

# Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love

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Corporate law firms in many respects set the tone for the U.S. legal profession. A large concentration of the newly-minted legal talent goes to large corporate law firms.<sup>1</sup> Most of these lawyers work as associates for a few years and then move on to other firms and practice settings. The relatively few who remain and are

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1. See David T. Zaring & William D. Henderson, *Young Associates in Trouble*, 105 MICH. L. REV. 1087 (2007).

selected as partners are very well compensated and occupy positions of high status in the legal profession and in the cities in which they work. They are by many accounts at the top of the professional hierarchy.<sup>2</sup>

Access to these partnership positions has long been unequally distributed. Until at least the 1970s, there were gender, ethnic, racial, and religious barriers that limited access to male, Caucasian, and Protestant lawyers.<sup>3</sup> The “white shoe firms” that developed initially on Wall Street and were replicated widely in other cities epitomized the exclusive elite corporate law firm as a male WASP organization.<sup>4</sup> The most elite corporate law firms for many years were also open only to graduates of the most select schools.<sup>5</sup> They were accordingly closed to the numerous local law schools serving immigrants and others who began to enter the legal profession in the late nineteenth century.<sup>6</sup>

Much has changed in the legal profession. The corporate law firms became much larger in the 1970’s and 1980’s<sup>7</sup> and, as mentioned above, they became more open to lawyers with more diverse backgrounds. The partnership ranks, however, are still predominantly male, and minorities are not nearly as well-represented as they are in the legal population more generally.<sup>8</sup> Local law school graduates are now found in the most prominent law firms, but the partnership ranks at those firms are still dominated by graduates of the most select schools.<sup>9</sup> There has also been growth in the number of minorities and women in the large law firms, but that growth is not nearly at the levels commentators expected when the law schools began to produce much larger

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2. JOHN HEINZ, ROBERT NELSON, REBECCA SANDEFUR, AND EDWARD LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005).

3. See JEROLD S. AUERBACH, *UNEQUAL JUSTICE* 24 (1976); ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* (1969); JEROME E. CARLIN, *LAWYERS’ ETHICS: A SURVEY OF THE NEW YORK CITY BAR* (1966); Robert L. Nelson, *Practice and Privilege: Social Change and the Structure of Large Law Firms*, 1981 AM. B. FOUND. RES. J. 95, 104.

4. David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493 (1996); Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 STAN. L. REV. 1803 (2008); Wayne K. Hobson, *THE AMERICAN LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY 1890-1930* (1986); See Elizabeth Chambliss, *The Shoe Still Fits: The White Buck Is Gone from Elite Law Firms, but the Snobbery It Represented Lives On*, LEGAL AFF., Sept.-Oct. 2005, at 18, available at [http://www.legalaffairs.org/issues/September-October-2005/toa\\_sepoct05.msp](http://www.legalaffairs.org/issues/September-October-2005/toa_sepoct05.msp).

5. Robert B. Stevens, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983); Randolph Jonakait, *The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools*, 51 N.Y.L. SCH. L. REV. 862, 864.

6. Joyce Sterling, Ronit Dinovitzer, & Bryant G. Garth, *The Changing Social Role of Urban Law Schools*, 36 SW. U. L. REV. 389 (2007).

7. RICHARD ABEL, *AMERICAN LAWYERS* (1989); MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS* (1991); ROBERT L. NELSON, *PARTNERS WITH POWER: SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM* (1988).

8. NALP FOUNDATION FOR RESEARCH & EDUCATION, *PERCEPTIONS OF PARTNERSHIP* (1999); NALP FOUNDATION FOR RESEARCH & EDUCATION, *KEEPING THE KEEPERS II: MOBILITY & MANAGEMENT OF ASSOCIATES*. (2003).

9. Zaring & Henderson, *supra* note 1.

numbers of women and minority graduates in the 1980's.<sup>10</sup> The expectation was that corporate law firms would reflect gender parity and racial and ethnic diversity as a matter of course. That has not happened.<sup>11</sup>

In addition, there have been important changes in the law firm business. Firms no longer have a stable set of loyal clients or partners committed to a life at one law firm.<sup>12</sup> Increased competition has led to changes in the length of time that it takes to become partner,<sup>13</sup> in the security of tenure for partners, and in the pressure on partners to continue to work very long hours. As we shall see from the discussion below, these changes have made the carrot of partnership less attractive and more distant to the associates supposed to supply the next generation of partners.

This article began as an investigation into the reasons that women and minorities seem disproportionately not to “fit” in large law firm settings and stay on to become partners. Its goal was to add a qualitative component to the raw data collected as part of the After the J.D. Project.<sup>14</sup> Drawing on more than sixty-six interviews with lawyers in their third to sixth years of private practice,<sup>15</sup> our particular aim was to see what factors contribute to the persistence of the inequalities that commentators expected to disappear long ago. On the basis of the interviews, we can indeed point to a number of examples demonstrating a lack of fit from the perspective of lawyers beginning their careers. They appear to be out of place in the corporate law firm setting. The story suggested by the interviews, however, is more complex.

Our findings and approach in this article can be introduced through the career of a lawyer who at the time of the interview was five years into the partnership track of a leading Washington, D.C. litigation firm.<sup>16</sup> Now, according to his firm's web site, he is a partner. Although the first in his family to attend college, and with a capacity for hard work that may have stemmed from that social position,

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10. Cynthia Fuchs Epstein, et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291, 356-64 (1995); Deborah L. Rhode, *Unfinished Agenda: A Report on the Status of Women and the Legal Profession*, in *A.B.A. COMM'N ON WOMEN IN THE PROFESSION* 14 (2001); VIRGINIA VALLAN, *WHY SO SLOW: THE ADVANCEMENT OF WOMEN* 2 (1999).

11. Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing Workplace Opportunities for Women Lawyers*, 29 *CAP. U. L. REV.* 923 (2002) [hereinafter Reichman & Sterling, *Recasting the Brass Ring*]; Nancy Reichman and Joyce Sterling, *Sticky Floors, Broken Steps and Concrete Ceilings in Legal Careers*, 14 *TEX. J. WOMEN & L* 27 (2004) [hereinafter Reichman & Sterling, *Sticky Floors*].

12. For changes in the relationship of clients and lawyers see, e.g., George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 *N.C. L. REV.* 1635 (2005-2006).

13. *Id.* For data on the increase of time for promotion to partner, see *id.* at 1670-1671.

14. For background on the AJD Project, see, e.g., RONIT DINOVTIZER ET AL., *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* (2004).

15. In addition to the transcripts of the interviews conducted with this sub-sample of attorneys from After the JD—Wave 1, the authors employed computer searches to establish the current location of these attorneys in January 2009. Of the 66 respondents used as the basis of this article, only 5 were not located as of January 2009.

16. See Interview 24 (on file with author).

he came from a solid middle class background and attended elite post-secondary schools capped by a federal clerkship. He began his career as a practitioner at the firm, and he reported three years ago that “I never thought I would be a big firm lawyer.” He had expected instead to “burn out quickly.” He liked the people in the firm, however—“the best part of the job is the people I work with.” He also found strong mentors who advised and helped him, for example, to “try a case in [a particular] area.” He did flirt with the law teaching market but did not find a suitable position. In short, he was not at all wedded to the large law firm or particularly focused on partnership. The main reason he was still there, he reported, was that, “nothing has driven me away.” He had no children at the time of the interview, and his wife was a governmental attorney well acquainted with the work regime of a large law firm. He carefully noted, in addition, that he and his wife made sure that they were not “locked into” the big firm lifestyle of the high roller. Nevertheless, he stayed at the firm. From his perspective, he did not participate and compete in a seven or eight year “tournament of lawyers” seeking partnership.<sup>17</sup> Instead, he did his apprenticeship and almost by accident ended up as a partner.

The story provides support for two complementary but also potentially competing narratives about the path of associates in large law firms. The relationship between the narratives is complex. One is the narrative of the path from associates to partners. From the perspective of the example just given, the accident that favored the partnership move depended on a number of factors that are not randomly distributed in the lawyer population. These factors, not surprisingly, tend to favor men over women, whites over minorities, and elite graduates over non-elite graduates. Minorities and women are not likely to survive the attrition process so essential to the corporate law firm partnership system.<sup>18</sup>

This narrative recognizes that lawyers starting careers in corporate law firms need to find ways to put in very long hours for a substantial period of years. There are two key elements of that survival. One element is “finding the love” or support necessary to successfully fulfill the obligations of the apprenticeship. Put simply, they are more likely to be able to continue the work if they get support from others inside and outside of the firm—including junior and senior associates and partners. The other aspect of “finding the love” emerges from supportive spouses, family, and peers. One problem with the situation of minorities and

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17. GALANTER & PALAY, *supra* note 7. For discussion on tournament theory see also Kevin A. Kordana, *Law Firms and Associate Careers: Tournament Theory Versus the Production-Imperative Model*, 10 YALE L.J. 1907 (1994-1995); Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2007-2008).

18. See, e.g., Reichman & Sterling, *Recasting the Brass Ring*, *supra* note 11, Reichman & Sterling, *Sticky Floors*, *supra* note 11; Wilkins & Gulati, *supra* note 4; 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 (2007-2008).

women in large law firms is that these firms were built by and for white males with wives at home. Those who do not blend in terms of ethnicity, race, and gender face one set of obstacles; those without home support face another. Success comes most easily to those who feel welcome and comfortable at work and have a warm and supportive home outside of work.

The second element necessary to a successful corporate apprenticeship is “doing the time.” Our narrative recognizes that lawyers starting their careers in corporate law firms need to find ways to put in very long hours for a substantial period of time. “Doing the time” requires the patience and commitment to put in the time necessary to compete for and attain partnership. “Doing the time” may require lawyers to work weekends, spend late nights, and travel on assignments. In an earlier article, one of the current authors suggested that the law firm as currently organized fits Lewis Coser’s definition of a “greedy institution.” A greedy institution makes total claims on its members. Large corporate law firms command total loyalty and commitment and implicitly assume that lawyers will have someone at home to care for the personal aspects of life.<sup>19</sup> It is not that lawyers going for partnership need only love and understanding from the home front. They need material support as well.

The second narrative is about the reproduction of the legal elite and more generally social class in the United States. Historically, as we have noted, the lawyers who gained the prestigious partnership positions were from the most elite law schools, which historically and currently draw mainly from relatively advantaged social groups. Individuals who gained entry into the leading law schools would join the ranks of the associates at the large corporate law firms, and out of that pool would come a new generation of partners. Those who did not become partners would be placed at boutique firms or would become in-house counsel of businesses with strong relationships with the particular corporate firms. In this manner a network of lawyers from similar backgrounds and schools secured the leading legal positions in the corporate law firms and the businesses with which they dealt. The status of the positions was reinforced partly by relatively high salaries, but also by the fact that they were occupied by individuals validated with degrees from the most prestigious schools. As just described, the second narrative of the reproduction of the elite credentialed at the most prestigious law schools matched the narrative of the path from associate to partner.

Our interviews, we shall see, suggest a potential disconnect in the story of the reproduction of the elite dominated by the most prestigious law schools. First, as we have noted, the corporate law firms now hire associates from a much wider pool of law schools than in the past. A disproportionately large portion of the associates come from the most prestigious schools, but many other schools with

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19. Reichman & Sterling, *Sticky Floors*, *supra* note 11 at 70.

students from relatively less advantaged backgrounds are also represented.<sup>20</sup> One might posit that those who become partner will naturally tend to come from the most elite schools, partly because of the relative numbers, partly because they presumably have more talent as represented by their undergraduate grades and LSATs, and partly because they will be likely to fit in with the existing partners with similar backgrounds.

We will suggest, however, that the corporate law firm apprenticeship is increasingly becoming disconnected from the competition for partnership. In particular, the preliminary evidence suggests that the most elite law graduates will translate the prestige that comes from three or so years at a corporate law firm into a highly valued position *elsewhere* in the legal profession or business world. They will not stay around to build the bonds that might pull them into the partnership ranks.

This second narrative, therefore, co-exists unevenly with the first one. Women and minorities who were long excluded from the elite partnership positions at the corporate law firms continue to be unlikely to stay and make their way to a partnership position. Our research makes this phenomenon quite clear. But those who used to dominate the corporate law firm partnerships may also be unlikely to stay. It is certainly possible that existing partners could find some way to recruit a new generation from among the most prestigious schools—at least, as our example suggests, from those who are among the hungrier graduates at those schools. But it also appears that the emerging pattern for the most prestigious law graduates is to leave before playing the game for partnership. It is admittedly difficult to make more than a preliminary hypothesis at this point, but our data suggest that those from the less prestigious schools and the less advantaged social backgrounds may take a disproportionate number of the corporate law partnerships.

To compare the two narratives, the corporate law firm apprenticeship may reproduce privilege *in the legal profession* as those who go through it move into prestigious and powerful positions that are mostly outside the corporate law firms, but the corporate law firms themselves may be losing some of their ability to reproduce the elite credentials of their traditional partnership stock. This outcome may not be a problem, and indeed it may be a welcome development. The problem, or more precisely the contradiction, is that the corporate law firms have historically used the prestige value of their partners' law degrees as a key aspect of their credibility as leaders of the profession and the provision of professional services.

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20. Galanter & Henderson, *supra* note 17. The authors refer to estimates of the number of associates to be hired during the fall of 2008. It was expected that there would be 10,000 new associates hired that fall. The top 20 law schools only produced about 6,500 graduates. Data from Aric Press, *The New Reality*, AM. LAW., Aug. 2007, at 91. These figures reinforce the fact that there is substantial room in large corporate law firms for graduates of non-elite law schools.

As in other work, we draw on Bourdieu's sociological approach as a helpful starting point.<sup>21</sup> It is useful to draw on the concept of the "legal field" as a semi-autonomous social space with its own rules of the game—which may change over time. Success in navigating the rules of the game relates to positions and dispositions of the players. A favorable position to play the game depends on advantages that come from the possession of capital valued in the field—skills, degrees, academic achievements, social manners, connections. Skill in playing the game comes in part from dispositions toward certain kinds of behavior socialized into the players—and that are rewarded in the field. Our approach can be contrasted with a rational actor approach that seeks to explain why associates *choose* to work in large law firms.<sup>22</sup> The suggestion then is likely to be that they put in the long hours either for prestige, money, or training, but as Zaring and Henderson point out, none of those explanations seems to work very well.<sup>23</sup> Even a "rationally acting" law graduate consciously weighing the costs and benefits of the corporate law firm apprenticeship might very well decide that the emotional costs, the necessity of long work hours, the boring and tedious assignments, and the lack of opportunity to develop lawyering skills outweigh any benefits associated with high pay and prestige.

Our focus accordingly is not on rational actors consciously weighing costs and benefits. Instead we investigate what leads law graduates of a certain profile to believe that it will somehow be good for their legal career to begin in a large corporate law firm. They are socialized to know that in order to achieve professional success—to play the game well, a natural first move is into the corporate law firm. Our approach also does not assume that the patterns of behavior of the law firms or their associates are the product of economic rationality. The long history and path-dependent institutionalization of law firms has produced behavioral patterns and incentives socialized into the various players of the game. The rules of the game have a logic that can be explained, but it is not necessarily consistent with rational actors and cost-benefit calculations.

Qualitative interviews are typically the best way to uncover what in fact people bring to the field, how they are orienting their behavior, what they expect from the moves that they make, and what it means in terms of the forms of capital that they can accumulate. The actors in any given field may or may not be self-conscious about the strategies that they believe are appropriate in order to navigate the field.<sup>24</sup> But interviews about the position they occupy, where they

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21. See Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 LAW & SOC'Y REV. 1 (2007).

22. See, e.g., PIERRE BOURDIEU & LOÏC WACQUANT, AN INVITATION TO REFLEXIVE SOCIOLOGY (1992).

23. Zaring & Henderson, *supra* note 1.

24. Ronit Dinovitzer & Bryant G. Garth, *Pro Bono as an Elite Strategy in Early Lawyer Careers*, in PRIVATE LAWYERS and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession, (Robert Granfield and Lynn Mather eds., forthcoming 2009).

are aiming, and the gains they expect as they make their way in the legal field provide the kind of insights that quantitative data alone cannot provide. The qualitative interviews from private practice that we draw on for this article numbered sixty-six. Of these, twenty-one were minorities and twenty-seven were women, and eleven of the women were minority. Our interviewees are by no means a random sample, but the picture they present provides a unique perspective on early career practice in corporate law firms.

Drawing on Bourdieu, in addition, we note that the apprenticeship as it currently exists raises the issue of human capital versus symbolic capital.<sup>25</sup> Again, economists tend to emphasize the value of human capital—educational skills, expertise—in adding value through professional practice that is then rewarded in the marketplace. Sociologists have promoted the notion of social capital—who you know—as another factor that leads to economic success by producing opportunities that are then rewarded. Symbolic capital comes from things associated with prestige—degrees, titles—that are recognized within a particular field.

The law firm apprenticeship bestows symbolic capital on a certain group. Symbolic capital is capital that has value because people through a circular logic believe it has value. To put it in extreme terms, suppose that the corporate apprenticeship develops no skills or expertise that is of value to subsequent employers, but that subsequent employers gain business or credibility because they have lawyers who have the prestige that comes from the apprenticeship. Symbolic capital, according to Bourdieu, is a key to the reproduction of the elite. Those with relatively advantaged backgrounds are socialized to take the path that gains the symbolic capital that will ensure their future path to success. So far the corporate law apprenticeship occupies that role in the eyes of the most elite law graduates.

We posit that major structural shifts in corporate law practice have transformed the apprenticeship period from one that combined symbolic capital with a good portion of human capital—the skills necessary to be a successful lawyer—to an apprenticeship that generates mainly symbolic capital. The structural changes include the growth of the law firms, the increased competition among law firms for business and for high-producing partners, and the related emergence of multi-tier partnerships and increased leveraging in large law firms.<sup>26</sup> The addition of new statuses (non-equity partners, of counsel, etc.) has altered the original “up or out” promotion system in favor of a system that creates a large class of lawyer employees. As noted before, these alternative statuses and indeed the high pressures put on partners to generate business may increase the likelihood that

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25. BOURDIEU & WACQUANT, *supra* note 22.

26. For data on the role of leveraging in large firms, see Baker & Parkin, *supra* note 12, at 1664-69. The increasing use of new statuses within large firm practice is discussed in Galanter & Henderson's discussion of a new elastic model of the tournament. *Supra* note 17.

associates accumulate their symbolic capital and then move elsewhere when the right opportunity comes. The increased competition also has meant that the ability to put in hours—often on very tedious assignments—has become the default measure of whether associates are gaining favorable attention from the partners. Partners may not have the time or inclination to bond with those who share their social background and interests—typically those from the more elite law schools. The hungrier and more driven associates are likely to look relatively better in that environment. The value of the symbolic capital that comes from the apprenticeship, in short, so far ensures a steady stream of associates, but it also encourages taking that value and capitalizing on it elsewhere. The story is not new for minorities and women, but it looks like the system also drives out many of those who traditionally would have stayed and reproduced the old partnership elite.

### I. THE LARGE LAW FIRM APPRENTICESHIP

Drawing on the terminology newly popularized by the Carnegie Foundation's *Educating Lawyers*,<sup>27</sup> we see the entry-level position in a corporate law firm as an "apprenticeship." The Carnegie study focused mainly on the period of formal legal education, but it is appropriate to think of the corporate law firm as a finishing school for a particular portion of law graduates. Many beginning lawyers in fact experience their work in a corporate law firm as an apprenticeship expected to last three years or so. As a practical matter, moreover, many more lawyers start in large law firms than become partners in those settings.<sup>28</sup> The early data from Wave 2 of the After the J.D. Project, in particular, show that the percentage of lawyers in law firms of more than 250 went from 20 percent of the sample to 11.7 percent, and the number in firms of 101-250 went from 8 percent to 4.6 percent as lawyers went from their third year in practice to their seventh.<sup>29</sup>

Law students in elite settings are socialized to believe that the appropriate way to begin their careers as lawyers is to work very hard for a decent period of time at a large law firm.<sup>30</sup> One self-assured lawyer contemplating moving into the government stated, for example, that he was "looking" for a new position since he had "done the three year thing at a firm."<sup>31</sup> Another lawyer noted specifically that, "Being an associate is like being a resident. You do it for five years and then

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27. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

28. See NALP FOUNDATION FOR RESEARCH AND EDUCATION, *BEYOND THE BIDDING WARS*; NALP FOUNDATION FOR RESEARCH AND EDUCATION, *THE LATERAL LAWYER*; NALP FOUNDATION FOR RESEARCH AND EDUCATION, *KEEPING THE KEEPERS II*, *supra* note 8.

29. Robert L. Nelson, Ronit Dinovitzer, Joyce Sterling, and Gita Z. Wilder, *After the JD: The Compelling Findings So Far- and a Look at What is to Come*. Preliminary First Results of the After the JD Study Wave II. AJD Panel Presentation at NALP's Annual Education Conference. Toronto, Canada (April, 2008).

30. Wilkins & Gulati, *supra* note 4, at 564.

31. See Interview 40 (on file with author).

you think about your life.”<sup>32</sup> An Hispanic lawyer with South American roots working in a major Chicago firm stated simply, “OK well you know . . . let’s take a stab at [the corporate law firm],” but not with the “goal of I’m going to be a partner.”<sup>33</sup> It is, in the words of another, “a stamp on the early portion of your career.”<sup>34</sup>

It is of course hard work, but, according to a lawyer who departed a top New York City firm after doing the apprenticeship, it is something that ought to be done at this stage of the career. Even though he “worked all those hours . . . for the first three years,” he suggested, “you know three years is not a long time in your life.”<sup>35</sup> As many others, he was prepared to give up those years. These law graduates may take a judicial clerkship as the first step in their post law school career, but the clerkship is not at all inconsistent with the first move into a large law firm. At least one firm, for example, conducted a mock football draft of new associates with the judicial clerks given top priority.

The process of socialization toward the apprenticeship in corporate law firms has been traced in studies of law schools, including popular works<sup>36</sup> and works by social scientists.<sup>37</sup> Sometimes the findings are presented as if there is some concerted effort within the law schools to move idealistic legal talent toward the service of large corporations, but it is more accurate to say that law students learn by many routes that there are hierarchies in the legal profession just as there are hierarchies in law schools, and that the “right” way to continue on the fast track is to start at a large corporate law firm. As Christa McGill showed in her research into cultural aspects of different law schools, the socialization process varies according to the eliteness of the school and its perceived institutional mission.<sup>38</sup> Those lacking the opportunity to work in corporate law firms are likely also not to understand why anyone would want to put in those hours working for corporations for three years—no matter the potential compensation. One of our interviewees from a school where it would be very difficult to gain access to an elite corporate firm said that, “I had originally thought I wanted to go with a large

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32. See Interview 17 (on file with author).

33. See Interview 47 (on file with author).

34. See Interview 59 (on file with author).

35. See Interview 51 (on file with author).

36. E.g., Kermit Roosevelt, *In the Shadow of the Law* (2005); Cameron Stracher, *Double Billing: A Young Lawyer’s Tale Of Greed, Sex, Lies, And The Pursuit Of A Swivel Chair* (1999); Richard Kahlenberg, *Broken Contract: A Memoir Of Harvard Law School* (1999).

37. ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND* (1992); see, e.g., James C. Foster, *Legal Education and the Production of Lawyers to (Re)Produce Liberal Capitalism*, 9 *LEGAL STUD. F.* 179 (1985); Ronald Pipkin, *Legal Education: The Consumer’s Perspective*, 1 *AM. B. FOUND. RES. J.* 1161 (1976); Howard S. Erlanger and Douglas Klegnon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 *LAW & SOC’Y REV.* 11 (1978); ROBERT STOVER, *MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL* (1989).

38. Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 *LAW & SOC. INQUIRY* 677 (2006).

law firm . . . [but] I realized it was not a good fit . . . . I wanted to enjoy having a life outside of the law. The law is not my life.”<sup>39</sup> In addition to the lawyers at the relatively elite schools, it is not unusual for pockets of students at non-elite schools, such as, for example, the members of the Law Review, to adopt the very same feeling about the importance of securing an apprenticeship in a large corporate law firm. They sustain each other in the assumption that their status in law school means they ought to do the corporate law apprenticeship.

This period of at least the first two or three years tends not to promote much planning or reflection among the lawyers. It is striking how many of the new corporate lawyers asked about their plans for the future made remarks that suggested a relative lack of planning. A lawyer five years into a large D.C. firm says, “I haven’t” any plans. Another at a prestigious L.A. law firm says simply that he is “not very goal-oriented.”<sup>40</sup> A lawyer at a major Chicago firm said that he is “not a big goal setter or planner.”<sup>41</sup> A woman at a large firm also in L.A. said about her short term goals: “I have no clue.” She planned to be an associate for four or five years, not do anything “wrong” to preclude partnership, but also certainly not focus on partnership.<sup>42</sup> A male associate at one of the most prestigious D.C. firms said about his future: “[I have] some vague ideas, but I wouldn’t say any concrete goals.”<sup>43</sup> There are those who give their future more thought, but the planning is limited. Another D.C. lawyer at a leading firm stated: “I do think about my professional destiny . . . [but it] may vary day to day.”<sup>44</sup> An Asian woman at a major L.A. firm similarly opined that she was only “thinking about the present” without any “five-year plan.”<sup>45</sup> And an African American originally educated in Africa but with a degree from an elite U.S. school made the same point as follows: as for future goals, he noted, he had “no game plan” except to “do good work” at the national law firm where he practiced in a major metropolitan area.<sup>46</sup>

Instead of planning for the future, these lawyers tend to take on faith that what they are doing will serve them well in whatever they do. Relatively few of the interviewees even commented on the importance of their apprenticeship in the corporate law firm. Those who commented certainly understood that the apprenticeship was part of what most considered the fast-track for legal careers. One lawyer without elite credentials who found a spot at a large Chicago firm did see what she had achieved: “everything I can learn here helps me here and would

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39. See Interview 62 (on file with author).

40. See Interview 8 (on file with author).

41. See Interview 59 (on file with author).

42. See Interview 17 (on file with author).

43. See Interview 18 (on file with author).

44. See Interview 28 (on file with author).

45. See Interview 32 (on file with author).

46. See Interview 30 (on file with author).

also help [me] anywhere else.”<sup>47</sup> Another referred to future “avenues of employment” opened by the corporate law firm apprenticeship.<sup>48</sup> As stated by an Asian graduate in San Francisco, “they always tell you in law school, go to the highest point and then you can always go down.”<sup>49</sup> A lawyer from a non-elite school who found himself in a position a year into practice at a small firm taken over by a major national firm, decided to move and was able to secure a position at a top New York firm. He reported that he made his choice of firms because, “I figured it would be a good, gold star to have on my resume for a few years.”<sup>50</sup>

Extending the apprenticeship beyond a few years is also considered a plus for the career. A lawyer at a large D.C. firm stated that he might stay a few years longer (and is still there as a senior associate), since he would not consider other options, in his words, “as long as I was doing all I could to you know grow professionally . . . . You’ve always got great options” if you choose to leave the corporate law firm.<sup>51</sup>

That faith in the utility of the apprenticeship allows lawyers to work very hard, doing work that is often drudgery. An elite law graduate at one of the most prestigious Wall Street firms noted that he worked until 8:30 or 9:00 most nights, but he also might work until midnight in a particular week in addition to a typical four or five hours on Sunday.<sup>52</sup> He stated that he was, “willing to make the sacrifices to [his] personal life” and that the associates all built a norm of strenuous work. He said that the “associates know who’s working hard and who’s not working hard,” and that he did not want to be a “slacker.” A similar but more upbeat characterization of the hours by a Wall Street associate was, “when I was single it was just like, it was kind of fun.”<sup>53</sup> According to an Asian woman from a large urban law school working at a large San Francisco firm, “I kind of know my job is to make life easy for partners,” and “because I’m a younger associate I want to get in as many hours as I can . . . to prove myself.”<sup>54</sup> An associate racking up prodigious hours for a leading D.C. firm said, “It’s up to you to make it interesting perhaps or to perhaps work harder at it.”<sup>55</sup>

It took an Arab-American with a top law degree a while to recognize the reality and adapt: “My first year I hated it a lot,” he reported, and “I never knew what time I could go home.” He came “to appreciate that it’s part of the job” stating, “Oh, yeah, okay, so this is my job, so deal with it.”<sup>56</sup> A woman doing real estate at

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47. See Interview 4 (on file with author).

48. See Interview 59 (on file with author).

49. See Interview 49 (on file with author).

50. See Interview 60 (on file with author).

51. See Interview 1 (on file with author).

52. See Interview 31 (on file with author).

53. See Interview 51 (on file with author).

54. See Interview 32 (on file with author).

55. See Interview 29 (on file with author).

56. See Interview 48 (on file with author).

an elite Los Angeles firm stated simply, "My job is a lowly job of sifting documents around and reviewing them," but she characterized the work as "fun."<sup>57</sup> Associates in litigation similarly celebrate very small achievements. For example, a Chicago lawyer stated that, "overall I've been extremely happy here . . . learning to litigate," referring to participation in client contact depositions and relatively simple hearings in some smaller cases that the firm had.<sup>58</sup> A less sanguine interpretation of an early litigation apprenticeship by a woman in the Silicon Valley was that she "basically spent a year reviewing documents" and writing some research memos.<sup>59</sup>

Many others in litigation noted the satisfaction they get from pro bono representation. A lawyer at one of the top Los Angeles firms stated that, "you get to run the case on your own, and you get to court."<sup>60</sup> A similarly positioned African-American D.C. lawyer highlighted the "real litigation experience" that comes from pro bono as contrasted with the regular work of associates.<sup>61</sup> One Asian woman in a litigation-oriented firm in Los Angeles even asserted that she consciously did considerable pro bono representation in order "to get trial experience."<sup>62</sup> The large law firms provide good pro bono opportunities that can ameliorate the drudgery, provide client contact, and build skills, especially in litigation. It is interesting, however, to contrast the observations of those in less prestigious litigation settings. In those settings the lawyers are really seeing action in trials by sitting as first or second chair.

A graduate of a local Chicago law school working at an insurance defense firm of close to one hundred lawyers reported, I "run my own show, with supervision, working with other people's files . . . [who have] enough confidence to just let me run with the files." He said that the "training here is unbelievable."<sup>63</sup> Another local law school graduate in Chicago doing defense litigation in a small firm said he was getting better cases in his third year and that he simply planned to get more "litigation experience under [his] belt," taking advantage of real "hands on experience" in cases.<sup>64</sup> Indeed, he hoped that the trial experience might enable him to move to a larger corporate law firm. A graduate of a local law school at a similar medium-sized firm reported that, in year three of her practice, "I've had two trials so far."<sup>65</sup> Another lawyer from a regional law school did insurance defense for a time and then took advantage of family contacts to move to the

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57. See Interview 17 (on file with author).

58. See Interview 44 (on file with author).

59. See Interview 34 (on file with author).

60. See Interview 8 (on file with author).

61. See Interview 45 (on file with author).

62. See Interview 49 (on file with author).

63. See Interview 21 (on file with author).

64. See Interview 13 (on file with author).

65. See Interview 62 (on file with author).

plaintiffs' side.<sup>66</sup> He had already reached a stage as a trial attorney, he noted, where he was not afraid "to go to the mat" with a trial if he did not get the settlement offer he wanted.

Among those in the corporate law firms, in short, we find a very common identity and perspective. It is found in essential respects across the board among the different racial and ethnic groups and among men and women. They are putting in the time, building their resume, and learning some skills along with a large dose of drudgery. Few expect to stay and become partner.<sup>67</sup> The general attitude toward partnership, however, is more complex than a simple plan and expectation to leave. Statements from respondents suggest a vague openness to partnership, such as the tentative expression by a woman at a large Chicago firm that she "thinks" she could go for partner.<sup>68</sup> A lawyer at a prestigious D.C. firm admits likewise that his "assessment of partnership prospects" is relevant to his decision whether to leave the firm.<sup>69</sup> The lawyer discussed in the beginning of this article, we discovered through a computer search, had indeed made partner. It may be recalled that he had expected to "burn out quickly," but apparently, he had enough openness to accept the partnership when it was offered.<sup>70</sup> A recently named partner of a national firm in its New York City office intimated when we interviewed him that partnership would be a nice accomplishment, but he also talked of moving to a smaller firm closer to where he lived because, "It's not worth it if I miss my kid growing up."<sup>71</sup> Apparently he has also been caught up by the lure of "the brass ring."

Statements of some degree of openness toward partnership are matched by statements of ambivalence or rejection. We find the simple statement, for example, that it is "virtually impossible to make partner here."<sup>72</sup> And we noted already the lawyer who said he will do his three years and move on. The lawyer mentioned above at the prestigious D.C. firm matched his interest in knowing his odds with another statement that he wants to spend more time with his wife and kids so has "different goals" than being a partner.<sup>73</sup> One associate reported doing very well at a smaller corporate firm and said he has a partner pushing him to do the right things to be partner. Still, he stated "I just don't know if I'm necessarily groomed for what he'd [the partner] like me to be."<sup>74</sup> He was even thinking of non-law options; however, we found him working as senior counsel at another law firm.

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66. See Interview 2 (on file with author).

67. Wilkins & Gulati, *supra* note 4.

68. See Interview 4 (on file with author).

69. See Interview 18 (on file with author).

70. See Interview 24 (on file with author).

71. See Interview 61 (on file with author).

72. See Interview 8 (on file with author).

73. See Interview 18 (on file with author).

74. See Interview 27 (on file with author).

It is hard to predict who will remain given this ambivalence. An African American lawyer at a prominent D.C. firm, for example, said that he expected to be there for three years, and that he expected we would not find him there when we tracked him four years after the interview, yet he is still there as a senior associate.<sup>75</sup> A woman on the West Coast with children who said that she did not have her sights set on the “ideal” of partnership and predicted we would next find her in business or in-house remains a senior associate at the same firm but in the New York office.<sup>76</sup>

Those who were still at large corporate law firms after five or six years inevitably began to think more seriously about partnership.<sup>77</sup> As one lawyer who ultimately left a prestigious New York firm stated, “if you’re going to be here to my level, I think the expectation is you’re gunning for partner.” But at the same time, he said, “I need to try to find some sort of balance . . . even a break from law.”<sup>78</sup> His girlfriend, he added, “recognizes that I look like I’m going to lose my mind.” Similarly, the African-American litigation associate interviewed five years into his career at a D.C. firm said that he was, “deeply ambivalent about partnership,” but “if you’re here you almost have to want it.”<sup>79</sup> An Asian woman who came back to a major firm in D.C. after a maternity leave was also interviewed when she was past her fifth year at the firm. Her view was, “I figured well I have to come back and at least try for partnership.” She said further that “I might as well shoot for partnership, but then again I’m not going to make it with that attitude, right.” But she also said that she did not like the hours. Put bluntly, “these are my options and I don’t really like any of them.” She is still a senior associate at the firm.<sup>80</sup>

The Hispanic lawyer at a large Chicago firm put it another way. He said “we’re all comfortable in our career paths, if we stick to it. But the main question is whether we want to stick to it.”<sup>81</sup> He has since moved as a partner to a law firm in Miami, where his family lives. A Chicago Arab-American lawyer who has since moved from an elite firm to a smaller corporate firm predicted that he would be looking for a corporate practice that was “not just a niche” but had better hours than the more elite firm.<sup>82</sup> The Asian woman who recently gained partnership at a prestigious firm in Los Angeles told us she thought she had a chance for partnership, but also that her fiancé was doing his residency in medicine. She suggested that he had five years left, so she needed five years of income.<sup>83</sup> Her

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75. See Interview 45 (on file with author).

76. See Interview 56 (on file with author).

77. Wilkins & Gulati, *supra* note 4.

78. See Interview 31 (on file with author).

79. See Interview 45 (on file with author).

80. See Interview 46 (on file with author).

81. See Interview 47 (on file with author).

82. See Interview 48 (on file with author).

83. See Interview 49 (on file with author).

statement raises gender issues that we will address below.

The Wall Street corporate lawyer who left an elite firm to become an investment banker said that he asked himself about the carrot of Wall Street partnership, “do I really want this,” given that partners are “killing themselves” with work.<sup>84</sup> Another New York associate was told by the partners that even they typically “had one foot out the door” when they were associates.<sup>85</sup> A woman in Los Angeles working for a real estate firm said on the one hand that, “I’ll make partner because it is what I want,” but she also stated that she may not want that future. One revealing comment was that she thinks about every year that she does not get to see her “mom . . . sisters or brothers.”<sup>86</sup> She is now in-house.

## II. THE MUTUAL SUPPORT STRUCTURE FOR ASSOCIATES

We have seen how associates enact the role that they picked up in law school. They put in the time and do the work to get through the corporate law firm apprenticeship. There are factors that emerge from the interviews that help that survival process, and we can now turn to some of them. There are some very practical items that some of the associates reported, for example living near work as a way to facilitate long hours. Sometimes familiarity with certain aspects of the corporate law firm context helps to give a sense of relative comfort. A woman who worked for a number of years as a paralegal said it helped her fit into the litigation group, even though the firm itself did not value that experience (Int.4). In her terms, it “made a huge difference” in her writing and in making her “comfortable with clients.” The woman who became a partner at a major L.A. litigation firm made a similar remark. She said that she had an advantage because she worked as a “case assistant” between college and law school, and it gave her “an understanding of what it takes to put a case together.”<sup>87</sup> An Asian woman on the partnership track at a prestigious L.A. firm stated similarly that her work as a business consultant helped her become comfortable talking to corporate leaders, and that comfort level helped her within the law firm setting.<sup>88</sup>

One key aspect of support for the corporate law firm apprenticeship is simply the fact of classmates and friends working in the same situation. When an entire cohort is in the same situation, it makes more sense to the participants. A woman with a degree from an elite law school working in a large L.A. firm stated, for example, “most of my friends work as hard as I do.”<sup>89</sup> An African American at a large Chicago firm stated similarly that “all your friends are working too.”<sup>90</sup> Still

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84. See Interview 51 (on file with author).

85. See Interview 52 (on file with author).

86. See Interview 9 (on file with author).

87. See Interview 49 (on file with author).

88. See Interview 46 (on file with author).

89. See Interview 17 (on file with author).

90. See Interview 30 (on file with author).

another referred to being on the “same track with other associates” and hanging out with college friends.<sup>91</sup> Another reported that it was “natural” to say, “let’s go out after work” and that his “friends in the city are people [he] went to law school with.”<sup>92</sup> As noted before, he opined that they were all comfortable in their career paths. A woman working in New York City whose husband was also a lawyer said, “I would meet my friends for drinks or dinner at ten” and that her “husband did the same thing.”<sup>93</sup> This peer impact could also occur within a firm, for example, the D.C. lawyer who reported five to seven close friends within his peer group at the firm,<sup>94</sup> and a New York City lawyer who has “three or four” associates “that spend a lot of time talking about these issues” of careers.<sup>95</sup>

There is a natural progression that leads to the almost inevitable departure of associates after three years or so. They sense that they have served their apprenticeship. They are both reminded and encouraged to move by the steady departures they witness among their cohort at the firm, their classmates, and their friends. As one lawyer noted, the frequent topic among associates who see each other socially is, “we talk about where we’re headed . . . you know how long we want to stay.”<sup>96</sup> Another lawyer asked specifically about support among her cohort for long hours replied that she was well into her sixth year, and “It’s me, I and only two other people are still at large law firms and everyone else already made their way to greener pastures.”<sup>97</sup> These departures also shrink the support that helped to sustain them through the long hours and late evenings that are typical of associates’ lives. As she noted, “I think I could probably take this for another year, tops.” The expected time horizon ends and much of the support structure collapses. The question then becomes which of the lawyers socialized to do the large law firm apprenticeship and move on will be, in Malcolm Gladwell’s term, the “outliers”<sup>98</sup> who stay for the partnership tournament.

Those who stay around past three or four years tend to go against what seems to be the normal pattern of attrition. We see that the partnership tournament in some form may then engulf those who remain. But the “tournament” looks very different if we ask the most important question, which is who in these firms will be in a position to be one of the few survivors that turns his or her attention to partnership. The default position for those who are not affirmatively kept in the race was aptly described by the elite lawyer who went into investment banking. From his experience, the associates who did not have a firm mentor and champion “kind of floated around . . . and then they just left after a while,

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91. See Interview 8 (on file with author).

92. See Interview 47 (on file with author).

93. See Interview 53 (on file with author).

94. See Interview 28 (on file with author).

95. See Interview 61 (on file with author).

96. See Interview 49 (on file with author).

97. See Interview 55 (on file with author).

98. MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS* (Little, Brown and Co. 2008).

because you should leave.”<sup>99</sup>

We have presented the self-reinforcing process that leads so many talented law graduates both to enter corporate practice and to move out prior to serious consideration for partnership. We know from the results of the process that women and minorities tend not to be there at the time of that serious consideration. They are disproportionately underrepresented in the partnership ranks despite what are often relatively positive numbers in the ranks of the beginning associates. Surveys from American Lawyer Media and NALP constantly reinforce the fact that women are hired as associates in the top firms, with 250 people and over, in equal proportions to their male counterparts.<sup>100</sup> However, the proportion of partners that are women or minorities has remained stagnant for almost two decades.<sup>101</sup>

### III. OUTSIDERS AND MISFITS: PROBLEMS ESPECIALLY FOR MINORITIES

In this section, we focus on the experience of minorities and women within the more general experience of the apprenticeship. For minorities, we especially focus on the issue of the support that comes from partners and cohorts of associates within the law firm. This is one aspect of the mutual “love” that one needs to feel to stay in the partnership race. For women, we focus on both time and love with respect especially to significant others and spouses.

One African American woman from a working class background who graduated from a high prestige law school made her decision to opt out of the corporate law firm apprenticeship before she graduated from law school. Now a public defender, she learned all she needed to know as a law student from her perspective. She said that, “I went to a couple of law firm Christmas parties and just really felt out of place and weird . . . This is not for me, this is not the environment . . . I thought they’re so fake . . . Why are you sitting here talking to me about golf?”<sup>102</sup> An Hispanic lawyer of Cuban descent also from a working class background and high prestige law school began his career at an elite Wall Street firm. Asked about that experience, which lasted only two years, he said “it was . . . very inhospitable, . . . for various reasons it was very inhospitable for people of color there . . .” Both from his perspective and that of his wife (who

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99. See Interview 51 (on file with author). Our observations are consistent with those of Wilkins & Gulati, *supra* note 4. See also Epstein et al., *supra* note 10, at 353-56 (1995); Galanter & Henderson, *supra* note 17.

100. NALP FOUNDATION FOR RESEARCH & EDUCATION, PERCEPTIONS OF PARTNERSHIP, *supra* note 8. See also NALP FOUNDATION FOR RESEARCH & EDUCATION, KEEPING THE KEEPERS II, *supra* note 8. See also, David Chambers et al., *Michigan’s Minority Graduates in Practice: The River Runs Through Law School*, 25 L. & SOC. INQUIRY 395 (2000).

101. Reichman & Sterling, *Recasting the Brass Ring*, *supra* note 11; Reichman & Sterling, *Sticky Floors*, *supra* note 11.

102. Interview 15 (on file with author).

also worked there), “. . . you just feel like an outsider.”<sup>103</sup> He moved to the Chicago office of another leading firm based on the West Coast. He liked the firm much better, and he was working prodigious hours. He did not expect to be in the race for partnership, however. In part he expressed the ambivalence that nearly everyone shows, stating, “It’s not quite what I want to do with my life . . . I’d like to do something I feel good about, rather than neutral.” But he also commented that, among the “stars” at the firm, “Well, the most obvious to me is that they’re all white.” Indeed, he noted,

I largely view myself as kind of faking it while I’m here, in terms of my work persona . . . . So I don’t think people who fake it have great success in making partner, ’cause I’m just not that comfortable with the people. I think they’re wonderful, but we’re all very different. The partners here, they own yachts . . . . They’ve always gone to the best schools, and they didn’t have to deal with the same kinds of things I dealt with.

He thought they were in fact encouraging him to do well in the firm: “I think that they want me to succeed . . . . And they’re staffing me on good matters, and they’re involving me in business development.” But he, reported, I “actually said to one of the partners, I said I’m realistic, I don’t expect to make partner.” The partner said, “What? Everyone loves you here. You should not say that.”<sup>104</sup> Not surprisingly, the associate has moved twice since we interviewed him, going in-house and then back to a large law firm in a different city.

An African-born male expressed skepticism about his future at the law firm where he began. From his perspective, he had a disadvantage in the firm: “A white person, who most of corporate America is white, finds it easier to relate to you than to relate to me.”<sup>105</sup> He is now with a much smaller law firm. An African American who sought to practice in the field of intellectual property provides another example of a lack of fit. He began at a law firm in Chicago. For whatever reason, the boutique where he began simply lost him. They even missed his performance review. In his words, “I felt that nobody was really interested in the development of my career.”<sup>106</sup> I “wasn’t developing even as an attorney.” The partners, he suggested, were “just throwing me bones.” He left for another boutique IP firm, reporting at the time of the interview that he had left for “an opportunity to work with a specific person who would take an interest in [his]development.” While volunteering that he had found a much better fit, he suggested that he still might not stay in the practice of law. One option, he suggested, was to go into real estate. It appears that he did leave this IP practice and has opened a solo law practice. He did not mention race as such, but he

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103. Interview 50 (on file with author).

104. *Id.*

105. Interview 30 (on file with author).

106. Interview 54 (on file with author).

provides another telling example of an African American who did not find a level of comfort to sustain a successful law firm apprenticeship, much less to be around for partnership consideration in a firm where he was a quite visible minority.

The feeling of fitting in also relates to the cohort of associates. It is easier to gain the support of such a cohort if people have things in common such as the same schools, family background, and interests. An Arab American lawyer at the corporate firm did not hang out with associates, for example, saying, “I’m married, have a baby . . . am religious . . . [and] don’t drink.”<sup>107</sup> He also volunteered that many top lawyers tend to be Jewish Americans, and that he had “to be very sensitive and walk a fine line” when topics came up like suicide bombings in the Middle East. His perception, at least, was that he had to be careful in social settings. An orthodox Jew at a leading L.A. firm which he has now left noted that he did not lunch with associates.<sup>108</sup> The Hispanic lawyer we have quoted at some length about his lack of fit also commented about his relationships with associates:

And here I am sitting in this room as a first year associate listening to these two senior associates compare notes about how many times they’ve flown the Concord, and what hotels they should stay in Paris. And I remember I also went on this lunch with a senior associate and a mid-level associate, and they were talking about where they like to go yachting off the coast of France . . .

He observed that, “You know we could barely pay the electric bill growing up, I didn’t have a yacht.”<sup>109</sup>

The perception of difference—from either side does not mean that outsiders will always leave before there is a potential for partnership. One notable example involves an African American again with the elite credentials and the working class background. He worked at a prominent D.C. firm. The firm, he noted, had been recognized for its commitment to diversity, but he clearly was suspicious of what that might mean for him. He opined, for example, that the African American partners in the firm would not stay and would be replaced by another group, who also would not stay. He also perceived some injustice in “seeing people who don’t appear to be any more particularly talented than you, who seem to become golden . . . because so and so is very interested in them.” His sense of what that system of rewards meant for him led him to say that we should be surprised in four years if we find him “in this type of private practice.”<sup>110</sup> Yet he is still at the firm. We explore the likely reasons he has remained later in this article.

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107. Interview 48 (on file with author).

108. Interview 18 (on file with author).

109. Interview 50 (on file with author).

110. Interview 45 (on file with author).

#### IV. WOMEN LAWYERS : HAVE THEY ACHIEVED INSIDER STATUS OR ARE THEY STILL OUTSIDERS?

We began this section with an African American woman who decided at the outset that she did not belong. For most of the women we interviewed for this article, the story is not of a perceived misfit at the start of the corporate apprenticeship. They opted for the corporate law apprenticeship and did not feel like an outsider or misfit. Of course, they tend to share the same social class background as the male associates, and they also tend to work in settings where at the beginning the number of female associates is about the same as the number of men.<sup>111</sup> They are in several respects not in the same position today that minorities are in the large law firms. We do, however, have two notable examples of misfit that perhaps gives some insight about how law firms used to deal with women.

The most dramatic example concerns a woman in a Midwestern law firm doing medical malpractice defense. She had a nursing degree before attending a regional law school. She was recently married when she joined the firm. The firm culture, in her opinion, was, “we don’t help you out.” After a harsh review typical of what associates in the firm received, she “came home and told [her] husband” that she wanted to quit. She went to her mentor, a woman who had recently been promoted to partner at the firm. Her mentor told her that this is “very much a man’s firm.” Once she made the decision to quit her job, she went to tell her mentor her decision. The mentor’s reaction was to refer to her own personal life,

... this is very hard to be newly married and trying to start a family . . . if that’s what you want—when I started this profession I was married and I stayed with the firm but I didn’t stay with my marriage. So you make that choice and if you want it then—it does work.” The mentor then gave a caveat to her comment, “. . . don’t get me wrong, people do it, it’s just—there are ways to do it but you got to decide if that’s for you.” At that point, the woman left the firm and the practice of law and decided to go back to nursing. She said, “It’s a profession where it’s 99.9% women . . . Maybe it’s just better suited to me, a better fit for me.”<sup>112</sup>

The second example has a similar ending and is set in the same Midwestern city. The woman began at a traditional corporate law firm where she did not feel

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111. Women associates were found in large corporate law firms in almost equal proportions to their male counterparts. See Dinovitzer et al., *supra* note 14, at 21. The study indicating that women in Wave 1 of AJD appeared in large firms over 100 attorneys almost as frequently as men. 15.8 percent of the women and 16.2 percent of men were working in law offices of more than 100 attorneys. Reichman and Sterling found that women face a double-bind. They must “fit in” and they must stand out if they are going to be rewarded with financial rewards and promotions at the same rates as comparable men. While some researchers argue that women are pulled out of law firms by the desire to spend more time with family, Reichman & Sterling conclude that these women are “pushed” out of their professional lives. Reichman & Sterling, *Recasting the Brass Ring*, *supra* note 11, Reichman & Sterling, *Sticky Floors*, *supra* note 11.

112. Interview 3 (on file with author).

welcome. She sensed a double standard: “the partners like to see . . . real go-getters and that is easier for men to do and be seen in a positive light.”<sup>113</sup> She found no partners who would take “a big interest in [her] or [her] career,” direct her workload and “shepherd her along.” Even the relatively few women who might have helped, she thought, were not “secure enough themselves” in the firm “to stick their necks out.” She left and decided to return to school to become a nurse practitioner.

There are of course other ways not to fit into the law firm setting. Issues of class were noted by a lawyer whose parents were not well off and who was working for a prestigious L.A. firm. In addition to commenting that achieving partnership was almost an impossibility where you “have to sacrifice eight years” even to have a chance, he commented that the people he worked with at the firm “grew up used to having lots of money.”<sup>114</sup> He felt a little different because of his less advantaged background. He is no longer at the firm. Age and experience may also lead to a misfit. One lawyer who had been an accountant for ten years started at one of the most prestigious Chicago firms. It had a large class of associates and had a style of dealing with them as they served their apprenticeship. For this more mature lawyer, it seemed that he was being treated “like a little kid,” and it was a “kind of a shock.” It was “snobbish,” “way too formal,” “too conservative,” and turning him into “an introvert.”<sup>115</sup> He moved to a British firm, however, and found that he felt much more at home. He is still there as a senior associate.

Finally, one woman felt that her position as a lateral associate disadvantaged her. She started in the Silicon Valley but found too much “infighting” among the litigation group at the law firm there. Then she used a headhunter to move to San Francisco. From her perspective, however “this [new firm] is not a collegial place.” It was especially a problem for the laterals. It is “difficult to be a lateral,” and “nobody knows who the laterals are.” She thought the partners considered the associates just there for the money and then leaving: “partners do not seem to have any interest in our lives.” She moved to a position in a federal government agency.<sup>116</sup> Certainly the experience for those who bond initially with a summer class is more conducive to law firm support than a lateral move into an established social group, including relationships with partners. As another lawyer who moved to a top New York City firm after a year elsewhere said, “in my first year or two here I was pretty much adrift.”<sup>117</sup>

Those who experience the apprenticeship as outsiders “faking it” or otherwise not experiencing comfort are highly unlikely to sustain the effort over a very long

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113. Interview 58 (on file with author).

114. Interview 8 (on file with author).

115. Interview 16 (on file with author).

116. Interview 34 (on file with author).

117. Interview 60 (on file with author); *see also* NALP FOUNDATION FOR RESEARCH AND EDUCATION, THE LATERAL LAWYER, *supra* note 28.

period of time, and they are even less likely to compete for a partnership. They do not feel welcome—much less loved—in the workplace that demands so much of their time. Another way of making that embrace of long hours more difficult is a lack of support from a spouse or significant other. The traditional corporate law firm, of course, was built for male partners with wives who managed the household chores, raised the children, and were willing to facilitate the long hours and total commitment to work of their husbands.<sup>118</sup> Spousal support certainly helps associates endure the apprenticeship in the first place, and if associates are to have any chance of staying on for partnership, that kind of practical and emotional support is invaluable.

## V. HOME SUPPORT AND THE CORPORATE APPRENTICESHIP

We noted at the outset that the D.C. lawyer who ultimately stayed through partnership was married to a lawyer with a somewhat better schedule. This relationship brought the lawyer in the large law firm two advantages. First, his wife presumably could at least understand the work he did and why the long hours were a “normal” part of the job.<sup>119</sup> Second, his wife had a less rigorous schedule.

We found many other examples where the spouse is a lawyer who knows the requirements of associate life.<sup>120</sup> Lawyers or other professionals understand the rigors of the apprenticeship and may even sustain that understanding into partnership. They may be less likely to pressure their spouses to spend more time at home or be more helpful with household chores. A woman at a Portland law firm whose husband is at a larger firm says that, “We eat out all the time” and that, “Thank goodness my husband’s an attorney too.”<sup>121</sup>

There are other examples of support for very long hours for at least some period of time. The Arab American reported that his wife had a very intense position, they had one child, and that they relied on a nanny. He stated that her background, which was similar to his, committed her to hard work, and she expected him to behave the same.<sup>122</sup> The Asian woman recently made partner in Los Angeles said her fiancé was a medical resident, but she suggested that she may back off when he finished his residency.<sup>123</sup>

There are also examples of the kind of support that comes from a spouse with a less rigorous schedule. Many of the men who were interviewed specifically noted

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118. See JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (Oxford Univ. Press 2000).

119. Interview 24 (on file with author).

120. See Interviews 21, 34 (boyfriend is a lawyer in-house), 46 (husband is a lawyer in the federal government and works reasonable hours), 50 (wife is a lawyer), 51 (wife is a lawyer), and 53 (husband is a lawyer).

121. Interview 57 (on file with author).

122. Interview 48 (on file with author).

123. Interview 49 (on file with author).

that their wife had a more flexible schedule than they did.<sup>124</sup> At least three male lawyers reported that their lawyer wives stopped or slowed working when children arrived. One of these males recently became partner at the New York office of a national law firm.<sup>125</sup> The lawyer turned investment banker said that his wife was a lawyer but that, with a 17 month old child, “gender roles are very much playing out.”<sup>126</sup> He said it was a “classic” case of “she’s not interested in making partner anymore” . . . From her perspective, “this is our son and you can’t get these years back.” A few women reported husbands with more flexible schedules,<sup>127</sup> but males were far more likely to receive this kind of support, which brings economic rewards but severely tests relationships—especially if it extends beyond the anticipated years of the apprenticeship.

Not all spouses were supportive, in fact. A lawyer from a rather privileged background who did his three years and moved into the federal government noted that his wife was not especially supportive. He said she was “annoyed all the time when [he’d] not get home at six.”<sup>128</sup> A lawyer at a Salt Lake City firm with three children and a wife at home reported that, “What I might think is a good balance, my wife might not.” She stayed at home, but “if she were working it would be more difficult.”<sup>129</sup> The more general difficulty of some relationships given the workload in the large law firms is evident in a statement by a male lawyer in Los Angeles. He noted that he did not think he could be married and do what he did, and he referred to divorces he had seen among his circle of associates.<sup>130</sup>

Among those we interviewed, however, the women seemed to experience far more pressure than the males to end the corporate apprenticeship. An Hispanic woman at a large corporate law firm in New York, for example, said she was expecting to leave (now she is at a different firm) because of the long hours. In her words, “yea, it’s time to cut back, I’m thirty-two, and I want to have a family . . . the man I’m dating hates my job.”<sup>131</sup>

Many women made statements that suggested that they were in fact putting their husbands’ career first. The woman in a small Portland firm said her husband, working in a large firm, was “driven”—“he works a lot more than I do” while she

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124. See Interviews 2 (wife does not work), 7 (wife does most of household chores), 11 (wife is highly educated but in less challenging job), 12 (wife is a realtor but stays at home with child), 13 (wife is in school but is able to do most of chores), 16 (wife is at home), 18 (wife teaches three hours a day), 27 (wife is a nurse who can pick up kids), 28 (wife is an OBGYN part-time and has one child), 45 (wife does chores), 50 (wife is a lawyer but stopped practicing when she had a child), 51 (wife is a lawyer but work slowed with child), 52 (wife is employed part-time and has three kids), 59 (wife is a school teacher), and 60 (wife works reasonable hours so she can handle chores). (Interviews on file with author).

125. Interview 61 (on file with author).

126. Interview 51 (on file with author).

127. See Interviews 46 (lawyer in federal government position), 34, and 53.

128. Interview 40 (on file with author).

129. Interview 42 (on file with author).

130. Interview 8 (on file with author).

131. Interview 55 (on file with author).

thinks partnership “seems like a hassle.”<sup>132</sup> Despite this statement deferring to her husband, this woman is now a partner in a larger New York City firm, indicating that the inclination to traditional roles does not always predict future movement. In contrast, a woman in a large law firm made the comment that she wanted to get married, saying that, “I don’t know if it’d be fair for me to say I want to be a partner.”<sup>133</sup> Even the anticipation of marriage gave this woman doubts about her aspirations for partnership. Another woman left a large San Francisco firm to move to a suburb too far away to commute “because [she] was getting married and was going to be living in” the new locale.<sup>134</sup> She moved to a smaller law firm. In contrast, we already discussed the stress reported by a woman who felt that either she had to quit her job and the legal profession or jeopardize her marriage.<sup>135</sup> Similarly, another woman left a large law firm after a “very tough decision of whether to return to that environment.” She thought the environment “would continue to destroy [her] marriage,” so she quit her corporate job without knowing her next position.<sup>136</sup> She moved to a smaller firm and her relationship mended. The woman from a non-elite school working at a large New York City firm had a lawyer husband working in a less pressing environment, but she reported that her “husband was suffering because of it.”<sup>137</sup> She went in-house in New York, following a partner at the firm, and then commuted from their city of origin after her husband took a legal job there. Ultimately she also was going to move there full-time and was pregnant at the time of the interview. She mentioned, however, that her husband had expressed a willingness to be a “house husband.” In fact, she is still with the corporation and has been promoted. A woman who rejected large law firms in favor of a public defender said that when she got married, “part of [her] living expense burden [was] lifted.”<sup>138</sup> The suggestion was that she did not care as much about the rewards of corporate practice because she expected the contribution of a spouse to help make up for the difference.

The requirements of the corporate law firm practice make it very tough for a two-lawyer couple to sustain it past a few years even without children. Rationales such as paying off the debt and building the resume with the corporate law apprenticeship become weaker as the years pass. What we see from our interviews, not surprisingly, is that the woman in today’s world is still more likely to be the one who takes the heat and moves out of that setting. While there are certainly many examples of female partners at corporate law firms sustained in

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132. Interview 57 (on file with author).

133. Interview 32 (on file with author).

134. Interview 35 (on file with author).

135. Interview 3 (on file with author).

136. Interview 36 (on file with author).

137. Interview 53 (on file with author).

138. Interview 50 (on file with author).

part by the practical and emotional support of a spouse with a less demanding career, there are many more examples of male partners with supportive wives. We see the same gender inequality if we look more specifically at the issue of time.

#### A. WOMEN, MARRIAGE, CHILDREN AND THE ISSUE OF TIME

The quantitative data from the After the J.D. Project show that a higher percentage of women feel time pressure than men. Higher numbers of women agree with the proposition that they wish they had less pressure to work so many hours.<sup>139</sup> We have numerous examples within the qualitative interviews of women expressing a desire to have more control over their hours, and that expression is especially evident when they contemplate children. Some of the interviews that we have not yet discussed in this article represent women who have opted out of the corporate law firm apprenticeship. A Mexican-American woman in Los Angeles who graduated from a local school and was working for a community college provides one example. She said that all the attorneys in the office are female, and that they became a second family. She noted that, perhaps, “I don’t think I am as ambitious as I should be.” But, she pointed out also that she has lots of “other stressors in [her] life.” She was the primary care giver for her parents. She recognized that she did not have a higher paying job akin to those held by friends, “but at the same time they don’t have some of the responsibilities” that she has.<sup>140</sup>

A Hispanic woman of Cuban descent in a medium sized Florida city who graduated from one of the top Southern law schools provides another example. She worked (and continues to work) at a small firm and emphasized the flexibility of her schedule. She said flatly that the “most important part for me is to have this schedule and be able to be with my son.”<sup>141</sup> The African American woman who was turned off to large law firms by the conversation at Christmas parties emphasized that the public defender environment was “very child friendly.” She said that one could bring kids to the office even for a week.<sup>142</sup> We have not discussed interviews more generally with public interest lawyers in this article, but certainly we could multiply examples from individuals in public interest positions of the importance of female-dominated, child friendly settings. An African American lawyer in an in-house setting makes a similar statement. She celebrated the “luxury of being professional while being able to have a home life.”<sup>143</sup> In fact, she told us that she was about to take her second parental leave

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139. For example, 56 percent of women associates in law firms of more than 100 reported that they would like to work fewer hours versus 42 percent of men who reported the same. DINOVTIZER ET AL., *supra* note 14.

140. Interview 5 (on file with author).

141. Interview 10 (on file with author).

142. Interview 15 (on file with author).

143. Interview 37 (on file with author).

since starting work at this organization. Another woman in a relatively small firm doing patent prosecutions in the Silicon Valley stated that the position she had was “pretty much the good life,” but that she still looked to go in-house “where the hours tend to be less extreme.”<sup>144</sup> She is now in fact working in-house.

Among the women in the corporate law firms, we can re-emphasize the statement quoted earlier of one high achiever that since she wanted to get married, she did not “know if it’d be fair for me to say I want to be a partner.”<sup>145</sup> She is now a public defender. And another woman in a large law firm criticized the women partners by saying that “they’re basically men.” Of one in particular, she said, “she’s scary, yea, . . . she didn’t raise her kids . . . they purport to . . . [be] role models for us.”<sup>146</sup> The suggestion was that the woman should comply with traditional gender roles and find the time to commit to the children. Interestingly, the woman who became a partner at a large L.A. firm, as noted, stated that she expected to go full tilt only for a five year period after we interviewed her. She was waiting for her fiance to finish his residency. A lawyer in a large Chicago firm stated that, “I don’t know how I would manage it if I had kids.”<sup>147</sup> She is now in a small plaintiffs’ firm.

Of course there are counterexamples. A particularly stellar one in our group of interviewees is the Asian woman at a prestigious D.C. law firm who, as we noted, went for partnership after taking time out to have a child. She is currently a senior associate. Her husband, with a more flexible government law job, remained on leave when she returned to practice. Her longevity in this apprenticeship depended on personal relations in the firm. Like many others, she started with the assumption typical of the apprenticeship orientation, “well I’ll give it a couple of years.” As she noted, she really liked the people in her group “and, you know, we kind of clicked.” Nevertheless, the “first year I had a really tough time,” while it “seemed like everybody else was having a great time.” She pointed to “the pressure and the hours.” But in the “second year I kind of turned a corner . . . [and] developed a relationship with the partners in the [specialty] group.”<sup>148</sup> The “feedback is pretty good,” making it possible for her to go “on a reduced schedule” when she had a child. She could count on two or three partners pulling her to partnership. One partner not in her group, in addition, said that, “this is what you need to do, this is how that group is viewed,” and the like, again making it hard for her to leave. She even “started having lunch with other mothers” to build a group within the firm. In short, she was in the race because, she emphasized, “I really like the people here.” And she pointed out also that she loved the substance of her work. She had been very lucky to be working on

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144. Interview 39 (on file with author).

145. Interview 32 (on file with author).

146. Interview 34 (on file with author).

147. Interview 5 (on file with author).

148. Interview 46 (on file with author).

interesting issues for large media conglomerates.

Another woman from a prestigious school working at a prominent Bay Area firm worked 60 to 80 hours, she stated, at the outset of her apprenticeship. Her husband, an MBA working as a business consultant, had somewhat better hours. She went part-time—roughly 40 hours per week—after a first child and was expecting a second child at the time of the interview. The law firm supported her, she reported, and in particular she counted on the help of a leading rainmaking partner who made her work more interesting and helped counsel her. She did not expect to stay at the firm, but today she is still a senior associate with the same firm.

The factors that moved these associates from the usual time-limited apprenticeship to a contender for partner—even with a child—lead to the next section.

#### B. TIME AND LOVE: BUCKING THE ODDS AND BECOMING A PARTNERSHIP CONTENDER

A relatively few associates stay in the large corporate law firms and compete for partnership. Our interviews suggest that a different support structure becomes more salient within the law firm and facilitates that development, which may even include a change of heart by the associate. As noted in the example of the Asian woman in D.C. and the woman with two children at a Bay Area firm, one or more partners may take over and strengthen the ties of particular individuals with the firm and the partnership track. We find further statements such as the following by a woman referring to a partner at a law firm with whom she had worked from the start: “He wants me to succeed as much as I want myself to succeed.”<sup>149</sup> A woman still on partnership track at a medium-sized Chicago firm notes about her partner mentor, “our personalities completely click together.”<sup>150</sup> The partner talks about her goals “so he can understand and if he can assign cases that will better fit into the challenges I want . . . and the type of skills I want to acquire.”<sup>151</sup> A lawyer who is now a partner in the New York City office of a national firm stated that the practice group leader in the seventh year of the associates’ practice “is very much involved in shaping[his] career.” He noted that they “spend a lot of time together talking about this.”<sup>152</sup> The contrary is also clear. A lawyer who moved strategically between practice groups of a New York City firm states that he left because “I perceived this one team as very cliquey and you know you are sort of one of the partners’ favorite associates or not.”<sup>153</sup> But later, in his new group, he found a partner who, he observed, “takes an active interest in my development . . . . And recognizes that making me better makes his

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149. Interview 9 (on file with author).

150. Interview 62 (on file with author).

151. *Id.*

152. Interview 61 (on file with author).

153. Interview 60 (on file with author).

job easier.” He stayed seven years—“I’m perfectly happy here, and I don’t think I’m being pushed out the door anytime soon”<sup>154</sup>—before taking a plum in-house position as Vice President and General Counsel.

The lawyer who stayed to his surprise and became a partner at a prominent D.C. firm had a partner who mentored him and told him what to do to present the proper profile for partnership.<sup>155</sup> A further and related aspect of the decision to stay is a bonding more generally with the people at the firm. As he stated, the “best part of the job is the people I work with.” This comment was repeated over and over again by other respondents.<sup>156</sup> Another refers to a partner who “takes pretty good care of me . . . makes sure that I’m meeting my billable quota . . . opportunity to push me to do the depositions, to do the court hearings . . . experts . . . he’s big on firm citizenship . . . guiding him to partnership . . . he’s doing all he can . . .”<sup>157</sup> A key litigation partner accounts for a Chicago man who remains on the partnership track.<sup>158</sup> The African American who remains at a D.C. firm despite a prediction that he would be gone did note that three or four partners “looked out for me at promotion time.”<sup>159</sup> An Asian woman who is now an LA partner said that the bond she formed as a summer associate with a partner mentor “carried her through.”<sup>160</sup> A New York City associate stated that he, “happened to develop friendships with people who really were mentors, both partners and associates” and that the best thing about the job is the people he works with.<sup>161</sup>

Close bonds do not ensure that one will stay in the partnership race, but there are clearly consequences from this kind of pull. The lawyer who became an investment banker said that he had a powerful mentor whom he had “angled” to work for and who taught him what he needed to know to be in a strong position for partnership. He left, but, “It was the one thing holding me back, ‘cause I felt it was a little bit of betrayal to actually leave” the mentor—“these are the people that matter if you want to stay and become a partner.”<sup>162</sup> The woman at a large firm in New York stayed on because of a close bond with a partner who went to the same small liberal arts college. She followed him in-house, even commuting to that job for a substantial time from the city that she and her husband moved back to for his practice.<sup>163</sup> As pointed out above, this woman is still working for the corporation and has been promoted since the first interview. An Hispanic woman at a large New York firm—her third—after six years, in contrast, said she

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154. *Id.*

155. Interview 24 (on file with author).

156. *E.g.*, Interview 61 (on file with author).

157. Interview 27 (on file with author).

158. Interview 59 (on file with author).

159. Interview 45 (on file with author).

160. Interview 49 (on file with author).

161. Interview 52 (on file with author).

162. Interview 51 (on file with author).

163. Interview 53 (on file with author).

had no mentors and had only “two people in this humongous firm” that she socialized with outside the firm.<sup>164</sup>

## VI. DIFFERENTIAL ATTRITION: A MATTER OF CHOICE?

One way to present our conclusions is that, first, corporate law firms are very demanding employers, and only a few associates will elect to make the sacrifices necessary to withstand the pressure to leave and instead put themselves in a position to make partner. Second, the path for success requires a willingness to put in the time and may depend in part on the support of significant others as well as peers and partners within the firm. Spouses can of course be supportive or unwilling to tolerate the lifestyle options presented by a relationship with someone married to the corporate law firm. It is not surprising, then, that the partnership ranks are disproportionately male and disproportionately white. Most minorities will typically leave voluntarily because they do not feel at home to the extent that they will do what it takes to withstand the pressures to move on. And most women will in a similar way not choose to be “just like a man,” put in the time, and organize their social life to withstand those same pressures. There will of course be exceptions, helped along especially by mentors who reach out to women and minorities in the same way—or more likely in a stronger way even—that partners long have bonded with associates and kept them in the partnership game. But there is a sense of inevitability or at best very slow progress that this analysis suggests. The status quo leads largely to the reproduction of the status quo.

We can question the inevitability of gender, racial, and ethnic inequality within the large corporate law firms by looking more carefully at the structures that sustain it.<sup>165</sup> This article is not focused primarily on the topic of organizational behavior, but our qualitative data from the bottom up lead to some preliminary thoughts consistent with our findings. Corporate law firms in the first place developed as institutions occupied by white males with wives at home. Charles Reich recently highlighted this feature in a description of the Cravath firm in the 1950s as an all-male institution, including secretaries and support personnel.<sup>166</sup> The corporate law firms also developed an economic model that depends on a relatively few associates remaining at the firm and becoming partners. The more elite the law firm, the more difficult and selective the path to partnership.

The associates at these firms for much of the last century were probably evaluated pretty carefully to see if they ought to become a partner. Of course, the

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164. Interview 55 (on file with author).

165. Wilkins & Gulati, *supra* note 4; Yves Dezalay & Bryant G. Garth, *The Confrontation between the Big Five and Big Law: Turf Battles and Ethical Debates as Contests for Professional Credibility*, 29 *LAW & SOC. INQUIRY* 615 (2004).

166. Charles Reich, *Cravath Veteran Recalls Law Firm Life of Yesteryear*, *AM. LAW.*, Dec. 17, 2007, available at <http://www.law.com/jsp/article.jsp?id=900005559130>.

pool of associates was limited to white males, and even to Protestants at a number of elite firms.<sup>167</sup> But the number of associates was not very large even at the largest law firms until the 1970's and 1980's.<sup>168</sup> The associates who left were also placed in in-house firms and in other settings. Corporate law firms did not hire laterals until relatively recently.

A relatively small number of associates also meant that the apprenticeship involved real mentoring and teaching by the partners. The law practice was also far less competitive, and there was room for partners to spend time training and mentoring. Starting at a corporate law firm probably did build skills that would be helpful in the career of those who left the firm. We do not want to romanticize what Galanter and Palay termed the "golden age" of corporate law firms,<sup>169</sup> but certain elements of that world are in much more scarce supply today.

As the number of associates grew dramatically and the economic pressures on partners mounted, the economic model stayed essentially the same. The practices changed, however. Associates worked more hours to sustain partner profits and the high associate salaries that came with more competition in hiring. Attrition remained high, but the sheer numbers of associates meant that close evaluation of the work and personality of each one had to give way to a more regularized system of attrition. Most associates had to leave voluntarily. Further factors related to increasing competition also made partnership more elusive and even less desirable. The years to make partner lengthened, and the track became more complicated with the addition of non-partner partnerships including non-equity and of counsel. The partnership position became much more stratified.<sup>170</sup> A bottom-line focus led to the proliferation of categories of lawyers not entitled to share in the profits of the firm. Similarly, the same focus meant that partnership was unlikely at most firms for those who could not themselves generate business for the law firm.<sup>171</sup>

In addition, the teaching parts of the apprenticeship became far less salient. Associates were put to work, and much of the work they did was inevitably routine and not consistent with building real legal skills. The carrot of partnership also changed. Partners in the more competitive environment worked much harder, and associates could see that their social life would not improve with the transition from associate to partner. The extra effort of partners required by today's competitive environment also reinforced the need for partners to have wives or to shrink their social lives even more.

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167. Wald, *supra* note 4.

168. GALANTER & PALAY, *supra* note 7. See generally Galanter & Henderson, *supra* note 17 (a more recent picture of the tournament).

169. GALANTER & PALAY, *supra* note 7, at 20-36.

170. See William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691 (2006).

171. Reichman & Sterling, *Recasting the Brass Ring*, *supra* note 11, Reichman & Sterling, *Sticky Floors*, *supra* note 11; Galanter & Henderson, *supra* note 17.

The features that characterized the corporate firms at the outset long ago evolved into organizational practices that became institutionalized. The old insight that it is good to start one's career at a large corporate law firm became embedded in bureaucratized hiring practices producing large classes of associates, very high pay compared to other legal starting positions, law school career services offices organized to match students with corporate law firms, head hunters ever ready to translate attrition from the large law firms into positions in other legal settings, and very willing law students socialized to believe that this set of practices is indeed natural and inevitable. Lawyers from the most prestigious law schools and those with the best grades at most others are "supposed" to do this corporate law firm apprenticeship involving very hard and often routine work for a few years, and then move on. They watch their friends move on, believe that they have done what they need to enhance the value of their resumes and pay off some loans, and they leave. Women and minorities are rarely going to stay with a firm and become partner in this organizational setting.

It may be, as Galanter and Henderson argue, that an exacerbating factor is the pressure on partners to build their own empires at the law firms and invest very little in firm-wide values such as diversity or even professionalism.<sup>172</sup> They suggest that minorities and women may not get picked by powerful partners seeking the very best to enhance their own positions in the firms.<sup>173</sup> We agree that the kind of match between partners with power and senior associates is a key to who will stay at a law firm. But we suspect that the pressures for attrition make many or most associates practically unavailable for that bonding. Most minorities and women will be gone before such a partnership-pulling relationship is formed, and for many reasons they also may not want to remain in that world.<sup>174</sup>

The organizational setting of the large law firm is the product of a very specific history. Its key features appear natural and inevitable even though the firm operates very differently than it did in the past. One way to think about the issues relating to the low partnership numbers of women and minorities, therefore, is to at least question the mutually reinforcing organizational practices that produce the structures of attrition in corporate law firms. Law graduates are socialized into believing that they ought to begin at large law firms, even though they may not gain much real experience. They are socialized to believe that they should leave after a few years. And they are rewarded in other practice settings for the resumé value of working at large law firms whether or not they have valuable skills or contacts. There is a logic to this system, but it is worth thinking about whether it all makes good sense. Similarly, there is a powerful logic to law firms needing many associates working long hours and requiring associates and partners to give up virtually all their time and require the services of a wife or

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172. Galanter & Henderson, *supra* note 17.

173. *Id.*; see also Wilkins & Gulati, *supra* note 4.

174. See Wilkins, *supra* note 18; Reichman & Sterling, *Sticky Floors*, *supra* note 11.

full-time equivalent, but again we should recognize that what appears inevitable is the product of a particular history and a logic that can be questioned.

The law firm apprenticeship, as with respect to law school degrees from prestigious schools, bestows symbolic capital on a certain group. Symbolic capital has value because people through a circular logic believe it has value.<sup>175</sup> The system that produces this symbolic value, which appreciably augments whatever skills and expertise are actually learned in today's apprenticeship as compared to those in the past, is relatively secure through many self-reinforcing practices in the legal field. Our interviews suggest that the key feature is smart and ambitious law graduates continuing to commit to a substantial investment in the corporate law firm apprenticeship. The set of reinforcing practices also tends to limit the chances for more racial, ethnic, and gender representation in the corporate law firms. The remaining question, explored below, is whether the system is evolving into one where the most elite law graduates will accumulate the symbolic capital associated with the corporate law firm apprenticeship, opting-out of any partnership competition on the grounds that it takes too much time to attain and in any event produces an undesirable lifestyle.

## VII. REPRODUCING ELITES? A POST-SCRIPT

We noted at the outset that corporate law firms were not only white male and protestant organizations, but they also were dominated by graduates of the most elite schools.<sup>176</sup> Graduates of the most elite schools still start their careers at large law firms, especially the most prominent and profitable ones, in higher percentages than do graduates of other schools. Graduates of elite schools, in addition, are more likely to come from privileged backgrounds than are graduates from schools lower in the law school pecking order. To some extent we see this phenomenon even in our interviews with minorities. Using the self-reported data on minority status, we oversampled for minorities in the After the J.D. pool, and we oversampled as well for the qualitative interviews. It is worth noting that we include a number of relatively advantaged Cuban Americans, at least two Hispanic lawyers whose parents come from South America, and several African Americans who grew up in relative privilege in Africa. We see even fewer Mexican Americans or African Americans in the traditional sense than one might have expected from the data. The minorities and non-minorities at corporate law firms tend, not surprisingly, to come from among the relatively privileged. As we saw in several interviews, associates who do not share that background sometimes find it harder to fit in. For some minorities, indeed, this class discomfort appears as prominent as racial or ethnic discomfort.

It is more difficult from our interviews to see how the relatively privileged fare

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175. PIERRE BOURDIEU & LOÏC WACQUANT, *AN INVITATION TO REFLEXIVE SOCIOLOGY* (1992).

176. Zaring & Henderson, *supra* note 1.

in terms of attrition. Will the law firms, we asked earlier, find ways to ensure that enough of the graduates of the most elite schools will stay around for the partnership competition to ensure that they will keep what they might believe is a critical mass of such graduates and the symbolic value that comes from that presence? If so, does that mean both that the most elite graduates and those with the most privileged backgrounds who tend to graduate from those schools—will disproportionately stay through the apprenticeship and beyond? It could be that more of their friends sustain them for longer, for example, or that they more easily form the kinds of relationships—marrying the firm—conducive to partnership.

Our qualitative data are inconclusive, but there are some hints that large law firm success in terms of partnership may not favor the privileged. We had one example of a relatively privileged associate who quickly left after doing his three years and whose wife also did not encourage him to work the long hours. Those from privilege may not feel the attraction of staying on the path to potential partnership, especially as the time to partnership continues to grow, and they also have a sense that they will land on their feet if they change positions. They are likely to be less hungry perhaps than those who fought their way into the corporate law firms. The partnership is also less attractive since it no longer is a ticket to a somewhat less-pressured elite status. Any impact from this unwillingness to stay in the apprenticeship would be compounded by the fact that, as Zaring and Henderson point out, the most elite law graduates are likely to work initially at the firms with the lowest partnership rates and accordingly the most demanding and stressful working conditions.<sup>177</sup>

There is some evidence that the associates in our interview pool who stay late in their apprenticeship and potentially could become partners are those from relatively less privileged backgrounds and typically not the most elite schools. Those who are hungriest and who fought their way into large law firms are perhaps more averse to leaving and more willing to do what it takes to position themselves for the prestige and economic reward that goes with partnership. They may also have spouses or family that share that hunger. While not the main subject of the article, there is some support for the idea that those who come up through the ranks will not only be disproportionately male and white, but also disproportionately from among the relatively less privileged among those law graduates able to enter these firms. This phenomenon may be a by-product of the routinized and internalized large law firm attrition, but it is far too early to expect that it will lead to a transformation of the profile of the partnership ranks as lateral hiring and partnership instability become increasingly the norm. Questions about whether elites are more likely to move out of the large corporate law firms will be answered in part by the forthcoming Wave 2 results of the After the JD study.

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177. Zaring & Henderson, *supra* note 1.