Countries*, (Glob. Lab. Org. Discussion Paper, Working Paper No. 719, 2020), <https://ideas.repec.org/p/zbw/glodps/719.html>.

86 See George A. Akerlof, *The Market for ‘Lemons’: Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488 (1970).

87 Harrington & Emanuel, *supra* note 64.

88 *Id.*

at a retailer—that, unlike Biglaw, can be done without a team,⁸⁹ but there is no obvious reason why the problem would be limited to that scenario. Fear of adverse selection likely inhibited the growth of telework 1.0 by prompting costly measures by management to mitigate it (agency costs) and costly measures by employees to demonstrate diligence (bonding costs).

Firms' restrictions on telework are best understood as an agency cost: they mandated employee presence for ease of monitoring that firms believed would be harder at a distance, at some cost to employee morale as well as increased wage and real estate costs on the firm. (Jamie Dimon likely spoke for many Biglaw leaders when he said: "Yes, people don't like commuting, but so what? I'm about to cancel all my Zoom meetings. I'm done with it."⁹⁰) Meanwhile, the widespread association of telework with shirking chilled employees' willingness to request regular telework arrangements. This means that employees who would have been diligent teleworkers never sought permission to work from home or worked from home less than would be optimal for them, thus incurring bonding costs in the form of face time. These responses to the risk of adverse selection and the underlying information asymmetry likely resulted in a suboptimal telework equilibrium from the standpoint of both managers and employees.

2. *Transaction costs of coordination and switching*

A second factor limiting telework pre-pandemic was the transaction costs of coordinating with at-home employees and switching to a remote setup. Coordination costs comprise a subcategory of transaction costs that includes gathering information, communicating, and making decisions both internally, at the intrafirm level, and externally, at the market level.⁹¹ The intrafirm level is emphasized here.

When only some team members work from home, communication frictions and other delays between them and their in-office colleagues become more likely, and in some cases unavoidable. For example, say a team leader wants to convene the team for a quick, informal meeting. A stroll down the corridor might give her a sense of who from a team is available for a meeting. If desired, the team can easily step into a conference room. By contrast, to assess a teleworking employee's availability, the leader must reach out to the at-home employee directly. This additional step not only takes additional time but adds a layer of formality and hassle that may lead to the remote employee not being included in the meeting if his participation is not essential. Software that tracks the employee—reporting to his superiors, for example, whether he is actively using his computer—may speed information gathering, but at some cost to morale. On the other hand, employers may be able to keep such information-gathering secret or employees may become used to it. Telework with a team increases friction, and solutions require tradeoffs that managers may not wish to evaluate dozens of times a day.

⁸⁹ *Id.*

⁹⁰ See Benoit, *supra* note 67.

⁹¹ See Jengchung V. Chen, Bo-chiuan Su & Timothy M. Hiele, *The Impact of IT-Coordination Costs on Firm Size and Productivity: Transaction Cost Perspective*, 21 INT'L J. ELEC. COM. 99, 102 (2017).

When two or more employees are involved, the coordination problem does not increase arithmetically with each marginal employee; it grows exponentially, or at least superlinearly. To demonstrate this, assume a simplified model of Biglaw work where a partner periodically meets with associates on an ad hoc basis. Suppose a given partner, working in the office, wants to meet with two associates at the same time. If the associates work down the hall, and the probability of finding either associate available at a time convenient to the partner is 0.9, then the probability of finding two available at the same time is 81 percent. But even during the business day, at-home availability may be more variable and unpredictable. Workers may take more breaks or otherwise reduce responsiveness, perhaps because by working remotely they face fewer spontaneous interruptions. Suppose two associates are particularly diligent while teleworking: their independent availability drops only to 0.8. Is this an effective drop of merely one-ninth? No: their *joint* availability now falls to 64 percent, or by over one-fifth. Now suppose one associate's availability declines only from 0.9 in the office to 0.8 while working from home but the other's drops substantially, from 0.9 to 0.5 at home. In this case, their joint availability falls to 40 percent, a more than 50 percent reduction from their joint in-office availability. Add in a third telework associate whose availability is, say, 0.7, and the joint availability of the trio drops to 28 percent (compared with 72.9 percent if they were all 0.9's in the office).

Under such conditions, we would expect attorneys with management responsibility to follow a practice (perhaps unconsciously) of calling on telework employees less often. They may also simply allow telework less often in the first place. In fact, we can also expect blunt prophylactic measures by managers—for example, denying remote work requests by employees who have demonstrated they thrive as team members in that format—for the sake of maintaining a consistent policy.

Solving coordination problems at a distance is harder than solving them locally. Once technological advancement in telework crosses a certain threshold,⁹² managerial issues dominate technical ones. In principle, all the management challenges are addressable. Expectations can be established clearly, and policies adopted to codify them. Meetings can be scheduled in advance rather than arranged ad hoc. Employees whose responsiveness is good can be rewarded and those who fall short can be disciplined or dismissed. But it is not difficult to understand why a firm that already expects a lot of its employees might want to avoid introducing elaborate management changes and might instead choose to simply require that work take place in the office, as it always had. Indeed, long before the pandemic, leading companies, including Bank of America, Aetna, IBM, and (somewhat famously) Yahoo, experimented with and subsequently revoked generous telework policies, recalling many staffers to the office.⁹³ Another way to put this is that Biglaw firms already have a strong culture,

92 See Juha-Miikka Nurmilaakso, *Coordination Costs and ICT Investments: An Economic Analysis*, 15 NETNOMICS: ECON. RSCH. & ELEC. NETWORKING 57 (2014).

93 Nicole Spector, *Why Are Big Companies Calling Their Remote Workers Back to the Office?*, NBC NEWS (July 27, 2017), <https://www.nbcnews.com/business/business-news/why-are-big-companies-calling-their-remote-workers-back-office-n787101>.

which can be expected to reassert itself once public health permits. Sentiments regarding remote work may be particularly strong at firms that have long adhered to strong traditions of in-office work, such as Cravath, Swaine & Moore, originator of the “Cravath System”⁹⁴ of management and training.

*B. The Effect of COVID-Era Telework on Adverse Selection
and Transaction Costs*

The exigencies of the pandemic made telework widespread in professional services, and in some jurisdictions it was mandated by law. The near-universality of the shift in Biglaw resulted in a near-complete substitution of Biglaw telework for in-office work. This eliminated the adverse selection problem: suddenly, there was no “selection.” Instead, nearly all Biglawyers worked from home. In the context of an ongoing pandemic, of course, this change was accompanied by new challenges, especially for parents and others with caregiving responsibilities. But it also eliminated frictions involved on both sides of the employment relationship in navigating the dance of adverse selection and the costs of coordination and switching. Management did not need to distinguish among employees to determine who was worthy (in its view) of the trust required for remote work, and employees did not need to calibrate their requests to management to work remotely or put in inefficient quantities of in-office work.

It is worth unpacking the various costs of the transition to telework 2.0. The pandemic changed the calculus of coordination and switching costs. The fixed costs of switching were absorbed more or less all at once rather than on an ad hoc basis for each employee going remote. For the same reason, the COVID emergency eliminated the costs of adverse selection: there was no selection, adverse or otherwise; nearly all Biglawyers started working from home nearly immediately. Most of all, the costs of coordinating between in-office and remote team members disappeared—not because they were actually eliminated, but because it became impossible (in some cases illegal) to work from the office. Not Zoom, but instant WFH/WFA, nearly universal within firms such as law offices and their clients, was the innovation of pandemic-era telework. In principle, it allowed firms to take the leap at no additional cost beyond the fixed costs of supplying and sustaining remote work infrastructure.

Telework 2.0 during the pandemic provided Biglaw and other providers of skilled scalable services an opportunity to assess the viability of remote work. It also allowed them to establish new norms and practices to help compensate for some of the intrinsic shortcomings of telework. It would be surprising if the learning that came about through this exploration did not affect telework post-COVID. To the extent that firms found remote work productive, they also likely determined that expanded remote work is capable of expanding the joint surplus of their relationship.

94 See William D. Henderson, *Talent Systems for Law Firms*, PD Q., Feb. 2017, at 5.

C. *The Joint Surplus and the Virtue of Choosing Between “Exploit” Strategies*

The exploration of telework during COVID, with its attendant changes in adverse selection and various other costs associated with the switch, furnishes a plausible mechanism by which Biglaw firms could choose to expand telework offerings post-COVID. Animating this possibility is the elimination of the gap between explore and exploit locational strategies.

Post-COVID, firms can choose between two different exploit strategies—the pre-pandemic model (in which in-person work predominated) and the model that operated (under uniquely trying circumstances) during COVID. And they can do so with the knowledge that post-COVID, the ability to work remotely will be far more attractive for many people than during the pandemic, when schools and other support systems were not functioning normally. Firms can also make adjustments of their own that they were unable to do amid the unique social and health challenges presented by COVID.

Historically, telework has been understood primarily as a benefit to the employee. However,

for remote work scenarios really to take off [in Biglaw], they probably will need to be promoted from the top down. Given commercial real estate prices, it is perhaps surprising that managing partners . . . aren’t being more proactive about pushing all of those worker bees out the door to the land of work-life balance.⁹⁵

Some tech firms such as Facebook, Twitter, and Google⁹⁶ and banks like ING⁹⁷ have already signaled they intend to make that shift permanently available for many employees post-COVID. Whether Biglaw follows suit (and indeed whether these companies even follow through in the first place) remains to be seen. Presumably, firms considering expanded telework are not doing so out of charity. And they need not: telework arrangements offer the potential to generate a larger joint surplus, giving employees and firms a larger pie to carve up.

An important area where this efficiency can be realized would be in the form of reduced real estate costs. Less immediately, Biglaw could also conceivably economize on staff or potentially even attorney salaries, thereby reducing both pieces of the double premium it pays for its megacity addiction.

More promisingly, telework 3.0 also opens up the possibility of new equilibria by changing the composition of prospective employees. In particular, it may make it easier for firms to deliver on gender equity commitments by recruiting those for

95 Lori Tripoli, *The Ginormous Reason Biglaw, and All Law, Should Get on Board with Working Remotely*, 38 OF COUNS. 11, 11 (2019).

96 See Katherine Bindley, *Silicon Valley’s Next Big Office Idea: Work From Anywhere*, WALL ST. J. (May 17, 2020), <https://www.wsj.com/articles/silicon-valleys-next-big-office-idea-work-from-anywhere-11589740234>.

97 Charlie Devereux, *ING Offers Permanent Work-from-Home Option*, EMPLOYEE BENEFIT NEWS (June 10, 2020), <https://www.benefitnews.com/articles/ing-offers-permanent-work-from-home-option>; Adedayo Akala, *More Big Employers Are Talking about Permanent Work-from-Home Positions*, CNBC (May 1, 2020), <https://www.cnbc.com/2020/05/01/major-companies-talking-about-permanent-work-from-home-positions.html>.

whom traditional in-person facetime expectations may not have been conducive⁹⁸—a pool that was historically written off by Biglaw. The CEO of Goldman Sachs has hinted at this connection.⁹⁹ Decentralization may help with both strategies as well; the bank is reportedly weighing moving one of its key divisions out of New York City to Florida.¹⁰⁰ To date, ICT and the growth of the global information economy have intensified¹⁰¹ rather than reduced returns to proximity for knowledge workers, including lawyers. These developments have also solidified the “consumer city” model, where knowledge workers opt to live in large cities for superior amenities.¹⁰² Thus far, these forces have worked in tandem. But telework opens up the possibility of employees choosing locations that cater to a variety of lifestyle preferences. In addition, some have suggested the premium on agglomeration may erode in the future, especially as housing costs in large cities are driven higher by restrictive land use rules, because firms will more aggressively explore alternatives outside established hubs.¹⁰³ If firms want to lean into the lifestyle and affordability dimensions of these options, they can now do so by exploiting the knowledge they acquired about what made for successful strategies during COVID.

Of course, many obstacles will continue to complicate telework post-pandemic. The character of these obstacles underscores that human rather than technological barriers to WFH are primary. One is client preferences that are either opposed to WFH or are sufficiently heterogeneous that in-person work is simpler. For example, the chief legal officer of Morgan Stanley, one of the world’s largest consumers of legal services, declared in July 2021 that he expected the law firms his firm uses to return to in-office work.¹⁰⁴ (Notably, this was before the surge in the Delta variant.) On the other hand, constraints on recruiting in-office employees to certain locations flowing from local political conditions¹⁰⁵ may favor telework.

98 Given the apparent inextricability of Biglaw from high-cost locations, satisfying facetime expectations also requires allocating a higher share of employee income to housing, a cost that associates from underprivileged backgrounds (who may carry higher debt loads) may be less able to bear.

99 See, e.g., Karina Hernandez, *Goldman Sachs CEO: Remote Work Policies Could ‘Attract’ New Employees after the Coronavirus Pandemic Is Over*, CNBC (Apr. 3, 2020), <https://www.cnbc.com/2020/04/03/goldman-sachs-ceo-remote-work-policies-could-attract-new-employees.html>.

100 Sridhar Natarajan, *Goldman Plots Florida Base for Asset Management in a Blow to New York*, BLOOMBERG NEWS (Dec. 6, 2020), <https://www.bloomberg.com/news/articles/2020-12-06/goldman-plots-florida-base-for-asset-management-in-a-blow-to-nyc>.

101 See Gaspar & Glaeser, *supra* note 49.

102 See Glaeser, Kolko & Saiz, *supra* note 50.

103 See Finlay & Williams, *supra* note 34; MORETTI, *supra* note 47; David Schleicher, *City Unplanning*, 122 YALE L.J. 1670 (2013); see also Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV. 498, 535-55 (2020) (exploring same from a joint transportation-land use perspective).

104 Brian Baxter, *Morgan Stanley Top Lawyer Demands Law Firms Return to Office (2)*, BLOOMBERG LAW (July 16, 2021), <https://news.bloomberglaw.com/us-law-week/morgan-stanleys-legal-chief-wants-law-firms-back-in-the-office>.

105 See, e.g., Danielle Arbril & Gerrit De Vynck, *Texas Wanted to Be the Tech Haven of the U.S. Its New Abortion Bill and Other Measures Are Causing Workers to Rethink their Move*, WASH. POST (Sept. 12, 2021), <https://www.washingtonpost.com/technology/2021/09/12/texas-abortion-law-tech-workers-reconsidering-relocation>.

IV. IMPLICATIONS FOR BIGLAW PRIVATE INTERNATIONAL LAW PRACTICE

An increase in the heterogeneity of Biglaw telework or locational preferences arising from the pandemic may augur a spatial redistribution of Biglaw. This, in turn, would have numerous spillover effects, including on municipal financial capacity, city life, and the legal profession.

When it comes to business transactions, few areas of legal practice are as concentrated in Biglaw as private international law.¹⁰⁶ This may be traceable in part to the centrality of choice-of-law questions in PIL,¹⁰⁷ which in the United States are determined in the first instance by contract¹⁰⁸ but are frequently the subject of dispute.¹⁰⁹ Because a large share of PIL in this area is generated in high-dollar transactions and disputes that are handled in Biglaw, changes to the practice of Biglaw and its footprint may have effects for the substance and practice of PIL.

In their landmark study of PIL and choice of law, Professors Erin O'Hara O'Connor and Larry Ribstein identify a "market for law" where parties choose from competing sources of law.¹¹⁰ One factor driving those choices is the location of law firms and their level of familiarity with various courts and sources of law. If PIL lawyers were to fragment spatially, the composition of the field's practitioners might change as it would no longer be limited to lawyers based in global cities. Dispersion could thus become a channel of change in PIL. For example, New York is a leading node of PIL practice and a state whose law is "notorious" for facilitating party autonomy¹¹¹; a growing prevalence of lawyers who come up and are based in the cultures of jurisdictions that take a dimmer view of contractual choice of law might alter some rules or dynamics of PIL.

106 For purposes of this Article, PIL refers to "the body of norms applied in international cases to determine the judicial jurisdiction of a State, the choice of the particular system or systems of law to be applied in reaching a judicial decision, and the effect to be given a foreign judgment." John R. Stevenson, *The Relationship of Private International Law to Public International Law*, 52 COLUM. L. REV. 561, 561-62 (1952) (footnote omitted). There has been some debate over the precise scope of PIL and distinctions between traditional Anglo-American and Continental conceptions of the field, *see id.*, but these are quite far afield of this Article's focus on the siting of PIL practice.

107 Of course, there are many other reasons why cross-border economic activity entails higher levels of scrutiny and legal involvement. For a discussion at a higher level of abstraction, see John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 IND. J. GLOBAL LEGAL STUD. 35, 55 (2007) ("Moving from the local, national context to the global arena creates vast new spheres of uncertainty as at this level the normative order is plural and fragmented, and likely to remain so. Therefore, in the 'supranational context, more so than in domestic spheres, 'interlegality' and 'internormativity,' that is, the relationships between a diversity of normative orders hold the key to legal certainty.") (footnotes omitted).

108 *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 187 cmts. c-e (AM. L. INST. 1971).

109 *See, e.g.*, Gregory H. Shill, *Boilerplate Shock: Sovereign Debt Contracts as Incubators of Systemic Risk*, 89 TUL. L. REV. 751, 789-807 (2015) (discussing choice-of-law disputes in the context of sovereign bonds).

110 O'HARA & RIBSTEIN, *supra* note 17, at 166.

111 *See* Symeon Symeonides, *The Scope and Limits of Party Autonomy in International Contracts: A Comparative Analysis*, in PRIVATE INTERNATIONAL LAW: CONTEMPORARY CHALLENGES AND CONTINUING RELEVANCE 101, 145 (Franco Ferrari & Diego P. Fernández Arroyo eds., 2019).

A review of some high-profile disputes in PIL over the past decade in which Biglaw firms featured prominently suggests a special role for connectivity, which is a close cousin to proximity. For example, the hazards brought about by the ubiquity and interconnectedness of contract terms have been made salient by several events. In the Argentina sovereign debt litigation saga, the definition of *pari passu* clauses became a central issue. They were used widely in Argentina's bonds and elsewhere in the market because the bond contract language was drafted by a small community of sovereign debt lawyers.¹¹² Similar features characterized the Eurozone debt crisis in the 2010s: boilerplate in sovereign bonds that did not account for the possibility of a Eurozone nation's exit from the currency area and thus failed to provide a mechanism to determine the currency in which payment would ultimately be due.¹¹³ Biglaw litigation, too, furnishes many of the components of PIL. For example, obtaining U.S. discovery in support of a foreign proceeding under 28 U.S.C. § 1782 has become a powerful tool,¹¹⁴ the specifics of which have been honed by litigators at a handful of Biglaw firms. Seeking recognition and enforcement of arbitral and foreign-country judgments, too, has been a Biglaw-driven practice, litigated by relatively small numbers of lawyers at elite Biglaw firms in a handful of cities.¹¹⁵ Opinions about the relationship of spatial proximity to the way these matters unfolded would be highly speculative, but since they all involved rapid transmission of ideas and forms, a rapid declustering of the industry could be expected to slow transmission rates, increase error rates, or both. At a minimum, it could be expected to reduce the pace of innovation. As clustering creates spillovers and speeds innovation by facilitating serendipitous and regular interactions, dispersion can be expected to slow the same forces.

Given its cross-border character, PIL has traditionally required a great deal of costly international travel, which suggests higher potential gains from telework in PIL than in other areas of practice. Some PIL practice areas seem likely to maintain elevated levels of telework after the pandemic. International arbitration was identified by one practitioner in the field as being "already past the point of no return on whether it will look the same as before—it won't," because clients will be unwilling to pay for in-person international arbitrations in the future except on very large-dollar matters.¹¹⁶ Another litigator reported that remote depositions had worked better than anticipated and suggested that non-critical depositions might stay virtual post-pandemic.¹¹⁷ If these predictions come to pass, the practice of international arbitration and other disputes and transactions could embrace

112 See MITU GULATI & ROBERT E. SCOTT, *THE THREE AND A HALF MINUTE TRANSACTION: BOILERPLATE AND THE LIMITS OF CONTRACT DESIGN* (2012).

113 See generally Shill, *supra* note 109.

114 See, e.g., *New Developments in U.S. Discovery in Aid of Foreign Arbitration*, SIDLEY AUSTIN LLP (July 9, 2020), <https://www.sidley.com/en/insights/newsupdates/2020/07/new-developments-in-us-discovery-in-aid-of-foreign-arbitration>.

115 See generally Shill, *Ending Judgment Arbitrage*, *supra* note 84.

116 Telephone Interview with Biglaw International Arbitration Lawyer (July 10, 2020) [hereinafter Telephone Interview with Biglaw International Arbitration Lawyer] (on file with author).

117 Telephone Interview with Biglaw Antitrust Litigator (July 21, 2020) (on file with author).

telework, decluster, or both. A shift away from traditional facetime expectations might help address what one interviewee called the “pale, male, and stale” issue of older white men dominating the field.¹¹⁸ On the other hand, another practitioner, who specializes in cross-border mergers and acquisitions, reported extremely high deal volume despite the remote setup, but expressed concern about aspects of firm management in a remote context for the long term, including associate hiring, training, retention, and assessment.¹¹⁹ Another transactional practitioner echoed this concern, describing the law firm as “a little bit like a teaching hospital” and worrying about what was lost with the universal remote work experience of telework 2.0, given that opportunities for informal learning and collaboration were less abundant in a distributed environment.¹²⁰

Biglaw strategic choices are made nowhere if not in a market. As firms trade off the costs and benefits of various locational and technological decisions after the pandemic, they will do so armed with new information: the experience of mandatory universal telework. Their choices will likely be felt especially strongly in the area of PIL practice, which has the potential to influence the demographic makeup and geographic distribution of PIL practitioners and, in turn, the substance of PIL.

CONCLUSION

Biglaw, a major source of PIL, has historically exhibited an intense preference for superstar city locations. Because of its international nature, PIL practice has also required more travel than other fields. These attributes make Biglaw in general and PIL practice in particular especially interesting areas in which to study pandemic-related changes in geographic clustering.

Prior to the pandemic, Biglaw managers had not only resisted spatial diffusion of offices but were regarded as resistant to the concept of remote work as a widespread substitute for in-office work.¹²¹ While the possibility of post-pandemic shifts in firm behavior remains speculative, one important difference is that firms approaching the question in the future will do so with superior information. Rather than choose between exploiting proven success (and paying the double premium) on one hand and exploring unproven alternatives on the other—the choice they once faced—the experience of prolonged, near-universal Biglaw telework during the pandemic means firms can now choose between two known quantities. This may shift the balance in favor of cost savings and employee flexibility, back to the old equilibrium, or somewhere new—time will tell. But managers will be able to choose between two different exploit strategies rather than the apple of an exploit strategy and the orange of an explore one.

118 Telephone Interview with Biglaw International Arbitration Lawyer, *supra* note 116 (statement made with respect to international arbitration specifically).

119 Telephone Interview with Biglaw Transactional Lawyer B (Mar. 29, 2021) (on file with author).

120 Telephone Interview with Biglaw Transactional Lawyer A (July 17, 2020) (on file with author).

121 *Id.*

For this reason, managers weighing various choices will be making an informed choice, and thus change is less likely to be blocked by the feared *possibility* of adverse selection, agency costs, and transaction costs. (It may of course be blocked by the reality of those costs.) Larger trends beyond law practice will presumably affect these tradeoffs as well. Biglaw is at the center of a series of concentric circles that will all be affected by changes in individual and collective spatial preferences and public policy following the pandemic—and where it goes, other elite professional services firms (and talent and tax revenues) may follow. Within Biglaw, the practice of PIL may be the canary in the coal mine.