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Black Lawyers Matter: Enduring Racism in American Law Firms

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BLACK LAWYERS MATTER: ENDURING RACISM IN AMERICAN LAW FIRMS

Vitor M. Dias*

ABSTRACT

Scholars and practitioners have extensively examined patterns of racial inequality in U.S. corporate law firms. In the corporate bar, pull factors that have long shaped legal professionals' careers include promotions, outside job offers, and family priorities that may lead to leaving the labor force altogether. Push factors, such as discrimination, problems with management, and work-life conflict, also precipitate work transitions. Beyond corporate firms, however, an urgent question remains open to empirical scrutiny: How does race affect career moves in the contemporary American legal profession?

In this Article, I address this question drawing upon data from the first nationally representative, longitudinal survey of U.S. lawyers. This study is one of few that uses event history analysis as a statistical technique to examine legal careers. It also draws on in-depth interviews to unravel how lawyers view their experiences at firms. These legal professionals detail how race influences assignment distribution and promotion within American law firms. Assessment of work histories of over 4,000 law school graduates, from the time they were admitted to practice in the year 2000, shows that, all else being equal, Black lawyers are pushed out of private law firms at much higher rates than white lawyers. As Black lawyers continue to strive for racial equality, these results indicate that race-conscious remedies remain critical not only for the future of law firms, but also for the broader legal profession.

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INTRODUCTION

In 1996, David Wilkins and Mitu Gulati published what is today considered a classic article on the state of race in American corporate law firms.¹ Wilkins and Gulati detailed how Black lawyers faced racial biases when they interviewed for jobs with corporate law firms.² This

1. See David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms: An Institutional Analysis*, 84 CALIF. L. REV. 493 (1996) (explaining the factors associated with the underrepresentation of African American lawyers at the partnership level in American corporate law firms).

2. *Id.* at 557. See generally Lauren A. Rivera, *Hiring as Cultural Matching: The Case of Elite Professional Service Firms*, 77 AM. SOCIO. REV. 999 (2012); LAUREN A. RIVERA, PEDIGREE: HOW ELITE STUDENTS GET ELITE JOBS (2015) (documenting through ethnographic techniques how racial biases are masked as cultural characteristics during job interviews in the corporate bar by a process the author calls "cultural matching").

study also identified that Black lawyers endured discrimination from the beginning of the hiring process throughout their careers as associates,³ a problem that has persisted during the 2000s and 2010s.⁴

As Wilkins and Gulati found, Black lawyers were more likely than white lawyers to be placed in firms' "flatline track" to do basic paperwork.⁵ White lawyers, by contrast, ended up on the "training track," which eventually made them more competitive for partnership.⁶ As a result of racial disparities in hiring, retention, and promotion, African Americans continued to be underrepresented in the corporate bar.⁷ Wilkins and Gulati observed that law firms' discriminatory practices "pervade[d] not only elite firms, but the entire legal profession."⁸

The lack of nationally representative, longitudinal data on lawyers in the United States, however, posed obstacles to assessing racial inequality in the bar as a whole—until recently. Academics at the American Bar Foundation (ABF) organized a first-of-its-kind longitudinal survey of lawyers admitted to practice in the United States in 2000.⁹ The ABF's "After the JD" (AJD) project, of which I am a team member, followed a cohort of lawyers starting in 2002.¹⁰ This Article uses the AJD's most recent data to empirically unravel why there *still* are so few African American lawyers in U.S. private law firms, twenty-five years after Wilkins and Gulati's landmark study.¹¹

To be sure, scholars have long discussed the processes that shape racial and ethnic inequality in the American legal profession.¹² One

3. See Wilkins & Gulati, *supra* note 1, at 540–42.

4. See Monique R. Payne-Pikus, John Hagan & Robert L. Nelson, *Experiencing Discrimination: Race and Retention in America's Largest Law Firms*, 44 L. & SOC'Y REV. (2010) (showing that Black lawyers continue to be underrepresented as partners in big law firms, even though racial differences between African Americans and whites are not statistically significant with respect to job satisfaction and commitment to stay with the same employer); DIVERSITY IN PRACTICE: RACE, GENDER, AND CLASS IN LEGAL AND PROFESSIONAL CAREERS 23–24 (Spencer Headworth et al. eds., 2016) (compiling socio-legal studies that discuss the potential and limitations of diversity efforts in the legal profession as a whole, including measures implemented by law firms).

5. See Wilkins & Gulati, *supra* note 1, at 565.

6. *Id.*

7. Following Wilkins & Gulati, African American and Black lawyers are used interchangeably in this article.

8. See Wilkins & Gulati, *supra* note 1, at 501.

9. See TERRY ADAMS, RONIT DINOVTZER, BRYANT G. GARTH, JOHN L. HAGAN, ROBERT L. NELSON, TAMMY A. PATTERSON, GABRIEL Plickert, REBECCA L. SANDEFUR & JOYCE STERLING, *AFTER THE JD III: THIRD RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 14–18* (2014) (detailing the structure of the AJD data over time).

10. *Id.*

11. See Wilkins & Gulati, *supra* note 1; ADAMS ET AL., *supra* note 9.

12. See generally RICHARD L. ABEL, *AMERICAN LAWYERS* (1989); ERWIN SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* (1964); JEROME E. CARLIN, *LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962); JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* 111–12 (1982) (analyzing data showing Jewish

explanation centers on educational credentials and academic performance in law school, arguing that these are key elements that shape lawyers' careers.¹³ However, this perspective has been challenged.

The second and competing explanation focuses on law firms' institutional characteristics in structuring legal professionals' trajectories. In response to the argument above, law school grades and ranking have been assessed to identify whether they are significant factors that influence the distinct employment prospects of Black lawyers vis-à-vis their white counterparts with similar backgrounds.¹⁴ In addition to—and more important than—grades, institutionalized practices matter for the assessment of lawyers' trajectories in the contemporary legal labor market.¹⁵ Today, covert discrimination against Black attorneys is more common than overt instances of racism within the firm setting.¹⁶ Both forms of racism exist, nonetheless.¹⁷ Covert discrimination includes a lack of social contact with partners and a dearth of partner mentorship opportunities for Black lawyers.¹⁸

These racialized and, at the same time, institutionalized, factors permeate the job ladder that African American lawyers must climb to become partners in law firms.¹⁹ Consequently, having the right “fit” continues to appear as a salient feature that adversely impacts Black

law practitioners “tended to be excluded from the high prestige fields”); JOHN P. HEINZ, ROBERT L. NELSON, REBECCA L. SANDEFUR & EDWARD O. LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR 62–69* (2005) (revealing the persistence of discrimination against people of color and women by comparing the results of surveys conducted with lawyers in Chicago in 1975 and 1995).

13. See Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 *STAN. L. REV.* 367, 369–70 (2004) [hereinafter Sander, *A Systemic Analysis*]; Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 *N.C. L. REV.* 1755, 1789–95 (2006) [hereinafter Sander, *The Racial Paradox*] (claiming that the lower performance of African Americans, compared to whites, in law school leads to their higher attrition rates in educational and professional settings).

14. See Payne-Pikus et al., *supra* note 4. See generally David L. Chambers, Timothy T. Cydesdale, William C. Kidder & Richard O. Lempert, *The Real Impact of Eliminating Affirmative Action in American Law Schools: An Empirical Critique of Richard Sander's Study*, 57 *STAN. L. REV.* 1855 (2005); James E. Coleman, Jr. & Mitu Gulati, *A Response to Professor Sander: Is It Really All About the Grades?*, 84 *N.C. L. REV.* 1823 (2005); David B. Wilkins, *A Systematic Response to Systemic Disadvantage: A Response to Sander*, 57 *STAN. L. REV.* 1915 (2005).

15. See MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 14*, 69 (1991) (explaining the mechanisms through which law firms grow and how the majority of them operate under an up-or-out system); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 *VA. L. REV.* 1581, 1650 n. 222 (1998) (expanding on Galanter & Palay's model with a specific focus on the job ladder within firms); David B. Wilkins, *“If You Can't Join 'em, Beat 'em!” The Rise and Fall of the Black Corporate Law Firm*, 60 *STAN. L. REV.* 1733, 1744 (2008) (following the history of African Americans who ended up leaving their previous firms to create their own successful corporate law firms).

16. See Payne-Pikus et al., *supra* note 4, at 559.

17. *Id.*

18. *Id.* at 560.

19. *Id.* at 559.

lawyers from the moment of hiring.²⁰ Compared to investment banks and consulting companies, law firms place the strongest emphasis on interpersonal abilities rather than technical skills during job interviews.²¹

In this Article, I extend this scholarship by analyzing how race helps explain the differences between Black and white attorneys in their likelihoods of: (a) being promoted to equity partner, (b) being fired from a law firm, and (c) leaving a law firm for any reason, or what is euphemistically described as a “voluntary” move.²² The bottom line is that Black lawyers continue to be pushed away from law firms at much higher rates than white attorneys based on their racial background alone. A stark and related finding is that once Black lawyers are unemployed, this unemployment status becomes a perpetual mark on the record of those who strive to become equity partners. Out of all lawyers surveyed by the AJD, only *one* Black attorney who faced unemployment eventually reached equity partnership.

These issues demand a better understanding of racial patterns of promotion as well as of voluntary and involuntary career moves away from law firms. To arrive at a more thorough explanation of these persistent problems, this Article is organized into four parts.

Part I provides background on the existing literature on racial inequality in the American legal profession. While law schools began to welcome an increasing number of racial minorities, it took decades for African American lawyers to join private law firms at a similar rate. Although Black lawyers represent a growing number of associates, they remain deeply underrepresented at the partnership level. Competing arguments have been put forth to discuss the roots of systemic racism in the bar.²³ Common ground within this scholarship, however, is that

20. See Bryant G. Garth & Joyce S. Sterling, *Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love*, 22 GEO. J. LEGAL ETHICS 1361, 1363, 1366, 1379, 1382, 1393 (2009) [hereinafter Garth & Sterling, *Exploring Inequality*] (describing how associates navigate the everyday life in law firms while accounting for the experiences of those who move to other settings); Bryant G. Garth & Joyce S. Sterling, *Diversity, Hierarchy, and Fit in Legal Careers: Insights from Fifteen Years of Qualitative Interviews*, GEO. J. LEGAL ETHICS 1123, 1125–26 (2017) [hereinafter Garth & Sterling, *Diversity, Hierarchy, and Fit*] (using interviews conducted in the context of the AJD to document how socialization opportunities with partners and clients are racialized in law firms, and how lawyers of color do not benefit from such opportunities like their white peers with a comparable background).

21. See Rivera, *supra* note 2, at 1004, 1011.

22. See Wilkins & Gulati, *supra* note 1, at 578 (contending that *voluntary* is a problematic term due to the career constraints that disproportionately impact attorneys of color as they decide how to move forward with their careers, hence the use of quotation marks).

23. See, e.g., Sander, *The Racial Paradox*, *supra* note 13, at 1758 (suggesting that law school grades are associated with patterns of racial discrimination and inequality in the bar); Payne-Pikus et al., *supra* note 4, at 561–62 (detailing based on statistical techniques how law firms' characteristics offer a more accurate explanation for racial inequality in legal practice than grades); Wilkins, *supra*

law firms remain “revolving doors” for African Americans, as Wilkins and Gulati identified.²⁴ Subsequently, I call attention to the still-relevant need for fleshing out factors shaping the partnership track, the decision to move away from law firms, and the process of being laid off. I also describe the AJD data and the mixed-method techniques used in the analysis.

In Part II, I present the results of the quantitative component of the AJD data. As the Article shows, this is one of the few studies that use event history analysis as an advanced statistical methodology to assess job transitions in the legal profession.²⁵ The AJD data offer a unique opportunity to analyze the entire employment history of the lawyers surveyed by the ABF. In sum, the results reveal two important findings. First, Black lawyers are significantly more likely than white lawyers to be fired from law firms and to leave law firms for other reasons. Second, white lawyers are more likely than Black lawyers to become equity partners.

Part III discusses the qualitative component of the AJD data. Here, I highlight how a subset of lawyers—with whom in-depth interviews were conducted as part of the AJD project—described their careers. These attorneys explained how they navigated both the formal and informal rules of the partnership track in law firms as they worked to survive and then thrive within this setting. For instance, while Black lawyers needed to ask for their promotions, white lawyers did not and, instead, received their higher rank more routinely.

As the Article concludes in Part IV, the racial differences in lawyers’ career paths and outcomes are striking, both qualitatively and quantitatively. I emphasize that political and market tools ought to be implemented to remedy racial inequality in the legal profession. Indeed, affirmative action is among such instruments. Yet questions about its future have emerged now that the U.S. Supreme Court

note 14, at 1925–26 (examining elements, in addition to grades, that influence the careers of racial minorities after law school).

24. See Wilkins & Gulati, *supra* note 1, at 580.

25. See Fiona M. Kay, *Flight from Law: A Competing Risks Model of Departures from Law Firms*, 31 L. & SOC’Y REV. 301, 303 (1997). Kay’s article uses survival analysis, which can also be referred to as event history analysis, to examine statistically why women are more likely than men to exit the legal labor force. *Id.* The article also explains that this “technique [is] particularly well suited to the questions posed by life course research. This methodological approach mirrors more accurately the process of transition from one employment setting to another than do conventional studies.” *Id.* See Fiona M. Kay, Stacey L. Alarie & Jones K. Adjei, *Undermining Gender Equality: Female Attrition from Private Law Practice*, 50 L. & SOC’Y REV. 766, 779 (2016) (employing similar statistical techniques to predict gendered patterns of leaving corporate law firms). Kay, Alarie, and Adjei define event history analysis as organizing survey data into a “format where a single spell accounts for each job held [or unemployment faced] by each respondent during his or her labor force experience.” *Id.* Different from Kay, Alarie, and Adjei, who “divided [these spells] into person-months segments,” the AJD data were structured as a person-year dataset due to distinctions between the survey instruments used here vis-à-vis in their article. *See id.*

consists of a solidly conservative majority. In this concluding section, I briefly reflect on persistent issues surrounding, in particular, *SFFA v. Harvard*—a lawsuit that challenges affirmative action—which the Court is expected to hear in the near future.²⁶

I. BACKGROUND

Lawyers have been active players in challenging and supporting changes to racial policies in the United States, both in court and in political forums.²⁷ Being uniquely situated to impact society at large,²⁸ lawyers also have shaped the contours of racial and gender relations within their own occupation.²⁹ After Wilkins and Gulati's study,³⁰ Garth and Sterling also addressed the issue of inequality among lawyers and noted, "[c]orporate law firms in many respects [still] set the tone for the U.S. legal profession."³¹

The literature shows important differences between Black and white lawyers in their job satisfaction levels and desire to leave their jobs, and, due to institutional characteristics African Americans find in the firm setting, they exit firms at higher rates.³² Even after more than a century of research on the persistent racial inequality in American law firms, these patterns raise an important question: How does race affect career moves within the contemporary American legal profession? In addressing this question, I use new data and techniques to explore this subject in detail.

26. Follow-up litigation has already ensued; *SFFA v. Yale* was filed in United States District Court for the District of Connecticut.

27. See ABEL, *supra* note 12. See generally JEROLD S. AUERBACH, *UNEQUAL JUSTICE* (1976) (discussing changes introduced by public policies, bar regulations, and court decisions on racial relations in the American legal profession since the beginning of the twentieth century).

28. See generally Marc Galanter, *Mega-Law and Mega-Lawyer in the Contemporary United States*, in *THE SOCIOLOGY OF THE PROFESSIONS: LAWYERS, DOCTORS, AND OTHERS* 152–76 (Robert Dingwall & Philip Lewis eds., 1983) (theorizing on how lawyers are uniquely situated to shape economic, political, and social aspects of society and the legal profession).

29. See John Hagan, *The Gender Stratification of Income Inequality Among Lawyers*, 68 *SOC. FORCES* 835, 836 (1990) (describing how lawyers change the rules governing the legal profession, which leads to gender disparities in career paths and outcomes). For a historical overview of how obstacles to non-whites and women becoming lawyers and then succeeding in law firms in the United States have marked the American legal profession, see Howard S. Erlanger, *The Allocation of Status Within Occupations: The Case of the Legal Profession*, 58 *SOC. FORCES* 882, 885–86 (1979); URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR, *supra* note 12, at 62–69. And, for a discussion of contemporary aspects of inequality resulting from the division of labor among lawyers, see Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 *AM. SOCIO. REV.* 382, 399–400 (2001); Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 *L. & SOC'Y REV.* 1, 8 (2007).

30. See Wilkins & Gulati, *supra* note 1.

31. Garth & Sterling, *Exploring Inequality*, *supra* note 20, at 1361.

32. *Id.*

A. Why Does Race Still Matter in American Law Firms?

Legal and social science researchers have documented the discriminatory experiences of African Americans, immigrants, people of Jewish descent, other racial and ethnic non-white groups, and women in the legal profession.³³ Some improvement has occurred in combating discrimination against several of these groups, but the bar exam's structure continues to produce adverse effects on the professional trajectory of women as well as racial and ethnic minorities.³⁴

At present, women constitute 37% of active attorneys affiliated with the American Bar Association, while people of color comprise 14.1%.³⁵ However, the traditional "promotion-to-partner tournament,"³⁶ which Galanter and Palay identified as big law firms' strategy to "retain the winning lawyers' skills,"³⁷ has proved to be severely stratified.³⁸ Consequently, white males account for over 90% of all partners in law firms—a number that goes up if one looks only at equity partners.³⁹ The increasing professional status of legal jobs is, therefore, accompanied by decreasing representation of women and racial minorities.

Using AJD data, Payne-Pikus, Hagan, and Nelson confirm these statistics.⁴⁰ According to them, the number of African Americans and Latinx individuals starting as associates in law firms is growing, "but neither group forms more than 1 percent of partners."⁴¹ This process overall stalled between 2011 and 2020, nonetheless.⁴² Given this attrition rate, combined with the limited progress toward racial equality in the bar over the past decade, it remains imperative to understand the experiences of people of color within the law firm setting. After all, these experiences are central to a lawyer's career,⁴³

33. See, e.g., SMIGEL, *supra* note 12; AUERBACH, *supra* note 27; ABEL, *supra* note 12; HEINZ & LAUMANN, *supra* note 12; URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR, *supra* note 12.

34. See URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR, *supra* note 12, at 317.

35. AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 32–33 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [<https://perma.cc/HV2Q-76ZF>].

36. GALANTER & PALAY, *supra* note 15, at ch. 5.

37. *Id.* at 107.

38. See URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR, *supra* note 12, at 73.

39. Payne-Pikus et al., *supra* note 4, at 554.

40. *Id.* at 562.

41. *Id.* at 554.

42. AM. BAR ASS'N, ABA NATIONAL LAWYER POPULATION SURVEY 4 (2021), https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf.

43. See, e.g., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR, *supra* note 12; DIVERSITY IN PRACTICE: RACE, GENDER, AND CLASS IN LEGAL AND PROFESSIONAL CAREERS, *supra* note 4, at 335. See generally Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008) (showing that, despite important transformations in the

while the explanations for such racialized career paths and outcomes vary.⁴⁴ I turn to these explanations next.

B. Does Legal Education Breed Racism in Law Firms?

Arguably, the attrition rate of the associate-to-partner track resembles a problem that begins in legal education.⁴⁵ That is, minorities are significantly different from their white counterparts with respect to their socialization, performance, and, ultimately, retention in law school.⁴⁶ Because law school ranking, law review participation, and grades function as important signals to prospective employers, African Americans would be at a disadvantage from the outset.⁴⁷ Scholars who propose this explanation claim that labor market outcomes in law firms trace back to lawyers' educational backgrounds.⁴⁸

Additionally, these outcomes stem from biased performance expectations that employers may hold, based on a perceived human capital gap between people of color and white people.⁴⁹ Human capital, in this context, loosely refers to one's ability and skills, which law firms measure in terms of law school GPA.⁵⁰ If partners tend to value grades as an indicator of being up to the job, they consequently privilege associates with high law school GPAs. Since Black students have, on average, lower GPAs than white students in law school, partners would discriminate not only at the time of a job interview but also throughout a law firm's partnership track.⁵¹

Several scholars contend, however, that this perspective tells an incomplete story of racial minorities in the U.S. legal labor market.⁵² Racial minorities are neither disproportionately fired from law firms

legal profession that have resulted in new employment prospects in other sectors, most lawyers still work at law firms in their careers).

44. This is the reason why I concentrate on the analysis of three career paths that directly relate to racialized career paths in law firms to date.

45. See Sander, *A Systemic Analysis*, *supra* note 13, at 370.

46. *Id.*

47. *Id.* at 376 n.20, 412.

48. *Id.* at 370–72.

49. Sander, *The Racial Paradox*, *supra* note 13, at 1821.

50. *Id.* at 1819–20.

51. *Id.* at 1812 (“If blacks at a firm have been hired with substantially lower average GPAs than whites, partners will assume that black associates may have lesser skills. Consequently, blacks will tend to be given less responsibility and fewer ‘proving’ assignments than will whites.”).

52. Several scholars offered direct responses, providing additional elements that challenge Sander's argument. Sander, *The Racial Paradox*, *supra* note 13, at 1812. The explanation includes the prediction of a striking reduction in the number of minorities without affirmative action measures, the institutional characteristics of firms associated with racialized patterns of assignment distribution within firms, and the limited opportunities of mentorship offered to racial minorities. *Id.* See, e.g., Wilkins, *supra* note 14; Coleman & Gulati, *supra* note 14; Chambers et al., *supra* note 14; Payne-Pikus, et al., *supra* note 4.

due to law school GPA alone nor do they choose to pursue a career in another sector because of their grades. Rather, attorneys who are racial minorities face the everyday practice of law without the mentorship and tasks needed for them to advance at the same rate in law firms as white lawyers.⁵³ For instance, at the beginning of their careers in 2002, over seventy percent of Black lawyers surveyed by the AJD desired better mentorship in their firms, compared to fifty percent of white lawyers who answered the same question.⁵⁴

In light of these stark racial differences, Payne-Pikus, Hagan, and Nelson conducted statistical analyses that controlled for legal education.⁵⁵ They found the characteristics of the law firms examined in their study to be significantly associated with racialized career patterns among Black lawyers.⁵⁶ In sum, access to partners significantly shapes Black lawyers' careers, whereas grades do not.

C. Mapping the Racial Contours of Legal Work: A Firm Perspective

Formal and informal rules governing how law firms organize their partnership track and everyday routines affect not only how assignments are distributed.⁵⁷ They also influence which tasks are assigned to whom and how much help some associates receive from partners compared to others. Mentorship programs, socialization opportunities, and having the chance to handle important cases constitute what Wilkins and Gulati called the "royal jelly" for lawyers to advance in law firms.⁵⁸

But the division of that "jelly" within firms is racialized. Compared to white lawyers, Black lawyers continue to be excluded from key legal matters and socialization opportunities with partners and clients.⁵⁹ By contrast, racial differences between African American lawyers and white lawyers are not significant with respect to job satisfaction and commitment to stay with the same employer.⁶⁰ These patterns ultimately and adversely impact African American lawyers' careers in the firm setting.

Even considering a lawyer's educational and professional background alone, the associate-to-partner track remains extremely competitive. Only a small number of lawyers have reached the position

53. See Payne-Pikus et al., *supra* note 4, at 561–62.

54. *Id.* at 566.

55. *Id.* at 563.

56. *Id.*

57. *Id.* at 560.

58. See Wilkins & Gulati, *supra* note 1, at 541.

59. *Id.* at 542, 568

60. See Payne-Pikus et al., *supra* note 4, at 572.

of equity partnership to date.⁶¹ This trend, in fact, traces back to when Cravath, Swaine & Moore first operationalized the “Cravath” system that set forth the institutionalized mechanisms through which lawyers could be evaluated to become partners.⁶² Some elements of the *Cravath* model persist, even though it has been adapted as law firms grow in size and across jurisdictions. Positions such as non-equity partner and of-counsel are currently common.⁶³ And, scholars have documented that women and racial minorities are more likely to occupy these roles as these new positions multiply.⁶⁴

In following Black lawyers’ careers in the corporate bar, Wilkins and Gulati also explained “how an interviewer’s subjective biases or tastes affect a candidate’s employment prospects.”⁶⁵ Even when African American lawyers attain good grades, have work experience, and engage in law school professionalization activities like law reviews, they are less likely to benefit from such factors in a job interview with a corporate law firm than their white counterparts with comparable records.⁶⁶ Thus, when a lawyer of color seeks to join a corporate firm with above-average credentials, race still plays a significant role in the job interview, especially for African American applicants.⁶⁷

Others have expanded on this point and examined some common pull and push factors that shape the careers of African American lawyers. Pull factors that influence legal professionals’ trajectories include promotions, lateral moves between firms, or family priorities.⁶⁸ Push factors, such as discrimination, problems with management, and work-life conflict, also precipitate work transitions.⁶⁹ These

61. *Id.* at 554.

62. See GALANTER & PALAY, *supra* note 15, at 9–10, 14, 56; Wilkins & Gulati, *supra* note 1, at 608.

63. See, e.g., Galanter & Henderson, *supra* note 43.

64. See Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299 (2008) [hereinafter Kay & Gorman, *Women in the Legal Profession*] (reviewing the literature focused on women’s careers in the legal profession in the twentieth century); Fiona M. Kay & Elizabeth H. Gorman, *Developmental Practices, Organizational Culture, and Minority Representation in Organizational Leadership: The Case of Partners in Large U.S. Law Firms*, 639 ANNALS AM. ACAD. POL. & SOC. SCI. 91 (2012) [hereinafter Kay & Gorman, *Developmental Practices*] (discussing the limitations of diversity efforts devised to increase the number of partners from minority backgrounds in American law firms).

65. See Wilkins & Gulati, *supra* note 1, at 559 n.225.

66. *Id.*

67. *Id.*; see also Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1080 (2011).

68. See generally GALANTER & PALAY, *supra* note 15 (identifying mechanisms of promotion within firms); Galanter & Henderson, *supra* note 43 (documenting some patterns of lateral moves between firms); Kay, *supra* note 25 (explaining family dynamics among women in the legal profession).

69. See generally GALANTER & PALAY, *supra* note 15 (detailing how the up-or-out promotion system works within big law firms); Galanter & Henderson, *supra* note 43 (noting how the business sector has influenced management practices in law firms). For an account of discriminatory

characteristics also appear in the reasons listed by lawyers surveyed by the AJD when making job changes, offering an opportunity to examine patterns empirically for the bar as a whole.

Even when firms devise formal and informal programs to “level the playing field” and reduce racial inequality associated with career moves, it is mostly white attorneys who benefit from these opportunities.⁷⁰ This problem persists largely because partners neglect important workplace needs for the training of minorities, reducing their chances of socialization with both clients and partners.⁷¹ As a result of the path-dependent nature of formal and informal practices that are marked by both covert and overt racism in private law firms, “none of the practices or cultural characteristics considered [by Kay and Gorman] was positively associated with the presence of minorities among partners.”⁷²

According to scholarship focusing on firms, two main dimensions of racial relations appear in the legal labor market. One is the changing socioeconomic characteristics of the U.S. market that have profoundly reshaped the growth of law firms and the opportunities for employment outside of such firms.⁷³ These opportunities include traditional paths in the public sector and an increasing number of in-house jobs at prestigious corporations.⁷⁴ The second is that making partner within law firms remains a highly valued but severely stratified outcome in terms of professional status and salary.⁷⁵

Taken together, these dimensions reveal how law firms still operate under an “up-or-out” system in which African Americans are disproportionately pushed out of the system.⁷⁶ Law firms thus continue to pose obstacles to African American lawyers’ careers, despite the rules of what Galanter and Palay call “tournament to partnership” being

practices, in general, see, e.g., Kay, *supra* note 25; Kay et al., *supra* note 25; Payne-Pikus et al., *supra* note 4; Wilkins & Gulati, *supra* note 1.

70. See Kay & Gorman, *Developmental Practices*, *supra* note 64, at 107.

71. See Payne-Pikus et al., *supra* note 4, at 557.

72. See Kay & Gorman, *Developmental Practices*, *supra* note 64, at 107.

73. See William D. Henderson & Arthur S. Alderson, *The Changing Economic Geography of Large U.S. Law Firms*, 16 J. ECON. GEOGRAPHY 1235, 1238–39 (2016) (conducting a network analysis of the relationship between the growth of legal markets across the U.S. and firm size, along with how lawyers have moved throughout the country). See generally, Galanter & Henderson, *supra* note 43; Garth & Sterling, *Diversity, Hierarchy, and Fit*, *supra* note 20.

74. See Ronit Dinovitzer & Bryant Garth, *The New Place of Corporate Law Firms in the Structuring of Elite Legal Careers*, 45 L. & SOC. INQUIRY 339, 364 (2020) (employing sequence analysis as another advanced statistical technique to identify how lawyers surveyed by the AJD move from one sector to another, including in-house, rather than focusing on changing employers only).

75. For comparisons over time, see generally GALANTER & PALAY, *supra* note 15; Galanter & Henderson, *supra* note 43; Bryant G. Garth, *Crises, Crisis Rhetoric, and Competition in Legal Education: A Sociological Perspective on the (Latest) Crisis of the Legal Profession and Legal Education*, 24 STAN. L. & POL’Y REV. 503 (2013); HEINZ & LAUMANN, *supra* note 12; URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR, *supra* note 12.

76. See Kay & Gorman, *Developmental Practices*, *supra* note 64, at 98.

supposedly equal for all associates, and despite recent transformations in the bar—e.g., the multiplying non-equity partnership positions, longer partnership track in firms, and increasingly prestigious in-house counsel jobs.⁷⁷ Consequently, Black lawyers who have been punished by the tournament rules of the associate-to-partner game may have been pushed away from the partnership track and sometimes from the firm setting entirely.⁷⁸

In response to these career constraints and the possibility of being dismissed due to law firms' institutional practices, Black lawyers devise strategies to navigate the contemporary legal labor market. For instance, some of these lawyers build professional networks that help them move from one firm to another. Once African American lawyers perceive racialized obstacles to advancement with their current employers, they also establish contacts with in-house counsel attorneys and government officials, which facilitates transitions across sectors.⁷⁹ Ultimately, Black lawyers with law firm experience and marketable skills might end up leaving firms to start their own or to work in other practice settings.⁸⁰ Such factors are critical in their employment prospects within the bar and other sectors.⁸¹ The next section details how the AJD data were collected and how I analyze them to cast new light on these job transitions.

II. THE QUANTITATIVE DATA: RACIAL INEQUALITY IN LAWYERS' CAREERS

This analysis uses data from the AJD study launched by the ABF, a longitudinal survey of approximately ten percent of law school graduates who were admitted to the bar in 2000 and followed over time between 2002 and 2012.⁸² Namely, the participants were surveyed at three different points, starting in 2002 with follow-up questionnaires in 2007 and 2012. The ABF refers to these three questionnaires as Wave 1, Wave 2, and Wave 3, respectively.⁸³ The legal professionals surveyed by

77. See, e.g., GALANTER & PALAY, *supra* note 15; Galanter & Henderson, *supra* note 43; Henderson & Alderson, *supra* note 73; Wilkins & Gulati, *supra* note 1.

78. See Wilkins, *supra* note 15, at 1745.

79. *Id.* at 1746.

80. *Id.*

81. *Id.*

82. ADAMS ET AL., *supra* note 9, at 14–15.

83. *Id.* at 14. Regarding the sample, fifty-three percent of respondents who had been previously surveyed in 2002 and 2007 completed the questionnaire in 2012, which totals 2,862 attorneys. *Id.* at 15. The response rate is about thirty-five percent, taking into account the original sample. *Id.* I include other lawyers who supplemented the cases lost due to attrition and were gathered using complex sampling techniques. I do not use multiple imputation nor listwise deletion to handle missing data. Instead, to fully capture racial minorities' outcomes in the legal profession, I simply control for missing data by adding a category that includes "unknown." I use

the AJD were asked about the positions they held between 2002 and 2012, as well as about their employers.⁸⁴ Therefore, the empirical analysis can focus on lawyers who worked in private law firms during the first twelve years of their careers.

In addition to its longitudinal nature, another advantage of the AJD data is that the survey is nationally representative. The sample includes the major legal markets in terms of population size, such as New York and California.⁸⁵ The AJD thus provides a comprehensive picture of lawyers admitted to practice in the entire country throughout the early 2000s. The AJD study collected the first data of its kind, following lawyers' careers both temporally and geographically.⁸⁶ The general characteristics of the sample of lawyers upon which this statistical analysis is based can be found in Table A1 of the Appendix, *infra*.⁸⁷

Scholars involved in the AJD project also conducted 219 in-depth interviews with lawyers who answered the survey questionnaires. My analysis draws upon a subsample of 144 interviews with lawyers who worked in a private law firm. This subsample of interviewees captures how these individuals narrated their firm experiences, even if they moved to a non-firm setting or exited the profession afterward.⁸⁸ In doing so, this study is among the first to combine qualitative and quantitative data on how race structures lawyers' careers and how legal professionals across the country describe the strategies they devised to navigate the practice of law in the contemporary U.S. legal profession.

A. A Statistical Analysis of Lawyers' Work Transitions

This inquiry is also one of the few that uses event history analysis as a statistical technique to assess lawyers' careers over time.⁸⁹ The data are structured in a way that accounts for each instance of employment or unemployment between 2003 and 2012.⁹⁰ For example, if a lawyer

the restricted datasets from the three waves, which have been made available by the American Bar Foundation.

84. *Id.*

85. *Id.* at 15.

86. *Id.*

87. *Id.* at 95. Individuals who neither reported their race nor their gender were excluded from the dataset. *Id.* at 94. See *infra* Table A1.

88. The author is greatly indebted to Bryant Garth and Joyce Sterling for collecting and sharing such a rich source of data. I extend my gratitude to Robert Nelson and Meghan Dawe, at the American Bar Foundation, for making the interview and statistical data available.

89. This approach has been used to estimate the probability for women to leave law firms and sometimes the legal profession altogether. See, e.g., Kay, *supra* note 25; Kay et al., *supra* note 25.

90. In statistical terms, this technique consists of using the employment history section of the AJD questionnaire to build a balanced, person-year dataset of American lawyers and estimate their career transitions since 2003 (i.e., after Wave 1) until Wave 3, collected in 2012.

was unemployed, hired as an associate, and then moved to work for the federal government all in the same year, each of these job transitions is considered in the quantitative analysis. The same applies to a lawyer who worked as an associate in the same law firm for seven years and became a partner in the eighth year. To reconstruct these professionals' trajectories accurately, I compiled their employment information starting in 2012 (Wave 3) and supplemented this information with details provided in 2007 (Wave 2) and 2002 (Wave 1). It is statistically safer to privilege the most recent jobs reported in the 2012 survey over older responses, which might omit details from the previous questionnaires.⁹¹

After organizing the data per these steps, I conducted a statistical analysis using a set of logistic regression models. These models predict the odds of being promoted to equity partner, exiting a law firm for any reason, and being fired from a law firm.⁹² This methodological approach allows for estimating the likelihood of lawyers moving up, down, or out of law firms.

The logistic regression also reveals which variables—i.e., characteristics—significantly influence these job transitions. For example, one or more variables may be significantly associated with racial differences in exiting a law firm for any reason, but not with being fired from a law firm. In addition to race and ethnicity, it is necessary to control for other potential explanations of career moves discussed by the literature in Part I. Specifically, demographic characteristics,⁹³ educational background,⁹⁴ perceived discrimination,⁹⁵ job satisfaction,⁹⁶ workplace context,⁹⁷ and employment history

91. To be sure, there were inconsistencies in the employment history reported by lawyers. The most common issue is the overlap of jobs in the same period among individuals who declared to be working full-time in more than one position. Such problems confirm that, given the structure of the data, most recent jobs ought to be reported first in the dataset and hence privileged over older jobs, which were subsequently deleted from the analysis only when this conflict emerged.

92. To account for racial differences in the sectors in which lawyers start their careers, I set 2003 as the time to begin the statistical analysis whether they were in a law firm or not.

93. Demographics have been coded as follows: Women are coded as 1 (one), whereas men have been assigned the value of 0 (zero). The data have been structured by sex, and hence I do not account for nonbinary individuals. Whites who have not declared to be from a Latinx background are the reference group to which African Americans, Latinx, and Asians are compared. Number of children is a categorical variable, and childless lawyers form the reference group to which legal professionals with children are compared. I also control for marital status, in which married individuals are compared to those who are not married.

94. Recall that educational background has been used as a loose indicator of human capital attributes. In this regard, the models account for law school GPA, LSAT score, and law school ranking.

95. Lawyers who reported perceiving any kind of discrimination are coded as 1 (one) and 0 (zero) otherwise.

96. Job satisfaction is a dichotomous (i.e., a dummy) variable based on the level of satisfaction declared by lawyers with respect to their advancement opportunities, which has been measured as a scale that ranges from 1 (one) "highly satisfied" to 7 (seven) "highly dissatisfied."

patterns⁹⁸ are used as sets of variables included in the logistic regression models.⁹⁹

Table A2 of the Appendix, *infra*, contains the results of the logistic regression. For a straightforward presentation of racial differences in becoming equity partner, exiting a law firm for any reason, and being dismissed from a law firm, I calculated the likelihood of these transitions happening in terms of predicted probabilities.¹⁰⁰ Statistically, it is necessary to estimate odds ratios using the logistic regression first and derive the predicted probabilities from them next—which are also referred to as average marginal effects. By taking this step, I can offer a simple, graphical representation of each career outcome by race. This technique is also considered a best practice in current quantitative studies, insofar as “the AME [average marginal effect] is the best summary of the effect of a variable.”¹⁰¹ And, there is one variable of particular interest to this Article: race.

Individuals who have declared a value of 6 or 7 on this scale are coded as 1 (one) and 0 (zero) otherwise.

97. Regarding the organizational characteristics of law firms, I specifically control for plans to leave the current employer within the next year and opportunities to join partners for meals. A brief note on firm size and practice setting is necessary. The number of lawyers working for a firm could control for two processes at once. First, the contemporary growth of private law firms spans geographical jurisdictions in the United States, and big law firms are increasingly interconnected around the country and the world. *See* Henderson & Alderson, *supra* note 73. Second, this information offers details pertaining to whether or not firm size distinctively shapes racial inequality and at which level of firm size this problem emerges. However, controlling for firm size, as well as for practice setting, in the statistical analysis creates an issue. It is a precondition for lawyers to work in a law firm to become partners, which excludes lawyers who might be moving from another sector from the models. Also, the sample consists of lawyers who worked in a law firm, which already restricts the cases to the legal population of interest to this study and creates an additional complexity to the models when accounting for firm size or practice setting. Statistically, this point is reflected in the Bayesian information criterion (BIC) computed for the models. The BIC is higher when practice setting is included in some of the models than when omitting this variable, and models with the lowest BIC should be preferred. Bearing this in mind, I estimated models with either firm size or practice setting as robustness checks rather than presenting the results here. Ultimately, the racial gap between Black lawyers and white attorneys presented in the predicted probabilities graphs persists, whether I control for firm size and practice setting or not.

98. The professional trajectories of the lawyers are also considered, and these variables include whether they ever worked part-time, ever exited the labor force, and ever left a law firm. Finally, year controls for serially correlated errors.

99. These variables have been measured at different time points. Race, gender, GPA, LSAT scores, and law school ranking are from Wave 1 (in 2002). Plans to leave the current employer within a year, having the chance to join partners for meals, and overall job satisfaction have been coded in three distinct moments, namely in 2002, 2007, and 2012. The following characteristics are time-varying parameters measured in 2002 through 2012: number of children, marital status, perceived discrimination, and the cumulative probability of having ever worked part-time, ever exited the labor force, and ever left a law firm.

100. *See generally* J. SCOTT LONG & JEREMY FREESE, REGRESSION MODELS FOR CATEGORICAL DEPENDENT VARIABLES USING STATA 245 (3d ed. 2014) (explaining the value of using both logistic regression models and predicted probabilities).

101. *Id.*

B. *Moving Away from Law Firms: Racial Differences in “Leaving Voluntarily”*

The first career outcome analyzed quantitatively is the probability of exiting a law firm for any reason. In the logistic regression, the value of 1 (one) reflects lawyers who exited a private law firm for any reason. The value of 0 (zero) indicates other career moves.

Following Wilkins and Gulati, I consider this job transition as being related to one’s “voluntary” decision to move from a law firm.¹⁰² As the authors posit, law firm structures pose racialized constraints to Black lawyers’ decisions about pursuing their careers as associates.¹⁰³ If Black lawyers stay at law firms doing “routine paperwork,” their advancement opportunities are reduced.¹⁰⁴ Leaving, however, requires building new networks at their next workplace.¹⁰⁵ When attorneys of color are fired, chances to create and strengthen professional ties are more limited than when leaving firms for other reasons.¹⁰⁶ Thus, not rarely, racialized firm structures make Black lawyers weigh the potential downsides of deciding to leave a firm against the risk of being forced to exit via dismissal. Black lawyers are consequently more likely to be “induced” to leave this setting than white lawyers.¹⁰⁷ Figure 1 reveals that this pattern indeed exists in private law firms, offering new details to what Wilkins and Gulati found in the corporate bar only.¹⁰⁸

102. See Wilkins & Gulati, *supra* note 1, at 589.

103. *Id.* at 591.

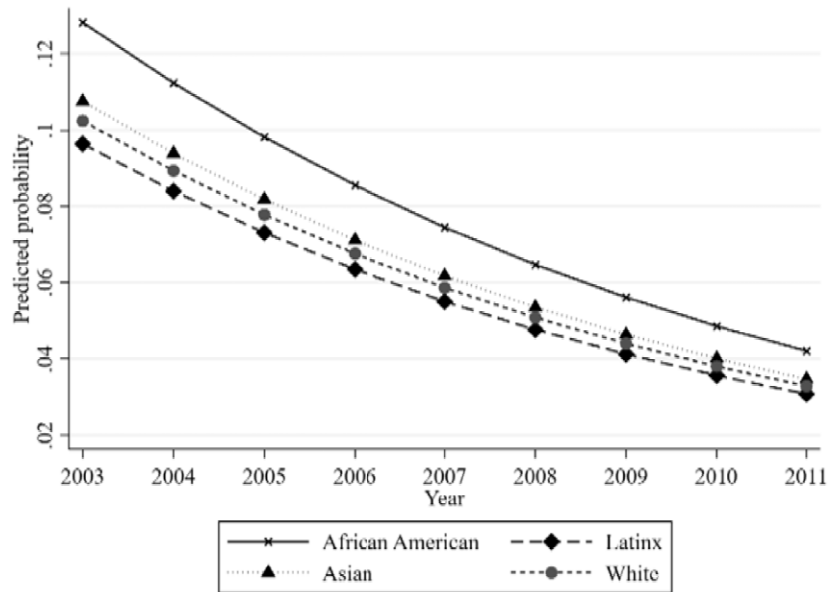
104. *Id.* at 565.

105. See *id.* at 567.

106. *Id.*

107. *Id.* at 571.

108. Only lawyers who worked in a law firm are included in the results shown in Figure 1.

FIGURE 1. LIKELIHOOD OF EXITING A LAW FIRM FOR ANY REASON BY RACE¹⁰⁹

According to Figure 1, Black lawyers are the group most likely to exit law firms for any reason, controlling for other demographic, educational, and professional characteristics.¹¹⁰ This difference is statistically significant when Black and white lawyers are compared. The racial differences in the likelihood of leaving firms persist over time. This trend suggests that—accounting for other demographic, educational, and professional characteristics—race still plays a role in maintaining disparities in law firms’ retention over time, especially among Black lawyers.¹¹¹

Other variables are statistically significant characteristics when predicting the likelihood of exiting a law firm.¹¹² For example, law

109. The predicted probabilities by race in the y-axis were calculated based on the logistic regression models presented in Table A2 of the Appendix, while holding all other variables at their observed values. Prepared by the author based on data from American Bar Foundation’s After the JD project.

110. All else being equal, only Latinx lawyers are less likely than white attorneys to make the same career move.

111. Evidence from other studies shows that African American lawyers end up starting their own firms, moving laterally, or practicing in other sectors. See Wilkins, *supra* note 15, at 1734–35, 1745–47; Wilkins & Gulati, *supra* note 15, at 580–81. At the same time, Asian lawyers also leave firms voluntarily at high rates, but rather than being mostly pushed to the public sector like many African Americans, recent analyses based on the AJD show that some Asian lawyers have instead found career prospects in business settings, such as prestigious in-house departments. See Dinovitzer & Garth, *supra* note 74, at 356.

112. Recall the white lawyers who have not declared to be from a Latinx background are the reference group to which individuals from other races and ethnicities are compared. For this

school ranking, gender, and the desire to leave a current employer within a year are associated with the probability of moving away from law firms. GPA in legal education is not. And when controlling for any form of perceived discrimination, being African American as opposed to white remains statistically significant. These results indicate that firm-level experiences help explain why lawyers exit law firms, but race alone continues to be a significant predictor of why Black lawyers exit at much higher rates than their white counterparts with a comparable background.

C. Moving Down: The Lay-off Racial Gap in U.S. Law Firms

The second career outcome examined statistically is the probability of being fired from a law firm. A value of 1 (one) has been assigned to lawyers who reported “contract end, fired, firm downsize/closed, merger”¹¹³ as the reason for a job transition in the AJD survey.¹¹⁴ Zero (0) has been coded as otherwise.¹¹⁵ As Galanter and Palay explained, even before their analysis, big law firms operated under an “up-or-out” system.¹¹⁶ Research on offices in Chicago¹¹⁷ and New York¹¹⁸ documented how racial and ethnic minorities were more likely to be dismissed than whites. Wilkins and Gulati also discussed this issue in the corporate bar.¹¹⁹ Figure 2 displays a deep, persistent, and statistically significant racial gap in the probability of dismissal between African American and white lawyers.

reason, except for race, the statistical significance of the independent and control variables in the logistic regression is measured while taking white lawyers into account. At the same time, the predicted probabilities by race are calculated, holding these same variables constant, and they confirm a racial gap between Black and white lawyers with otherwise similar characteristics.

113. These distinct forms of dismissal are coded together as a means of capturing forced career transitions, which stem from firms’ decisions rather than a lawyer’s own choice to change employers or settings. Although these categories have substantive differences, the fact remains that firms are the ones with the power to decide that Black lawyers are let go more frequently than white lawyers based on race.

114. See AM. BAR FOUND., AFTER THE JD: A LONGITUDINAL STUDY OF CAREERS IN TRANSITION, AJD QUESTIONNAIRE—WAVE 2, 10–11 (2007) (on file with author); AM. BAR FOUND., AFTER THE JD: A LONGITUDINAL STUDY OF CAREERS IN TRANSITION, AJD 3 QUESTIONNAIRE, 10–11 (2012), <https://www.icpsr.umich.edu/web/ICPSR/studies/35480/datadocumentation> (under the “Data & Documentation” tab, select “Download”; then choose “Questionnaire [PDF]”).

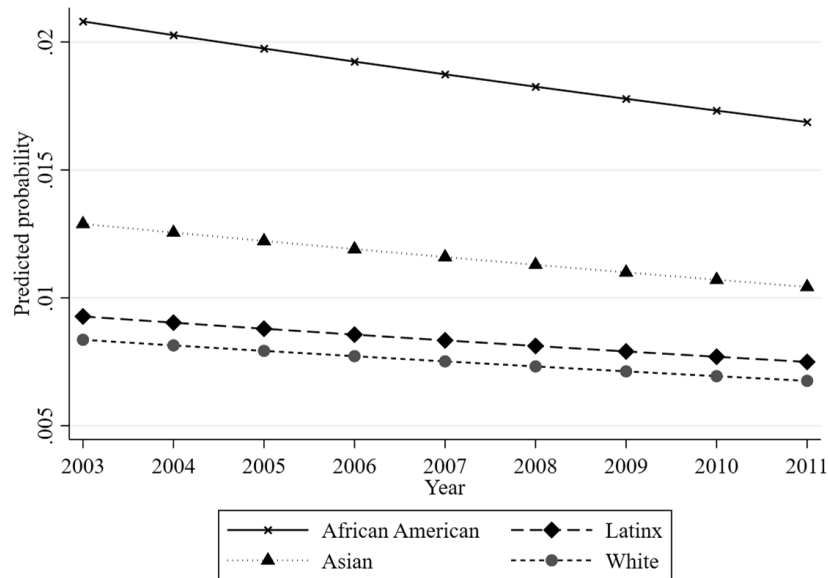
115. Again, the analysis is restricted to lawyers who worked as associates.

116. See GALANTER & PALAY, *supra* note 15, at 29.

117. *Id.* at 35.

118. *Id.* at 26, 29.

119. See Wilkins & Gulati, *supra* note 1, at 608.

FIGURE 2. LIKELIHOOD OF BEING FIRED FROM A LAW FIRM BY RACE¹²⁰

White lawyers have the lowest probability of being fired. All else being equal, African American lawyers are significantly more likely than white lawyers to be fired—followed, again, by Asians. Similar to voluntary moves away from firms, grades are statistically insignificant when calculating the chance of being fired. Thus, educational performance does not explain the racial disparity.

Most importantly, the racial gap in dismissals remains significant over time. Different from the other results previously described, having ever worked part-time is the only employment characteristic that significantly explains the movement of being fired from a law firm. These findings suggest that race influences the chances of layoff more significantly than workplace and educational characteristics do.

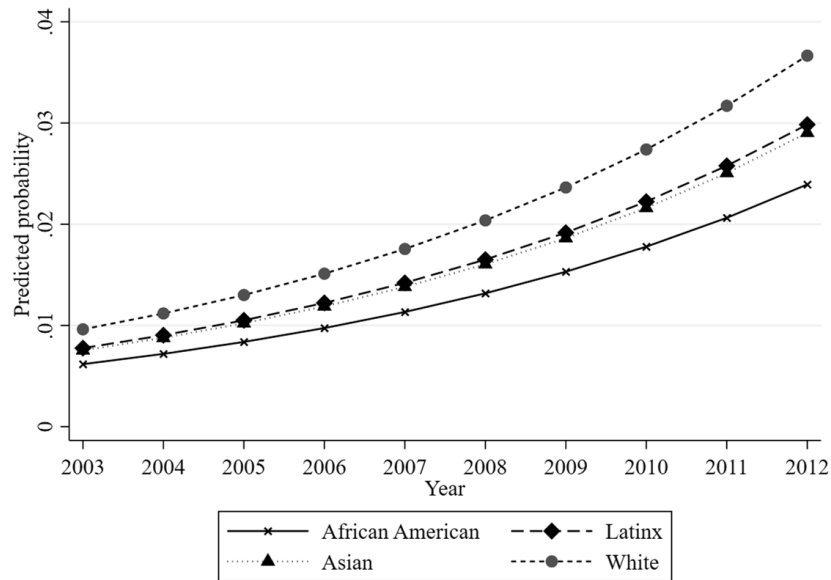
D. Moving Up in the Profession: Becoming Equity Partner

The last career outcome assessed quantitatively is promotion to equity partner, which is coded as a binary variable. The value of 1 (one) indicates that a lawyer reported an equity partnership position in the AJD survey, whereas 0 (zero) reflects individuals who have never been

120. The predicted probabilities by race in the y-axis were calculated based on the logistic regression models presented in Table A2 of the Appendix, *infra*, while holding all other variables at their observed values. Prepared by the author based on data from American Bar Foundation's After the JD project.

an equity partner.¹²¹ The movement up a firm's job ladder also presents some racialized patterns, as Figure 3 makes clear.

FIGURE 3. LIKELIHOOD OF PROMOTION TO EQUITY PARTNER BY RACE¹²²



According to Figure 3, the probability of becoming an equity partner is higher for white lawyers than other racial groups with otherwise similar characteristics. Also, the gap between white and non-white lawyers grows over time. Grades and law school ranking are not statistically significant in predicting equity partnership. Although perceived discrimination is a strong explanatory characteristic of becoming partner in models estimated without all the other variables, it is not significant when controlling for other career factors.

This trend calls attention to the other variables that significantly influence the likelihood of promotion to partnership. Having plans to leave the current employer within a year is significantly associated with a decrease in the probability of becoming an equity partner. Most importantly, the promotion to equity partnership is the only outcome in

121. Again, the analysis is restricted to lawyers who worked in a law firm.

122. The predicted probabilities by race in the y-axis were calculated based on the logistic regression models presented in Table A2 of the Appendix, *infra*, while holding all other variables at their observed values. Prepared by the author based on data from the American Bar Foundation's After the JD project. 2012 appears here but not in the other graphs because the data show the lawyers who eventually became partners in 2012. To include 2012 when estimating the other two outcomes, it would be necessary to know whether lawyers exited or were fired from a law firm in 2013, i.e., the year after Wave 3—when the AJD questionnaire was last distributed and organized.

which all the indicators of a lawyer's professional trajectory are statistically significant. Also, being an African American as opposed to white remains marginally significant, controlling for these other factors. Taken together, these patterns suggest that firm-level variables and the characteristics of lawyers' professional trajectories shape the probability of promotion to partnership in addition to race alone.

Therefore, the career constraints that lead lawyers to leave law firms, along with firm-level factors, help explain lawyers' chances to move either up or down the ladder within the firm setting. In the next Part, I discuss the quantitative results in light of how lawyers themselves described their careers. To do so, I examine how legal professionals who worked as associates received their assignments from partners, how they felt about working on such assignments with the help of partners, and how they ultimately perceived their opportunities to ascend within firms.

III. THE INTERVIEW DATA: RACIAL RELATIONS THROUGH THE EYES OF LAWYERS

Garth and Sterling have thoroughly mapped racial differences in how lawyers describe their experiences as associates.¹²³ Their interviews with lawyers surveyed by the AJD project have been transcribed and organized by the ABF.¹²⁴ This unique source of qualitative data on lawyers' careers has served as the basis for other projects carried out by the ABF.¹²⁵ Lawyers' narratives cast light on partner attitudes toward associates and the perceived cultural fit among lawyers. Such stories, according to the authors, have a strong racial component.¹²⁶ To complement their work with an emphasis on factors that go beyond fit,¹²⁷ I completed a qualitative analysis of the AJD interviews to examine subtle, racialized patterns in how private firms' organizational characteristics shape lawyers' careers.

To do so, I used the qualitative data analysis software Atlas.ti to examine the content of the AJD interviews. First, I built a subsample of lawyers who worked as associates. Next, I coded excerpts of conversations with Atlas.ti's auto-coding function. This way, I was able to use the linguistic root of certain terms to maximize the amount of

123. See Garth & Sterling, *Exploring Inequality*, *supra* note 20; Garth & Sterling, *Diversity, Hierarchy, and Fit*, *supra* note 20.

124. See Garth & Sterling, *Exploring Inequality*, *supra* note 20, at 1363 ("[The article's] goal was to add a qualitative component to the raw data collected as part of the After the J.D. project").

125. These initiatives include a book project on which I am working alongside Garth, Sterling, and other collaborators.

126. See Garth & Sterling, *Exploring Inequality*, *supra* note 20, at 1365.

127. See Garth & Sterling, *Diversity, Hierarchy, and Fit*, *supra* note 20, at 127.

text to be empirically scrutinized. For example, the code “promo” includes words such as promoted *and* promotion, “mentor” refers to mentor *and* mentorship, and the like. Table 1 lists Atlas.ti codes with the number of times they appear in the interviews.

TABLE 1. FREQUENCY OF THE CODES COLLECTED FROM THE INTERVIEWS

Code	Frequency
Advance	287
Assign	174
Coffee+Dinner+Lunch+Meal	2737
Dismiss+Fire+Terminate	299
Laid+Lay	367
Mentor	87
Partner	413
Promo	344
Social	61
Number of interviews	137 ¹²⁸

All the codes in Table 1 were chosen based on the questions asked by AJD interviewers. By drawing from the questions, I seek to capture the determinants of career transitions similar to the quantitative analysis. Thus, the topics covered by my coding methodology include advancement opportunities and promotion, chances to socialize with partners and clients, employment termination, access to partners and mentorship, and opportunities to obtain and work on assignments.¹²⁹

A. *Receiving Assignments: The Racial Division of Labor*

The qualitative data enrich understanding of the statistical patterns by capturing the law firm experience through the lenses of the lawyers on whom the quantitative findings are based. Consider, for instance,

128. The sample of 137 refers to the number of interviews, not the number of lawyers. Some legal professionals were interviewed more than once.

129. Although the interview questionnaire includes structured questions about lawyers' careers, the interviewees frequently pushed the conversation in directions that demanded the use of distinct words. Consider, for instance, the interplay between joining partners for meals and receiving partner mentorship. While some attorneys talked about this point by mentioning mentors within the firm setting explicitly, others explained the value of having a coffee, lunch, or dinner with partners. For this reason, I draw from a combination of terms while using the auto-coding tool in Atlas.ti.

the initial step for associates to show their work: receiving assignments. As Wilkins and Gulati documented,¹³⁰ African American lawyers were more likely to end up doing “routine paperwork” in firms’ “flatline track.” Their white peers, by contrast, tended to work on challenging assignments in the “training track.” Monica,¹³¹ a white lawyer,¹³² explained how quickly she became staffed with enough cases at her firm:

Interviewer: I guess, if you could be explicit about how assignments get given out to associates here.

Monica: [T]here is an assigning partner[,] so when you first come, when an associate first comes in, the first assignment is through that assigning partner. And then people sometimes go back to that assigning partner and he will call around and ask people[,] but it’s for the most part people get work informally. . . . And pretty much within the first month or two[,] I was staffed on enough cases that I never went back to the assigning partner. . . . Everything else has been through people I’ve already worked with or someone I went to and said[,] “I’d really like to work on this kind of case, do you have anything?” and I think that’s fairly typical. I might have started doing that earlier[,] but most people don’t get their work through the assigning partner, which makes the assigning partner’s life difficult.¹³³

What Monica perceives as informal actually opens the door to biases based on the chances of having “worked with” someone. If African American lawyers are less likely to benefit from the opportunities to interact with partners from the outset, the formal and informal processes through which assignments are distributed in law firms may compound the disadvantage faced by Black lawyers. Although, formally speaking, Monica’s firm has an assigning partner, the everyday practice in the firm underscores the importance of working with other lawyers and partners to receive important assignments informally. For example, Lynden, an African American

130. Wilkins & Gulati, *supra* note 1, at 565.

131. Interviews by American Bar Foundation’s After the JD Project (AJD) with anonymous subjects. Interview transcripts are on file with the author. I use pseudonyms for all the interviewees quoted in this Article. Note that transcript quotes are subject to spelling and grammar errors.

132. Racial categories used in the interviews are self-reported by lawyers in the AJD survey questionnaire.

133. See Interview 37 by American Bar Foundation’s After the JD Project (AJD) with anonymous subject, at 12 (on file with author).

lawyer, explained how race might have played a role in the distribution of his tasks:

Interviewer: What about when it comes to getting assignments. Have there ever been instances where you felt either you were given an assignment or not given an assignment as a result of your race?

Lynden: I don't think that's ever—I just mention that we try to be open minded and certain things happen and if you can't attribute them to that, then you don't do it. There's been one or two occasions that it just seemed odd that I had an assignment and then the most senior partner on the case said, "oh, he's doing it," and then it kind of got switched. But I never got the sense, I mean I have a good reputation, my work product is at least acceptable, there are people that like what I do, so I didn't know what to attribute that to other than that person had their own hand-picked—which is very much the case. Usually the most senior partners, they reach out and they say, "I like John, [he] is my guy," so they try to make sure that everything that comes out kind of goes through John. Since I don't have that kind of relationship, I just assumed that they said, "oh, you," [and] said to the junior partner, "you should have thought about who I like."¹³⁴

Lynden, to be sure, tries "to be open minded" when asked about racial relations in the context of getting assignments. He recalls only a few occasions that "seemed odd" to him. However, his story confirms the persistent workplace dynamics of senior partners who prefer that "everything . . . goes through" their "guy[s]." Lynden also makes it clear that he does not have that kind of relationship with the most senior partners to whom he refers. Comparing Monica's account to Lynden's, it is possible to see the limits of a formal assigning partner system and the potential of cultivating informal relationships with the "partners with power"¹³⁵ when cases are assigned or redistributed.

134. See Interview 11 by American Bar Foundation's *After the JD Project* (AJD) with anonymous subject, at 6 (on file with author).

135. See ROBERT L. NELSON, *PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM* 212 (1988) (describing an interview in which a retired partner details the value of cultivating ties between partners and within firms "on the basis of an ongoing relationship, not on the basis of a document or a formal agreement.").

B. *Knocking on the Partners' Doors: The Role of Mentorship in Working on Assignments*

After assignments are circulated, there are distinct perceptions of how open partners are to working with associates, including providing mentorship. Consider an account from Jackson, a white man:

Interviewer: [I]s it comfortable to . . . walk into the senior partner's office and ask a question if you are not sure what to do on something?

Jackson: Yeah, oh yea, we have an open-door policy . . . it's fairly informal in that respect. . . . You know, as far as the chain of command. I mean, we all know where it comes from, but yeah, I could walk into any office at any moment and anyone is free to walk into my office.¹³⁶

Similar to Jackson's account, I saw the repeated use of the term "open-door policy" among other white attorneys. Joshua, another white lawyer, explains how a formal mentorship track became unnecessary once he perceived "such an open-door policy" in the office:

Interviewer: So when you have questions[,] do you feel free to walk into a partner's office and ask questions?

Joshua: Yea, . . . we started off with sort of a formal mentoring relationship. . . . That lasted for probably a year technically, but in reality[,] there was such an open[-]door policy with the firm that I, I never really felt like it was necessary. . . .¹³⁷

Interviewer: OK, well is there somebody [with whom] you would perhaps go out to lunch, have a drink, talk about career in general?

Joshua: Well, there's one guy I play golf with somewhat regularly . . . [w]ho's actually one of the senior partners, and we play in a league together with clients every Tuesday. So he and I have, I guess, a very open relationship, as far as talking about the firm. . . . And expectations for, for me. And we typically sit down after the partnership meetings, and he'll give me the, the

136. See Interview 10 by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 4 (on file with author).

137. See Interview 48 by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 10 (on file with author).

recap of exactly what occurred. So[,] I think I'm probably more informed than most associates are.¹³⁸

Again, what started through a firm's formal, organizational channel (here, a mentorship program) permitted the creation of an informal yet organizational process through which white associates could build ties with partners. Perhaps not surprisingly, there are distinct perceptions of how open associates consider the partners' doors when the former needs to ask for help. Instead of a horizontal form of management, some lawyers express their views of a vertical, hierarchical relationship with partners when working on an assignment. Amir, a lawyer who self-identified by selecting the category "from other racial background," described such a hierarchy in the firm where he worked:

Interviewer: [C]an you go . . . to partners and ask for any kind of help? . . .

Amir: [N]o, and I'll tell you why, just because my first two assignments were with mid-level associates and it was a clear hierarchy and I didn't need to. And again, you're oblivious to what your role is and you're very nervous about asking dumb questions and you're very nervous about bothering the partner with questions that the associate can answer. So you'd be very hesitant to ask the partner for anything unless of course you're working with the partner.¹³⁹

Amir's story highlights two important patterns that exist in the everyday work of an associate. First, although a formal hierarchy exists, there are unclear situations as to whether a junior lawyer should direct questions to mid-level associates before "bothering" partners. Second, working alongside a partner gives associates the chance to pass through the formal hierarchy of the firm and address questions about legal matters and other issues. Associates with access to partners eventually come out ahead when compared to associates without such channels of communication with the firm's leadership.¹⁴⁰

138. *Id.*

139. See Interview 4 by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 6 (on file with author).

140. Law firm partners play multiple and important roles in how assignments are distributed and in offering insights into how best to work on such tasks to satisfy clients. These factors ultimately shape how law firms operate and how the lawyers working there are expected to behave to advance in their careers. See, e.g., NELSON, *supra* note 135.

C. *Navigating Law Firms' Coded Information to Reach Partnership*

Interactions with partners, in sum, help associates learn about their job prospects. Through these channels, associates gain access to valuable information regarding advancement opportunities. James, a white associate, illustrates comprehensive knowledge of his firm's standards for promotion to partnership:

Interviewer: [O]n this, technicalities [in] the firm. Do you know what the processes are for promotion to partner, how that works here[?]

James: I do. . . . , you are eligible for partner 8 years out of law school and you get 1-for-1 credit for clerkship, largely any legal experience that you have up to . . . I think it might be 2.5 years, I don't recall, that translates directly, cause I think for people who do 3 years of clerkship, one at each level, or [2 years] at District Court and then a Court of Appeals, you may lose half a year and then you're I think in the discretionary call where they can either put you with your class or back you up half a year, you'd be paid with your class. So, at the end of 8 years there is a vote by the partnership[,] and . . . we don't right now have any tiers at all. It is solely an equity partnership. There are isolated individuals who have a counsel position but [they're] usually partners who are later in their careers and want to sort of decrease their hours and start phasing towards a next stage, or sometimes [there have] been individuals who have been out and back and aren't really sure that they want to come back and join the partnership full time, so we probably have 4 or 5 people who are counsel right now, and there [has] been, I think, one associate I can think of who took himself out of, I don't know formally how that is done, but took himself out of partnership consideration and kind of has a [niche] part of the practice . . . — I don't know what his compensation is, but he is, I think, still technically an associate.¹⁴¹

James thoroughly describes how long it would take for him to be considered for partnership, followed by how points count toward his promotion. Indeed, he is well aware of the different tracks that exist in the firm with respect to a counsel position versus partnership. Although the circulation of detailed information might be similar across firms,

141. See Interview 2 by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 4-5 (on file with author).

even offices that are deemed to be transparent by associates can be nevertheless opaque. For example, Ricardo, a Latino lawyer, proudly described the transparency of his law firm with respect to its promotion system:

Interviewer: OK, and did they talk about when it would be that you'd be considered for promotion?

Ricardo: [T]hey'd need a minimum of two years to evaluate me, which puts me within the window of . . . the normal track. They didn't volunteer it, I asked. But . . . it's very clear here. They have [a] pretty good, fairly well enforced system here.¹⁴²

Interviewer: Sounds much more transparent than many firms.

Ricardo: They're very transparent. Apparently they [are], and again, I'm new so I haven't seen it.¹⁴³

Ricardo intelligently explains how quickly he could be considered for promotion within the regular associate-to-partner track in his firm. However, he needed to ask for it to happen, despite how "well enforced" and "transparent" the system that his firm had implemented arguably was. Pamela, an Asian attorney, on the other hand, candidly explains why that might have been the case, even though she and Ricardo did not work in the same firm: "You continue to advance or else you get fired."¹⁴⁴

Pamela's statement highlights the persistence of an "up-or-out" partnership track system in American law firms that Galanter and Palay and others identified during the twentieth century.¹⁴⁵ If Ricardo had not asked to move up, would he have been pushed out of the partnership track entirely?

Charles, a white lawyer, emphasizes that the more associates move up, the more details they may obtain to navigate firm structure. As Charles explained, associates have to decipher the "coded" information provided by partners. Such details are key to thriving within the firm

142. See Interview 23 by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 23 (on file with author).

143. *Id.*

144. See Interview 11b by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 2 (on file with author).

145. Even considering the transformations of big law firms regarding their relationships with corporate clients, Pamela's case indicates that some institutional characteristics within firms have remained over time. See, e.g., ABEL, *supra* note 12; HEINZ & LAUMANN, *supra* note 12; SMIGEL, *supra* note 12. See generally GALANTER & PALAY, *supra* note 15.

setting, which highlights how crucial the socialization opportunities with the firm's leadership are.

Interviewer: [S]o when you switched to be an associate[,] did anyone talk about what the process for promotion is at the firm[?]

Charles: They periodically have things, associate luncheon type of deals, where at least once a year they have somebody do that and a lot of it is informal; you know, chatting with people within your group and lunches with partners and people like that who tell you about the business and how it was when, you know, a lot of it is somewhat coded. . . . [A]nd they sort of say, "well, this is what we had to do," passing the expectations on to you and, like I said, they do have the more formal luncheons and things like that when they talk about the process and things that they look at; and in the end, if you know people who are higher up, they start to tell you a lot more as you get higher up.¹⁴⁶

Thus, lawyers must devise strategies to navigate both organizational structure and culture in order to follow firms' formal rules and informal norms. As the interviews reveal, some professionals were pushed up through informal, yet organizational, practices. Others, by contrast, had to ask for such advancement opportunities to remain in the associate-to-partner track.

These differences continue to be shaped along racial and ethnic lines. What the qualitative information suggests is confirmed by the quantitative analysis. Recall that the regression models revealed that lawyers from minority backgrounds are frequently pushed out of law firms and the partnership track compared to white lawyers, all else being equal.¹⁴⁷ Therefore, racial minorities, as well as women, often need to think of strategies that take into account other employment opportunities outside law firms.

D. *Considering Other Practice Settings*

In the AJD project, Dinovitzer and Garth have found that racial and ethnic minorities and women are overrepresented in the business and

146. See Interview 93 by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 6 (on file with author).

147. See *supra* Figures 1, 2, and 3.

public sectors.¹⁴⁸ Although law firms endured a severe decrease in business after the 2008 crisis,¹⁴⁹ Wilkins and Esteban Ferrer documented how big accounting firms expanded their global legal services.¹⁵⁰ Lawyers in the United States have observed this trend when talking about employment opportunities beyond law firms, such as Beau (a white lawyer): “I think, if you want opportunities to get into corporate America, you should go to an accounting firm, because it’s a completely different business model in that nobody gets fired at these accounting firms.”¹⁵¹

Beau’s account is certainly an exaggeration. But it is an important indicator of the perception of employment opportunities in this sector. It also shows a sense of the potentially higher stability in another corporate job, compared to staying at a law firm as an associate.

When Galanter and Palay first conceptualized the context of the rise of the “big law firm,”¹⁵² getting “into corporate America” through an accounting firm may have worked as a secondary option. But Galanter and Henderson¹⁵³ have identified changes to the partnership track that have unfolded in tandem with increasing opportunities in other settings,¹⁵⁴ such as in the rise of the “big accounting firms.”¹⁵⁵

Similar perceptions also appear in the stories told by lawyers who remained at a law firm but saw their colleagues moving elsewhere. The circulation of lawyers from law firms to the public sector and back to firms reveals an interesting dualism in terms of career paths and outcomes when considering switching jobs and sectors. Mitchell, a white lawyer, described how moving from a position in the government to a firm can be challenging. As Mitchell puts it: “I knew some lawyers who came over from the [attorney general’s] office, who are here now, actually, who were more advanced in their careers, but, you know, they had to come in as staff attorneys, because they didn’t have a book of business.”¹⁵⁶

148. See Dinovitzer & Garth, *supra* note 74, at 346.

149. See Garth, *supra* note 75, at 509–10.

150. See David B. Wilkins & Maria J. Esteban Ferrer, *The Integration of Law into Global Business Solutions: The Rise, Transformation, and Potential Future of the Big Four Accountancy Networks in the Global Legal Services Market*, 43 L. & SOC. INQUIRY 981, 989–96 (2016) (identifying how big accounting firms have not only gained some market share of traditional corporate law firms but have also attracted talented corporate lawyers, which is a new setting in which they can find profitable and prestigious employment).

151. See Interview 12 by American Bar Foundation’s After the JD Project (AJD) with anonymous subject, at 17 (on file with author).

152. See GALANTER & PALAY, *supra* note 15, at 16 (describing how firms and their lawyers devised strategies to serve their business clients).

153. See Galanter & Henderson, *supra* note 43, at 1896.

154. *Id.*

155. See Wilkins & Esteban Ferrer, *supra* note 150, at 981–84.

156. See Interview 48b by American Bar Foundation’s After the JD Project (AJD) with anonymous subject, at 4 (on file with author).

It is noteworthy that Mitchell sees his colleagues advancing in their careers while facing some hurdles after moving from the government to a private law firm. Thus, although career constraints exist, some lawyers, again, devise skillful strategies to progress within the firm setting and thrive within the structure of the bar. At the same time, other legal professionals, especially women and people of color, end up moving forward with their careers in the public sector. This trend has been perceived as a structural issue of the partnership track as well as being contingent upon career aspirations, such as James (a white lawyer) explained:

I don't know actually what our numbers [in terms of lawyers of color] are. I think it's obviously worse in the partnership than it is among associates but one of my best friends in DC was an African American associate here who always wanted to be a public defender and left us to go do that.¹⁵⁷

In his account, James raised an interesting argument regarding what his friend "always wanted to be."¹⁵⁸ Yet, James did not mention how socialization opportunities in law school and within firms matter to one's choice of career path. For instance, a lawyer may realize that, despite the obstacles posed by law firms to most female and non-white lawyers, there are mechanisms that help explain both their permanence and success within such an environment. Indeed, Claire, an Asian attorney, shows a deep understanding of the career moves of her colleagues and how the long-standing, continuing mentorship provided by former employers has influenced her own path:

Interviewer: I forgot to ask[,] have you had any career mentors particularly?

Claire: Yeah, I'm not official where I would say to their face[s,] ["you're a mentor to me,["] but one from another firm . . . was a great teacher to me while I was there and we've kept in touch over the years, and she also has three kids and we just had dinner July 3rd, so I'm lucky in that she's a very busy partner and she made time to come down here to have dinner with me and hang out when she didn't have to. . . .¹⁵⁹

157. See Interview 2 by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 14 (on file with author).

158. *Id.*

159. See Interview 66 by American Bar Foundation's After the JD Project (AJD) with anonymous subject, at 9 (on file with author).

Interviewer: And did [people from your law school] go into traditional law practice like you did with firms?

Claire: So almost everyone that I know that I've kept in touch with started with the large law firm, but one now is at the [Santa Clara County], one is at the public defender, one is . . . she made partner at a law firm in San Francisco.¹⁶⁰

The stories of Claire and the other interviewees underscore how important it is to recognize that lawyers are agentic social actors. They have control over their careers, even though they have more or fewer options depending on their work environment.¹⁶¹ Such options, however, are largely distributed along racial and gender lines.¹⁶²

The inequality in the amount of information circulated in law firms directly relates to racial differences in the attention that associates receive from partners. These disparities range from obtaining assignments, to working on legal matters, to learning details about promotion. For example, Joshua, the white associate who played golf with partners and clients, did not talk about promotion, because he had no need to do so. Conversely, there are several instances where we see Black lawyers feeling restrained in asking questions about how to advance their career opportunities. The distinct experiences reflected in the interviews highlight that law firms' differential treatment of associates presents racialized patterns.

CONCLUSION

In the contemporary American legal profession, the notion of hierarchy, fit, and not having key networks within law firms exemplify the difficulties of navigating the firm context as an associate of color. This point is particularly salient among African American lawyers. At

160. *Id.* at 16.

161. It is important to acknowledge that lawyers' decisions concerning their jobs are embedded within the economic and organizational structures in which they work. They are not only a product of an environment, however. These attorneys have found ways to build their careers by moving from one employer to another or working towards a promotion, despite the obstacles posed to them. *See generally* Wilkins & Gulati, *supra* note 1; Kay & Gorman, *Women in the Legal Profession*, *supra* note 64; Kay & Gorman, *Developmental Practices*, *supra* note 64. Social actors, in general, and lawyers, in particular, do exercise agency. Still, their choices and aspirations are also influenced by the professional structure that they find when working in legal organizations. This reality applies to attorneys practicing law in different jurisdictions, such as in the U.S. and the U.K. DIVERSITY IN PRACTICE: RACE, GENDER, AND CLASS IN LEGAL AND PROFESSIONAL CAREERS, *supra* note 4 at 249, 251.

162. *See generally* Wilkins & Gulati, *supra* note 1; Kay & Gorman, *Women in the Legal Profession*, *supra* note 64; Kay & Gorman, *Developmental Practices*, *supra* note 64; DIVERSITY IN PRACTICE: RACE, GENDER, AND CLASS IN LEGAL AND PROFESSIONAL CAREERS., *supra* note 4.

the aggregate, quantitative level, these patterns result in racial differences between Black lawyers and white lawyers in voluntary and involuntary exits from law firms, as well as in promotions within firms.

The formal mechanisms through which law firms structure their job ladders and how lawyers should climb them coexist with informal, yet institutionalized hurdles. Law firms thus continue to work under a system that perpetuates racial inequality.¹⁶³ They operate based on moving targets, which impair African Americans from having predictable and reliable career trajectories.¹⁶⁴

This work has drawn from extensive socio-legal scholarship on racial inequality in the legal labor market,¹⁶⁵ which has long followed and marked the American legal profession. In using both qualitative and quantitative data from the first longitudinal survey of lawyers' careers, I have found that grades, law school background, and law firm characteristics do not explain away the fact that African American lawyers are less likely to become equity partners than white lawyers. Nor are these characteristics significant in accounting for why Black lawyers are more likely to exit law firms and to be dismissed. Simply put, being African American as opposed to white reduces the chances that a lawyer will move up within firms and significantly increases the odds of being forced out.

These findings reinforce the conclusion that the U.S. bar remains stratified by both race and gender. People of color need to consider such challenges as they devise strategies to navigate the contemporary legal labor market. This is why there still are so few Black lawyers in American private law firms.¹⁶⁶ The U.S. legal profession, therefore, ought to set instruments in place to remedy racial inequality.

Affirmative action is among the instruments that Wilkins and Gulati identified as important for furthering diversity and inclusion in legal education as well as in law firms.¹⁶⁷ However, affirmative action has been challenged in American courts.¹⁶⁸ In 2003, Supreme Court Justice Sandra Day O'Connor ruled in the landmark case, *Grutter v. Bollinger*: "We expect that 25 years from now, the use of racial

163. Several scholars have documented that, even though discriminatory practices may have changed throughout the twentieth century, they remain visible in law firms and continue to negatively influence the careers of racial minorities and women. See Kay & Gorman, *Developmental Practices*, *supra* note 64. See generally SMIGEL, *supra* note 12; HEINZ & LAUMANN, *supra* note 12; Wilkins & Gulati, *supra* note 1; Payne-Pikus et al., *supra* note 4.

164. See Kay & Gorman, *Developmental Practices*, *supra* note 64. See generally SMIGEL, *supra* note 12; HEINZ & LAUMANN, *supra* note 12; Wilkins & Gulati, *supra* note 1; Payne-Pikus et al., *supra* note 4.

165. See Kay & Gorman, *Developmental Practices*, *supra* note 64. See generally SMIGEL, *supra* note 12; HEINZ & LAUMANN, *supra* note 12; Wilkins & Gulati, *supra* note 1; Payne-Pikus et al., *supra* note 4.

166. See Wilkins & Gulati, *supra* note 1 (explaining similar obstacles that Black lawyers faced while focusing on the corporate bar only).

167. *Id.* at 512–13.

168. *Id.* at 598 n.401.

preferences will no longer be necessary to further the interest approved today.”¹⁶⁹ But questions about the future of affirmative action and whether this part of the ruling remains accurate are in contention. These issues are pressing, especially considering the solidly conservative majority in the Supreme Court, which is expected to hear *SFFA v. Harvard*.¹⁷⁰ With less than ten years to reach the expiration date predicted by Justice O’Connor, racial inequality continues to pervade the bar in the United States, making affirmative action still very much necessary.

By calling attention to this pressing matter, this study furthers our understanding of the role of race within the legal profession. The inquiry here is novel because it explains that making equity partner within a law firm continues to be dominated and shaped by race. Race is also a significant predictor of being dismissed, and once that occurs, the findings show that African American lawyers have greater difficulty re-entering the partnership track in a subsequent law firm.

In conclusion, the advancement and socialization opportunities that ultimately help lawyers become partners are significantly reduced for African American lawyers, compared to their white counterparts with similar credentials and experience. The quantitative data, along with the interviews, show that racial mechanisms of inequality persist. They are institutionalized in the bar and pose significant barriers to the career progress of minorities, in general, and Black lawyers, in particular.¹⁷¹

169. *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

170. See generally *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (Harvard Corp.)*, 397 F. Supp. 3d 126, 131 (D. Mass. 2019), *aff’d sub nom.*, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. 2020), *petition for cert. filed*, U.S._ (Feb. 28, 2021) (No. 20-1199).

171. See, e.g., Garth & Sterling, *Diversity, Hierarchy, and Fit*, *supra* note 20.

APPENDIX

Table A1. Descriptive statistics of the sample by outcome¹⁷²

	Law Firm Exits	Fired from Law Firms	Equity Partnership
African American	0.07	0.08	0.09
Latinx	0.10	0.10	0.10
Asian	0.09	0.10	0.10
White	0.73	0.73	0.71
Female	0.43	0.43	0.49
Male	0.57	0.57	0.51
Not Married	0.22	0.22	0.23
Married	0.78	0.78	0.77
No children	0.55	0.55	0.54
1 Child	0.22	0.22	0.21
2 Children	0.18	0.18	0.19
3+ Children	0.05	0.05	0.06
Law School GPA <2.99	0.14	0.15	0.15
Law School GPA 3.00-3.24	0.19	0.19	0.19
Law School GPA 3.25-3.49	0.22	0.22	0.21
Law School GPA 3.50-3.74	0.14	0.14	0.15
Law School GPA 3.75-4.00	0.07	0.07	0.07
LSAT 0-50 Percentile	0.25	0.25	0.24
LSAT 50-75 Percentile	0.42	0.41	0.40
LSAT 75-100 Percentile	0.09	0.08	0.09
Law School Rank 1-10	0.11	0.11	0.13
Law School Rank 11-20	0.12	0.12	0.13
Law School Rank 21-50	0.22	0.22	0.22
Law School Rank 51-100	0.27	0.27	0.26
Law School Rank 101-137	0.16	0.16	0.14
Law School Rank <137	0.11	0.11	0.10

172. For a straightforward presentation of the sample characteristics, year and the missing categories have been omitted from this table. Any inconsistencies in the proportions are due to rounding errors. The data are from the three Waves of the AJD. Sample: Lawyers who worked in corporate law firms at any point in the first twelve years of their careers, including those who moved to other practice settings.

Table A1. Continued

Unperceived discrimination	0.87	0.88	0.89
Perceived discrimination	0.13	0.12	0.11
Overall satisfied with advancement opportunities	0.56	0.54	0.44
Overall dissatisfied with advancement opportunities	0.07	0.06	0.07
Does not join partners for meals	0.07	0.06	0.07
Joins partners for meals	0.25	0.24	0.19
Does not desire to leave current employer within a year	0.51	0.49	0.38
Desires to leave current employer within a year	0.11	0.10	0.12
Cumulative probability to have ever worked part-time	0.05	0.05	0.07
Cumulative probability to have ever exited the labor force			0.16
Cumulative probability to have ever exited a law firm			0.26
N	2,329	2,334	2,810

Table A2. Results of the Logistic Regression Models, Odds Ratios¹⁷³

	Model 1 Law Firm Exit	Model 2 Fired from Law Firms	Model 3 Equity Partnership
African American	1.30 [*]	2.53 ^{***}	0.63 [#]
Latinx	0.94	1.12	0.80
Asian	1.06	1.55	0.78
Female	1.36 ^{***}	1.49 [*]	0.74 ^{**}
Married	0.84 [*]	0.59 ^{**}	1.24
1 Child	0.91	1.18	1.31 [#]
2 Children	0.87	0.94	1.54 ^{**}
3+ Children	0.80	0.78	1.83 ^{**}
Law School GPA < 2.99	0.99	1.52	0.88
Law School GPA 3.00-3.24	0.94	1.25	0.93
Law School GPA 3.25-3.49	1.05	1.28	0.87
Law School GPA 3.50-3.74	1.18	1.56	0.89
Law School GPA Missing	0.78	1.00	0.90
LSAT 0-50 Percentile	0.78 [#]	0.63	0.97
LSAT 50-75 Percentile	0.76 [*]	0.88	1.06
LSAT Missing	0.76 [#]	0.53	0.79
Law School Rank 11-20	0.88	1.64	1.00
Law School Rank 21-50	0.80 [#]	1.56	1.14
Law School Rank 51-100	0.76 [*]	1.38	1.15

173. The reference categories are white, male, childless, not married, law school GPA 3.75-4.00, LSAT 75-100 percentile, graduated from a top-10 law school, unperceived discrimination, and no desire to leave employer within a year. All models control for year, and 2003 is the reference group. The data are from the three Waves of the AJD. Sample: Lawyers who worked in a law firm.

p < 0.10, * p < 0.05, ** p < 0.01, *** p < 0.001

Table A2. Continued

Law School Rank 101-137	0.67 ^{**}	2.00	0.94
Law School Rank <137	0.71 [*]	1.80	1.03
Law School Rank Missing	0.50 [*]	0.72	1.35
Perceived Discrimination	1.00	1.35	1.17
Overall Dissatisfied with Advancement Opportunities	0.98	1.13	0.71
Job Satisfaction Missing	0.83	0.37 ^{**}	0.83
Joins Partner for Meals	0.82	0.74	1.31
Joins Partner for Meals Missing	0.83	0.75	0.90
Plans to Leave Employer Within a Year	1.43 ^{**}	1.02	0.44 ^{***}
Desire to Leave Missing	1.57 [*]	3.84 ^{***}	0.71
Ever Worked Part-Time	1.08	1.91 [#]	0.28 ^{***}
Ever Exited the Labor Force			0.69 [*]
Ever Exited a Law Firm			0.32 ^{***}
Constant	0.19 ^{***}	0.01 ^{***}	0.01 ^{***}
Pseudo R ²	0.03	0.05	0.10
Observations	2,329	2,334	2,810
BIC	6810.35	1719.77	3971.70

