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NOTES

STRUCTURED PSYCHOMETRICS IN BIGLAW
TALENT ACQUISITION: AI-DRIVEN
QUANTITATIVE FIT

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STRUCTURED PSYCHOMETRICS IN BIGLAW TALENT ACQUISITION: AI-DRIVEN QUANTITATIVE FIT

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INTRODUCTION

“The vast majority of hiring practices today are based on ‘the way it has always been done’ . . . based upon gut feelings, intuition, emotions, subjective beliefs, and common misconceptions about what actually works.”¹ This criticism rings true as well for the hiring practices of large law firms in the U.S., which have shown little industry-wide change since the advent of the *Cravath System*, what Cravath, Swaine & Moore LLP calls their “model for developing talent, incentivizing collaboration and client service, and building long-term relationships of trust.”² The Cravath System is widely emulated by a category of law firms (“Biglaw”) that typically are the largest—in both attorney headcount and geographic reach—and compensate competitively amongst each other. The Cravath System seeks to derive partners “from the ranks of [associates]” and to recruit “the most promising students from a diverse array of excellent law schools” while providing “associates with rigorous and expansive training.”³ Such a model for attracting and developing talent has grown to dominate Biglaw and retains an impressive amount of inertia. “Doing something else than the norm requires effort. But it’s easy to say that hiring is important. And it’s easy to use the same hiring process and screening questions as everyone else.”⁴ For many decades now, Biglaw has comfortably settled on the Cravath System’s hiring philosophy as a sufficient and preferred talent acquisition model.

The Cravath System is not just a talent acquisition model, it is also a talent development model intended to be applied to the same

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¹ ATTA TARKI, EVIDENCE-BASED RECRUITING: HOW TO BUILD A COMPANY OF STAR PERFORMERS THROUGH SYSTEMATIC AND REPEATABLE HIRING PRACTICES xiii (2020).

² *The Cravath System*, CRAVATH, SWAINE & MOORE LLP, <https://www.cravath.com/the-cravath-system/index.html> (last visited Jan. 29, 2022).

³ *Id.*

⁴ TARKI, *supra* note 1, at 20.

individuals it attracts. “However, the strategy of developing your own talent requires enormous discipline and bold bets in building the infrastructure needed to succeed in deploying this strategy.”⁵ The Cravath System has acted as the backbone of Biglaw for many years now and law firms have generally not been perceived to tout incompetent professionals. While the enormous discipline practiced and bold bets currently placed by Biglaw can be argued as more or less effective, improvement is always possible, especially in a business world with ever-evolving goals and competition. Biglaw risks growing complacent, weathering undesirable turnover rates in hopes of producing enough star talent to maintain profit margins and competitive edges. However, “traditional strategies are no longer enough. In today’s era, your team’s talent and passion should be your competitive advantage.”⁶ How can Biglaw gain the courage to evolve out of the cautious approach to attain new competitive advantages when the industry as a whole is reluctant to innovate? “The cautious approach is a ‘recipe for mediocrity,’”⁷ but mediocrity is not what drives the success of law firms. Law firms want rainmakers—profitable partners who have survived unfavorable turnover rates—but little has been done to identify who will or will not become a rainmaker. “If your talent acquisition playbook is the same as most other [firms], you’re in trouble. Chances are that another firm is going to run the same plays with more resources and superior talent—and win.”⁸

Sadly, this is exactly what has been occurring, except that no firm is truly winning. Biglaw has found itself in a perpetual arms race for talent through compensation. But, even market-leading firms find that “their competitors have followed suit and, in effect, will merely have raised the compensation bar for their industry.”⁹ The ineffectiveness of salary-raising races can be evidenced by the tech industry’s growing

⁵ *Id.* at 8.

⁶ *Id.* at ix.

⁷ *Id.* at 8.

⁸ *Id.* at 107.

⁹ *Id.* at 131; see *Biglaw Salary Scale*, BIGLAW INVESTOR, <https://www.biglawinvestor.com/biglaw-salary-scale/> (last visited Jan. 29, 2022) (“The Cravath scale has largely stayed the same across the major law firms because those firms are competing for the best law students from the best law schools. If one firm offers a higher salary, historically the other firms tend to announce salary increases shortly thereafter.”); see also Dylan Jackson, *The Cost of the Talent War: Bonuses, Raises Drive Up Big Law Compensation Expenses by Double Digits*, THE AM. LAW. (Dec. 10, 2021, 5:00 AM), <https://www.law.com/americanlawyer/2021/12/10/the-cost-of-the-talent-war-bonuses-raises-drive-up-big-law-compensation-expenses-by-double-digits/> (“When you look at the expenses of law firms, the No. 1 cost is people.”).

capture of graduates from top-ten MBA programs, where “despite lower salaries, tech has been able to extract more talent from these elite programs”¹⁰ like the traditional MBA routes of financial services and consulting firms (two firm types that acquire talent using a similar process as Biglaw). While law firms have not yet faced such threats to as significant of a degree, the future is far from secure. The Big Four accounting firms, despite currently paying less than half of Biglaw’s starting salaries, have been perceived for over a decade now as a looming competitor for law school graduates.¹¹ The accounting firms are primarily prevented from encroaching on Biglaw’s business (for now) by the inability to practice law rather than an inability to compensate.¹² Nevertheless, accounting firms have increasingly employed law school graduates in past years.¹³ And, in a scenario in which accounting firms begin hiring practicing lawyers, law firms will suddenly have to compete for talent, beyond compensation.¹⁴ Later described in this Note, such a scenario could prove problematic to Biglaw because firms do not screen for associates that openly desire high compensation; they instead interview for the exact opposite—intrinsically motivated employees.¹⁵ Law firms offer competitive compensation, but do not default to selecting compensation-motivated employees.¹⁶ Further, these compensation-motivated employees may drift to firms able to offer a larger variety of

¹⁰ TARKI, *supra* note 1, at 133.

¹¹ Victoria Hudgins, ‘Business-Minded’ Law School Students Grab Big 4’s Hiring Attention, LAW.COM (Jan. 20, 2021, 11:38 AM), <https://www.law.com/legaltechnews/2021/01/20/business-minded-law-school-students-grab-big-4s-hiring-attention/>; Aaron Muhly, *Talent Battle: Big Four vs. Big Law*, EVELAW, (June 25, 2019), <https://www.evelaw.eu/blog/2019/6/20/talent-battle-big-four-vs-big-law>.

¹² See Meg McEvoy, *ANALYSIS: The Big 4 Is Knocking – Are State Bars Answering?*, BLOOMBERG L. (Sept. 18, 2019, 5:01 AM), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-the-big-4-is-knocking-are-state-bars-answering> (“U.S. law firms are still somewhat insulated from competition from the Big Four by attorney ethics rules that, in theory, bar them from practicing U.S. law. When and how the large accounting firms will enter the practice of U.S. law is one of the biggest debates in the legal industry today.”).

¹³ Bruce MacEwen, *Whither the Big 4?*, ADAM SMITH ESQ. (Jan. 23, 2016), <https://adamsmithesq.com/2016/01/whither-the-big-4/> (describing how in 2016, “about 5-10% of US law school graduates went to work for an accounting firm”).

¹⁴ Bruce MacEwen, *The Associate Comp Wars & Thick/Thin Communities*, ADAM SMITH ESQ. (Mar. 10, 2022), <https://adamsmithesq.com/2022/03/the-associate-comp-wars-thick-thin-communities/2/> (“compensation per se ranks as ‘one of the three [motivators] at the bottom of the list’” of factors that contribute to job satisfaction).

¹⁵ LAUREN A. RIVERA, PEDIGREE: HOW ELITE STUDENTS GET ELITE JOBS 151 (2015) (“[T]he best paths and values were those presented as having been guided by intrinsic versus extrinsic motivations.”).

¹⁶ *Id.* at 163-64.

non-compensation reasons to work.¹⁷ As it becomes clearer that law firms are mirroring each other's hiring practices with no real hiring threat around, it also becomes clearer that few law firms have any *unique* competitive advantage in terms of talent, which is the very prized possession of any professional service firm. In Biglaw's tight contest for talent, slightly tipping the scales by finding marginally better candidates can make an impressive difference.

Although a law firm may employ hundreds or even thousands of revenue-generating employees, law firms operate under a Pareto or power-law distribution,¹⁸ where it quickly becomes apparent that having one rainmaking partner is many times more valuable than an army of entry-level associates. This is especially true in a profession where "the dollar value produced by each person can be precisely tracked"¹⁹—the billable hour for associates and fees collected for partners conveniently serving as the dominant measures of productivity in law firms. Power-law distribution is not unique to law firms, since research of over 600,000 professionals and 198 samples showed that "[r]esults are remarkably consistent across industries, types of jobs, types of performance measures, and time frames and indicate that individual performance . . . follows a [Pareto] distribution."²⁰ Thus, it is advantageous for law firms to improve at recognizing and acquiring talent with the highest productive potential.

While the efficacy of existing hiring practices in Biglaw is certainly debatable, moving a mountain is not accomplished by finding the biggest shovel possible. A complete overhaul will take decades, bring chaos and costs, and be subject to great resistance in an already resistant-to-change industry.²¹ Blatant first-movers will be punished by clients and

¹⁷ MacEwen, *supra* note 14 ("[F]irms raising comp at the fastest rate fare no better at all in retention than their lagging-behind peers.").

¹⁸ See Michael Barrons, *Do the Math: How the 80/20 Rule Can Elevate Law Firm Productivity*, INFOWARE (Oct. 12, 2017), <https://infowaregroup.com/blog/do-the-math-how-the-80-20-rule-can-elevate-law-firm-productivity>. This is true not only between colleagues but also between firms. See Bruce MacEwen, *Is Your Firm Playing to Win, or Not to Lose?*, ADAM SMITH ESQ. (Oct. 7, 2018), <https://adamsmithesq.com/2018/10/is-your-firm-playing-to-win-or-not-to-lose/> ("10% of the entire revenue of the [AmLaw] 100 firms is accounted for by the top three . . . and the top nine firms garnered as much revenue as the entire bottom half of the 100 firms.").

¹⁹ TARKI, *supra* note 1, at 6.

²⁰ *Id.* at 7.

²¹ See *Overcoming Lawyers' Resistance to Change*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/insights/articles/overcoming-lawyers-resistance-to-change> (last visited Mar. 26, 2022); see also Himesh Chavda, *Breaking the Resistance to Change – The Cultural Challenges Hindering Innovation in Law*, LAW.COM (Jan. 15, 2019, 12:00 AM), <https://www.law.com/international->

competition alike and will risk the disease of over-uniqueness.²² There is also no obvious argument that Biglaw needs a complete transformation either because law firms are already successful as is in developing rainmakers and pleasing clients with competent legal services.²³ Change must be slow and deliberate using tools that are certain to work and will bring meaningful impact. Here, the task is not to upend what law firms are looking for; we can put faith into the fact that law firms have been and are continuing to be profitable while using the Cravath System.²⁴ Instead, the task is to approach select imperfections and improve Biglaw's hiring process rather than its hiring criteria. This Note combines a number of perspectives and disciplines to proffer a unique suggestion toward recognizing better talent and acquiring a new intra-industry competitive edge.

First, the Cravath System will be described and stripped down to its recognizable components. Understanding what Biglaw seeks in talent, how they have been finding it, and why the hiring practices have not budged will be crucial. Biglaw falls under the category of elite professional services ("EPSs"),²⁵ where both the criteria and process can be collapsed into one term: the *sponsored contest*.²⁶ After describing the sponsored contest, which gives great insight into both the what and the why of the Cravath System, the criteria and process behind Biglaw hiring

edition/2019/01/15/breaking-the-resistance-to-change-the-cultural-challenges-hindering-innovation-in-law/.

²² Zebras are an excellent example of the potential dangers of standing out. Although camouflage is a default explanation for many animals' fascinating physical appearances, the zebra stands out in the Savannah grass while its lion predators are camouflaged instead. When scientists marked a particular zebra in order to distinguish it from the herd for studies, the distinction would lead to the zebra getting eaten by lions the quickest. The stripes on a zebra appear to camouflage them with each other than with the environment. Like a red-painted zebra, an over-unique law firm whose competitors and clients alike can distinguish as diverging too far from an accepted practice places itself in a high-risk high-reward scenario that can resemble gambling more than smart business strategy. See Taylor Foreman, *This Weird Zebra Story Will Make You Understand Creativity*, ILLUMINATION (Aug. 16, 2020), <https://medium.com/illumination/this-weird-zebra-story-will-make-you-understand-creativity-89c83fce6ce4>; see generally Brad Shorr, *Being Unique Is a Bad Way to Sell*, LEAD GENERATION INSIGHTS (May 9, 2017), <https://www.straightnorth.com/insights/being-unique-bad-way-sell/>.

²³ Nicholas Bruch, *Law Firms Are More Profitable Than Ever. How are They Doing It?*, L. J. NEWSL. (Nov. 2018), <https://www.lawjournalnewsletters.com/2018/11/01/law-firms-are-more-profitable-than-ever-how-are-they-doing-it/?slreturn=20220029024524> ("[T]he vast majority of firms within the Am Law 200 have reported increases in inflation adjusted [profit-per-equity-partner] over the past decade.").

²⁴ *Id.*

²⁵ RIVERA, *supra* note 15, at 16.

²⁶ *Id.* at 30.

will be examined to see if and where it is open to improvement. Much like a patient's visit to the doctor, positive change begins with diagnosis rather than jumping straight to prescription. I will argue that it is the process—namely grounded in an excess of subjective evaluation—and not the criteria that warrants a priority for change if the goal is to make adjustments that are both meaningful and implementable. Thus, a proposal for updating the process, in order to be palatable and practical, must either stay true to the existing criteria or only offer the slightest of tweaks. The proposed change is *quantitative fit*, or an objective and structured evaluation of personality using psychometrics. The central reason why personality measurement can provide a proper change in the hiring process without perverting criteria is that Biglaw *already* subjectively selects for personality.

Second, because the prescription for changing the hiring process will be to introduce personality psychometrics, the Five-Factor Model of personality will be described, its methodology analyzed, and its validity and reliability defended. Then the Five-Factor Model will be made applicable to identified issues in the Biglaw hiring process. Each personality attribute will be assessed for its capacity to help identify proper talent for Biglaw. I will argue that objective personality testing will both rein in and complement the hyper-subjective process that law firms currently rely on.

Third, this Note will examine the effective implementation of quantitative fit. One apparent challenge is ensuring that personality profiles are considered in light of the endless, dynamic, immeasurable, and complex variables that go into understanding a human. In addition, in seeking to complement and not replace existing Biglaw hiring practices, quantitative fit should not draw conclusive boundaries to define what proper talent looks like. Rather, quantitative fit should be used by law firms as a calibration tool to guard against the fallibility of human judgment. I will argue that artificial intelligence can help to make quantitative fit sustainably implementable. Although Biglaw's talent acquisition model has been stable for decades, the modern professional world changes daily, and "[t]here are no quick fixes, and nothing works *all the time*."²⁷ What law firms want may change as the market, economy, candidate pool, technology, clients, and who-knows-what change. Artificial intelligence can become the tool by which a candidate's personality and the ever-changing desires of law firms remain aligned. This Note argues that implementation via artificial intelligence can play

²⁷ TARKI, *supra* note 1, at 37.

two simultaneous roles: reinforcing existing criteria while transforming process.

“Top-tier talent used to be equally inaccessible to all companies, but now . . . is reachable by companies that embrace innovating technologies and practices.”²⁸ With Biglaw being relatively non-innovative to date, there exists an undefined and untapped potential for competitive edge driven by better measuring personality. In fact, personality is perhaps the most important measurement that already exists in Biglaw. In all EPS firms, Biglaw especially, *fit* is an anchoring criterion at the interview stage, a necessary component to ultimately be selected for a position. “Interviews—which . . . carried great weight in final hiring decisions—were seen as highly subjective assessments *based on applicants’ personalities* rather than their qualifications listed on paper.”²⁹ Because fit is shorthand for a candidate’s personality, the existing criteria simply become complemented with its structured version in the form of a statistically rigorous personality profile—the quantitative fit. It is prescribing an objective and structured perspective to the evaluation of personality, specifically using machine learning, from which Biglaw can benefit—a treatment that is relatively easy to administer, already graduated from the uncertain realms of hope or scientific non-rigor, and self-adapting for the future.

I. WHO GETS HIRED BY BIGLAW?

“[M]ost interviewers [use] their own ‘One Big Idea’ that they believe will help them predict on-the-job success for candidates.”³⁰ Biglaw’s One Big Idea is fit. A study of EPSs by Professor Lauren A. Rivera showed that evaluators “named fit as *the most important criterion* at the job interview stage.”³¹ Fit can be summarized as shared values, an applicant’s stable personality traits, and “similarity in play styles.”³² Fit is “perceived to be a stable personality characteristic of applicants—they either had it or they did not”³³ and “[f]irms try to minimize attrition by using fit as a selection tool.”³⁴ One law firm hiring manager boasted to Rivera that “you can tell we were all recruited to come to [this firm] because we all have the same personalities. It’s clear

²⁸ *Id.* at 27.

²⁹ RIVERA, *supra* note 15, at 111 (emphasis added).

³⁰ TARKI, *supra* note 1, at 34.

³¹ RIVERA, *supra* note 15, at 136 (emphasis in original).

³² *Id.*

³³ *Id.* at 137.

³⁴ *Id.* at 139.

we're all the same kind of people.”³⁵ As the former chief talent officer at Netflix, Patty McCord stated, “[m]aking great hires is about recognizing great matches—and often they’re not what you’d expect.”³⁶

Thus, Biglaw’s current One Big Idea, fit, is the *matching of personalities*. “We think that our One Big Idea is the best predictor of future success when assessing a candidate, but why do we do this? Because none of the available methods are entirely able to predict on-the-job success, we are tempted to think that nothing works.”³⁷ Does fit predict anything effectively? Before fully analyzing fit, the foundation for the process that leads to the consideration of fit should be explored. Fit is not the sole criterion, and despite being the *most important*, it is not considered first either. Biglaw must be more than finding personality matches, and there must also be a compelling reason to allow a single-minded focus on fit. Prior to subjectively evaluating fit, Biglaw is oddly obsessed with the exact opposite: *structured evaluations*.

Practically speaking, “structure” is accomplished by ensuring that each incident can be measured with *reliability*.³⁸ “Test reliability shows how consistent a measure is”³⁹ across multiple measurements. If a different evaluator can get the same measurement of a candidate across multiple repetitions of that measurement, then the measurement is reliable. While subjective evaluations are not necessarily unreliable (i.e., if you know a person very well to begin with), hiring generally involves people who cannot be subjectively measured because most interviews are novel interactions between strangers. Structure, however, does not guarantee *validity*. “Test validity shows the probability that . . . a variable will accurately measure what it is supposed to measure, such as how successful a candidate will be in a job.”⁴⁰ Ten evaluators can ask a fully-

³⁵ *Id.*

³⁶ TARKI, *supra* note 1, at 118.

³⁷ *Id.* at 34.

³⁸ Structure, quantitative, and objective are not entirely synonymous, but the terms, for purposes of this Note, share a degree of interchangeability because they all collapse into the one overall idea being presented. Structure refers to consistency across evaluators which in turn indicates reliability. Generally, structured interviews have different evaluators asking the same questions rather than creating space for evaluator discretion. Quantitative refers to being able to measure data in some numerical fashion. Objective refers to the validity of data not changing between evaluators. Objectivity often requires a lack of bias. The answer to what year candidate John Doe graduated high school should not change regardless of who asks it or answers it. Meanwhile, asking if basketball is more fun to watch than hockey can produce different answers from different people that are all correct. The contrasting terms are unstructured, qualitative, and subjective, and these terms are also somewhat interchangeable for purposes of this Note.

³⁹ TARKI, *supra* note 1, at 172.

⁴⁰ *Id.*

grown adult candidate's height ten different times and the answer will be very reliable because it won't change. But answering one's height has nearly non-existent validity unless height can predict job performance. Height is valid in basketball, but no compelling evidence exists that taller or shorter lawyers can draft better merger agreements. This would mean that measuring height is invalid for measuring a lawyer's job performance.

Biglaw interviews have nearly nonexistent structure, or very low reliability because the interviews are not standardized.⁴¹ While subjective evaluations may indeed be valid, the lack of reliability indicates that the measurement of personality can be improved. It becomes necessary to describe the hiring process from beginning to end and recognize structure where it does appear in order to understand why the interview stage lacks structure and is instead dominated by subjectivity.

A. *The Structure in Biglaw Talent Acquisition*

First-year Biglaw associates are primarily selected from on-campus interviews ("OCIs"), or during a similar season of hiring in which Biglaw firms engage most of their recruiting efforts for summer associates.⁴² Students entering their second year of law school partake in OCIs and spend the following summer with the law firm, usually hoping to receive an offer to return full time after graduation.⁴³ This process is central to the Cravath System but is also analogous to the other EPS firms' talent acquisition models. Investment banking and consulting firms also conduct OCIs and hire the vast majority of their entry-level employees straight out of school.⁴⁴ First, the Cravath System will be explored in greater detail to explain which students even get to play this hiring game. Second, the sponsored contest, a shared phenomenon amongst EPS hiring practices will be explored to find out which students eventually get to win the game.

⁴¹ RIVERA, *supra* note 15, at 124-25.

⁴² *PreLaw - What Is the Timetable for Legal Recruitment?*, NAT'L ASS'N FOR L. PLACEMENT, https://www.nalp.org/pre-law_timetable (last visited Mar. 19, 2022) ("Most large law firms hire their entry-level attorneys out of their summer associate class.").

⁴³ *Id.* ("Not every summer hire will receive a permanent offer, but most usually do.").

⁴⁴ RIVERA, *supra* note 15, at 17.

1. The Cravath System

Initially, the Cravath System was developed by Cravath, Swaine & Moore LLP (“Cravath”) because the “emphasis on credentials had a clear business purpose designed to compensate for the limitations of legal education.”⁴⁵ Early on, “most law schools required little or no college education,”⁴⁶ and the Law School Admission Test (“LSAT”) did not even exist until 1948. “In contrast, Harvard, Columbia, and Yale [law] grads typically had a college degree before entering law school.”⁴⁷ As of 1948, nearly 70% of Cravath’s associates had graduated from one of these three law schools.⁴⁸ As the landscape of the legal education system changed, the Cravath System not only kept its initial rationale but also developed new justifications to remain the preferred model for talent acquisition.⁴⁹

“Intellectual horsepower” may be the briefest summarization of what the Cravath System seeks to secure. With few available signals of legal aptitude or competency, Cravath determined that “the inputs themselves (i.e., qualified associates) had little value to clients. Rather, they needed to be trained by the investment of intensive training.”⁵⁰ Cravath would instead find graduates with the most potential to handle complex legal matters, established work habits, and a desire for growth and longevity. Although Cravath states that “[b]rilliant intellectual powers are not essential,” what a brand new Cravath hire would be expected to provide was a balanced intellectual mold worthy of being crafted internally. A sound education history being one of the few available signals of such worth, college graduates who then performed sufficiently at an elite law school became desired over non-college graduates who likely attended non-elite law schools.⁵¹

However, law firms then and now did little to screen their applicants. Taking as axiomatic that pursuing graduates from elite law

⁴⁵ Bill Henderson, *Part II: How Most Law Firms Misapply the “Cravath System”*, LEGAL PRO. BLOG (July 29, 2008), https://lawprofessors.typepad.com/legal_profession/2008/07/part-ii-how-mos.html.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ The Cravath System’s design does more than act as a model for talent acquisition. The system also seeks to drive attorney development, promote sustainability, ensure lockstep compensation, protect tenure with the “up and out” partner track, internal promotions, and relationships between colleagues. However, these goals are temporally separate enough from hiring practices where they need not be explored in this Note.

⁵⁰ Henderson, *supra* note 45.

⁵¹ *Id.*

schools (in turn inferring an undergraduate education as well) would give access to the type of mold desired, Cravath had little need for developing its own detailed criteria. Even today, “[e]valuators [believe] that ‘the best and the brightest’ [are] concentrated in America’s most elite universities . . . Admission to an elite school [is] seen as a sign of superior ‘intellectual horsepower’ and well-roundedness . . . Such beliefs [lead] firms to outsource the first round of candidate screening to admissions committees at elite universities.”⁵² Because elite universities have already emphasized a student’s high school GPA, test scores, extracurriculars, and personal statements, law schools then applying a similar process again became sufficient for law firms like Cravath to draw their associates out of the best law schools by default.

While some may entirely believe that the strength of one’s legal education is largely indicative of performance on the job, this foundational belief behind the Cravath System makes even more sense for administrative ease. As long as there are enough law students at elite law schools (or gradually higher-performing students at gradually less prestigious schools), “[t]here may be really good candidates out there, but it’s not worth the investment on [the firm’s] part to spend a lot of resources looking for them when [they] have a very good pool that’s easy to reach.”⁵³ The “Big-fish-little-pond” effect⁵⁴ is not a groundbreaking concept anymore, and many hiring partners in Biglaw today are “firm believer[s] that you could get really good candidates from the top 5 percent of most colleges.”⁵⁵ Malcolm Gladwell, in *David and Goliath*, finds that

[t]he more elite an educational institution is, the worse students feel about their own academic abilities . . . And that feeling—as subjective and ridiculous and irrational as it may be—*matters*. How you feel about your abilities—your academic ‘self-concept’—in the context of your classroom shapes your willingness to tackle challenges and

⁵² RIVERA, *supra* note 15, at 36.

⁵³ *Id.* at 37.

⁵⁴ Krysten Crawford, *Stanford Education Study Provides New Evidence of “Big-Fish-Little-Pond” Effect on Students Globally*, STAN. GRADUATE SCH. OF EDUC. (Nov. 30, 2018), <https://ed.stanford.edu/news/stanford-education-study-provides-new-evidence-big-fish-little-pond-effect-students-globally>.

⁵⁵ RIVERA, *supra* note 15, at 36-37.

finish difficult tasks. It's a crucial element in your motivation and confidence.⁵⁶

Thus, while hiring the top student from every law school would be more fruitful than hiring all of the students from just one top school, competition between firms and availability of recruiting resources prove to be substantial barriers. The mentality adopted by firms is that “[t]he focus is on places like Harvard because it’s just easier. You can go lower down in a class and still get those smart, hardworking, well-rounded people.”⁵⁷ The Cravath System, still very much in effect today, continues to trust the screening filters that students have passed just to be admitted to an accredited law school, all of which now require undergraduate degrees. Screening deference is prioritized towards the most elite law schools, since they are the most competitive to get into. Meanwhile, attendance at gradually less prestigious law schools will require a student to prove to a greater degree his or her academic competence post-admittance.⁵⁸ As one attorney stated to Rivera, “I want people from Yale Law to walk through our doors. They are highly unlikely to be failing at life.”⁵⁹

In addition to the reasons stated above, firms continue to employ the Cravath System—prioritizing school prestige and law school grades above all else—for a number of other reasons. First, “firms [view] selecting new hires with prestigious academic credentials as a means of attracting clients and heightening their confidence in the firms.”⁶⁰ Stated simply, *marketing matters*. Even first-year associates who have little experience in the actual practice of law are billed out at hundreds of dollars per hour and will have web profiles on the firm’s site. Clients want to know that they are getting the best so listing degrees from reputable schools alongside Latin distinctions and other impressive credentials is an important marketing tool. Second and relatedly, “[r]ecruiting students from elite schools was also a means of consolidating a firm’s status by developing connections with graduates who were perceived to be the future ‘movers and shakers’ of the world.”⁶¹ Such connections are

⁵⁶ MALCOLM GLADWELL, *DAVID AND GOLIATH: UNDERDOGS, MISFITS, AND THE ART OF BATTLING GIANTS* 80 (2013).

⁵⁷ RIVERA, *supra* note 15, at 37.

⁵⁸ *Id.* at 103 (“At super-elite campuses, grade thresholds were lower, if present at all Conversely, students at less selective institutions needed to be at the top of their classes.”).

⁵⁹ *Id.* at 38.

⁶⁰ *Id.* at 37.

⁶¹ *Id.* at 38.

tied to eventually generating further business over time. Third, firms would “restrict competition to elite schools because their competition also did so.”⁶² Firms do not want to “leave [themselves] up for some kind of negative differentiation before the clients.”⁶³ When it comes to talent acquisition, Biglaw has collectively adopted the Cravath System and refuses to budge for better or worse. While the Cravath system initially rewarded the ‘first mover’ that could gobble up elite talent straight out of law schools, Biglaw now has reasons to not drastically move first when competing for talent because of the fear that aiming for anything less than the appearance of elite leads to consequences. Biglaw talent acquisition has become an arms race for school prestige and top grades, with actual job performance as an afterthought.

Thus, the Cravath System mainly dictates who gets to play the Biglaw game at all. Students either from the best schools or with the best grades (ideally both) get their tickets punched. However, the Cravath System is not a law of nature, it is an industry practice. Explanations for who ultimately wins and why outliers exist are found within the framework of the sponsored contest.

2. Sponsored Contests

“In a *contest system*, competition is open to all; success depends on demonstrated ability . . . By contrast, in a *sponsored system*, existing elites select the winners, either directly or through third parties.”⁶⁴ Biglaw hiring involves many shades of both contest and sponsored systems. Like a contest system, anyone can apply through a firm’s job posting as long as they have the requisite application materials. Like a sponsored system, firms will show greater interest and dedicate the most resources to applicants partaking in OCIs from the most prestigious law schools or with referrals. Like a contest system, the barriers to entering law school are relatively low: there are no required majors, no minimum LSAT score or undergraduate GPA, no requisite prior work experience, and the total seats available across U.S. law schools are plentiful to the extent that complaints of a saturated legal job market are now common. Like a sponsored system, law firm positions historically were upper-class jobs “restricted to white, Anglo-Saxon, Protestant men from families with ‘good names.’”⁶⁵ Thus, the Biglaw talent acquisition game can be

⁶² *Id.*

⁶³ *Id.* at 39.

⁶⁴ *Id.* at 29 (emphasis original).

⁶⁵ *Id.* at 30.

considered a *sponsored contest*, where “[a]nyone may apply, but in reality, employees considered only those applications sponsored by existing elites: either prestigious universities or industry insiders.”⁶⁶

The Cravath System is one piece of the whole picture, albeit a significant one. An elite law school acts as an *institutional sponsor* to a candidate’s Juris Doctor degree (or one in progress), and also endorses the grades earned. Generally speaking, as the prestige of a law school decreases, so does the strength of the sponsorship. What the Cravath System does not naturally capture is something that was traditionally prevalent in the legal industry and still is today: *individual sponsorship*. Although individual sponsors can gradually sponsor an institution rather than a student (i.e., “new or less prestigious schools could be put on the list [of target schools] if the firm had high-ranking employees who were graduates and pushed the firm to recruit from their alma mater”),⁶⁷ much of individual sponsorship takes the form of a personal relationship. “In many firms . . . an application from a student at a [less prestigious] institution was discarded without review unless the applicant had an individual sponsor”⁶⁸ In order to be considered as an applicant without fitting the default criteria of the Cravath System, “[y]ou need to know someone, you need to have a connection, you need to get someone to raise their hand and say, ‘Let’s bring this candidate in.’”⁶⁹ An individual sponsor can then be understood as “a person in a firm who would vouch for [an applicant] and push their application into the consideration set.”⁷⁰

There are three dominant hypotheses for why individual sponsorships work. “Each of these theories presents the value of referrals as stemming from employers’ rational calculations about what makes a more productive worker and workforce.”⁷¹ The *better match hypothesis* states that “because existing employees know important information about the formal and informal demands of jobs, they may bring forward applicants who are a better fit with job requirements than those acquired through less personalized sources.”⁷² This hypothesis seems at least plausible, since law firms seem to recognize that their default metric, the Cravath System, may not provide results reliable enough to capture exceptions to the rule. The second is a *richer pool hypothesis*, which

⁶⁶ *Id.* at 30.

⁶⁷ *Id.* at 32.

⁶⁸ *Id.* at 35.

⁶⁹ *Id.*

⁷⁰ *Id.* at 48.

⁷¹ *Id.* at 49.

⁷² *Id.*

states that applicants presented through referrals are more appropriate based on screening requirements. This hypothesis seems unlikely since (1) the Cravath System appears to capture those screening requirements quite well already, and (2) Rivera's studies showed that "[r]eferred applicants usually were atypical; referrals compensated for candidates' lack of desirable and easily observable qualifications."⁷³ Stated simply, good qualifications do not need referrals. The third hypothesis is the *social enrichment hypothesis*, that "preexisting ties . . . can enhance on-the-job training, satisfaction, or mentoring."⁷⁴ Social enrichment seems plausible in many instances but is far from the rule. The power of individual sponsorship is not limited to the hiring of associates that will directly work in the same team or office as the sponsor. Social enrichment may very well be the case in some sponsorships but not in others.

The forms of individual sponsorship commonly fall into a few categories. First, a "sponsoring employee would directly deliver the job seeker's application (in person or via email) and draw attention to it."⁷⁵ Since a firm's first line of evaluators often ignore resumes and applications that do not seem desirable according to the Cravath System, individually sponsored applicants would instead receive an express lane to review (i.e., consideration for interviews). Second and third, "[d]ue to internal and external power dynamics, the referrals of senior employees and clients carr[y] great weight."⁷⁶ "A senior employee . . . could push through an applicant to the interview stage for any reason, even a personal whim regardless of the quality of the candidate's resume," while *high-tough referrals* (referrals from clients or judges) "were widely seen as 'business development activity,'"⁷⁷ and would also secure a first-round interview though usually not more.

Here is where the "structure," or objective portion of Biglaw talent acquisition ends. Admittedly, there is a lot that has gone into it by now, but considerations that can be compared by numbers or answered in a reliable yes/no fashion do not systematically exist beyond this point. Although it is worth investigating the validity of a school's rank,⁷⁸ a rank

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 50.

⁷⁶ *Id.* at 52.

⁷⁷ *Id.*

⁷⁸ Perceptions of which schools are more or less prestigious is derived not from any one official ranking but general perceptions, historical relevance and longevity, ranking reports. RIVERA, *supra* note 15, at 32 ("Firms commonly made their school selections based on general perceptions of . . . institutions' prestige In addition, firms used the reports of external ranking organizations such as U.S. News and World

can be listed in a reliable manner. A school either is or is not ranked higher than another. GPA or class rank is also objective and reliable because a candidate's answer will not change from one evaluator to the next. Individual sponsorship is also objective despite its fluid and arbitrary appearance. Competing for individual sponsorships is the primary goal of professional networking for an active job-seeker and although luck, preexisting personal relationships, and subjective judgment may all affect whether a candidate has an individual sponsor, there is a structure for law firms because it is an objective and rather simple inquiry: "do you have a sponsor and who is it?"

The winners of the Cravath System compounded with individual sponsorships are not those who ultimately get the job. At the interview stage, a brand new process shows face, and it uses heavily unstructured criteria. Even for first-round interviews (which are shorter but not procedurally different than second/final round interviews), many law firms choose to shift gears to subjective evaluation and sometimes entirely ignore who the better candidate was at the structured level.

B. Unstructured Interviews: Evaluation Designed for Human Error

"[I]f something feels as if it should work, many of us convince ourselves that it does."⁷⁹ Biglaw talent acquisition is no exception. Evaluators in Biglaw interviews are often given no significant instructions other than for presentation's sake (e.g., don't cut interviews short, don't take notes so that it feels more like a conversation, and don't forget to respond to thank you emails).⁸⁰ Rivera's insider experience at an EPS firm's training for evaluators showed that subjectivity was not only acknowledged but even endorsed. Instructions were the likes of "[i]f someone bothers you, don't let them go forward,"⁸¹ and "[w]e trust your judgment. You'll get a sense of the whole candidate."⁸²

It sounds odd that even if the interview is unstructured, evaluators would suddenly remove objective criteria entirely. If a candidate came

Report and the Law Schools Admissions Council."). In addition, while the most prestigious schools are desired in just about any Biglaw firm, more local schools to a specific office tend to be given more consideration, in part because having a candidate remaining in the office for many years is desired and having local ties serves as evidence of it. Remaining in the same firm for many years to eventually become an internally-developed capable attorney is also part of the Cravath System.

⁷⁹ TARKI, *supra* note 1, at 31.

⁸⁰ RIVERA, *supra* note 15, at 115, 117.

⁸¹ *Id.* at 116.

⁸² *Id.* at 117.

from an elite school with top grades, shouldn't that candidate's pedigree be weighted during final consideration for the position? If a candidate was sponsored, shouldn't the sponsorship mean something beyond an invitation to interview? The lack of harmony between the two criteria sets at the resume and interview stages is a head-scratcher for sure. "Evaluators believed that merit was best assessed by evaluating 'the person' not 'the paper' and they did not trust resumes to reliably predict job performance."⁸³ If evaluators do not care for a school's prestige and the candidate's grades—despite heavily screening for them earlier—and do not believe that they serve as evidence of merit or job performance, then it must mean that both merit and job performance predictors can be observed in an interview, the only other stage before final decisions for job offers are made. However, Biglaw does not conduct case-based interviews, behavioral questions, or any particular kind of filter for competency at all. Biglaw believes that interviewing requires no formal training and instead relies on common sense to have "just a conversation."⁸⁴ Because there are no detailed guiding principles for the Biglaw interview, it lacks consistency across multiple evaluations and is unstructured to the point where human error in judgment appears to be invited rather than guarded against.⁸⁵ One law firm hiring manager told Rivera that "[o]ur attorneys bring their own styles to interviews. . . . We trust their instincts."⁸⁶ This means that the full arsenal of human biases is welcome in making final hiring decisions.⁸⁷ A biased result is one that

⁸³ *Id.* at 118.

⁸⁴ *Id.* at 123.

⁸⁵ *Job Interviews Don't Work*, FARNAM ST., <https://fs.blog/job-interviews/> (Last visited Jan. 29, 2022).

⁸⁶ RIVERA, *supra* note 15, at 124.

⁸⁷ One rather obvious problem in addition to bias is the possibility for reinforcement of any discriminatory outcomes resulting from existing hiring practices. However, discrimination is an issue to be addressed separately from this Note. I assume that firms do not want to change what they want in their talent, and implicit in that assumption is that what law firms want in their talent is/should be legal (i.e., non-discriminatory). There is no argument underlying this Note that any existing or potential discriminatory outcomes should be permitted or reinforced as a consequence of psychometrics or artificial intelligence having greater presence in talent acquisition. Discriminatory outcomes attributable to the use of personality profiles or machine learning should be stress-tested for and addressed with great attention as any hiring process or criteria should be. If a discriminatory outcome is suspected, taking a step back from implementation in order to assess whether implementation was the cause or revealer of such outcomes should be one of the first questions asked. With that in mind, I will briefly mention that I expect that the FFM can be validated using criterion-related validation in a disparate impact suit. "Of the three methods of validation, criterion-related validation is the only one which correlates tests results with actual work performance and is thus considered preferable to methods based on less direct evidence." JOEL WM. FRIEDMAN, *THE LAW OF EMPLOYMENT DISCRIMINATION: CASES AND MATERIALS* 320, 321 (13th ed. 2020). Criterion-related validation is in fact

is “systematically off target,”⁸⁸ and, in talent acquisition, off target means that the best candidates are getting overlooked.

There is a myriad of potential biases that can enter the scene when making an evaluative judgment about another person. Keep in mind that a law firm interview’s One Big Idea is fit. The claim in this Note is not that injecting structured psychometrics into evaluations will change the criteria, but rather that final determinations of the same fit that is currently assessed will be less biased—less systematically off target. “[F]or the purpose of evaluating the quality of an employer’s judgments when selecting employees, it seems reasonable to use the judgments that the same employer makes when evaluating the employees thus hired.”⁸⁹ If Biglaw wants to interview for the best fit, then we should be assessing whether or not bias in interviews affects fit.

Interviews are also a minefield of psychological biases. In recent years, people have become well aware that interviewers tend, often unintentionally, to favor candidates who are culturally similar to them or with whom they have something in common, including gender, race, and educational background. Many companies now recognize the risks posed by biases and try to address them through specific training of recruiting professionals and other employees.⁹⁰

With Biglaw providing little to no training and believing that effective interviewing requires little more than common sense and intuition, it is no surprise that many biases become fully expressed. This is already a pervasive issue for any one given pair of evaluator and interviewee. However, “[d]ifferent interviewers respond differently to the same candidate and reach different conclusions.”⁹¹ While there is some correction against biases when interviewing the same candidate multiple times (as is often the case in a second-round, or “callback” interview), first-round interviews, or “screeners,” are often conducted by only one

one way of describing the very machine learning implementation process that I later introduce, Part III, *infra*, and fits well with the concepts of correlation and factor analysis that I later introduced, Part II, Section A.1, *infra*. Criterion-related validity “should consist of empirical data demonstration that the selection procedure is predictive of or *significantly correlated* with important elements of job performance.” 29 C.F.R. § 1607.5 (emphasis added).

⁸⁸ DANIEL KAHNEMAN ET AL., *NOISE: A FLAW IN HUMAN JUDGMENT* 4 (2021).

⁸⁹ *Id.* at 302.

⁹⁰ *Id.* at 303.

⁹¹ *Id.*

revenue generating employee or a human resources staff member. A little positive luck can go a long way if a candidate ends up being evaluated by someone who has biases that work favorably for said candidate. A little negative luck, however, may foreclose an otherwise excellent match between candidate and firm.

Surely, a law firm would not define an ideal candidate to be one who was fortunate enough not to bump into evaluators that had biases against them, but rather a true fit. A complete evaluation of fit is inevitably going to require a subjective component and the subjective component will inherently be riddled with biases. This is why the unstructured evaluation of fit should be complemented (rather than entirely replaced) with quantitative assessments of fit. All it would take for a purely objective talent acquisition model to fall apart is one instance of a new hire, who was entirely decided based on structured measurements of fit, to perform poorly. “The strengths of quantitative methods are that you can measure, standardize, and replicate many of the outcomes. The strengths of qualitative methods are the richness and depth of the insights . . . *both methods should be used as complementary tools when assessing candidates.*”⁹²

II. PERSONALITY PSYCHOLOGY IN THE WORKFORCE

A. *Measurement: The Five-Factor Model*

Personality, or “the general psychology of individual differences,”⁹³ is an admittedly strange subject with an obscure history. The *Five-Factor Model* (“FFM”) of personality failed to launch in the mid-1930s despite coming from Louis Thurstone, a “U.S. pioneer in psychometrics.”⁹⁴ In Thurstone’s Presidential Address for a meeting of the American Psychological Association, Thurstone remarked that “[i]t is of considerable psychological interest to know that the whole list of sixty adjectives can be accounted for by postulating only five independently common factors.”⁹⁵ Thurstone had subjects use sixty adjectives to describe close acquaintances. At this time, the statistical discovery of a personality factor was no eureka moment, since many factors or sub-factors had been discovered in earlier models: the General Factor of

⁹² TARKI, *supra* note 1, at xv (emphasis added).

⁹³ THE FIVE-FACTOR MODEL OF PERSONALITY vii (Jerry S. Wiggins ed., Guilford Publications 1996).

⁹⁴ See L. L. Thurstone, NEW WORLD ENCYCLOPEDIA, https://www.newworldencyclopedia.org/entry/L._L._Thurstone.

⁹⁵ *Id.* at 1; see also note 127, *infra*.

Intelligence (g) by Spearman in 1904, “will” by Webb in 1915, and “cleverness” by Garnett in 1919.⁹⁶ These factors appear to be rough sketches of what eventually became Openness, Conscientiousness, and Extraversion respectively. Oddly enough, the chronology of discovery roughly aligns with the popular mnemonic for the FFM, ‘O.C.E.A.N.’ where Agreeableness and Neuroticism round out the model. The FFM is also popularly known as the Big Five.

The FFM did not maintain a singular form from the 1930s to modern-day. “Until recent times . . . the psychometric approach to the essential dimensionality of personality constructs had failed to produce a generally accepted model.”⁹⁷ Having undergone transformations ranging from three to even ten or more factors, personality appeared to be outside the reach of precision for many decades. However, what is most important is that some variation of a multi-factor model persisted. “Personality psychology rediscovered the five-factor model in the 1980s”⁹⁸ when findings about the statistical model revealed, somewhat reluctantly, that “five-factor solutions were remarkably stable across studies, whereas more complex solutions were not.”⁹⁹ Through the past few decades, the reliability of the FFM has been established with greater scientific rigor, empowered finally by a widespread acceptance within the clinical psychology field, at least for the number of primary factors in a personality model. The FFM, though far from a complete theory of personality, has shown robustness across cultures, media, age groups, and evolution.¹⁰⁰

The methodology of the FMM is of particular importance for understanding its reliability and validity. “In his *Nicomachean Ethics*, Aristotle attempted to provide [a] map for human ‘character’ traits, and since his time, others have tried similar mappings.”¹⁰¹ However, mapping such characteristics requires solving two scientific problems: “(1) a procedure for sampling human attributes, and (2) a method for structuring that sample of attributes.”¹⁰² The lexical hypothesis and factor analysis, respectively, address those problems when it comes to personality. “[M]odern science aims to obtain new knowledge . . . by gathering observations and then using mathematical tools to connect

⁹⁶ FIVE-FACTOR MODEL OF PERSONALITY, *supra* note 93, at 2.

⁹⁷ *Id.* at 12.

⁹⁸ *Id.*

⁹⁹ *Id.* at 13.

¹⁰⁰ *Id.* at 16.

¹⁰¹ *Id.* at 22.

¹⁰² *Id.*

these observations into comprehensive theories.”¹⁰³ Isaac Newton, in *The Mathematical Principles of Natural Philosophy*, “showed that the book of nature is written in the language of mathematics.”¹⁰⁴ Statistics is used in fields of science, like psychology, that are too complex to speak of solely using the language of mathematics. Oftentimes in university psychology curricula, one of the first—if not the very first—required courses is an introductory course in statistics and methodology. A brief, but detailed look into both the lexical hypothesis and factor analysis will be useful in order to apply personality traits—each a product of phenotypical observations and statistics—to Biglaw talent acquisition. Doubt over theoretical perspectives or methodology should be properly addressed first, or else objective results post-implementation that are undesired will be easily cast aside, further propagating an imbalance in favor of subjective hiring.¹⁰⁵ Francis Bacon, in *The New Instrument*, argued that knowledge is power. “The real test of ‘knowledge’ is not whether it is true but whether it empowers us Consequently, truth is a poor test for knowledge. The real test is utility.”¹⁰⁶ After describing its methodology sufficiently to cast aside common levels of doubt (“[m]ost people have a hard time digesting modern science because its mathematical language is difficult for our minds to grasp, and its findings often contradict common sense”¹⁰⁷), the real power of the FFM—utility of understanding the attributes for Biglaw talent acquisition—will be explored.

¹⁰³ YUVAL NOAH HARARI, *SAPIENS: A BRIEF HISTORY OF HUMANKIND* 251 (2015).

¹⁰⁴ *Id.* at 256.

¹⁰⁵ One reason why it is critical to defend the reliability and validity of the FFM is because much of pop personality psychology is riddled with “appealing fictions.” In science, particularly statistics-driven sciences like clinical psychology, measurement is what distinguishes “real” from “not yet real.” For example, the four learning styles (visual, auditory, reading and writing, and kinesthetic), though seemingly plainly observed, have not yet been measured in social psychology and thus have not been made “real.” This does not mean that learning styles do not exist, but rather that learning styles so far have failed to manifest on a scientific level and continue to be an unproven hypothesis if left as is. Entertaining the FFM with room to question its reliability or validity, like the learning styles, especially at the implementation stage is a quick path to ensuring that confirmation bias continues to run rampant in talent acquisition. See e.g., Harold Pasher et al., *Learning Styles: Concepts and Evidence*, 9 *PSYCH. SCI. IN PUB. INT.* 105 (2009); Cedar R. Reiner & Daniel Willingham, *The Myth of Learning Styles*, 42 *CHANGE: THE MAG. OF HIGHER LEARNING* Issue 5, 34 (2010); Beth A. Rogowsky et al., *Matching Learning Style to Instructional Method: Effects on Comprehension*, 107 *J. OF EDUC. PSYCH.* 64, 65 (2015); William Furey, *The Stubborn Myth of “Learning Styles”*, 20 *EDUC. NEXT* Summer 2020 8, 9.

¹⁰⁶ HARARI, *supra* note 103, at 259.

¹⁰⁷ *Id.*

1. Methodology

“Over the years, a number of philosophers and linguists have remarked about the ‘wisdom’ embedded in natural languages.”¹⁰⁸ The *lexical hypothesis* draws on this wisdom and, as language philosopher J.L. Austin notes, “our common stock of words embodies all the distinctions men have found worth drawing.”¹⁰⁹ Under the lexical hypothesis, the “common stock of words” (i.e., everyday language) is a complete collection from which descriptions of individual differences can be acquired. Psychologist Raymond Cattell stated that “[t]he position we shall adopt is a very direct one . . . making only the assumption that all aspects of human personality which are or have been of importance, interest, or utility have already become recorded in the substance of language.”¹¹⁰ Further, although linguistic theory and everyday language will change,¹¹¹ the appearance of new terms is balanced out by the obsolescence of old terms, and this concern is further mitigated when considering that “[a]lthough faddish terms appear and disappear . . . within decades, the overall framework of language is comparatively conservative . . . and most personality terms have been used in a recognizably similar way for centuries.”¹¹²

To better embrace the lexical hypothesis, a few axiomatic propositions should be elaborated on. First, “personality language refers to phenotypes and not genotypes.”¹¹³ Thus, personality consists of mere linguistic observations and are not intended to explain why individual differences are the way they are at a biological level. Second, personality traits, although they may be traits, are more cautiously described as “attributes.” Although I will frequently refer to both traits and attributes interchangeably throughout this Note, the distinction takes precedence over the nomenclature. Traits “are relatively stable over time and across situations. The lexical perspective itself does not require these assumptions.”¹¹⁴ Third, a combination of two propositions are maintained, that “[t]he more important is an individual difference in human transactions, the more languages will have a term for it,”

¹⁰⁸ FIVE-FACTOR MODEL OF PERSONALITY, *supra* note 93, at 22.

¹⁰⁹ *Id.* at 22.

¹¹⁰ *Id.* at 23.

¹¹¹ ROGER BROWN, *PSYCHOLINGUISTICS: SELECTED PAPERS ix* (1972) (“The fact that linguistic theory changes, and does at a rapid clip, poses real difficulties for the psychologist who wants to use linguistic theory in his own work.”).

¹¹² FIVE-FACTOR MODEL OF PERSONALITY, *supra* note 93, at 28.

¹¹³ *Id.* at 24.

¹¹⁴ *Id.* at 25.

alongside that “the more important is such an attribute, the more synonyms and subtly distinctive facets of the attribute will be found *within any one language*.”¹¹⁵ These two propositions are respectively the *across-language form* and the *within-language form*. Unsurprisingly, language also follows a power-law distribution, where the vast majority of linguistic communication is accomplished by a small percentage of existing words. In the English language, roughly 80% or more of speech is accomplished using less than a thousand of the most common words.¹¹⁶ This linguistic phenomenon is strong evidence of both the across-language and within-language forms. Fourth, the *adjective function*, whether carried out by actual adjectives (e.g., he is unorthodox) or other words like nouns or verbs (e.g., she is a maverick), serves as “the central repositories of the sedimentation of important individual differences into the natural language.”¹¹⁷ Although the FFM using the English language relies primarily on adjectives (as most languages do), potential variations must be considered when comparing across languages. Fifth, the lexical hypothesis draws strength, not weakness, from the usage of single words instead of phrases and sentences. “[S]ingle terms often function holophrastically; that is, they can incorporate complex ideas that are normally expressed in sentences.”¹¹⁸ Describing oneself as courageous bypasses with little leakage of meaning the excess words in the sentence “I believe that I am courageous,” all while dodging added ambiguities from attaching additional descriptive words (e.g., “willingly courageous”). Finally, the lexical hypothesis requires that “[t]he most important dimensions in . . . personality judgments are the most invariant and universal dimensions.”¹¹⁹ “A robust and replicable factor solution is one that is so clear and strong that the choice of analytic method becomes unimportant,”¹²⁰ and this becomes particularly important when recognizing consistent results despite variances in language, culture, and reporting environments. The FFM is grounded upon these axiomatic propositions that allow it to be considered a valid, reliable, and universal scientific approach to individual differences.

¹¹⁵ *Id.* at 26 (emphasis in original).

¹¹⁶ 1000 MOST COMMON WORDS, <https://1000mostcommonwords.com/> (last visited Mar. 19, 2022) (“Language learning, like most things in life, follow the Pareto principle. It’s been said that the top 1,000 most frequent words in a language make up over 80% of the speech.”).

¹¹⁷ FIVE-FACTOR MODEL OF PERSONALITY, *supra* note 103, at 30-31.

¹¹⁸ *Id.* at 32.

¹¹⁹ *Id.* at 35.

¹²⁰ *Id.*

Following the lexical hypothesis and just as crucial to the FFM is *factor analysis*. Uncharacteristic for most sciences (if that has not been established already), the FFM came about in an atheoretical manner. In a gross over-summarization, the scientific method hypothesizes a reality and then tests it with control and variable groups. The FFM was more or less “discovered” by utilizing the lexical hypothesis, but no model or even a preferred number of factors was hypothesized in advance. Psychologists did not test to see if “Agreeableness” or “Neuroticism” would be personality traits. The five factors (Extraversion, Openness, Agreeableness, Conscientiousness, and Neuroticism) could have easily been named I, II, III, IV, and V to point to the factors that were discovered. Psychologists simply pushed human language through a statistical process and accepted what came out of the other end.

“[F]actor analysis summarizes the relations between many variables by expressing each variable as some unique combination of a few basic dimensions, known as factors.”¹²¹ A deeply technical and mathematical understanding of factor analysis is unnecessary, and an illustration of factor analysis for the trait Neuroticism might suffice. Neuroticism, which will be fully detailed below, deals in part with anxiety.¹²² If a set of one hundred questions regarding words with an adjective function were given to many self-reporting individuals, one can expect to find that after accumulating sufficient reports, patterns begin to surface. If many people answered affirmatively to three of the hundred words “fearful,” “worrisome,” and “nervous,” then a *cluster* begins to form. A cluster indicates that if a person gives a particular response to a word, he or she is likely to also give a similar response to another word within a group to which that word belongs.¹²³ Clusters are not binary with strict boundaries but will instead be formed out of meaningful *correlations*. Using arbitrary numbers to illustrate, “fearful” and “worrisome” may have a correlation of 0.7, meaning that 70% of affirmative answers for one will also affirmatively answer for the other. “Fearful” and “confident” may have a correlation of 0.15, meaning that only 15% of responses for one match responses for the other. If a correlation is 1.0, it means that 100% of the responses for one word match the other word’s responses and this indicates that *the two are the*

¹²¹ HANDBOOK OF RESEARCH METHODS IN PERSONALITY PSYCHOLOGY 424 (Richard W. Robins et al. eds., Guilford Publications 2009).

¹²² See II.A.2.e, *infra*.

¹²³ See Bernard S. Gorman, *The Complementary Use of Cluster and Factor Analysis Methods*, 51 J. OF EXPERIMENTAL EDUC. 165 (1983) (“[C]luster analysis aims primarily to provide relatively homogeneous groups of subjects and/or variables on the basis of one or more multivariate similarity criteria.”).

same thing. In psychometrics, a correlation of 0.3 or greater is usually considered significant in that the two items are meaningfully related,¹²⁴ and that *something underlying about the two items must be the same.* Thus, if “fearful,” “worrisome,” “nervous,” and a whole host of other words begin to cluster due to their meaningful correlation, a psychologist may conclude that all of these words point to some broader underlying idea and can then title that idea “Neuroticism.”

By presenting the common stock of adjective-functioning common language, across languages, to a very large number of self-reporting participants, five clusters were extracted. Five broader ideas, dimensions, or factors of human personality appeared. The Law of Large Numbers is the principle that “while it might be difficult to predict with certainty a single event . . . it [is] possible to predict with great accuracy the average outcome of many similar events.”¹²⁵ Each of these factors do not definitively speak to any one individual’s proclivities in any particular circumstance, but it does speak both reliably and validly about how a person high in Neuroticism tends to behave across an aggregate of circumstances over time. In fact, one might move the goalpost and pick another level of what a meaningful correlation is, or even check for correlation among discovered clusters. By doing so, two broader factors of personality—Plasticity and Stability—were derived alongside two aspects (i.e., sub-traits) for each of the five main traits.¹²⁶ No trait exists in a bubble, free of any correlation from other traits, and it should not even have to be mentioned that a person is the product of all of his or her personality traits acting in unison, creating a harmony of individual differences that ceaselessly manifests and adapts itself in new circumstances.

Although the field of statistics can offer even greater and more detailed insights, that is a job best left for the statisticians and computers at the stage of implementation. It is, for now, sufficient to provide the tools for a Biglaw firm to select their data to measure and understand the elementary insights provided by the FFM. For example, if meeting billable hours requirements and being in the upper quartile of Conscientiousness positively correlates by 0.8, then it brings into perspective that approximately 64% of the variance (correlation coefficient squared) for meeting billable hours can be explained by being

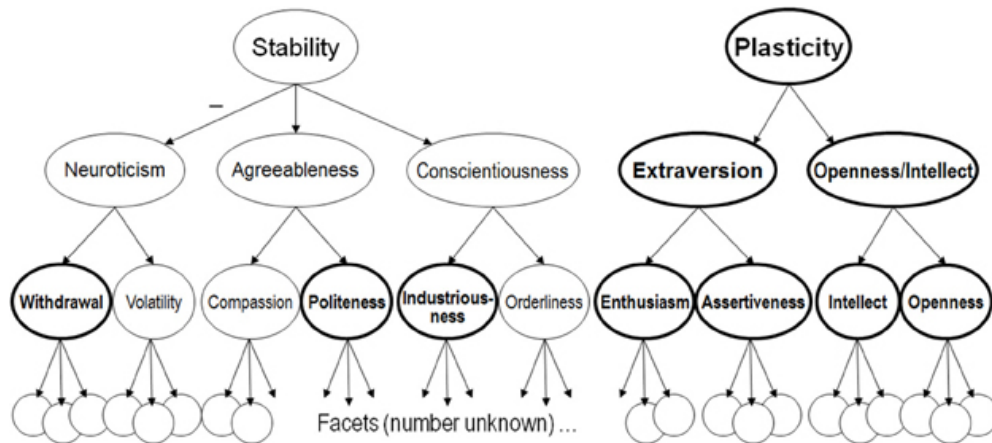
¹²⁴ TARKI, *supra* note 1, at 36.

¹²⁵ HARARI, *supra* note 103, at 256-57.

¹²⁶ Gregory J. Feist, *Creativity and the Big Two Model of Personality: Plasticity and Stability*, 27 CURRENT OP. IN BEHAV. SCI. 31, 31 (2019) (“[T]he five personality dimensions do not seem to be completely independent of each other and hence are not the highest level in the hierarchy of personality.”).

in the upper quartile of Conscientiousness. Such statistical insights are far from becoming the Bible of talent acquisition, but it is unlikely that firms will be harmed by adopting them as calibrators to better recognize talent and ensure that the best candidates are not slipping through the cracks.

2. The Personality Attributes



The FFM, though nominally focused on the number five, has a hierarchy structure within itself that can lend itself to two, five, or ten depending on the level of analysis. All five attributes can be grouped into Plasticity (Extraversion and Openness) and Stability (Agreeableness, Conscientiousness, and Neuroticism).¹²⁷ Each of the five attributes further splits into two aspects (e.g., Conscientiousness consists of sub-clusters Orderliness and Industriousness). Thus, factor analysis allows for someone to endorse either a “Big Two” model or even a “Big Ten” model if desired. Starting with the two attributes that make up Plasticity and ending with the three attributes that make up Stability, each of the five main attributes (and their aspects) will be described. In doing so, implementation can be considered in light of multiple levels of analysis. For example, a personality profile that exhibits just high or low Plasticity and high or low Stability is a far less complex personality profile than one that balances five or even ten attributes. Going deeper is possible with even smaller factors, but even “factor analysis researchers are often

¹²⁷ Although Stability and Plasticity exist from the same atheoretical factor-analysis process that the five main traits were borne out of, psychologists speculate that the two largest clusters form because Stability is related to serotonin-producing experiences and Plasticity is related to dopamine-producing experiences. See generally, Feist, *supra* note 126.

plagued by the problem of choosing an adequate number of factors,”¹²⁸ and it may be imprudent to explore beyond what is commonly researched. Despite the temptation to systemize and break models into more definite components, effective implementation may come at the cost of simplicity, and providing a menu for levels of analysis allows both broad and detailed implementation as desired.

Emphasizing again that the FFM is a model of observation rather than explanation, how we choose to view personality attributes can shape how we frame their utility in the real world. Each attribute can be viewed as a sub-personality or a statistically meaningful cut-out from one overall personality. Each attribute can also be viewed as a frame of reference. To illustrate with a few gross oversimplifications, neurotic people frame the world as a place of possible threats, open people frame the world as a place to engage with abstraction, and conscientious people frame the world as a place to work and organize. If attributes serve as frames of reference, they mold and shape a person’s perceptions. Attributes may also be viewed as value and goal setters. The extraverted person may value, and thus set goals to form relationships with new people. The agreeable person may value, and thus sets goals to alleviate conflict and encourage collaboration. If the purpose of a scientific endeavor is to comprehend and utilize, then it is both necessary and practical to think about the utility of attributes both while they are measured and implemented.

a. Extraversion

The first trait within Plasticity, Extraversion, is one that is well known to the point that it has pervaded popular culture and is a staple even in widespread personality models that lack statistical rigor (e.g., the Myers-Briggs Type Indicator). “Extraversion describes active people who are sociable, talkative, and assertive.”¹²⁹ Although Extraversion is generally perceived as a social trait (i.e., manifests itself because of the presence or absence of other people), it has also been described as reward sensitivity, in which social situations tend to induce the kinds of rewards that people, inherently social creatures, are sensitive to.¹³⁰ Although

¹²⁸ Gorman, *supra* note 123, at 166.

¹²⁹ Kira O. McCabe & William Fleeson, *What is Extraversion For? Integrating Trait and Motivational Perspectives and Identifying the Purpose of Extraversion*, 23 PSYCHOL. SCI. 1498, 1500 (2012).

¹³⁰ *Sensitivity to Rewards May Distinguish Extraverts From Introverts Rather Than Higher Sociability, According to New Study*, AM. PSYCHOL ASS’N (2000), <https://www.apa.org/news/press/releases/2000/09/extraverts>.

“[t]he specific subcomponents of extraversion are debated.”¹³¹ Assertiveness and Enthusiasm are the two most established aspects of Extraversion. “One area of agreement among most researchers is that extraversion is related to positive affect . . . the relationship between extraversion and positive affect holds up even within individuals, such that people experience more positive affect when they act in an extraverted manner than when they act in an introverted manner.”¹³² What was notable for considering the Extraversion of a professional in the workplace was that “[p]ositive affect can be viewed as a proxy for goal achievement—people pursuing our hypothesized goals should show increases in state extraversion, and increases in state extraversion should lead to increased positive affect.”¹³³ Goal achievement here refers to setting and pursuing new career-related goals, not necessarily career success or satisfaction.

b. Openness

The second trait in Plasticity is a rather interesting one, and often controversial. Openness to Experience (“Openness”) splits into the aspects of Openness Proper (“Creativity”) and Intellect. Here is where the atheoretical personality model begins to understandably raise doubt into the minds of non-statisticians. Creativity is not conventionally seen as a personality attribute, and neither is Intellect, which is essentially one’s intelligence quotient (“IQ”). Keep in mind that all factors overlap to a degree, so sub-traits are sub-traits exactly for that reason—Creativity and Intellect significantly correlate into Openness. Openness can be roughly summarized as a facility with ideas and experiences. More broadly defined, “[o]penness to experience refers to the extent to which a person actively seeks and appreciates different experiences and tolerates and explores novel situations.”¹³⁴ Although Openness is consistently associated with all measures of creativity and is thus reliable, it may not be causal. “Openness to experience might not directly cause creativity, but it serves as a ‘catalyst’ for the expression and exploration of creative ideas and activities.”¹³⁵ Creativity can be measured as either a proclivity to engage in divergent thinking or by the accumulation of

¹³¹ McCabe, *supra* note 130, at 1500.

¹³² *Id.*

¹³³ *Id.* at 1501.

¹³⁴ Baoguo Shi et al., *Openness to Experience as a Moderator of the Relationship Between Intelligence and Creative Thinking: A Study of Chinese Children in Urban and Rural Areas*, 7 *FRONTIERS IN PSYCHOL.* 1, 1 (2016).

¹³⁵ *Id.* at 2.

creative achievements (e.g., musical compositions, publications, films acted in, etc.). In either case, something creative must simultaneously be both novel and useful. Creativity can also be broken down into *fluency* (how many ideas one produces) and *originality* (how improbable the ideas are to be produced by others).

Intellect, however, is where things begin to get dicey. “Openness to experience often shows positive associations with IQ test performance . . . intelligence and creativity are positively correlated to a point . . . but the correlation becomes trivial or non-existent above the threshold.”¹³⁶ One tentative conclusion relating Creativity with Intellect is that creative endeavors will often require sufficient Intellect to play with the ideas and concepts, but more Intellect beyond that threshold does not always ensure greater Creativity. There is also a diminishing returns hypothesis instead of a threshold hypothesis. The most controversial part about Intellect, however, is not about its relation to Creativity. IQ, having come about a similar, if not same factor analysis process as the rest of personality and much of social sciences at large, is extremely reliable but heavily scrutinized and criticized for its validity.¹³⁷ Admittedly, intelligence of any kind as a component of personality is an uncomfortable finding to many. Clinical psychologists swear by its reliability, but the competition is thin if any other type of intelligence becomes overshadowed by IQ. If there were more than one type of intelligence, IQ merely being one of them, then there should be a range of correlations between IQ and the other intelligence type, but meaningfully diverse correlations have not yet been found.¹³⁸ In any event, the validity of IQ, like the validity of any scientific phenomenon, should continue to be investigated so that it is further strengthened or challenged in search for the truth.

c. Agreeableness

The first of three traits within Stability is Agreeableness, or the trait that describes “individuals [who] generally engage in less quarrelsome behavior and more cooperative behavior in daily life . . . agreeable individuals exhibit a preference for more socially adaptive

¹³⁶ *Id.*

¹³⁷ See generally Daphne Martschenko, *The IQ Test Wars: Why Screening for Intelligence is Still So Controversial*, THE CONVERSATION (Oct. 10, 2017), <https://theconversationnotecom/the-iq-test-wars-why-screening-for-intelligence-is-still-so-controversial-81428>.

¹³⁸ See note 158, *infra*.

modes of conflict resolution.”¹³⁹ Agreeableness has been hypothesized to have been evolutionarily selected for the proper care of infants or pair-bonding and disagreeableness for purposes of inter-community conflict and tribalism. Agreeableness further has been linked with effortful control (i.e., self-control against intrapsychic urges) which has an inverse relationship with anger and aggression.¹⁴⁰ Agreeableness has also been hypothesized to “describe [a] general tendency to be altruistic,” and an unwillingness to be exploitative of others.¹⁴¹

Politeness and Compassion are the two aspects of Agreeableness. Politeness is the “tendency to be respectful of others and to suppress aggressive, norm-violating impulses,” while Compassion is “the tendency to be emotionally concerned about others.”¹⁴² It is more obvious, at least compared to Openness, to see that the two aspects would belong together and correlate into one larger trait. While some may conflate the two aspects in their day-to-day lives (e.g., rude people do not appear to concern themselves with the emotions of others), the two are in fact distinguishable. Because Politeness and Compassion can be interpreted differently by people according to their culture, values, priorities, and even language, one person might see ‘telling the hard truth’ as both polite (lying is disrespectful) and compassionate (the truth is for your own good), while the recipient may perceive it as both impolite and uncompassionate.

Agreeableness should not be conflated with empathy. Empathy is a term thrown around liberally and has its own arena of common confusion in the social sciences, but it should be noted that while there are agreeable people who are empathetic, they are not necessarily so (e.g., a salesperson must be agreeable but need not be empathetic to customers). Empathy will not be further discussed in this Note below, but out of caution for those who perceive testing for Agreeableness as testing for empathy, it should be noted that the two are not the same. Sometimes, this conflation has served organizations well. Companies and professions like the medical field have begun incorporating empathy training when in reality they are commonly developing agreeable workforces because they value the appearance of Compassion and

¹³⁹ Scott Ode & Michael D. Robinson, *Agreeableness and the Self-Regulation of Negative Affect: Findings Involving the Neuroticism/Somatic Distress Relationship*, 43 *PERSONALITY & INDIVIDUAL DIFFERENCES* 2137, 2138 (2007).

¹⁴⁰ *Id.*

¹⁴¹ Kun Zhao et. al., *Politeness and Compassion Differentially Predict Adherence to Fairness Norms and Interventions to Norm Violations in Economic Games*, 7 *FRONTIERS IN SCI.* May 2016, at 1, 2.

¹⁴² *Id.*

Politeness. Empathy is not a personality component to increase, nor is it a skill that can be taught easily for a professional environment.

d. Conscientiousness

Conscientiousness is probably the most impactful trait for Biglaw talent acquisition to focus on. Conscientiousness is “the propensity to follow socially prescribed norms for impulse control, to be goal-directed, planful, able to delay gratification, and to follow norms and rules.”¹⁴³ The number of potential aspects for Conscientiousness numbers up to seven, the two most recognized being Industriousness and Orderliness, but with room to further recognize impulse control, reliability, conventionality, virtue, and decisiveness.¹⁴⁴ Industriousness is “the tendency to stay focused and to pursue goals in a determined way” whereas Orderliness is “the preference for routines, deliberation, and detail-orientation.”¹⁴⁵ Orderliness and Industriousness might cluster because orderly people need to put in work to keep their lives ordered and that automatically sets a temperamental goal that one pursues by working towards.

Conscientious people are better oriented toward long-term planning and delay gratification. Conscientiousness is also positively correlated with self-reported overall life satisfaction. Because there is always work to be done in life, industrious people especially enjoy working, and working usually improves one’s life rather than destroys it (i.e., earning and saving money to build wealth), it makes sense that Conscientiousness is positively correlated with overall life satisfaction and serves serotonergic functions well by actively resisting chaos.

e. Neuroticism

Neuroticism is defined as “the tendency to experience frequent and intense negative emotions in response to various sources of stress . . . includ[ing] anxiety, fear, irritability, anger, sadness, and so forth.”¹⁴⁶ Conscientiousness and Neuroticism share an inverse correlation, but the

¹⁴³ Joshua J. Jackson et al., *What Do Conscientious People Do? Development and Validation of the Behavioral Indicators of Conscientiousness (BIC)*, 44 J. OF RSCH. IN PERSONALITY 501, 501 (2010).

¹⁴⁴ *Id.* at 502.

¹⁴⁵ Mark Travers, *Two Hidden Personality Traits That High Achievers Have in Common*, FORBES (Nov. 6, 2020), <https://www.forbes.com/sites/traversmark/2020/11/06/two-hidden-personality-traits-that-high-achievers-have-in-common/?sh=e6f5d646bda7>.

¹⁴⁶ David H. Barlow et al., *The Nature, Diagnosis, and Treatment of Neuroticism: Back to the Future*, 2 CLINICAL PSYCHOL. SCI. 344, 344-345 (2013).

inverse correlation by no means indicates exclusivity. One can be both high in Conscientiousness and high in Neuroticism, as commonly seen in law schools where anxious high-achievers and those with imposter syndrome appear to congregate.¹⁴⁷ This relationship leads to Neuroticism possibly being the second most valuable trait to Biglaw.

Generally, Neuroticism is an “exaggerated negative emotionality” and is accompanied by “the pervasive perception that the world is a dangerous and threatening place, along with beliefs about one’s inability to manage or cope with challenging events.”¹⁴⁸ The two aspects of Neuroticism are Withdrawal and Volatility. Logically, this split makes sense. If Neuroticism is considered a sort of “threat sensitivity,” then any time a threat appears, the two options would be to either hide from it or behave in a manner that will shake up one’s reality to counteract the threat-induced volatility. Neuroticism is not simply a measure of sadness, nor is it necessary to push the slightest bit of Withdrawal or Volatility into the realm of psychological disorder.¹⁴⁹ Because many psychologists attempt to confirm that evolution would have selected out useless levels of high or low Neuroticism, some hypothesize that the utility of high Neuroticism—which appears to be exclusively detrimental at first glance—is to limit the consequences of human exploratory behavior, often driven by Plasticity. Predators, discovery of new foods, and outside tribes would come with risks, and a temperament that could not process risk but only opportunity would certainly lead to early death. A continuation of that hypothesis states that high Neuroticism is becoming increasingly obsolete in the modern world, where most threats at a biological level (e.g., disease or starvation) have been largely eliminated. This would imply that evolution has yet to catch up with the

¹⁴⁷ *Id.* at 345 (“These beliefs often are manifested in terms of heightened focus on criticism, either self-generated or from others, as confirming a general sense of inadequacy and perceptions of lack of control over salient events.”).

¹⁴⁸ *Id.*

¹⁴⁹ However, disorders like depression may often times appear no different than an individual high in Withdrawal that has had a series of negative events in their lives, often one reinforcing the next. Practically speaking, excessive proclivities in line with Withdrawal or Volatility may not induce behavior all too different from depressive or manic disorders. See generally Chengwei Lui et al., *Influence of Neuroticism on Depressive Symptoms Among Chinese Adolescents: The Mediation Effects of Cognitive Emotion Regulation Strategies*, 11 *FRONTIERS IN PSYCHIATRY* May 2020, at 1, 2 (describing how “neuroticism is closely related to depressive symptoms and anxiety.”); Gregg Henriques, *Trait Neuroticism and Depressive and Anxiety Disorders*, *PSYCH. TODAY* (Feb. 26, 2017), <https://www.psychologytoday.com/us/blog/theory-knowledge/201702/trait-neuroticism-and-depressive-and-anxiety-disorders> (“Given the very close association between anxiety and depression and the understanding of high [Neuroticism] . . . it is clear that high [Neuroticism] should be related to anxiety and depressive disorders.”).

changing reality for humans and those who are exceptionally high in Neuroticism are too neurotic for their, or anyone else in society's own good.

B. Effects: Predicting Performance in the Workplace

Having described the five personality attributes, the implications of those attributes should be speculated as to how they relate to performance in Biglaw. It is vitally important to remember that this Note does not prescribe "better" personalities for Biglaw, and these predictions are primarily speculative in order to illustrate the kinds of observations one could make when seeing the attributes in action. The end goal is to improve Biglaw's ability to pursue candidates that it believes are best, not candidates that this Note determines to be best. In addition, although the attributes are generally analyzed one at a time, it is crucial to remember that all five are in action at any given moment. People are complex and personality cannot serve as the sole model to explain away everything about a candidate.

The analysis will be mainly divided into Plasticity and Stability because most of the meaningful considerations for Biglaw occur on the Stability side. While Plasticity is not a small or ignorable portion of personality and may have very desirable balances for the "ideal" candidate, Stability is where the wider range of possible performance predictions can be found. It should be noted that it is improbable that the Biglaw candidate pool expands to every reach of the spectrum for all five attributes. For example, individuals who are excessively low in Conscientiousness would have dropped out of college or never attended to begin with because a graduate degree is intensive in both work and long-term planning. The most disagreeable members of society (especially when combined with low Conscientiousness) are also unlikely candidates because the most disagreeable demographic has a high probability of being presently incarcerated and thus not in law school or applying for Biglaw.¹⁵⁰ While Biglaw talent acquisition has little to worry about for the most troublesome candidates compared to all of society, there is still a sufficient range of each personality attribute to be able to

¹⁵⁰ Scott A. McGreal, *The Paradox of Conscientious Prisoners*, PSYCH. TODAY (Dec. 27, 2016), <https://www.psychologytoday.com/us/blog/unique-everybody-else/201612/the-paradox-conscientious-prisoners> ("[C]riminals tend to be lower than most people in agreeableness (sympathy for others) and conscientiousness (self-control).").

locate more or less fitting personality profiles out of a large enough pool of candidates.

Across the board, it appears that pursuing high Plasticity is not very rewarding when pitched against existing Biglaw hiring criteria. Rather, it is the avoidance of extremely low Extraversion and extremely low Openness that seems to do the most work. With regards to Plasticity, the screening measures provided by law school admissions and law school grades, combined with the subjective social screening provided by the conversational interview or individual sponsor, seem to sufficiently screen out problematic candidates for Openness and Extraversion respectively. Extraversion, both Assertiveness and Enthusiasm, and Creativity are not very helpful predictors of workplace performance to start,¹⁵¹ and Intellect currently carries a host of administrability issues that even if overcome, would prove to be relatively unhelpful.¹⁵² First, learning appropriate social skills can mask surface-level problems for those that fall a little deep into the introverted side of the spectrum. Another reason why Extraversion might correlate so little with predictions of on-the-job success is that the wide variety of possible work for lawyers may allow extraverts to self-select into extraverted roles and for introverts to self-select into introverted roles.¹⁵³ Beyond the extremely low end of the spectrum, which could throttle colleague collaboration and client-facing interactions, Extraversion is otherwise not a personality trait to greatly worry about in terms of finding fit.¹⁵⁴

¹⁵¹ TARKI, *supra* note 1, at 56 (“Extraversion has a correlation with predicting on-the-job success of 0.09—almost meaningless for validity—while GPA has a correlation of 0.34.”).

¹⁵² This is not to downplay the amount of complexity and general cognitive aptitude necessary in order to engage in legal work at all. To say that measuring Intellect would not be helpful does not make for ignorance of the difficult work a lawyer must do in Biglaw, or any lawyer job at that. The pool of possible candidates (law school students and graduates) sets a very high absolute floor of Intellect relative to all of society. It is precisely because most, if not all of the candidate pool is already within a strata of high Intellect to begin with, that further measuring the trait would not be too helpful. If Biglaw were to hire regardless of education, prescribing measurements of Intellect (whether that takes the form of IQ or some other evaluation) would be much more forceful.

¹⁵³ Susan Cain, *How to Level the Playing Field for Introverts and Extroverts*, QUIET REVOLUTION (“Write comprehensive job descriptions that inform people how much interaction, networking, collaboration, and advocacy is required in positions before candidates take the jobs. This will enable introverts to self-select out of jobs that they might not thrive in.”).

¹⁵⁴ Some firms emphasize seeking “entrepreneurial spirit” or candidates capable of one day building their own books of business. Such talents may measure high in overall exploratory behavior, and if a firm desires high exploratory behavior, Plasticity could be more valued. In addition, although Extraversion is described as including a proclivity towards goal-achievement, this is exploratory behavior (the tendency to set

Creative lawyers are a double-edged sword. Legal analysis is rewarding for those with high fluency and originality in order to argue novel arguments or preempt potential forthcoming issues. However, in Biglaw, excessive Creativity can also be a curse. In an interview, creative candidates will often express themselves in ways that fall outside of existing evaluating frameworks. Here is where an unstructured evaluation portion proves to remain valuable since EPS firms “rejected standardizing evaluation on the grounds that it was an approach that could lead to missing out on ‘diamond[s] in the rough.’”¹⁵⁵ Biglaw already screens for sufficient cognitive aptitude using the Cravath System’s criteria and measuring IQ enters uncertain legal territory due to its history with discriminatory outcomes.¹⁵⁶ While General Mental Ability (“GMA”) and other cognitive tests such as working memory “games” (already utilized by accounting firms) seem to circumvent the variety of issues surrounding the use of IQ, they essentially test for the same factor.¹⁵⁷ Even though higher Intellect is one of the more reliable job performance indicators available,¹⁵⁸ Biglaw already has a process for attaining that criterion, and it would not be a small adaptation to begin outright testing IQ. It does not make sense for the Cravath System, which only seeks sufficient cognitive aptitude, to suddenly choose to seek maximal cognitive aptitude.

Various balances of the three Stability attributes can have a wide range of consequences for Biglaw professionals. In a collaborative environment like a law firm, a certain amount of Agreeableness is necessary in order to not be a detriment to teamwork.¹⁵⁹ The problem

goals) and should not be conflated with the proclivity to actually accomplish goals, which is more aptly associated with Conscientiousness.

¹⁵⁵ RIVERA, *supra* note 15, at 125.

¹⁵⁶ See generally *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

¹⁵⁷ G Factor, or general intelligence factor, is arrived at much like any personality factor using the same statistical method of factor analysis. While personality ends up with five factors that do not meaningfully correlate with each other except into two further categories of Plasticity and Stability, intelligence factors end up correlating with each other across the board. Thus, if five different types of intelligences (e.g., fluid, crystallized, spatial, quantitative, and working memory) correlate so that someone high in one intelligence ends up being high in all of the intelligences, then there is one underlying factor; a statistical conclusion that there is something that is the same about all five intelligence types and thus one intelligence factor. See Kendra Cherry, *What Is General Intelligence (G Factor)?*, VERYWELL (Apr. 25, 2021), <https://www.verywellmind.com/what-is-general-intelligence-2795210> (“The idea is that this general intelligence influences performance on all cognitive tasks.”).

¹⁵⁸ See note 152, *supra*.

¹⁵⁹ Bryan Robinson, Ph.D., *One Personality Trait Enhances Job Performance and Success The Most, New Study Finds*, FORBES (Apr. 3, 2022), <https://www.forbes.com/sites/bryanrobinson/2022/04/03/one-personality-trait-enhances-job-performance-and-success-the-most-new-study->

faced by the most disagreeable people is that they do not like being told what to do and will speak their mind (especially those low in Politeness), often to the point of breaking professional workplace customs. Thus, the ability to collaborate and communicate with colleagues, supervisors, and clients all requires a base amount of Agreeableness. However, those who are the most agreeable suffer from other ailments. Perhaps obvious in the name, overly agreeable people may agree to do anything for the sake of conflict avoidance rather than healthy conflict resolution.¹⁶⁰ In Biglaw, the inability to set boundaries may allow the most agreeable lawyers to suffer from exploitation both personally and professionally. In a culture like South Korea, where the hierarchy grounded in age and seniority is taken seriously to the extent that it is encoded in the language itself, juniors culturally behave more agreeably towards seniors, stifling potentially important communications in the workplace that can result in disastrous consequences.¹⁶¹ Conscientiousness is one of the best predictors of performance in the workplace available, at least among statistically measured factors.¹⁶² It should surprise no one that high Industriousness, or the general proclivity to work, would be desired in Biglaw. The work environment is demanding, and all EPS firms share characteristics such as time-intensive work in excess of sixty-five hours per week.¹⁶³ Orderliness appears to have almost zero drawbacks and it is much more forgiving to be excessively orderly than to be excessively disorderly. Disorderly people will have a difficult time even getting their own lives in order, so it would be unreasonable to expect them to manage their work, the interests of supervisors, colleagues, and clients, or even their own office space and emails. Excessive Orderliness can be

finds/?sh=5d9078be2848 (“The key to creating a strong and healthy workplace is good communication. Agreeableness . . . among coworkers is mutual [and] flows freely.”).

¹⁶⁰ See Tim Dahi, *The Personality Trait That Makes You Vulnerable To Exploitation*, ILLUMINATION (Nov. 10, 2021), <https://medium.com/illumination/the-personality-trait-that-makes-you-vulnerable-to-exploitation-990c459f7148> (“[Y]ou feel that asserting your own needs/wants would lead to conflicts, and agreeable people always shy away from conflict.”).

¹⁶¹ Ashley Halsey III, *Lack of Cockpit Communication Recalls 1999 Korean Airlines Crash Near London*, WASH. POST (July 8, 2013), https://www.washingtonpost.com/local/trafficandcommuting/lack-of-cockpit-communication-recalls-1999-korean-airlines-crash-near-london/2013/07/08/0e61b3ca-e7f5-11e2-a301-ea5a8116d211_story.html (“[T]he first officer said nothing, even though the instrument in front of him indicated that the plane was turned almost sideways . . . Korean culture is hierarchical. You are obliged to be deferential toward your elders and superiors in a way that would be unimaginable in the U.S.”).

¹⁶² TARKI, *supra* note 1, at 61.

¹⁶³ RIVERA, *supra* note 15, at 17.

detrimental at the truly extreme end, echoing ADHD-like behavior, where the focus on organization takes priority over meeting the goals of the work itself. However, much of Orderliness can be channeled into work itself, and a lawyer who is very high in both Orderliness and Industriousness could even end up working hard enough to irreparably harm their own health and lifestyle. While it is tragic to see professionals obsess over their work—sometimes to the extent where they kill themselves with it—they are quite rare and pursuing candidates that are high in Conscientiousness is a generally effective strategy for a work environment like Biglaw. High turnover rates¹⁶⁴ in this sense may indicate that the demands of work are too high for the average Biglaw associate and that it is a job that is not only best suited for high Conscientiousness, but also severely ill-suited for low Conscientiousness. Law firms are often concerned with high turnover rates,¹⁶⁵ and the long-term, work and goal-oriented nature of conscientious candidates should be seen in most cases as an attractive trait that will help minimize turnover. Finally, low Neuroticism tends to be favorable for Biglaw firms. Neurotic people are less likely to focus under stress¹⁶⁶ and are more likely to burnout from work.¹⁶⁷ The extremely high end of Neuroticism may require medication and psychiatric treatment in order to function normally in the workplace.¹⁶⁸ Although Neuroticism at an individual level may be undesirable, across the board it is probably beneficial to have a meaningful level of Neuroticism within one's firm, office, or even smaller task team. Sufficient threat sensitivity in the aggregate is what balances opportunity with risk and having enough Neuroticism can sometimes serve as “voices of reason” in the midst of an otherwise very risk-tolerant team.

¹⁶⁴ See Debra Cassens Weiss, *Law firms came ‘dangerously close’ to losing almost a quarter of their associates in 2021*, new report says, ABA J. (Jan. 11, 2022), <https://www.abajournal.com/news/article/law-firms-came-dangerously-close-to-losing-a-quarter-of-their-associates-in-2021> (“The associate turnover rate for law firms reached 23.2% through November 2021 on a rolling 12-month basis.”).

¹⁶⁵ See generally Link Christin, *Confronting Lawyer Turnover in Law Firms*, ATT’Y AT WORK (Mar. 27, 2021), <https://www.attorneyatwork.com/confronting-lawyer-turnover-in-law-firms/> (“44 percent of associates leave their firms after being there for three years, including entry-level and lateral hires.”).

¹⁶⁶ Marissa Higgins, *How Neuroticism May Affect You At Work*, BUSTLE (Oct. 6, 2016), <https://www.bustle.com/articles/188204-how-neuroticism-affects-you-at-work-according-to-science-might-explain-your-tendency-to-get-distracted> (“[P]eople who displayed neurotic tendencies tended to have a lower ability to focus on tasks for an extended period of time.”).

¹⁶⁷ Renzo Bianchi, *Burnout is more strongly linked to neuroticism than to work-contextualized factors*, 270 PSYCHIATRY RSCH 901, 904 (2018).

¹⁶⁸ See note 150, *supra*.

III. USING ARTIFICIAL INTELLIGENCE TO GROUND CRITERIA AND ADAPT PROCESS

“What if we could use many more predictors, gather much more data about each of them, spot relationship patterns that no human could detect, and model these patterns to achieve better prediction? This, in essence, is the promise of AI.”¹⁶⁹ Revisiting the core argument for the injection of quantitative fit into Biglaw talent acquisition, this Note suggests an upgrade for the process surrounding the existing criteria. At the interview stage, evaluators are seeking fit and simultaneously gravitating positively toward candidates that are like themselves. Considering the flaws introduced by letting human judgment run rampant, it makes sense to adopt AI to help reinforce Biglaw’s endeavors to find candidates that are similar to the existing revenue generating employees, who are the supervisors and colleagues that an eventual hire would work with.

“Machine learning is a subset of artificial intelligence which applies statistical techniques to ‘enable machines to improve at tasks with experience.’”¹⁷⁰ Thankfully, personality is also the product of statistical techniques and lends itself extremely well to machine learning. What then is the task that we can assign to machine learning? The proposal is to not only have candidates present a personality profile but also to have existing employees, associates, and partners alike, submit their personality profiles consistently throughout their careers. Machine learning will take the data of personality profiles over time and provide clarification on what sort of temperamental proclivities are held by high-level performers. “For data mining and deep learning to work, programmers have to translate the problem or desired outcome ‘into a question about the value of some target variable.’”¹⁷¹ Each firm should investigate what its desired outcome is. The billable hour or fees collected as a measure of productivity is one possible metric for what a “good hire” is in Biglaw. Over time, AI would identify the personalities of the most productive lawyers, and candidates at the interview stage can have their personalities compared to that of the expected star performer. My gut-level prediction is that Conscientiousness, particularly Industriousness, will show to be a desirable personality trait. Partnership can be a measure of success in Biglaw, and perhaps a firm

¹⁶⁹ KAHNEMAN, *supra* note 88, at 128-29.

¹⁷⁰ McKenzie Raub, *Bots, Bias and Big Data: Artificial Intelligence, Algorithmic Bias and Disparate Impact Liability in Hiring Practices*, 71 ARK L. REV. 529, 531 (2018).

¹⁷¹ *Id.* at 533.

wants to prioritize longevity and career development over a raw number of hours worked. AI would learn over time what personalities are most likely to become partners. My gut-level prediction is that here, high Extraversion and somewhat low Agreeableness may be the sweet spot. Another possible metric is self-reported satisfaction or turnover rates. Lawyers in Biglaw can be surveyed to see how satisfied they are with their careers at different stages in their career or whether they expect to move on from Biglaw entirely. If turnover rates are to be reduced, AI may be able to learn what kinds of proclivities those who resign tend to have. My gut-level prediction is that avoiding high Neuroticism may lead to lower turnover rates.

One apparent criticism of machine learning is that candidates may learn to lie (as they already do in qualitative evaluations, giving answers that they believe interviewers will want to hear) or that existing employees will ill-perceive their own personalities. Such flaws are inevitable in self-reported data sets such as personality. However, machine learning is a patient process, and such concerns should be alleviated over time. These criticisms further necessitate that machine learning is conducted over the course of many “generations” of data. In Biglaw, because there are sets of years for the expected partnership track and sets of years with higher turnover rates, a candidate’s lies or an employee’s faulty self-reporting will correct itself in due time, hopefully within just one generation’s worth of firm-wide data. While it is unfortunate that any one particular individual may get away with exploiting the flaws of a self-reported machine learning hiring tool, such exploitation already exists and would not worsen because AI and self-reported personality fails to entirely prevent it. It would be better to have long-term safeguards of self-correction than to continue hiring practices that have no safeguards at all.

In any event, having the data of both existing and potential employees over the course of years and decades, combined with metrics of success that the firm chooses for itself (whether the firm believes it is an accurate representation of themselves or a goal moving forward instead), allows machine learning and personality to output statistical models that calibrate and clarify good hires from bad ones. Personality should be implemented with machine learning because it reinforces the statistical rigor that factor analysis already puts it through. If a firm’s goals or business environment changes over time, machine learning will reflect that shift accurately. At the hiring stage, a personality profile does little to fight bias if only the candidate provides such a profile for an evaluator to subjectively analyze. The bias would then be transferred to

the personality profile, and nothing would have really been improved. Ultimately, machine learning will allow a matching of personalities—exactly what unstructured interviews for fit seek to do already—by allowing a firm to come up with its own metrics, which can even be a dynamic blend of considerations. What quantitative fit through machine learning allows *is for a firm to become more like itself*.

CONCLUSION

Within the legal industry, Biglaw is in the best—arguably unique—position to implement personality testing via AI to attain a competitive edge in talent. First, Biglaw may be the only type of organization in the legal industry to have the resources to implement such practices. Second, Biglaw probably crosses the minimal threshold of candidates and employees necessary to provide enough data to put data-intensive machine learning processes to use. Third, Biglaw with its profit-based motivations places a premium on having a competitive edge with talent in ways that other kinds of legal entities do not. Thus, the effort-to-reward ratio is sufficient to justify dedicating resources to develop AI for talent acquisition.

Personality testing is only going to reward a firm for its increased efforts if the testing is implemented in a manner that can adapt to changing circumstances both internally and externally. Personality profiles for candidates yet to be hired may be interesting and helpful, but they can also reinforce biases, discriminatory outcomes, or other existing issues if a firm has poor personalities to begin with. Law firms that come to conclusive decisions about what a “right” personality for an attorney will find themselves with a series of difficult problems to solve. Even if a specific balance of traits is determined to be desired in the most favored candidate, what benefits from other balances of traits are being left off the table? Will the candidate pool remain sustainable in light of new, more specific criteria? What happens when those hired and retained in a firm become *too* similar to each other?

Quantitative fit can be implemented using machine learning and provides a sustainable process that allows for a firm to not only find the best personalities to match its existing community of professionals, but also offers a fairer assessment to candidates. Wholesale objections to using personality profiles imply overthrowing Biglaw’s existing criteria because it is precisely personality that is already being measured at the interview stage. Wholesale objections to using machine learning to accomplish personality matching are objections to the utility of statistics

and self-adapting solutions. Biglaw should not be criticized for continuing to seek what it believes is best for itself, but that cannot be an excuse for deciding against improved talent. Quantitative fit driven by machine learning will give Biglaw the talent it wants, but more accurately, consistently, and efficiently.