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Quo Vadis? From the Schoolyard to the Courtroom

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Abstract
Existing theories exploring how companies interact with the law stop short of unveiling whether and why companies can differentially pursue, interact with, and benefit from a particular legal environment. We theorize that companies can use social structures—shared educational and professional affiliations—between lawyers and judges to strategically pursue specific legal jurisdictions, influence judges' discretion, and ultimately reap different legal outcomes from the same legal environment. Using data on such affiliations between lawyers and federal judges, we examine companies' choice of U.S. federal district courts and their legal outcomes in patent infringement litigation from 1990 to 2013. Our results reveal that companies strategically pursue courts in which their lawyers have past educational or professional affiliations with the courts' judges. If a desired judge is assigned to the case, a company leverages its lawyers' social structures to tailor any legal communication to match that judge's style. While such behavior results in a higher likelihood of winning a lawsuit, it also creates an inherent risk. In stacking their legal teams with lawyers who have connections to judges, companies often shortchange the human capital—lawyers' skillsets—required to win a case, which adversely affects legal outcomes if the desired judge is not assigned to the case.

Keywords: social capital, interorganizational relations, social networks, beyond the organization, law, embeddedness, interpersonal influence

A formative question in organization studies is how organizations interact with their legal and regulatory environments. The foundational work in this space is built on the notion of law as a universal constraint, wherein corporate actors are expected to comply with the law and act in a way that avoids legal liability (Parsons, 1964; Weber, 1968; Kalberg, 1980). Subsequent research suggested that while organizations accept law as a universal constraint, they can actively change their legal environments through collective action (e.g., Pfeffer and Salancik, 1978: 188–224; Edelman, Fuller, and Mara-Drita, 2001; Kalev, Dobbin, and Kelly, 2006; Choi, Jia, and Lu, 2015). Recent work has relaxed the

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assumption of law as a universal constraint and demonstrated instead that companies engage in legal and regulatory arbitrage, selectively choosing jurisdictions that tend to favor corporate actors (Ingram, Yue, and Rao, 2010; Rao, Yue, and Ingram, 2011). This research depicts the legal environment as a shopping mall, wherein companies shop for jurisdictions that will advance their private interests, just as retail customers choose stores that offer them the best deals. It is now well established that corporations tend to incorporate, expand, invest, and litigate in jurisdictions that offer favorable labor laws, anti-takeover statutes, financial disclosure requirements, and speed of adjudication (e.g., de Figueiredo, 2005; Grandy, 2009; Rao, Yue, and Ingram, 2011).

Conspicuously missing from these accounts of how companies interact with the law is a focus on legal arbiters. This lacuna is particularly puzzling given that law inevitably underdetermines action (e.g., Edelman, 1992; Fuller, Edelman, and Matusik, 2000) and hence engenders the potential for legal arbiters to use their discretion in interpreting and applying the law (cf. Funk and Hirschman, 2014). Such discretion could emanate in part from arbiters' values, preferences, worldviews, and difficult-to-articulate beliefs that are tightly intertwined with their individual experiences, all of which constitute private and tacit knowledge (Polanyi and Sen, 1967; Hernandez, 2014).

The principal question in this study is whether and to what extent corporate actors can learn about and consequently influence legal arbiters through social structures that connect them, thus affecting the selection of jurisdictions, arbiters' judgment, and ultimately legal outcomes. Addressing this question is important for two reasons. First, exploring this question could aid understanding of firm-level variation in explaining how companies interact with their legal environment. Extant research has not clarified why companies are differentially attracted to the same jurisdictions and why only some of them secure favorable interpretations of law in a given jurisdiction (cf. Hiatt and Park, 2013). Second, attending to this question can expand our view of companies' agentic reach in shaping their legal environments, as they may move beyond merely choosing preferred jurisdictions to actively influencing the exercise of law in those jurisdictions.

We explore corporate plaintiffs' practice of choosing favorable legal venues in which to initiate legal proceedings, as well as the associated legal outcomes. The choice of court, often referred to as ''venue shopping,'' has received scholarly attention in law and economics, where scholars have explained plaintiffs' choices through publicly observable, court-specific characteristics that are believed to favor plaintiffs. Such characteristics typically include fast judgments, prior verdicts favoring plaintiffs, and judges' conservative political attitudes (de Figueiredo, 2005). Using these explanations as the baseline in the present study, we argue that our current understanding of how companies interact with the law misses the importance of a critical factor—the social structures that connect the lawyers representing corporate actors with judges—and that this factor can illuminate why and how only some companies pursue and benefit from a given legal venue.

Because lawyers and judges frequently overlap in their educational and career paths, the resulting common educational and professional affiliations engender intricate social structures among them. The legal system is replete with cases in which the lawyers representing corporate actors have attended the same colleges or law schools as the judges and/or have clerked for them.

The peculiarities of certain interorganizational litigation give plaintiffs nearly unlimited flexibility in choosing the specific court in which they initiate legal action, which gives companies the opportunity to use social structures strategically to pursue private advantage. We thus explore whether companies leverage social structures when pursuing legal action against competitors and whether doing so produces tangible private advantage. In doing so, we investigate the processes by which the social structures of common educational and professional affiliations between corporate lawyers and judges might enhance or constrain favorable legal outcomes.

Specifically, we examine how social structures can enable lawyers to influence judges by tailoring the legal message to them, a process that we aim to capture empirically. Yet such advantage is far from assured; although companies can strategically choose the legal venue in which to initiate legal proceedings, they cannot choose the judge assigned to the case. We therefore also explore whether leveraging social structures could come at a cost. Affiliations with key decision makers are rare (Seidel, Polzer, and Stewart, 2000), and selecting lawyers based on their social affiliations with judges could compromise securing the best human capital for the case. If lawyers' social capital reaps only limited benefits, the incurred tradeoffs in human capital—required legal skills—could negatively affect legal outcomes.

We aim to make several contributions with this study. First, we respond to the call for a deeper understanding of how organizations can shape rather than just be shaped by their external environments (Barley, 2007, 2010). In particular, we aim to enhance research on how organizations try to secure favorable legal treatment (Pfeffer and Salancik, 1978: 188–224; Mizruchi and Schwartz, 1992; Rao, Yue, and Ingram, 2011). In doing so, we uncover a novel pathway by which organizations can influence legal environments, that is, by leveraging social structures to learn about and influence the discretion of legal decision makers. Intriguingly, organizations in essence borrow these social structures from their providers of legal services. Securing favorable interpretations of the law by leveraging social structures is thus likely to be available to a broad group of market participants that rely on the services of legal professionals. This influence is far less visible and hence more difficult to regulate than lobbying and other forms of coordinated action among companies, and yet it can profoundly shape market interactions, private advantage, and even the evolution of law through legal precedent.

Second, the complex process of companies' matching to jurisdictions remains only weakly understood (Rao, Yue, and Ingram, 2011: 380), and the overwhelming focus lies in explicating how certain jurisdictional features attract most, if not all, corporate actors. A central puzzle remaining in the theories of regulatory arbitrage is why companies do not then overwhelmingly flock into pro-business jurisdictions and why legal and regulatory convergence does not occur across jurisdictions as swiftly as the theory predicts (Carruthers and Lamoreaux, 2016). By highlighting the role that social structures may play in connecting companies and arbiters, we examine why companies could differentially be attracted to—and benefit from—the same jurisdiction.

Finally, we aim to contribute conceptually and empirically to the work on embeddedness and social capital by showing exactly how the structures of common professional and educational affiliations translate into private advantage, a process we call ''social capital activation.'' Conceptually, we want to

explicate a relationship-specific dynamic of how flows of private information about a given alter can be reciprocated with flows of influence toward that alter. Empirically, whereas social influence is a frequently hypothesized dynamic in networks (e.g., Davis and Greve, 1997; Rogers, 2010), it is rarely observed. We aim to advance network research by empirically capturing the underlying dynamics of influence in social relationships while ruling out alternative mechanisms.

SOCIAL STRUCTURES AND LEGAL ADVANTAGE

Regulatory Arbitrage and the Social Structures of Educational and Professional Affiliations

Companies' regulatory arbitrage manifests in strategic choices of legal jurisdictions for a range of corporate activities, including incorporation decisions, corporate expansion, bankruptcy proceedings, and litigation. Extant research has largely attributed the selection of jurisdictions to publicly observable, jurisdiction-specific characteristics that favor corporate actors. For example, U.S. companies are more likely to establish new facilities in states with right-to-work laws, which are known to reduce unionization (e.g., Ellwood and Fine, 1987; Moore, 1998; Rao, Yue, and Ingram, 2011), or to relocate to jurisdictions with less stringent local air quality standards (e.g., List, McHone, and Millimet, 2003). Similarly, the choice of a jurisdiction for incorporation is positively affected by lower restrictions on managerial control and strict anti-takeover statutes (Winter Jr., 1977; Cohen and Bebchuk, 2003). Companies seek to litigate in jurisdictions that are known to favor plaintiffs and process cases quickly, thus saving on litigation expenses (Moore, 2001). And for patent infringement litigation specifically, plaintiffs—who typically own the rights to the contested intellectual property—also prefer more ideologically conservative courts because conservative judges are more likely to side with property rights' owners than with those who challenge those rights (McKelvie, 2007; Sag, Jacobi, and Sytch, 2009).

While informative, these perspectives provide limited insight into how and why companies could differentially be attracted to and benefit from the same jurisdiction. Thus firm-level heterogeneity in the pursuit of (and incurred benefits in) the same legal environment remains weakly understood. Embracing that the application of law leaves considerable room for adjudicators' discretion (cf. Edelman, 1992; Misner, 1996; Hiatt and Park, 2013), we argue that social structures of educational and professional affiliations connecting company lawyers and judicial arbiters provide opportunities for companies to influence judicial discretion.

Breiger (1974: 183) was among the first to discuss systematically that common social affiliations create two distinct layers of social structure: links to collectivities (''such as in 'love' for one's country'') and direct connections among individuals. The common educational and professional affiliations we examine here may prompt both social identification—the perception of oneness with or belongingness to a human aggregate—and the formation of concrete social relationships. We examine each in turn.

Social identity theory posits that people tend to classify themselves and others into social categories using organizational membership, religious

affiliation, and occupation (Tajfel and Turner, 1979; Turner, 1982). Individuals who identify with the same social category are less likely to make sharp distinctions between their own self-interests and other in-group members' interests. Being affiliated with a common group may therefore lead members to emphasize their shared interests instead of discordant ones.

For social identification effects to operate, people do not need to know each other personally. Social identification can emanate from an *asynchronous social affiliation* between actors, such as attending the same educational institution at different times. Although an interpersonal relationship can boost the level of social identification, the primary factor that triggers social identification is actors' belonging to the same social category. In other words, people can claim common identification through their shared institutional membership even when personal connections are absent.

Graduating from the same college or university is particularly conducive for forming a shared social identity because the membership structure in institutions of higher education makes it easy to distinguish members from nonmembers. One lawyer we interviewed for this study equated judges' and lawyers' attending the same institution, regardless of graduation year, to ''tribal camaraderie.'' The same interviewee noted that strong social identification is not limited to elite educational institutions: ''I see this camaraderie being applied to schools outside of the top 10 or even top 50. . . . What matters is how much you identify with the school.''

Of course, people may also identify with the same social category when they have *contemporaneous social affiliations*, meaning their experiences over-lap in both place and time. This situation can induce direct social relationships emerging from *social foci*: social or physical entities around which joint activi-ties are organized. Joint activities in churches, clubs, workplaces, or schools entail social interaction, and people whose activities are organized around a common focus tend to become tied together interpersonally and form a cluster (Feld, 1981). Ties created through shared organizational foci tend to outlive the foci that created them and to be strong and persistent, allowing actors to con-tinue to share knowledge and work together (Suitor and Keeton, 1997; Reagans, 2011; Dahlander and McFarland, 2013).

For example, people are much more likely to build a relationship with alters who work in the same business unit than with those who work outside of it (Kleinbaum, Stuart, and Tushman, 2013). Interpersonal relationships created in prior educational and work settings provide a strong foundation for sustaining ongoing relationships, often in a different context than where the ties were cre-ated initially (Larson, 1992; Cohen, Frazzini, and Malloy, 2010; McEvily, Jaffee, and Tortoriello, 2012). As Coleman (1988: S99) argued, graduating from the same school—similar to growing up in the same hometown or attending the same church—provides social relations around which circles of relationships are later built and constitutes a form of social capital.

In our study's context, clerkships are powerful opportunities to build lasting relationships between lawyers and judges. Law school students typically apply for clerkships a year before they graduate. Once selected, a law clerk works closely with the employing judge for one or two years, assisting the judge with legal research, making legal determinations, and writing legal opinions. Clerks' relationships with their employing judges serve as their first on-the-job training, offering mentorship during the formative years of their careers (McEvily,

Jaffee, and Tortoriello, 2012). One interviewee for this study compared clerking for a judge with becoming that person's apprentice: ''You follow them around, you eat with them, you sit there, you argue with them, [and] you write their opinions. . . . When you write a judge's opinions, you literally become the voice of the judge for that year or two.''

These tight-knit relationships with supervising judges typically endure long after the formal clerkship ends. Lawyers we interviewed repeatedly mentioned that they keep in touch with the judges for whom they clerked. As one lawyer mentioned, judges count their former clerks among the few people they trust enough to invite to their homes and to discuss various work-related and personal topics. A former clerk described his relationship with his employing judge this way: ''I would ask for life advice and general professional advice. Which associations should I join? Or I am thinking of working or moving to this law firm, and he worked with them. Should I apply for this position?'' A federal judge told us, ''Most of the contact [between former clerks and judges] is over the issue of employment. References. Do you know so and so? . . . Perhaps questions of the legal matter.''

Like clerkships, contemporaneous educational affiliations between lawyers and judges—having attended the same institution and overlapped in time for at least part of their studies—can induce lasting social relationships. Both through classes and extracurricular activities, educational institutions provide opportunities for members to meet and build interpersonal relationships. Compared with clerkships, however, the formation of enduring social relationships from contemporaneous educational affiliations is less assured. This is because these social foci can be large and diffuse, precluding repeated encounters with the same actors, which are essential for building relationships (Feld, 1981). In our analytical strategy, we thus explore the extent to which the size of the contacts' alma mater can shape the hypothesized relational dynamics.

We anticipate that both asynchronous and contemporaneous affiliations between lawyers and judges motivate them to interact, thus affecting plaintiffs' choice of legal venue. Asynchronous affiliations with a given court's judges may guide a company's lawyers to select a court in which they know their fellow tribespeople are working. This similarity-attraction can be triggered between individuals even when they had no social interaction in the past (Byrne and Rhamey, 1965; Byrne, 1971).[1] And because contemporaneous social affiliations propagate lasting social relationships and complement social identification with the powerful effect of the transfer of tacit knowledge, they

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[1] The social identification effects that common affiliations engender can operate in large part by bypassing an individual's deliberate cognitive processes and by developing a visceral attraction between actors who share the same institutional affiliation (Rider, 2011; Claes and Vissa, 2020). But our interviews revealed that affiliations can sometimes trigger more rational cognitive analysis. One lawyer described how favoring graduates from the same school can benefit both lawyers and judges: ''When I see a judge from the same law school and he's older than me, I'm basically saying, 'Hey, help me out.' . . . [Likewise] judges want lawyers from their alma mater to succeed. . . . More [name] University partners, more political clout . . . means there's more leverage to help that district court judge get to an appellate bench or a proctorship or a tenure spot at [name] University or a political appointment somewhere else.'' In this case, lawyers can pursue a court to which others from the same institutional affiliation are assigned because of an instrumental and calculated desire to advance their own careers. Similarly, they expect judges to behave in an instrumental manner and help them, because the judges want to further their political influence and career success.

constitute a potent form of social capital (e.g., Bourdieu, 1986: 248; Coleman, 1988: S104; Inkpen and Tsang, 2005: 150). Tacit knowledge includes insights, intuitions, and beliefs that are intertwined tightly with the experience of the knowledge source but are difficult to articulate (Polanyi and Sen, 1967; Hernandez, 2014). As a result, close observations and repeated interpersonal interactions are necessary to transfer such complex, non-codified knowledge (Uzzi, 1997; Hansen, 1999; Levin and Cross, 2004). In our empirical context, given the exceptionally rigorous selection process for judges and high levels of scrutiny in the federal judicial system, tacit knowledge is unlikely to include confidential information or be associated with favoritism. Instead, contemporaneous affiliations can allow lawyers to acquire and update privileged knowledge of how various judges think and evaluate arguments and evidence, as well as how they interpret and apply the law. Thus we predict:

> **Hypothesis 1:** A company is more likely to initiate litigation in a court in which there are prior common educational or professional affiliations between its lawyers and the court's judges.

Realized Common Affiliations and Legal Outcomes

An intriguing question is whether social proximity not only shapes actors' behaviors but also enables them to reap superior performance. One could envision a world in which actors, through influences of social attraction, act in an economically rational way by leveraging social proximities in their decision making. Such behaviors would reflect their expectations that the effects of social identification and knowledge transfer can translate into private advantage. Against this explanation, one could pit research suggesting that socially based mutual attraction in markets often undermines the efficiencies of purely economic imperatives (e.g., Pouder and John, 1996; Sorenson and Waguespack, 2006; Rogan and Sorenson, 2014).

We believe that contemporaneous affiliations and the resulting social relations can yield better performance outcomes primarily because of the transfer of information that is not easily available to outsiders (Dokko and Rosenkopf, 2010). Actors can leverage associated social structures to selectively enact an environment that allows them to use intimate observations and access knowledge that is private, soft, and often tacit to enhance their influence. Specifically, such knowledge enables actors to interpret and communicate more effectively in the setting. Accessing such knowledge can confer a specific advantage in influencing the assigned evaluator by adapting the flow and content of the message to that evaluator.

In the context of litigation, different judges have different styles and theories of legal reasoning on which case outcomes are premised (Schubert, 1965, 1974; Tetlock, Bernzweig, and Gallant, 1985). Judges respond differently to nuances in arguments, legal strategy, and procedural demands, and knowledge of such differences is difficult to acquire through formal education (O'Connor and Hermann, 1995). Several former clerks told us that written arguments may be more influential than oral arguments for some judges because they prefer to study submitted papers carefully. This preference can determine how detailed the submitted documents must be and what the lawyer chooses to present in a written versus an oral argument. These nuanced understandings

often incorporate the deeper knowledge of a given judge's worldview. In our fieldwork, we observed a federal judge admonish an experienced patent litigation team when they asked the judge to seal the legal proceeding's transcript, thus making it confidential. The judge responded with a fervent lecture about the injustice of depriving the public of the right to understand what happens in a public court. The litigation team might have sidestepped this conflict if one or more of its members had the knowledge of this judge's beliefs.

As a possible countervailing mechanism to the theorized impact of lawyers' contemporaneous affiliations, some judges might apply harsher standards to former clerks or classmates to avoid perceptions of favoritism. A federal judge hinted at such a dynamic when telling us, ''I just hold [former clerks] to a higher standard because they've got to know better than to pull anything in front of me.'' Recent research has found that such a dynamic occurs in adversarial, zero-sum relationships between network contacts when authoritative third-party stakeholders demand unwavering loyalty that is not mired in potentially compromising affiliations with former partners (Uribe, Sytch, and Kim, 2020). These conditions are particularly critical when the presence of potentially compromising affiliations is routine.[2] But these conditions do not apply to the relationship between judges and lawyers, so it is doubtful that judges would systematically penalize lawyers with shared educational or professional affiliations.

The preceding arguments about the impact of contemporaneous affiliations on legal outcomes do not outright dismiss the possible effects of asynchronous affiliations and concomitant social identification on legal advantage. It is conceivable that similarity can predict legal advantage via liking (Tajfel, 1982; Cialdini, 1984). We anticipate, however, that the effect of tacit knowledge on legal outcomes, which is unique to contemporaneous affiliations, will be considerably stronger because it opens opportunities for strategic influence:[3]

> Hypothesis 2: A company is more likely to win a lawsuit when there are prior common educational or professional affiliations between its lawyers and the presiding judge.

Social Capital Activation: Tailoring the Message

How exactly does private advantage accrue to actors with contemporaneous educational and professional affiliations? Broadly speaking, the activation of social capital refers to the processes by which the ensuing social structures can shape outcomes. Because social structures can convey the nuances of how a given alter thinks, interprets, and evaluates arguments and evidence,

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[2] Having prior affiliations with the presiding judge is not prohibited in the canons of legal or judicial practice, which makes such affiliations normal and acceptable. One clerk we interviewed hinted at the normalcy of the associated behavior: ''There is some efficiency in filing with a lawyer who is a former clerk. . . . But the practice is probably excessive given the benefits.'' More broadly, in our fieldwork, judges and lawyers alike expressed no reservations about having in legal hearings common prior professional or educational affiliations with one another.

[3] It is essential to emphasize that this argument focuses on *alter-specific* knowledge and the associated patterns of influence. This differs from cognitive homophily engendered by actors merely attending the same educational institution, wherein exposure to similar professors and curriculum can lead to equivalent reasoning and argumentation. In our empirical strategy, we account for the possibility of cognitive homophily.

these structures can create opportunities for tailoring messages to that alter. Thus the flows of private knowledge from the alter to the ego in the proverbial pipes of social structure (Podolny, 2001) can prompt reciprocal flows of the ego's influence over that alter.

For a message to change attitudes or behaviors in an influence process, it must be attended to and processed cognitively. Tailoring arguments to the audience's preferred styles, interests, and values has been shown to result in more persuasive messages (Lavine and Snyder, 1996; Sonenshein, 2006; Hirsh, Kang, and Bodenhausen, 2012). This effect operates through three central pathways. First, the degree to which an issue is tailored to a specific target positively influences the degree of attention the target devotes to that message (Dutton et al., 2001; Howard-Grenville and Hoffman, 2003). Second, tailored messages, which use style and content familiar to and comfortable for the target, are easier to process cognitively (Lee and Aaker, 2004). Finally, tailored messages may elicit greater psychological or instrumental benefits for the target, ranging from affirming one's values and creating positive affect to attaining private goals (Cesario, Grant, and Higgins, 2004; Hirsh, Kang, and Bodenhausen, 2012). To tailor the message effectively, therefore, an actor needs to understand the target's goals, values, and attitudes, which requires deep knowledge about the recipient. Social connectivity resulting from contemporaneous educational and professional affiliations can be a powerful conduit for such knowledge.

As in many other evaluative contexts, there are numerous opportunities in litigation to tailor the message to a given judge. As one lawyer told us,

> Some judges will enjoy a good story. If you can construct a narrative around a plaintiff, a judge will be more responsive. . . . Others prefer a clear issue of law as opposed to muddying it with facts and narratives, because it makes it easier for a judge to dispose of the case, easier to make a ruling. . . . Some judges take a practical approach to avoid creating extra paperwork and extra dockets. They favor (an) aggressive style.

Another litigator recounted an example of message tailoring when parties submit motions to compel a counterparty to provide sufficient access or documentation in discovery:

> One approach to write them is to state that ''Here is what I asked for, here is what they gave me, and I am entitled to the difference.'' Real logical and straightforward. Another way is to say, ''Listen, we are the white knight. We have been fighting for months, and they have been stealing and they have been lying, and these are no-good people.'' So, you get the judge to think that I am the white knight. Every time he reads the papers, you are the white knight. Some judges like that. Some others would say this is unprofessional and would say that ''All I hear is a lot of name-calling.''

It requires a great deal of familiarity with a judge to discover his or her specific preferences or style. Several lawyers we interviewed said that having a lawyer on their team who has such knowledge is extremely helpful in preparing a case to position it as more favorable in the eyes of the presiding judge. The flows of private knowledge stemming from contemporaneous educational and professional affiliations are likely to come both from initial learning about the

alter and from continuous updating due to the ongoing relationship with the alter. Initial learning takes place in the context of the original foci, such as when debating a classmate's legal reasoning in law school or crafting a judge's opinion as a clerk. In an ongoing relationship, each interaction in which one's contacts offer advice, perspective, or an opinion or engage in a discussion provides additional data regarding how these contacts interpret information, think, reason, and apply their knowledge. This could be analogous to observing potential changes in the research tastes and preferences of one's former Ph.D. advisor by discussing academic job openings, job candidates for those openings, or recently published research. Thus ongoing relationships and interactions are likely to enable lawyers to continuously enhance and update the privileged, tacit knowledge of how a given judge thinks and operates, as well as interprets and applies the law. Taken together, these arguments lead us to predict:

> **Hypothesis 3:** The positive performance effect of prior common contemporaneous educational or professional affiliations between a company's lawyers and the presiding judge is mediated by message tailoring.

Unrealized Affiliations: The Trade-off Between Social and Human Capital

Teams in a variety of work contexts, including consulting, investment banking, and legal services, are composed in part based on the teammates' social or professional affiliations with key evaluators. For example, a consulting or an investment banking team may include a teammate who has previously worked with the client's senior executives who may evaluate the team's work. These social connections and their anticipated advantage are not always assured, however. In complex, long-term consulting, information technology, or investment banking projects, the full set of evaluators—customers, sponsors, or executive decision makers—may not be known in advance or can change with the project's shifting scope and requirements, well after the initial project team is selected. In such cases, the potential social or professional connections with key evaluators can remain unrealized.

   What outcomes accrue to teams that are composed based on affiliations with key evaluators if these affiliations are unrealized? We anticipate that these teams will suffer from the incurred trade-offs in team composition between social and human capital. Three key premises form this argument. First, social affiliations with key decision makers are rare (Seidel, Polzer, and Stewart, 2000). Second, in part because such affiliations are rare and human capital—both general and task-specific—varies across employees (Abowd, Kramarz, and Margolis, 1999), it is unlikely that such affiliations will perfectly coincide with the required human capital for the work at hand. In other words, if a team is composed based on social affiliations with key evaluators, it may shortchange the requisite human capital. Third, human capital is essential for team performance (Hitt et al., 2001; Crook et al., 2011). Thus when social affiliations are not realized—because the desired evaluators are not assigned—the team's performance likely will be hampered by limited human capital.

   A key boundary condition for this argument is that the team's composition cannot be changed freely after the evaluators are known or reassigned. Meeting this boundary condition is not uncommon, because changes in team composition while work is underway come with significant costs. Such

changes can adversely impact both knowledge transfer and the ability to manage the client (Bendapudi and Leone, 2002). In complex IT projects, staff turnover leads to higher costs and a slower progress rate, partially because newly acquired members must be acquainted with the project's mechanics and integrated into the project team (Abdel-Hamid, 1989). And adding more teammates increases the costs of work and, to the extent that social and professional affiliations are visible, may even bring extra evaluative scrutiny to the team.

The general dynamics we outline above apply to the legal services context. Reaffirming well-established insights about the variations in general ability among employees, in our fieldwork, clients often commented that they see ''an A, a B, and a C team from the same law firm working on similar cases.'' One lawyer elaborated:

> It is not the case that every lawyer that is at [elite law firm name] that's a third year is of equal ability. Nor is every partner of equal ability. The cases are not taken by [elite law firm name], monolithic [elite law firm name], and then assigned to lawyers that are the best. Lawyers have relationships with clients. The clients might think this is the best lawyer, and they give that lawyer the case, and that lawyer assembles the team. But there might be a disconnect between what lawyers have clients and what lawyers are good lawyers. And clients might not be perfect at figuring that out.

In addition, some cases might require specific technical expertise or different types of experience or styles of presentation. One interviewee told us, ''There are lawyers that are efficient and smart. But some lawyers are difficult. That is their strategy—just be difficult on everything. And it can be effective. It depends on the case and on the client, because not every strategy works in every situation.'' Our interviews also revealed that some lawyers move a case quickly and aggressively and pressure the defense early. They may not be as methodical as other lawyers, however, which may become challenging if the case reaches trial.

When senior lawyers, who typically manage the relationship with the client, have decided on the legal venue in which to file, they sometimes seek to complement the legal team with lawyers—usually of junior stature—who know the judges from the chosen court. In some cases, the lawyers' familiarity with *any* of the court's judges guides the search. In others, senior lawyers select team members based on intuitions about which judge might take the case based on the most recent case assignments, their perceptions of judges' expertise in patent law or a given technology, or each judge's current caseload. Regardless, social capital considerations with anticipated evaluators may shape team composition.

In teams stacked heavily based on common affiliations with the court's judges, we can reasonably expect human capital considerations to be deemphasized. It is extremely unlikely that teammates' general ability, technical skills, expertise, and experience needed for a specific case coincide perfectly with the distribution of their social affiliations with judges. But because plaintiffs have no advance knowledge of or control over which judge will preside over a case (because judges are typically assigned randomly), hoped-for social connections may not materialize. When the desired presiding judge is not assigned to a case, we anticipate that the legal team's performance is adversely affected by its limited human capital.

The central boundary condition is met in our context. First, incumbent lawyers are difficult to replace due to their case-specific knowledge: by the

time a judge is assigned, they know the nuances of the case and client better than any other lawyer in their firm. One senior litigator said, ''By the time the complaint is filed, I would have spent three months getting to know the client and the industry.'' Another lawyer elaborated that this knowledge is not easy to pass on to others:

> It takes time to understand the technology. And, it is not something [such as], ''Hey, I am going to give you a two-hour tutorial, and you are going to get it.'' I have read 25 patents that are our prior art in a lot of detail. I have read our patent six times. I have met with the inventor. And each one of those is hard to convey.

Second, adding more people to the team can signal to the client that you are increasing costs or not managing the project efficiently. As one lawyer said, ''You are going to cost out [the case] given the size of the team. It is hard for the in-house counsel to say, 'I don't want you staying up at night reading these documents,' because they probably do. But one way to control costs is to control the size of the team.'' Adding new people to a complex, long-lasting project can also make it more difficult to manage the relationship with the client. Another litigator mentioned that a new team member could be ''asking clients questions that have already been answered. [It's] just a sure way to look like you are not efficiently managing the case.''

Considering the anticipated tradeoff between social and human capital, we expect that legal teams with unrealized affiliations with the presiding judges will register lower performance and that the limited human capital of those teams will explain this effect:

> **Hypothesis 4:** A company is less likely to win a case when there are unrealized prior common educational or professional affiliations between its lawyers and the court's judges.

Context: Patent Infringement Litigation and Choice of Legal Venue

Our empirical context is patent infringement litigation in biotechnology and pharmaceuticals from 1990 to 2013. In the U.S., patent infringement is defined legally as making, using, offering to sell, selling within the country, or importing into the country a patented invention without the authority to do so during the term of the patent (35 U.S.C. ∫271(a)). Patent infringement litigation has become a central feature of contemporary markets, which increasingly are driven by innovation and knowledge creation (Rivette and Kline, 2000). With about 5,100 patent infringement cases filed in 2016, the growth of patent litigation has outpaced growth in granted patents by 22 percent since 1991 (PricewaterhouseCoopers, 2017).

In the biotechnology and pharmaceutical industry, patent infringement litigation represents some of the longest, fiercest, and most consequential forms of interorganizational conflict (Liebeskind et al., 1996). Legal expenses alone can amount to $5 million per patent infringement lawsuit. In addition, the verdicts can require infringers to forfeit millions of dollars in damages, which can triple in cases of willful and knowing infringement. In some cases, a single patent infringement lawsuit can threaten the viability of the entire enterprise.

In a typical patent infringement lawsuit, the patent owner argues that one or more of its patent claims have been violated and may demand an injunction, as well as economic and punitive damages. Due to the high costs of employing specialized intellectual property (IP) experts in-house and legal constraints surrounding selective disclosure of information to competitors, companies out-source most of their legal work to external legal counsel. Litigation usually entails extensive engagement with that external counsel, which is typically involved from the earliest stages of the process, when the patent owner begins to suspect an infringement has occurred. Ordinarily, a plaintiff selects its external legal counsel, and then the plaintiff and external legal counsel jointly choose a court in which to file the case.

Patent infringement litigation in the U.S. falls under the primary jurisdiction of 94 federal district courts. In 1988, the U.S. Congress eliminated the separate defense of improper venue for corporate defendants to help district courts manage their workload and streamline the litigation process (Ryan, 1995a, 1995b). The amended federal venue statute defines a corporate defendant as one that ''resides in any judicial district in which it is subject to personal jurisdiction at the time the action is filed'' (28 U.S.C § 1391(c)). This provision offered companies great flexibility in choosing courts for litigation (Moore, 2001). For example, an alleged patent infringer can be sued in the Eastern District of Texas if it merely advertised its products on a website that is accessible from Texas or has sent e-mails to or accepted credit card information from Texas residents. As one lawyer told us, ''When the defendant is a corporation, I can sue them virtually anywhere I want.'' This amended statute thus enabled plaintiffs to seek a favorable legal venue to pursue private advantage.[4]

While plaintiffs have almost complete control over the court in which a case will be heard, betting on a specific judge being assigned to the case is more of a gamble. This is because, typically, lawsuits are assigned randomly to federal judges to ensure impartiality (Federal Judicial Center, 2016). Our empirical results support random assignment of judges to cases.[5]

DATA AND METHODS

Data

The sampling frame included the complete 1998 Bioscan listing of biotechnology and pharmaceutical companies. To control for variations in regulatory and legal regimes and to ensure data availability, we retained all independent,

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[4] Defendants occasionally attempt to transfer the case to another court, arguing that moving to another venue is clearly more convenient for the litigating parties and witnesses. Courts have maintained, however, that the plaintiff's choice of venue is of paramount consideration for subsequent proceedings. In our data, the defendants requested that the case be transferred to a different court in less than 0.4% of the cases; the court did not grant any of these requests. Consistent with our argument about social structures conferring advantage, defendants were three times as likely to request that the case be transferred if the plaintiff's lawyers had shared educational or professional affiliations with the presiding judge.

[5] In our supplementary analyses reported in Table A1 in Online Appendix A (http://journals .sagepub.com/doi/suppl/10.1177/0001839220922133), we predict the assignment of a judge to a given case from the pool of the focal federal court's judges, conditional on filing the case in that court. Our results fail to establish any systematic patterns of assignment with respect to the judge's past educational and professional affiliations with the plaintiff's lawyers, thus being consistent with random assignment.

dedicated U.S. biotechnology and pharmaceutical firms, resulting in a sample of 406 companies. We then extracted complete patent infringement litigation records for each company from the U.S. federal district courts using the Lex Machina and PACER (Public Access to Court Electronic Records) databases for the period of January 1990 to August 2013. After adding 1,748 companies that appeared in patent infringement litigation as either adversaries or co-filers during the same period, our data covered the population of 2,154 companies (both public and private), which collectively engaged in 1,601 patent infringement lawsuits filed in U.S. federal district courts. The initial sample consisted of 607 unique plaintiffs, 3,226 unique plaintiff–defendant dyads, and 4,715 unique case–dyad pairings. After removing cases in which documents were sealed, the sample in regression models included 2,527 unique plaintiff–defendant dyads from 1,032 cases. We collected litigation records manually and cross-verified for accuracy using Westlaw and LexisNexis.

We complemented the analysis of archival data with insights from more than 50 semi-structured interviews with lawyers, in-house counsel, federal judges, and clerks. Nearly three-quarters of these interviews were with practicing lawyers working in the U.S. offices of 14 large and mid-sized law firms. Fieldwork also included conversations with several in-house legal personnel with experience hiring external counsel for two large organizations, as well as three federal judges and several clerks from courts in the southern and eastern U.S. The interviews with the federal judges and all but one clerk were conducted in person; the majority of the remaining interviews were conducted over the phone. In addition, the first author of the study has attended in person select hearings of two patent infringement cases. We used the insights from the fieldwork to understand how the theorized dynamics could apply in our context and to inform our quantitative analyses.

Dependent Variables

Our hypotheses led us to use two dependent variables: (1) the choice of venue, which captures the plaintiff's choice of the U.S. federal district court in which to file a given patent infringement lawsuit and (2) the plaintiff's outcome following the termination of the case. In our sample, 11.5 percent of cases resulted in judgments for the plaintiff, 6.7 percent favored the defendant, and 81.8 percent were either settled out of court or terminated on procedural grounds. To estimate the factors leading the plaintiff to choose a specific district court when filing a given lawsuit against a given defendant, we used a plaintiff–defendant–case–court tetrad as the unit of analysis. The binary dependent variable *choice of venue* took the value of 1 if the plaintiff chose a specific court and 0 otherwise. To estimate the plaintiff's legal outcome, we defined our second dependent variable, *plaintiff's win*, as a binary variable that took the value of 1 if at least one of a plaintiff's claims was supported in the court via judgment or trial and 0 otherwise. We obtained case outcomes by manually reviewing the dockets of each terminated case.

Independent Variables

Common educational and professional affiliations. The central variables of interest are the common educational and professional affiliations between

lawyers and judges. When a case is filed, common affiliations are only potential, and they become either realized or unrealized when the presiding judge is announced. Consistent with our theory, we captured the following three classes of affiliations: (1) *potential* common affiliations, which captures the affiliations between the plaintiff-side lawyers and all judges of a given court; (2) *realized* common affiliations, which captures the affiliations between plaintiff-side lawyers and the presiding judge; and (3) *unrealized* common affiliations, which refers to potential affiliations between the plaintiff-side lawyers and all non-presiding judges of the focal court.

To estimate the impact of shared experience produced by overlaps in space and time, we distinguished between contemporaneous and asynchronous educational affiliations. Accordingly, *potential BA contemporaneous affiliations* and *potential JD contemporaneous affiliations* measure the number of instances when the plaintiff's lawyers and any of the given court's judges obtained their undergraduate degree or Juris Doctor (i.e., professional law) degree, respectively, from the same institution with at least a one-year overlap during their training. *Potential BA asynchronous affiliations* and *potential JD asynchronous affiliations* measure the number of instances when the plaintiff's lawyers and any of the given court's judges obtained their undergraduate or law degrees, respectively, from the same educational institution, but their respective training periods did not overlap. We measured *potential clerkship affiliations* by counting the number of instances when the plaintiff's lawyers previously clerked for one of the given court's judges.

Realized BA/JD contemporaneous/asynchronous affiliations and *realized clerkship affiliations* use the same criteria described above, but they capture respective affiliations between plaintiff-side lawyers and the presiding judge only. *Unrealized BA/JD contemporaneous/asynchronous affiliations* and *unrealized clerkship affiliations* measure the affiliations between the plaintiff-side lawyers and all the court's nonpresiding judges. We collected judges' educational information from the *Federal Judicial Center's Biographical Directory of Federal Judges*. We collected lawyers' educational attainment records and clerkship data from their résumés, which we obtained through an extensive Internet search. About 23 percent (clerkship) to 98 percent (asynchronous JD affiliations) of the cases in our data had potential affiliations. These affiliations were realized in 2 percent of the cases.[6]

Message tailoring. To test the mechanism by which common affiliations translate into superior outcomes, we aimed to capture lawyers' efforts to tailor their arguments for presiding judges. A patent lawsuit begins when the plaintiff files the legal complaint in a federal district court. The complaint identifies the patent owner and the accused infringer(s), lists the patents allegedly infringed,

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[6] Another relevant layer of social structure connecting lawyers and judges could stem from their common professional affiliations in private practice. Our analyses revealed that 93% of the judges in our sample had at least some experience working for a law firm before their appointment to the federal district court. The full details of judges' employment are available in the unedited questionnaire responses submitted to the Senate Judiciary Committee during the Senate hearing phase of the nomination process. Unfortunately, the questionnaires are very difficult and time-consuming to access, especially those for the judges nominated before 2009. These data constraints prevented us from incorporating former private practice affiliations into our analyses.

describes the infringing activities of the accused party, and stipulates the requested relief. The complaint therefore frames the scope of the litigation and advances the core premise for the lawsuit. At some point after the plaintiff has submitted the complaint (in our data, after an average of 14 days), the presiding judge is assigned to the case. Thereafter, the plaintiff's lawyers can revise the complaint.

Using text analysis of the complaint documents obtained from PACER and Lex Machina, we first explored whether the revised complaints differed from the original complaints in length, content, tone, and emotion. Our manual analysis revealed that 48 percent of the revised complaints added new information (e.g., modified general allegations, added more background information); 47 percent added or removed claims; 45 percent modified the list of parties (e.g., added a new defendant); and 10 percent corrected facts. We anticipated that lawyers with common contemporaneous affiliations with the presiding judge would be more likely to revise complaints following the assignment of that judge. Accordingly, we counted the *number of revised complaints* the plaintiff submitted.

We also explored whether revised complaints are particularly effective when lawyers increase the similarity between their writing and the presiding judge's linguistic style. Based on a subsample of 32.7 percent of judges for whom such data were available on PACER or Lex Machina, we collected "opinions" and "findings of fact and conclusions of law" documents that a presiding judge wrote for the five most recent patent cases that were decided before the focal case was filed. In a similar data collection process for lawyers, we obtained the full text of original and revised complaints for all cases in the study. This resulted in a text corpus comprising 1,821 legal documents with about 25.5 million words.

Using these data, we established the linguistic baseline for lawyers and judges along the four Linguistic Inquiry and Word Count (LIWC) summary variables: (1) analytical thinking, with high values reflecting formal, logical, and hierarchical thinking and lower values reflecting more informal, personal, and narrative thinking; (2) clout, with high values indicating high expertise and confidence and lower values suggesting a more tentative, humble, and even anxious style; (3) authenticity, with higher values associated with a more honest, personal, and disclosing text and lower values indicating a more guarded, distanced form of discourse; and (4) emotional tone, with high values associated with a more positive, upbeat style and low values revealing greater anxiety, sadness, or hostility.[7]

We subsequently measured *linguistic style similarity* as the cosine distance between the four-dimensional vectors representing judges' and lawyers' linguistic styles, scaled by 100 so that the variable ranges between 0 and 100 (for a similar approach, see Goldberg et al., 2016; Piezunka and Dahlander, 2019). To account for cognitive homophily resulting from mere exposure to the same professors and curriculum while attending the same law school, we removed JD-institution-specific variance from this measure using the presiding judge's JD-institution fixed effects. Thus, in addition to using the number of revisions as the mediator, we also used the interaction between the number of revisions and linguistic similarity. The interaction captures message tailoring as revisions

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[7] Medium values of emotional tone suggest either a lack of emotion or emotional ambivalence.

that are accompanied by higher values of linguistic style similarity to the presiding judge.

Instrumental Variables

To account for the impact of unobservables that could affect both court selection and legal outcomes, we used two instrumental variables to instrument court selection. First, *judicial vacancy* counts the number of unfilled judgeships in a court. Filling a vacant federal judgeship requires a nomination from the president of the United States, followed by Senate hearings and a vote. Controlling for the size of the judicial bench of a given court, courts with more vacancies reduce the plaintiffs' uncertainty about the presiding judge, thus making that court a more attractive venue. We obtained the list of vacant judgeships for each federal court from the Administrative Office of the U.S. Courts Archive of Judicial Vacancies.

Second, *local patenting activity* captures the share of biotechnology and pharmaceutical patents invented by scientists who reside within 100 miles of a given court, using patents granted in *t–1*, where *t* is the year in which the lawsuit was filed. Courts located in hotbeds of patenting activity are likely to experience more patent disputes. We obtained patent data from the U.S. Patent and Trademark Office. Following Hall, Jaffe, and Trajtenberg (2001), we operationalized biotechnology and pharmaceutical patents as those belonging to one of the following 3-digit U.S. technological classes: 424, 514, 435, 800, 351, 433, and 623.

Both instrumental variables passed the test of weak instruments: the Montiel Olea–Pflueger (2013) test rejected the null of weak instruments for a weak instrument threshold of $\tau = 10\%$.[8] Regarding the exclusion restriction, it is unlikely that the degree of local patenting activity or the number of unfilled judgeships affects the outcome of the focal case, other than by steering the case to a particular district court.

Control Variables

We accounted for a comprehensive set of variables that could potentially affect the statistical inference regarding how common educational and professional affiliations impact court selection and outcomes. These controls include: (1) court characteristics affecting the plaintiffs' baseline preference, (2) geographic distance, (3) baseline likelihood of a legal dispute, (4) baseline probability of common educational affiliations, (5) lawyers' quality, trial experience, and effort, and (6) case complexity. Table 1 describes these measures.

Analysis

Given that the *choice of venue* is a binary variable, in testing hypothesis 1, we used a conditional logistic regression with dyadic fixed effects for plaintiff–

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[8] To our knowledge, no established test of weak instruments currently exists for models including both a dichotomous endogenous regressor and a dichotomous dependent variable. We have therefore used the Montiel Olea–Pflueger (2013) test, which treats both the dependent variable and the endogenous regressor as continuous variables. Models 1a, 2a, and 3a in Table 3 report the results of first-stage court selection models.

Table 1. Description of Control Variables

Variable	Operationalization
Court characteristics affecting plaintiffs' baseline preference (Data source: Federal Court Cases Integrated Database, Federal Judicial Center)	
Average case duration	The average number of days elapsed from the day a case is filed until the day the case is terminated, averaged over all patent lawsuits decided by the court from year $t–5$ to year $t–1$.
Percentage of cases favoring plaintiffs	The percentage of terminated cases in which the court ruled in favor of the plaintiff from year $t–5$ to year $t–1$.
Percentage of Democratic judges	The percentage of judges affiliated with each court in year $t–1$ who were nominated by a Democratic president.
Geographic distance (Data source: Bioscan, Bloomberg, Compustat, Google, ORBIS, Public Access to Court Electronic Records, U.S. Postal Service Database)	
Plaintiff-to-court distance	The logarithm (in miles) of geographic distance between the primary plaintiff and the given court.
Lawyer-to-court distance	The logarithm (in miles) of geographic distance between the lawyers and the given court (mean values weighted by the number of lawyers from a given location when the plaintiff is represented by multiple lawyers).
Plaintiff-to-lawyer distance	The logarithm (in miles) of geographic distance between the primary plaintiff and the lawyers (mean values weighted by the number of lawyers from a given location when the plaintiff is represented by multiple lawyers).
Baseline likelihood of a legal dispute (Data source: Compustat, ORBIS, Public Access to Court Electronic Records, U.S. Patent and Trademark Office)	
Pr(plaintiff engages in a litigation)	The similarity between the focal company's patent portfolio, measured over $t–1$ to $t–5$, and the portfolios of the typical patentees in intellectual property disputes; that is, companies that have their patent portfolio infringed upon in years $t–1$ to $t–5$. For a plaintiff i in year t, this measure can be expressed as $\sum_{j=1}^{k'_t} \omega_{jt} \frac{p_{ijt}}{\sum_{j=1}^{k'_t} p_{ijt}}$, where $\omega_{jt} = \sum_{i=1}^{m'_t} \frac{p_{ijt}}{\sum_{j=1}^{k'_t} p_{ijt}} \times (p_{jt}^0)^{-1}$. p_j is the count of a plaintiff's patents in a given 3-digit U.S. patent class j, k' represents the list of patent classes that describe the patent portfolios of companies whose intellectual property was infringed, and p_j^0 is a vector for all companies whose intellectual property was not infringed. Taken together, ω_{jt} captures a plaintiff's disproportionate participation in some patent classes compared with nonplaintiffs. We removed the focal company's information when calculating ω_{jt} to avoid endogenous calibration of the measure.
Public company	A binary variable that takes on the value of 1 if a plaintiff is publicly traded and 0 otherwise.
Baseline probability of common educational affiliations (Data source: Federal Judicial Center)	
Pr(baseline for BA affiliation)*	The proportion of federal judges (both active and senior judges) in the country who graduated from the schools from which the plaintiff's lawyers obtained their undergraduate degrees.
Pr(baseline for JD affiliation)*	The proportion of federal judges (both active and senior judges) in the country who graduated from the schools from which the plaintiff's lawyers obtained their JD degrees.
Number of judges	The number of active and senior judges in the focal court in year $t–1$.

(continued)

Table 1. (continued)

Variable	Operationalization
Lawyers' quality, trial experience, and efforts (Data source: Manual search of lawyers' résumés, Public Access to Court Electronic Records, RECAP, Lex Machina)	
Number of lawyers from elite law schools	The number of lawyers representing the plaintiff who graduated from one of the top 14 law schools (''T14''): Columbia University, Cornell University, Duke University, Georgetown University, Harvard University, New York University, Northwestern University, Stanford University, University of California–Berkeley, University of Chicago, University of Michigan–Ann Arbor, University of Pennsylvania, University of Virginia, and Yale University.
Number of lawyers with clerkship experience	The number of lawyers with clerkship experience, measured as the number of plaintiff-side lawyers who clerked in federal, state appellate, trial court, or local jurisdictions.
Lawyers' age	The average age of lawyers on the plaintiff's team.
Number of lawyers' previous appearances in focal court/before presiding judge	The number of previous cases plaintiff-side lawyers litigated in the focal court. The number of previous cases plaintiff-side lawyers litigated before the presiding judge.
Number of documents submitted	The number of documents submitted by plaintiff-side lawyers normalized by case duration. We include this variable when we test hypotheses 2–4.
Case complexity (Data source: Public Access to Court Electronic Records, U.S. Patent and Trademark Office)	
Number of claims[†]	The logarithm of the total number of claims in the litigated patents in the focal case.

* To account for the possibility of judges' selection into patent cases, we created two control variables for the proportion of judges who heard at least one patent case since 2000 and come from the lawyers' alma maters, for BA and JD, respectively. Replacing these measures (using all years' observation but not limited to patent cases) with the new measures (using only patent cases but only for post-2000 records due to data availability) did not alter the pattern of our findings.

† Several alternative measures such as the number of docket entries or motions per day also yielded similar results.

defendant pairings. This allowed us to control for any time-invariant, unobserved dyadic effects. We computed robust standard errors adjusted for clustering at the plaintiff–defendant level. In predicting *plaintiff's win* (hypotheses 2 and 4), we instrumented court selection in the first stage. Because the dependent variables are binary at both the selection and outcome stages, we used an instrumental-variable bivariate probit regression. These models include filing-year fixed effects and estimated standard errors, while also adjusting for clustering at the plaintiff–defendant level.

To test whether the effect of realized contemporaneous educational and professional affiliations on case outcome is mediated by the number of revisions and linguistic similarity (hypothesis 3), we used the counterfactual mediation analysis framework proposed by Imai, Keele, and Tingley (2010), which is applicable to nonlinear models. This approach formalizes the mediation effect using the potential outcome framework for causal inference, in which the average mediation effect is akin to an average treatment effect. The nonparametric bootstrap confidence intervals of the mediation effects are based on 2,000

resamples (for additional details about the mediation procedure, see Imai, Keele, and Yamamoto, 2010; Imai et al., 2011).

RESULTS

Table B1 in Online Appendix B (http://journals.sagepub.com/doi/suppl/10.1177/ 0001839220922133) displays the descriptive statistics and zero-order correlations for all variables. Low values of both variance inflation factors (ranging from 1.55 to 1.66) and condition indices (ranging from 4.74 to 5.32) indicate that multicollinearity is unlikely to impact our estimates.

In the baseline model of venue choice (model 1, Table 2), which is consistent with prior research (de Figueiredo, 2005), we find a strong tendency for corporate plaintiffs to prefer (1) courts that historically favored plaintiffs in their rulings and (2) courts with fewer Democratic judges, hence favoring conservative ideology. Our results also document strong and consistent effects of geographic distance, showing that plaintiffs favor courts close to both their headquarters and their external legal counsel. Surprisingly, the results also indicate that plaintiffs tend to avoid courts with rapid disposition times. Because biotechnology and pharmaceutical firms sometimes file patent infringement cases to delay competitors' market entry, plaintiffs in this industry may avoid fast-adjudicating courts.

Hypothesis 1 (H1) predicted that a company would be more likely to initiate litigation in a court in which there are prior potential common educational or professional associations between its lawyers and the court's judges. The results reported in model 2 of Table 2 show a positive effect on court selection for all five types of affiliations (BA contemporaneous, BA asynchronous, JD contemporaneous, JD asynchronous, and clerkship), thus supporting H1. For example, when one of the plaintiff's lawyers clerked for a judge in a specific court, the likelihood of that plaintiff choosing that court soars by a factor of 9 when holding other variables at their means. The improvement in model fit between models 2 and 1 (see Table 2's notes for fit indices) indicates that potential common educational or professional associations meaningfully enhance the explanatory power of the baseline court selection model. To ensure that our results are not skewed by the addition of junior lawyers before filing the complaint (but after the choice of venue), in model 3 of Table 2 we reran model 2 analyses using only senior lawyers who appeared in the original complaint file. While the estimate for potential BA asynchronous affiliations loses its statistical significance, the overall results are consistent with those based on the entire lawyer pool and reported in model 2. Finally, our results indicate that the effect sizes of contemporaneous affiliations when selecting a court strongly outweigh those of asynchronous affiliations. This asymmetry likely indicates that the added advantage of acquiring tacit knowledge and the influence associated with contemporaneous affiliations outweigh the stand-alone effects of social identification inherent to asynchronous affiliations.

In Table 3, we test hypothesis 2 (H2) using bivariate probit regression models, which estimate the legal outcomes of a given case conditional on court selection. Models 1a (selection stage) and 1b (outcome stage) report results using both judicial vacancy and local patenting activity as instrumental variables. In models 2a/2b and 3a/3b, we present results using the instruments separately. Consistent with H2, realized clerkship and JD contemporaneous

Table 2. Conditional Logit Predicting Plaintiff's Choice of Venue*

	(1)	(2)	(3)[†]
Average case duration	.003••	.003••	.004••
	(.000)	(.000)	(.000)
Percentage of cases favoring plaintiffs	.012••	.011••	.012••
	(.001)	(.001)	(.001)
Percentage of Democratic judges	−.023••	−.025••	−.027••
	(.001)	(.001)	(.001)
Plaintiff-to-court distance	−.411••	−.360••	−.360••
	(.036)	(.038)	(.037)
Lawyer-to-court distance	−1.527••	−1.467••	−1.126••
	(.032)	(.033)	(.028)
Plaintiff-to-lawyer distance	.545••	.488••	.250••
	(.040)	(.037)	(.036)
Pr(plaintiff engages in a litigation)	71.992••	79.796••	36.686••
	(11.689)	(12.307)	(8.764)
Public company	−.233	−.279	−.407••
	(.154)	(.195)	(.115)
Pr(baseline for BA affiliation)	.038	−.039	−.035
	(.048)	(.052)	(.033)
Pr(baseline for JD affiliation)	−.056	−.114•	−.025
	(.045)	(.048)	(.026)
Number of judges	.022••	−.010••	.009••
	(.002)	(.003)	(.003)
Number of lawyers from elite law schools	.033	.024	.156••
	(.042)	(.044)	(.052)
Number of lawyers with clerkship experience	−.013	−.167••	−.311••
	(.036)	(.042)	(.074)
Lawyers' age	−.031••	−.022•	−.029••
	(.009)	(.009)	(.007)
Number of lawyers' previous appearances in focal court	.198••	.186••	.250••
	(.011)	(.011)	(.013)
Number of claims	−.033	−.019	−.011
	(.044)	(.047)	(.040)
Potential BA contemporaneous affiliations		.456••	.301••
		(.075)	(.102)
Potential BA asynchronous affiliations		.079••	.008
		(.015)	(.025)
Potential JD contemporaneous affiliations		.189••	.209•
		(.068)	(.084)
Potential JD asynchronous affiliations		.075••	.104••
		(.008)	(.008)
Potential clerkship affiliations		2.231••	2.651••
		(.141)	(.216)
Observations	333,716	333,716	262,731
Log-likelihood	−7,395	−6,710	−6,528
AIC	14,822.32	13,462.30	13,098.92
BIC	14,993.80	13,687.38	13,318.97

+ $p < .10$; •$p < .05$; ••$p < .01$; two-tailed tests.
* Robust standard errors are in parentheses, clustered by plaintiff–defendant dyads. Log-likelihood test (model 1 vs. model 2): $\lambda^2 = 1,370.01$, d.f. = 5, $p < .001$.
† Model 3 excludes (1) all non-partners and (2) lawyers added to the case post-filing from the analysis.

Table 3. Bivariate Probit Regression Predicting the Plaintiff's Choice of Venue and Case Outcome*

	(1a) Choice of venue	(1b) Plaintiff's win	(2a) Choice of venue	(2b) Plaintiff's win	(3a) Choice of venue	(3b) Plaintiff's win
Average case duration	.001••	−.000•	.001••	−.000•	.001••	−.000•
	(.000)	(.000)	(.000)	(.000)	(.000)	(.000)
Percentage of cases favoring plaintiffs	.004••	.000••	.004••	.000••	.004••	.000••
	(.000)	(.000)	(.000)	(.000)	(.000)	(.000)
Percentage of Democratic judges	−.009••	.000••	−.010••	.000••	−.009••	.000••
	(.001)	(.000)	(.001)	(.000)	(.001)	(.000)
Plaintiff-to-court distance	−.137••	.086••	−.145••	.086••	−.135••	.086••
	(.014)	(.018)	(.014)	(.018)	(.014)	(.018)
Lawyer-to-court distance	−.451••	−.079••	−.482••	−.080••	−.450••	−.079••
	(.013)	(.015)	(.012)	(.015)	(.013)	(.015)
Plaintiff-to-lawyer distance	.126••	−.060••	.133••	−.060••	.125••	−.060••
	(.011)	(.015)	(.011)	(.015)	(.011)	(.015)
Pr(plaintiff engages in a litigation)	4.560	19.901+	4.772+	19.901+	4.854+	19.901+
	(2.849)	(11.222)	(2.846)	(11.222)	(2.852)	(11.222)
Public company	−.089••	.196•	−.082••	.196•	−.087••	.196•
	(.021)	(.064)	(.021)	(.064)	(.021)	(.064)
Pr(baseline for BA affiliation)	−.015	−.306••	−.013	−.306••	−.017	−.306••
	(.012)	(.042)	(.012)	(.042)	(.012)	(.042)
Pr(baseline for JD affiliation)	.016	.055+	.015	.055+	.017	.055+
	(.011)	(.028)	(.011)	(.028)	(.011)	(.028)
Number of judges	−.007••	−.001•	−.002	−.001•	−.004••	−.001•
	(.002)	(.000)	(.001)	(.000)	(.002)	(.000)
Number of lawyers from elite law schools	−.057••	.071•	−.055••	.071•	−.057••	.071•
	(.014)	(.029)	(.014)	(.029)	(.014)	(.029)
Number of lawyers with clerkship experience	−.080••	.066•	−.077••	.066••	−.079••	.066•
	(.010)	(.026)	(.010)	(.026)	(.010)	(.026)
Lawyers' age	−.017••	−.023••	−.016••	−.023••	−.017••	−.023••
	(.002)	(.006)	(.002)	(.006)	(.002)	(.006)
Number of lawyers' previous appearances before presiding judge	.354••	.007•	.360••	.007••	.352••	.007•
	(.045)	(.003)	(.045)	(.003)	(.045)	(.003)
Number of lawyers' previous appearances before other judges	.061••	.004•	.062••	.004•	.061••	.004•
	(.003)	(.002)	(.003)	(.002)	(.003)	(.002)
Number of claims	−.000	−.044	.000	−.044	.002	−.044
	(.009)	(.029)	(.009)	(.029)	(.009)	(.029)
Number of documents submitted	−.001	.016••	−.001	.016••	−.001	.016••
	(.002)	(.004)	(.002)	(.004)	(.002)	(.004)
Realized BA contemporaneous affiliations†	3.463••		3.447••		3.472••	
	(.343)		(.347)		(.343)	
Realized BA asynchronous affiliations	2.680••	.036	2.659••	.039	2.660••	.034
	(.352)	(.075)	(.351)	(.075)	(.352)	(.075)
Realized JD contemporaneous affiliations	8.352••	1.189••	8.215••	1.193••	8.340••	1.187••
	(.103)	(.312)	(.108)	(.312)	(.105)	(.312)
Realized JD asynchronous affiliations	4.901••	.093•	4.903••	.096•	4.918••	.091•
	(.311)	(.040)	(.316)	(.040)	(.311)	(.040)
Realized clerkship affiliations	8.534••	.664••	8.489••	.670••	8.510••	.661••
	(.204)	(.212)	(.209)	(.212)	(.205)	(.212)
Unrealized BA contemporaneous affiliations	.095••	−.005	.103••	−.005	.083•	−.005
	(.033)	(.021)	(.033)	(.021)	(.033)	(.021)

(continued)

Table 3. (continued)

	(1a) Choice of venue	(1b) Plaintiff's win	(2a) Choice of venue	(2b) Plaintiff's win	(3a) Choice of venue	(3b) Plaintiff's win
Unrealized BA asynchronous affiliations	.054••	.000	.051••	.000	.054••	.000
	(.007)	(.003)	(.007)	(.003)	(.007)	(.003)
Unrealized JD contemporaneous affiliations	−.017	−.069••	−.012	−.069••	−.021	−.069••
	(.034)	(.021)	(.034)	(.021)	(.035)	(.021)
Unrealized JD asynchronous affiliations	.022••	.005••	.022••	.005••	.023••	.005••
	(.003)	(.002)	(.003)	(.002)	(.003)	(.002)
Unrealized clerkship affiliations	1.191••	−.086•	1.192••	−.084+	1.183••	−.088•
	(.064)	(.043)	(.065)	(.043)	(.065)	(.042)
Instrument: Judicial vacancy	.071••		.074••			
	(.011)		(.011)			
Instrument: Local patenting activity	.017••				.018••	
	(.003)				(.003)	
Choice of venue		−.155••		−.167••		−.149•
		(.060)		(.060)		(.060)
Observations	333,716		333,716		333,716	
Log-likelihood	−128,944		−128,970		−128,971	

+ $p < .10$; •$p < .05$; ••$p < .01$; two-tailed tests.
* Robust standard errors are in parentheses, clustered by plaintiff–defendant dyads. All models include filing year indicator variables.
† We were unable to estimate the effect of realized contemporaneous BA affiliations because, in our data, the plaintiffs always settled cases when potential contemporaneous BA affiliations were realized.

affiliations are positively related to the likelihood that the plaintiffs will win the case. Estimates from model 1b suggest that one realized JD contemporaneous affiliation with the presiding judge (compared with no such affiliation) increases the likelihood of the plaintiff winning the case by a factor of 4.6. Similarly, one realized clerkship affiliation with the presiding judge increases the likelihood of the plaintiff's win by a factor of 2.8.[9] The effects of realized asynchronous affiliations on legal outcomes, in contrast, are significantly weaker. They are insignificant for BA asynchronous affiliations and weak in magnitude for JD asynchronous affiliations. We were not able to estimate the effect of realized contemporaneous BA affiliations because, in our data, the plaintiffs always settled the case when potential contemporaneous BA affiliations were realized.[10]

Because smaller foci are more likely to propagate lasting social relationships (Feld, 1981), we explored whether the effect of realized JD contemporaneous affiliations would vary depending on the size of the law school. Using full-time-equivalent student enrollment data from *U.S. News & World Report*, we

[9] An average firm has a 10.6% chance of winning a given lawsuit without any realized or unrealized contemporaneous affiliation. This likelihood increases to 29.4% with one realized clerkship affiliation and to 49.3% with one realized contemporaneous JD affiliation.
[10] For these and other models predicting legal outcomes, we ensured that the independent variables in question do, in fact, predict winning and not just the likelihood of proceeding to trial. We did so by running a series of multinomial logit and simple logit models predicting wins, while varying the baseline category between losses and pre-trial outcomes (i.e., settlements and dismissals).

Table 4. Mediation Analysis Results*

	(1a) Number of revisions	(1b) Plaintiff's win	(2a) Number of revisions	(2b) Plaintiff's win
All control variables and filing-year fixed effects	Included	Included	Included	Included
Realized JD contemporaneous affiliations	−.344•• (.101)	2.451•• (.640)		
Realized clerkship affiliations			.880•• (.312)	.952• (.459)
Number of revisions		.468•• (.059)		.446•• (.060)
95% CI of the average causal mediation effect	[−.047, −.011]		[.019, .113]	
Observations	3,688		3,688	

	(3a) Number of revisions	(3b) Plaintiff's win	(4a) Number of revisions	(4b) Plaintiff's win
Realized JD contemporaneous affiliations	−.523 (.386)	2.392•• (.877)		
Realized clerkship affiliations			2.997•• (.377)	1.869• (.779)
Number of revisions		.438•• (.102)		.343•• (.111)
Linguistic style similarity		.243 (.154)		.322•• (.106)
Number of revisions × Linguistic style similarity†		.145 (.192)		.281• (.125)
95% CI of the average causal mediation effect	[−.115, .014]		[.055, .365]	
Observations	572		603	

+ $p < .10$; •$p < .05$; ••$p < .01$; two-tailed tests.
* Robust standard errors are in parentheses, clustered by plaintiff–defendant dyads.
† Mean-centered.

calculated student enrollment (logged) of the pertinent law schools in the plaintiff-side lawyers' graduation year.[11] Our results suggest that the effects reported in H2 are significantly stronger for smaller schools, thus supporting our conjecture about the formation of social relations and more robust knowledge transfer. A decrease of one standard deviation from the mean in foci size increased the effect of realized JD contemporaneous affiliations on the plaintiff's win by a factor of 2.4.

To test hypothesis 3 (H3), we first explored whether the number of revised complaints mediated the effects of realized JD contemporaneous affiliations and realized clerkship affiliations on the plaintiff's win. The results shown in Table 4 models 1b and 2b indicate that the mediator, number of revised

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[11] Law schools in our data represented medium-sized collectives (mean = 572 students; S.D. = 261 students), which enabled us to capture meaningful effects of foci size on interaction. In contrast, the link between the varying size of student body and propensity for interaction would be less informative for significantly larger undergraduate educational institutions (mean = 9,443 students; S.D. = 9,662 students).

complaints, significantly increased the plaintiff's likelihood of winning the case ($b = .45\sim.47$, $p < .01$). The difference-in-means test revealed a significantly higher number of submitted revised complaints for the condition of realized contemporaneous affiliations than for either unrealized contemporaneous affiliations ($t = 6.26$, $p < .01$) or no contemporaneous affiliations ($t = 4.41$, $p < .01$). This is predominantly because realized clerkship affiliations had a significant, positive effect on the number of revised complaints ($b = .88$, $p < .01$; model 2a in Table 4), which in turn increased the plaintiff's likelihood of winning the case. The 95-percent confidence interval of the average mediation effect excluded zero, thus supporting H3 for clerkship. We did not find evidence that the number of revised complaints mediated the effect of realized JD contemporaneous affiliations.[12]

Results reported in models 4a and 4b of Table 4 indicate that the effect of message tailoring is strongest when both linguistic similarity and number of revisions are high: the mediation effect of the number of revised complaints becomes more positive when the revision is coupled with a high level of linguistic style similarity ($b = 0.28$, $p < .05$).[13] That is, when plaintiff-side lawyers' potential clerkship affiliations become realized, they revise their message more, resulting in the plaintiff being more likely to win a case, especially when the revisions have a high level of similarity with the linguistic style of the presiding judge. Taken together, the results partially support H3 (only for clerkship affiliations).

The results in models 1b, 2b, and 3b of Table 3 support hypothesis 4: that unrealized JD contemporaneous affiliations and unrealized clerkship affiliations reduce the plaintiff's likelihood of winning the case. One unrealized affiliation reduces the likelihood of the plaintiff's winning the case by about 11.5 percent for JD contemporaneous affiliations and by 12.1 percent for clerkship affiliations.[14] We do not find any evidence for negative effects of unrealized asynchronous BA and JD affiliations. In fact, the coefficients of unrealized JD asynchronous affiliations are positive and statistically significant but negligible in magnitude. Coupled with the previously reported effects, these findings reveal an intriguing pattern. It is conceivable that some legal teams sample heavily on contemporaneous JD affiliations and clerkship affiliations with judges in composing teams, because such affiliations translate into positive legal outcomes. Yet when these affiliations do not materialize because a preferred judge is not assigned to the case, the teams are less likely to win.

In supplementary analyses, we explored the viability of boundary conditions for this argument. Namely, we examined whether plaintiffs actively add lawyers with realized affiliations after the presiding judge is assigned or remove

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[12] Lawyers with realized JD contemporaneous affiliations with the presiding judge submit fewer revisions than lawyers with no such affiliations (model 1a, Table 4). Upon closer examination of our data, we found that this pattern is driven by high numbers of revisions submitted by lawyers *without* contemporaneous affiliations. If we dichotomize the revision count (with values taking on 1 for at least one revision submitted and 0 for no revisions), lawyers with realized JD contemporaneous affiliations are more likely to submit a revision ($b = .63$, $p < .05$).

[13] In these models, we were unable to account for the full set of control variables due to limited data: the linguistic data were available for only 32.7% of the judges in our sample.

[14] An average firm has a 10.6% chance of winning a given lawsuit without any realized or unrealized contemporaneous affiliation. This likelihood drops to 9.4% with one unrealized contemporaneous JD affiliation and to 9.3% with one unrealized clerkship affiliation.

lawyers who have unrealized affiliations with the presiding judge. Neither practice was pervasive in our empirical context. In our data, the odds ratio of adding lawyers with realized contemporaneous affiliations over those with unrealized contemporaneous affiliations was not greater than 1 after the assignment of the judge for any type of social affiliation. The aggregate odds ratio is 0 across all three types of contemporaneous affiliations, suggesting that plaintiffs do not add lawyers who have contemporaneous affiliations with the presiding judge. This may be because of the factors we discussed earlier, including cost and the challenge of bringing a new lawyer up to speed on the case, or it may be because of the limited availability of such affiliations.

In advancing the negative effect of unrealized affiliations on legal outcomes in H4, we suspected that it may be driven by the tension between selecting teammates based on social versus human capital. We thus created a measure that captures the degree to which teams emphasize social capital over human capital in selecting teammates. The variable, *social capital focus*, is operationalized as the proportion of plaintiff-side lawyers who (1) have potential social affiliations (i.e., with any judge on the bench of the focal court) and (2) studied at a non-elite law school, defined as law schools outside the top 14 *U.S. News & World Report* ranking (T14 as it is known in legal circles).[15] In Table 5, we report the results of the instrumental variable bivariate probit regression models estimating the effect of social capital focus on legal outcomes, conditional on court selection. The results indicate that a plaintiff's social capital focus strongly predicts the choice of venue, consistent with our previous results that support H1. Social capital focus, however, has a negative main effect on legal outcomes as shown in model 1b, and this effect is driven entirely by the plaintiffs who end up with unrealized affiliations. When we include the product terms between social capital focus and unrealized contemporaneous affiliations, social capital focus no longer has a statistically significant, negative main effect on legal outcomes (model 2b of Table 5).

Furthermore, we find that most of the negative performance effect of social capital focus on legal outcomes comes from junior lawyers (i.e., non-partners). The junior lawyers are those whom the senior lawyers (i.e., partners) are more likely to add to the case following, in part, the venue discussions with the client. Empirically, we have decomposed social capital focus into two variables: *social capital focus (partners)* and *social capital focus (non-partners).* Results from model 3b in Table 5 show that the magnitude of the negative effect of social capital focus for junior lawyers on legal outcomes exceeds that of senior lawyers by a factor of 20. Taken together, these results indicate that if the social affiliations with key decision makers do not materialize—if the court does not assign a preferred judge to the case—then the tradeoff between human and social capital in team composition constrains the team's performance.

Recall that our analysis of message tailoring was possible only for judges who had written publicly available opinions or other documents. Importantly, our additional analyses revealed that social affiliations with judges have a

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[15] This measure uses the proportion of teammates with advanced degrees from elite institutions to proxy general human capital as opposed to the specialized human capital required for a specific task (i.e., a legal case) (for a similar approach, see, e.g., Hitt et al., 2001). If requisite data become available, a better measurement approach would account for both the general and specialized components of human capital.

Table 5. Bivariate Probit Regression Predicting the Plaintiff's Choice of Venue and Case Outcome*

	(1a) Choice of venue	(1b) Plaintiff's win	(2a) Choice of venue	(2b) Plaintiff's win	(3a) Choice of venue	(3b) Plaintiff's win
All control variables	Included	Included	Included	Included	Included	Included
Realized BA contemporaneous affiliations	3.633••		3.684••		3.423••	
	(.342)		(.344)		(.345)	
Realized BA asynchronous affiliations	2.706••	.032	2.694••	−.047	2.676••	.045
	(.345)	(.075)	(.347)	(.076)	(.351)	(.077)
Realized JD contemporaneous affiliations	8.222••	1.190••	8.170••	1.239••	8.325••	1.090••
	(.096)	(.314)	(.089)	(.310)	(.103)	(.312)
Realized JD asynchronous affiliations	4.853••	.084•	4.855••	.053	4.897••	.086•
	(.308)	(.040)	(.308)	(.039)	(.312)	(.040)
Realized clerkship affiliations	8.400••	.628••	8.352••	.721••	8.550••	.742••
	(.206)	(.211)	(.207)	(.211)	(.205)	(.231)
Unrealized BA contemporaneous affiliations	.007	.010	.061	.010	.098••	.011
	(.036)	(.024)	(.037)	(.026)	(.033)	(.021)
Unrealized BA asynchronous affiliations	.056••	−.000	.057••	−.000	.054••	−.000
	(.007)	(.003)	(.007)	(.003)	(.007)	(.003)
Unrealized JD contemporaneous affiliations	−.032	−.064••	−.072+	−.064••	−.016	−.062••
	(.034)	(.022)	(.037)	(.023)	(.034)	(.022)
Unrealized JD asynchronous affiliations	.022••	.005•	.022••	.005••	.023••	.005•
	(.003)	(.002)	(.003)	(.002)	(.003)	(.002)
Unrealized clerkship affiliations	1.095••	−.069	1.006••	.029	1.218••	−.013
	(.063)	(.044)	(.078)	(.052)	(.067)	(.045)
Social capital focus	1.234••	−.344••	1.679••	.027		
	(.118)	(.128)	(.273)	(.191)		
× Unrealized BA contemporaneous affiliations			−.762••	−.319+		
			(.214)	(.190)		
× Unrealized JD contemporaneous affiliations			.305	−.182		
			(.299)	(.199)		
× Unrealized clerkship affiliations			.684+	−1.531••		
			(.396)	(.447)		
Social capital focus (partners)					−.075•	−.284•
					(.038)	(.135)
Social capital focus (non-partners)					−.858••	−5.646••
					(.221)	(.913)
Instrument: Judicial vacancy	.071••		.070••		.072••	
	(.011)		(.011)		(.011)	
Instrument: Local patenting activity	.017••		.017••		.017••	
	(.003)		(.003)		(.003)	
Choice of venue		−.130•		−.131•		−.154•
		(.060)		(.059)		(.061)
Observations	333,716		333,716		333,716	
Log-likelihood	−128,890		−128,867		−126,592	

+ $p < .10$; •$p < .05$; ••$p < .01$; two-tailed tests.
* Robust standard errors are in parentheses, clustered by plaintiff–defendant dyads. All models include filing year indicator variables.

stronger positive effect on legal outcomes when there are *no* publicly available written documents by a given judge. These findings point to the critical role social structures play in transferring private knowledge.

SUPPLEMENTARY ANALYSES

Lawyers' Specialization in Specific Courts

One scenario of concern involves plaintiffs potentially selecting lawyers who specialize in trying cases in a specific court. If this were the case, choosing a law firm would be equivalent to choosing a court, which would compromise the consistency of estimates in the court selection models. We addressed this concern with a two-pronged empirical approach. First, all our models include the control variable that captures lawyers' experience with the focal venue. Second, in additional analyses, we purged our estimates from the effect of administrative counsel (also called ''local counsel''). Some plaintiffs retain administrative counsel for nominal or convenience reasons such as serving pleadings, motions, notices, and other papers that may require an in-person appearance. While no official roster of administrative counsel exists, our field-work revealed that these are typically small law firm offices located near the court and staffed by graduates of local law schools. Thus in Table C1 in Online Appendix C, in constructing affiliation variables we removed all lawyers whose principal office is located in the same state as the court (model 1), who are not employed by one of the 250 largest U.S. law firms (model 2), who have worked only on cases filed at a single court (model 3), who obtained their BA and JD degrees from the same state in which the court is located (model 4), and who fit any of the four preceding operationalizations of the administrative counsel (model 5).[16] The overall pattern of results in all these models is consistent with that reported in the main models.

Multiplexity

Prior research has suggested that multiplex relationships—those that simultaneously encapsulate multiple affiliations between the same pair of actors—may help actors gain advantage (relative to uniplex ties) by incorporating multiple channels of accessing and distributing information (Padgett and Ansell, 1993; Ansell, 1997; Shipilov and Li, 2012). In our context, however, multiplex, contemporaneous relationships do not exist: our data did not include any teams with multiplex, contemporaneous JD and clerkship affiliations with presiding judges. The teams that had multiplex relations across contemporaneous and asynchronous relationships were no more likely to win cases than teams with only contemporaneous affiliations.

Source of Knowledge Advantage

The advantage we attribute to ongoing social relationships resulting from clerkship could be explained *only* by lawyers' initial learning about the judge during the clerkship period. In other words, having a lasting relationship with the judge beyond clerkship may be unnecessary for this effect to hold. To explore this

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[16] Models 1 and 4 in Online Appendix C also help address the potential spurious correlations between common affiliations and choice of venue caused by common birth or growth locales. For example, because many lawyers and judges tend to remain close to their alma mater, it is plausible that being born or growing up in the same locale can account for both common affiliations and choice of venue. These models, while removing the effect of lawyers' potential attachment to a certain region, reproduced the main results.

alternative, we used geographic proximity between a judge and his or her former clerk as a proxy for continuous contact. In addition to lowering the cost and effort required to maintain connections (e.g., Zipf, 1949), proximity allows actors to overlap in numerous venues that facilitate professional and social contact (e.g., American Bar Association meetings, American Intellectual Property Law Association meetings, children's schools, churches). Such repeated interactions allow judges and former clerks to share, gain, and update knowledge (Zaheer and McEvily, 1999). Supplementary analyses revealed a strong negative interaction effect between clerkship and geographic distance on legal outcomes, in addition to the positive main effect of clerkship. These results support the importance of continuous contact with the judge and of related knowledge updates about the judge, in addition to initial learning during the clerkship period.

The arguments leading to hypothesis 2 suggest that contemporaneous affiliations are more likely to result in private advantage than asynchronous affiliations due to the transfer of critical tacit knowledge. But we consistently found a positive (albeit weak) effect of realized JD asynchronous affiliations on legal advantage. One possibility was to attribute this effect to social identification between lawyers and judges from the same alma mater. We tested this possibility by identifying law schools with higher levels of social identification. Research has suggested that private institutions, as well as institutions with higher rankings, greater alumni donation rates, higher yield rates, or better athletic performance, have higher levels of social identification among alumni (Cialdini et al., 1976; Mael and Ashforth, 1992; Elsbach and Kramer, 1996). We thus estimated the interactions between asynchronous JD affiliations and the following variables: private versus public status, law school ranking, percentage of donating alumni, yield rates, and performance of the university's football and basketball teams (e.g., Baldi, Stern, and Dukerich, 2011).[17] Our tests failed to reveal a consistent effect of these interactions on legal outcomes, casting doubt on the prominence of social identification.

Another possibility was to attribute the effect of contemporaneous JD affiliations to cognitive homophily. That is, perhaps the lawyers and judges were exposed to the same professors and the same knowledge base, leading them to think similarly about legal issues. Such cognitive homophily could help the lawyers influence and persuade the judges more effectively. In supplementary analyses, we decomposed the effect of asynchronous JD affiliations into ''near misses'' (i.e., when lawyers graduated three to five years apart) and ''distant misses'' (i.e., when lawyers and judges graduated six or more years apart). Results reported in Online Appendix D suggest that the lawyers and judges

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[17] Public versus private university status was determined by checking whether the educational institution is operated by privately elected or appointed officials and derives its major funding from private sources. We obtained these data from the U.S. Department of Education's National Center for Education Statistics. We measured law school ranking as the school's position in the *U.S. News & World Report* rankings in the year prior to filing the lawsuit. We calculated the percentage of donating alumni using the two-year average (prior to filing the lawsuit) alumni donation rate of the law school reported in *U.S. News & World Report*'s survey. Information on yield rates, the percentage of admitted students who chose to enroll in the law school in the year prior to filing the lawsuit, was obtained from the same survey. We measured the performance of the university's football and basketball teams as the two-year sum of the number of total appearances in Associated Press weekly polls for both teams of JD alma maters prior to filing the lawsuit. When multiple lawyers represented a plaintiff, we used the corresponding mean value.

who graduated within three to five years of one another account for the overall positive effect of realized asynchronous JD affiliations on winning the case. These findings render preliminary support to the cognitive homophily hypothesis.

Two key pieces of evidence, however, invalidate cognitive homophily as the primary alternative mechanism explaining the effect of *contemporaneous* JD affiliations on legal outcomes. First, the judges' scores on the four dimensions of linguistic style (analytical thinking, clout, authenticity, and emotional tone) failed to reveal evidence of strong clustering by law schools. Empirically, law school fixed effects account for 16 to 30 percent of variation in those dimensions. Second, in estimating the mediation effect of message tailoring, we removed the law school specific variance from that measure using presiding judges' law school fixed effects.[18]

Yet another possibility is that the knowledge acquired through social structures with the judge could be equivalent to that acquired through repeated encounters with the same judge in court. In principle, repeated interactions are the central edifice of learning theories (Bandura, 1986, 2001). To evaluate the effectiveness of learning through repeated encounters, however, one would need to consider the number of such encounters and the nature of learning occurring in those interactions (Vanneste and Puranam, 2010). In evaluative contexts, repeated encounters with the same evaluator could be rare, and the nature of learning occurring in such encounters is likely to differ greatly from that transpiring in social structures. Furthermore, because of the task orientation of such encounters and their more public nature, the values, preferences, and worldviews of evaluators are typically revealed indirectly, through evaluative feedback. Put differently, insights about the evaluator have to be inferred from his or her evaluative decisions. Such feedback loops could be noisy and reflect responses to complex arguments, resulting in incomplete or ambiguous information about the evaluator (March and Olsen, 1975; Vegt et al., 2010; Lee and Harris, 2013). In the case of multiple evaluators, it becomes difficult to isolate the perspective of a given evaluator. Social structures, in contrast, are known to entail more frequent, private, and free-flowing exchanges of information, supplying direct insights about a given contact's values, preferences, or worldviews.

In our context, learning from repeated appearances before the same judge is challenging. Repeated encounters before the same judge are rare. Considering that most cases do not progress to trial and are settled, the opportunities to observe and learn from judges' decisions and behaviors are constrained. Only 7.5 percent of lawyers in our sample had repeated encounters with the same judge that progressed to trial. Furthermore, learning about a given judge is often inferred from judicial decisions as opposed to open and direct discussions that could transpire in social structures. It is thus not

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[18] In an alternative approach, we used the Web of Science data on 3,458 intellectual property–focused articles published in 103 law journals from 1975 to 2013 to match legal IP scholars to law schools. We have subsequently constructed annual IP faculty-to-student ratios for each law school in our sample, using the ratio as a proxy of the likelihood that students who graduated in different years took IP classes from the same instructors. We then included the IP faculty-to-student ratios as controls both as main effects and as interactions with asynchronous JD affiliations. None of the variables resulted in a statistically significant effect on legal outcomes; the main effect of the contemporaneous affiliations and our mediation analyses remained intact.

surprising that while the effect of repeated encounters before the focal judge has a positive effect on legal outcomes, its effect is negligible relative to that associated with social structures: the magnitude of the coefficient estimate for repeated appearances before the presiding judge on legal outcomes is only about .6 percent and 1.0 percent of those for realized JD contemporaneous affiliations and realized clerkship affiliations, respectively (refer to model 1b, Table 3).

DISCUSSION

How do companies strategically shape their external legal and regulatory environments? This question has tantalized organizational theorists for quite some time, and yet the amount of pertinent scholarly inquiry is limited. When and how such influence enables companies to *differentially* benefit from the same legal context has not been well explored. The corporate behavior we studied is distinct from attempts to change legal rules via lobbying or other forms of collective action, thus affecting the application of law for broad groups of corporate actors (e.g., Pfeffer and Salancik, 1978: 188–224; Choi, Jia, and Lu, 2015). Given that law does not fully determine action and leaves room for judicial discretion, our study examined whether social structures between corporate lawyers and judges can be used to affect that discretion. Our principal argument is that such social structures can convey private insights about how judicial arbiters interpret and apply the law, enabling companies to influence a specific judge to obtain private advantage. Our study produced two key findings.

First, companies use the social structures of common educational and professional affiliations that connect their lawyers with judges to manufacture legal advantage. They do so by strategically choosing legal venues in which to initiate legal action, pursuing courts in which connections between their lawyers and judges can translate into legal advantage. When the desired judge is chosen to handle the case, these social structures enable lawyers to revise and tailor their messages to that judge, ultimately securing private advantage. Such influence is beyond what may be anticipated from actors' belonging to the same social category; it stems from leveraging the tacit flows of private knowledge about how a given judge reasons, interprets, and applies the law. Our research design enabled us to capture these elusive influence processes empirically: we find that lawyers with materialized affiliations are more likely to revise their arguments for the presiding judge and do so by matching the judge's linguistic style. Importantly, the effect of affiliations on legal advantage is particularly strong for judges who do not have publicly available judicial opinions or other written documents on record. Although the analysis of message tailoring for such judges is not possible (because their baseline linguistic style cannot be estimated), this finding likely points to the critical role social structures play as conduits of private knowledge.

Our second key finding is that the strategic behavior of seeking and influencing judges via social structures comes with significant risks. In putting together a team of lawyers that has social affiliations with the desired judge, companies appear to shortchange the human capital required for the task. Connections with key evaluators are rare, and it is unlikely that teammates with such connections will also have the specific skills required for the case at hand. We

found that when the desired judge was not assigned to the case, hence leaving social capital unrealized, limited human capital adversely affected legal advantage compared with having no affiliations at all.

The latter finding is subject to a key boundary condition. It holds in contexts in which changes to team compositions are difficult to carry out *after* the evaluators are revealed or changed. Many contexts satisfy this boundary condition because in much project work—whether it is consulting, banking, or information technology—evaluators can change with a project's changing scope and requirements. Yet changing the team composition midway through a project often creates confusion, leads to loss of project-specific knowledge, or arouses tension with evaluators; as such it is rare (Abdel-Hamid, 1989; Bendapudi and Leone, 2002).

The two central findings of our study create a significant tension for companies seeking to shape their legal environments strategically, which is akin to gambling on team composition. If this gamble pays off and the court assigns the desired judge, the upside is significant. If the gamble does not pay off, downsides emerge. Relative to the upsides, the downsides are weaker in absolute terms, but they are more frequent because obtaining the desired evaluator is rare. Tracking a litigation trajectory of an average company, we find that strategically seeking favorable venues and judges produces *overall* negative effects on winning in litigation: –11.2 percent for contemporaneous law school affiliations and –1.3 percent for clerkship affiliations. Thus the rare potent upsides of strategically influencing the legal environment are overwhelmed by the less potent but more numerous downsides resulting from missed attempts to do so. These overall effects should be interpreted with caution: lawsuits vary in their overall significance, and companies may disproportionately benefit from rare critical wins. Furthermore, substantial heterogeneity exists in companies' actual realized rates of success. In our data, some companies needed just one attempt to strike gold and have potential affiliations with judges realized; others did not attain that even after 64 attempts. And these effects vary by the degree to which companies shortchange human capital in pursuing social affiliations with judges.

Contributions

This study makes three key contributions. First, we advance research on how companies can shape and not just be shaped by their legal environments. This is a critical area of inquiry in which scholarly examinations have been lagging (Barley, 2007, 2010; Hiatt and Park, 2013). We unveil a novel channel by which companies can influence their legal environments. Rather than shaping the broader legal environment through collective action, companies leverage social structure to influence the application of law by affecting the discretion of judicial arbiters in a given legal case. Such influence is accessible via the borrowed social affiliations of legal professionals and is thus available to a broad range of market participants who use their services. While it is pervasive, it is difficult to detect and regulate and yet can significantly shape legal advantage.

At the level of a broader economic system, the effect of social structures on legal outcomes is likely to be pernicious, even though we do not directly establish this effect empirically. It appears that when guided by social structures, companies' regular interactions with the law can weaken the predictive power

of universal legal standards in governing economic activity. More concretely, it is plausible that two similar lawsuits could result in dramatically different legal processes and outcomes depending on the social structures connecting the corporate lawyers and judges. And because future legal decisions critically rely on historical precedent in the U.S. common law system, the ensuing evolutionary dynamics could lead to the continuous formation and reinforcement of a less universal and predictable legal system.[19] Since a formally rational legal system is essential for innovation, entrepreneurship, and vibrant economic activity (North, 1990; Edelman and Suchman, 1997), our findings offer a reason to question the legal system's current and future ability to regulate economic activity effectively.

The silver lining lies in unveiling the self-regulating dynamics of the legal system, which could counter the strong pull toward its being less universal and predictable. To be clear, the negative effects on legal outcomes associated with the tradeoff between social and human capital could also destabilize the legal system and its ability to universally regulate economic behavior. The ideal state of a formal and rational legal system requires the absolute determinacy of the universal legal standard in explaining legal outcomes. But a tradeoff between social and human capital could also deter corporate actors' particularly aggressive attempts to leverage social structures to take advantage of the legal system.

Our second contribution is advancing the work on regulatory arbitrage (de Figueiredo, 2005; Ingram, Yue, and Rao, 2010; Rao, Yue, and Ingram, 2011). We show that it is vital to reconsider what regulatory arbitrage could entail. It can incorporate not just the familiar dynamics of seeking favorable jurisdictions but also attempts to secure a desired adjudicator and influence that person's decision making. The influence dynamic we study helps unveil how some companies can secure firm-specific legal advantage in the homogeneous legal environment demarcated by the same jurisdictional boundary. In addition to informing theories of competitive interaction (Rindova and Fombrun, 1999; Gavetti, Helfat, and Marengo, 2017), such firm-specific legal advantage can help tackle some of the pressing questions in theories of regulatory arbitrage (Radaelli, 2004; Carruthers and Lamoreaux, 2016). Specifically, it can help explain why corporate actors do not overwhelmingly flock to the same jurisdictions, which would force regulatory convergence across jurisdictions to manage workload or to attract corporate capital.

Importantly, the search for favorable jurisdictions and judges, as well as attempts to influence those judges, likely extends well beyond patent infringement litigation. Jurisdictional shopping is at the core of many political and legal strategies and is pervasive in contexts where policymaking or policy implementation authority is shared among local, state, and national governments or is distributed across geographical districts. Examples could include companies' strategic choice of jurisdictions for initiating bankruptcy proceedings (e.g., LoPucki and Whitford, 1991) or nation states' efforts to pursue a favorable international venue to address issues of immigration or asylum seeking (e.g., Guiraudon, 2000). Environmental, civil rights, and anti-abortion advocacy groups

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[19] The outcome of a single legal case, for example, can spawn entirely new fields, such as in the emergence of biotechnology following the judicial ruling that allowed the patenting of biological forms (Diamond v. Chakrabarty, 447 U.S. 303, 1980).

and social movements have all been documented to engage in strategic choices of jurisdictions to obtain either favorable application of existing laws and regulations or the passage of new favorable laws (e.g., Handler, 1978; Pralle, 2003). Our hope is that the insights from this study can inform a variety of policymaking and implementation decisions.

An intriguing possibility is that, under certain conditions, former professional affiliations between actors can become a liability. In our empirical context, a possible germane dynamic would be judges applying harsher standards to former classmates or clerks to avoid perceptions of favoritism. Recent research has highlighted how legal agents who previously collaborated and now find themselves in adversarial relationships can escalate conflict systematically to distance themselves from prior collaborators and secure perceptions of unwavering loyalty to their paying and demanding principals (Uribe, Sytch, and Kim, 2020). This effect was found to hold under the following conditions: (1) agents who previously collaborated find themselves in an adversarial, zero-sum relationship in which they represent conflicting principals; (2) the standards of the profession and the paying principal demand unwavering loyalty to the principal; and (3) the fiercely conflicting principals have reasons to be concerned about the agents' expressions of unwavering loyalty. None of these conditions seems to describe the interactions between lawyers and judges in legal proceedings. Coupled with the normalcy of past professional or educational affiliations between lawyers and presiding judges, these affiliations are unlikely to become a liability in this context.

It is conceivable, however, that certain conditions may create equivalent pressures on legal and regulatory arbiters to avoid perceptions of favoritism, thus leading them to exercise harsher judgment against those with prior common professional or educational affiliations. Future research could explore, for example, whether high levels of media scrutiny and public disclosures of past affiliations could render such affiliations disadvantageous to lawyers. Importantly, should such dynamics occur, they would present an equally worrisome case for legal outcomes and the resulting evolution of the legal system, which should evolve absent of the effect of social structures.

Finally, our study informs social network research by illustrating how the flows of alter-specific information to the ego can be reciprocated with alter-specific influence from the ego. We show that the pipes of social structures (Podolny, 2001) are not limited to flows of private information but can also contain the linguistic wrenches of influence. This nuance is important because so much network research has theorized about the transfer of tacit knowledge as underlying the performance effects of social structures. In most cases, however, tacit knowledge is assumed to contain valuable substantive information about a particular practice (Davis, 1991), technology (Tatarynowicz, Sytch, and Gulati, 2016), job candidate or vacancy (Granovetter, 1973), or organizational activity (Burt, 2004). In contrast, our research suggests that acquiring substantive information may not be a necessary condition for such effects of social structures to hold. Instead, social structures can convey information about the alter as the target of influence, thus enabling the focal actor to tailor the message to that alter to elicit compliance. It thus remains unclear to what extent adoption of new ideas or practices in social networks could be driven by the

supply of private information about the practice from network contacts or by the network contacts' delivery of public information in the (privately known) best ways to influence the recipient. The combination of these processes, in turn, could explain the proliferation of suboptimal managerial decisions or the diffusion of inferior practices.[20] More broadly, the focus on activating social capital and the ensuing relational processes (such as influence and flows of information or other resources) is important because it allows scholars to treat structure and the ensuing action as distinct constructs, thus no longer axiomatically ascribing behaviors to network positions (cf. Burt, 1992, 2005).

Furthermore, our results highlight the tension between human and social capital in securing advantage. In many contexts, both human and social capital are critical for performance, and yet it is often futile to hope that the actors who have the most valuable social connections are also the most skilled for the task at hand. How should organizations manage such trade-offs? Our findings suggest that using social capital for team composition is advisable only with respect to the most enduring evaluators, because the change or departure of key evaluators could significantly compromise the team's overall performance. A fruitful avenue for future research would be to explore when and under what circumstances organizations should favor social versus human capital in role assignment or team composition.

While we show that companies prevail in litigation by influencing their legal environment, it is not entirely clear how the resultant surplus is distributed with their external counsel (e.g., Fernandez-Mateo, 2007). In our context, cases that involve a lawyer who has a clerkship affiliation with the presiding judge take 269 additional days, on average, to resolve relative to cases with no realized affiliations, which is likely to result in higher litigation costs for companies. Given the conflicting incentives and the principal–agent tensions surrounding the work of external counsel (Schwartz, 2012), exploring the distribution of surplus constitutes yet another promising direction for future work.

Acknowledgments

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[20] Of concern here is that standard policy protection mechanisms against such harmful effects of social structures, including rules of selective information disclosure or codes of ethics, are unlikely to moderate social influence effectively. As recent legal rulings indicate, our work has immediate practical implications (see Online Appendix E).

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Supplemental Material

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