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# RACE AND RAPPORT: HOMOPHILY AND RACIAL DISADVANTAGE IN LARGE LAW FIRMS

Kevin Woodson\*

## INTRODUCTION

Over the past two decades, clients and other constituencies have pushed large law firms to pursue greater racial diversity in attorney hiring and retention.<sup>1</sup> Although these firms have devoted extraordinary resources

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1. This issue has generated collective and individual action on the part of the general counsels' offices at hundreds of corporations. See INST. FOR INCLUSION IN THE LEGAL PROFESSION, *THE BUSINESS CASE FOR DIVERSITY: REALITY OR WISHFUL THINKING?* 15 (2011) (describing how in 1988, General Motors became the first major corporation to formally request that their law firms promote greater racial diversity); MELISSA MALESKE, *DESIGNING DIVERSITY: LAW DEPARTMENTS SHARE THEIR STRATEGIES TO DRIVE INCLUSION PROGRAMS* 47–48 (2009) (discussing how in-house counsel and law firms have addressed diversity); Anjali Chavan, *The "Charles Morgan Letter" and Beyond: The Impact of Diversity Initiatives on Big Law*, 23 *GEO. J. LEGAL ETHICS* 521, 523 (2010) (noting that in 1999, more than 500 corporations signed "Diversity in the Workplace, A Statement of Principle," vowing to "give significant weight" to law firms' diversity efforts when hiring law firms); Karen Donovan, *Pushed by Clients, Law Firms Step Up Diversity Efforts*, N.Y. TIMES, July 21, 2006, at C6 (discussing Sara Lee General Counsel Roderick A. Palmore's 2004 letter, "The Call to Action," which insisted that law firms take more proactive measures in improving diversity); Catherine Ho, *Diversity, By The Hour Lawyers Live by the Billable Hour. Now, One Law Firm Is Hoping That Mentality Will Translate into a More Diverse Workplace*, WASH. POST, Mar. 24, 2013, at A21 (discussing DuPont's practices in selecting female and minority lawyers to manage their firms' day-to-day work); Kellie Schmitt, *Corporate Diversity Demands Put Pressure on Outside Counsel*, CORPORATE COUNSEL (ONLINE) (Dec. 28, 2006), <http://www.corpcounsel.com/id=900005470357/Corporate-Diversity-Demands-Put-Pressure-on-Outside-Counsel>. But see Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 *GEO. J. LEGAL ETHICS* 1041, 1063 (2011) (observing that Wal-Mart continues to give its legal work to firms with poor diversity records); Veronica Root, *Retaining Color*, 47 *U. MICH.*

toward better recruiting and retaining attorneys of color,<sup>2</sup> and despite a proliferation of “best practices” guides and diversity policy recommendations,<sup>3</sup> these considerable efforts have yielded only modest gains.<sup>4</sup> With respect to black attorneys in particular, the tide of racial progress in these firms has moved forward at a glacial pace, even ebbing and receding in recent years.<sup>5</sup>

Although large law firms now hire significant numbers of black attorneys as junior associates, these black associates report significantly worse career experiences and outcomes than their white counterparts. As a group, they receive lower quality work assignments,<sup>6</sup> are less satisfied with their experiences,<sup>7</sup> and ultimately leave these firms at faster rates.<sup>8</sup> Very few ever become partners.<sup>9</sup>

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J.L. REFORM 575, 605 (2014) (questioning the commitment of corporate clients to law firm racial diversity).

2. See Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. LEGAL PROF. 1, 5 (2009) (discussing a survey finding that 50 percent of participating Am Law 200 firms allocated an average of \$513,500 for their diversity managers’ offices); Root, *supra* note 1, at 598–601 (discussing diversity efforts undertaken by various law firms in response to client pressure).

3. See, e.g., ABA, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS 26–30 (2010); MINORITY CORP. COUNSEL ASS’N, CREATING PATHWAYS TO DIVERSITY: A SET OF RECOMMENDED PRACTICES FOR LAW FIRMS (2001), available at <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=613>; NAT’L ASS’N FOR LAW PLACEMENT, DIVERSITY BEST PRACTICES GUIDE (2014); N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, BEST PRACTICES STANDARDS FOR THE RECRUITMENT, RETENTION, DEVELOPMENT, AND ADVANCEMENT OF RACIAL/ETHNIC MINORITY ATTORNEYS 1–2 (2006); Erin Brereton, *The New Face of Law Firm Diversity*, 29 LEGAL MGMT. 1 (2010) (suggesting that law firms undertake a number of organizational reforms); see also ARIN N. REEVES, ABA COMM’N ON WOMEN IN THE PROFESSION, FROM VISIBLE INVISIBILITY TO VISIBLY SUCCESSFUL: SUCCESS STRATEGIES FOR LAW FIRMS AND WOMEN OF COLOR IN LAW FIRMS (2008); DRI, THE DRI LAW FIRM DIVERSITY RETENTION MANUAL (2005); MINORITY CORP. COUNSEL ASS’N, A STUDY OF LAW DEPARTMENT BEST PRACTICES (2005).

4. See Root, *supra* note 1, at 587–93 (discussing the incremental increases in minority representation in elite law firms since 2000).

5. Press Release, Nat’l Ass’n for Law Placement, Law Firm Diversity Among Associates Erodes in 2010 (Nov. 4, 2010), available at <http://www.nalp.org/uploads/PressReleases/10NALPWomenMinoritiesPressRel.pdf>.

6. See *infra* note 74.

7. Monique R. Payne-Pikus et al., *Experiencing Discrimination: Race and Retention in America’s Largest Law Firms*, 44 LAW & SOC’Y REV. 553, 567–569 (2010).

8. *Id.* at 560; see also EEOC, DIVERSITY IN LAW FIRMS 9 (2003) (describing minority attorneys as more likely to report that work and partnership opportunities at their firms are not “equally available to all”); GITA Z. WILDER, ARE MINORITY WOMEN LAWYERS LEAVING THEIR JOBS?: FINDINGS FROM THE FIRST WAVE OF THE AFTER THE JD STUDY 12–13 (2008) (noting that minority women are more likely to anticipate leaving their employment); Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755, 1805–07 (2006) (discussing how black associates are more likely to leave their firms as associates than their white cohorts). As of 2009, minority attorneys still constituted only 1.3 percent of partners at firms of 101–250 lawyers, 1.8 percent of partners at firms of 251–500 lawyers, 2.02 percent of partners at firms of 501–700 lawyers, and 2.05 percent of partners at firms with more than 700 attorneys. Nat’l Ass’n for Law Placement Bulletin, *Women and Minorities at Law Firms by Race and Ethnicity—An Update* (Apr. 2013), available at <http://www.nalp.org/0413research> [hereinafter NALP Bulletin].

9. NALP Bulletin, *supra* note 8, at tbl.2; see also Jonathan D. Glater, *Law Firms Are Slow in Promoting Minority Lawyers to Partnerships*, N.Y. TIMES, Aug. 7, 2001, at A1; Alan

The failure of firms to achieve greater racial equity has generated extensive research and commentary from legal scholars<sup>10</sup> and other interested parties including practicing attorneys,<sup>11</sup> journalists,<sup>12</sup> and the organized bar.<sup>13</sup> The existing legal scholarship has tended to address this problem through the conceptual lens of racial bias. From this perspective, the difficulties of black law firm associates are manifestations of the racial biases of their (predominantly white) colleagues, embedded in, and enabled by, the institutional workings of their firms.<sup>14</sup>

This Article calls attention to a different, heretofore unacknowledged source of racial disadvantage in these firms, one that is neither dependent

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Jenkins, *Losing the Race*, AM. LAW., Oct. 3, 2001, at 36 (discussing one prominent New York City law firm's failure to retain or promote its many black associates).

10. See, e.g., James E. Coleman, Jr. & Mitu Gulati, *A Response to Professor Sander: Is It Really All About the Grades?*, 84 N.C. L. REV. 1823 (2006); Tiffani N. Darden, *The Law Firm Caste System: Constructing a Bridge Between Workplace Equity Theory & Institutional Analyses of Bias in Corporate Law Firms*, 30 BERKELEY J. EMP. & LAB. L. 85 (2009); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998) [hereinafter Wilkins & Gulati, *Reconceiving the Tournament*]; David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CALIF. L. REV. 493 (1996) [hereinafter Wilkins & Gulati, *Why Are There So Few Black Lawyers*]; David B. Wilkins, *On Being Good and Black*, 112 HARV. L. REV. 1924 (1999) (reviewing PAUL M. BARRETT, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA* (1999)); see also Payne-Pikus et al., *supra* note 7; Root, *supra* note 1; Sander, *supra* note 8.

11. See, e.g., Frederick H. Bates & Gregory C. Whitehead, *Do Something Different*, 76 A.B.A. J. 78 (1990); Pamela W. Carter, *Diversity on Trial: Integrating the Legal Profession*, 52 DRI FOR DEF. 55 (2010); Luis J. Diaz & Patrick C. Dunican, Jr., *Ending the Revolving Door Syndrome in Law*, 41 SETON HALL L. REV. 947 (2011); J. Cunyon Gordon, *Painting by Numbers: "And, Um, Let's Have a Black Lawyer Sit at Our Table,"* 71 FORDHAM L. REV. 1257, 1273–75 (2003); Vance Knapp & Bonnie Kae Grover, *The Corporate Law Firm—Can It Achieve Diversity?*, 13 NAT'L BLACK L.J. 298 (1994).

12. See, e.g., Ann Davis, *Big Jump in Minority Associates, But . . .*, NAT'L L.J., Apr. 29, 1996, at A1; Jenkins, *supra* note 9; Rita Jensen, *Minorities Didn't Share in Firms' Growth*, NAT'L L.J., Feb. 19, 1990, at A1; Adam Liptak, *In Students' Eyes, Look-Alike Lawyers Don't Make the Grade*, N.Y. TIMES, Oct. 29, 2007, at A10; Julie Triedman, *The Diversity Crisis: Big Firms' Continuing Failure*, AM. LAW., May 29, 2014, <http://www.behblaw.com/Hidden-Pages/The-Diversity-Crisis-Big-Firms-Continuing-Failure--The-American-Lawyer.pdf>.

13. See, e.g., CHI. BAR ASS'N, *DIVERSITY INITIATIVE* (2006); THE LAW FIRM DIVERSITY REPORT, MINORITY BAR ASSOCIATIONS OF WASHINGTON JOINT COMMITTEE ON LAW FIRM DIVERSITY (2009); ABA, *supra* note 3.

14. See, e.g., Darden, *supra* note 10, at 131 (stating that "inequitable practices [that] stem from stereotypes and cognitive biases that are allowed to manifest through discretionary and informal structures"); Rhode, *supra* note 1, at 1053–55 (noting the in-group bias of white male attorneys and the status-based rejection of attorneys from marginalized groups); Root, *supra* note 1, at 607–10 (describing implicit bias and aversive racism against black attorneys); Wilkins & Gulati, *Why Are There So Few Black Lawyers*, *supra* note 10, at 507, 511 (discussing "the persistent myth of black intellectual inferiority" and emphasizing "the interplay between . . . structural factors and background assumptions about race and merit"). Even Richard Sander, who controversially has argued that the primary source of black associates' difficulties in these firms are merit-based, has inferred that stereotype discrimination also likely contributes substantially. See Sander, *supra* note 8, at 1818 (positing that law firm partners stereotype black associates as incompetent).

upon these inferences of racial bias, nor incompatible with them.<sup>15</sup> Cultural homophily,<sup>16</sup> the tendency of people to develop rapport and relationships with others on the basis of shared interests and experiences,<sup>17</sup> profoundly and often determinatively disadvantages many black attorneys in America's largest law firms.<sup>18</sup> Although not intrinsically racial,<sup>19</sup> cultural homophily has decidedly racial consequences in this context because of the profound social and cultural distance that separates black and white Americans,<sup>20</sup> evident in pronounced racial patterns in a wide variety of social and cultural behavior.<sup>21</sup> Drawing evidence from interviews of seventy-five black attorneys who have worked as associates at large law firms throughout the country,<sup>22</sup> this Article argues that homophily-based behavior deprives many

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15. This Article does not question that racial bias, both conscious and unknowing, continues to contribute to the difficulties of black associates in these firms. Rather, my purpose in this Article is to call attention to a different source of racial inequality, one that potentially carries very different implications for our efforts to understand and address this problem. The evidence uncovered in my research, however, does problematize default inferences of racial bias to explain racial disparities in employment. It suggests that in many instances, problems attributed to bias and stereotyping may, to a larger extent, reflect the workings of cultural homophily instead.

16. Homophily, the tendency of similar people to develop relationships with one another, can occur on the basis of any number of personal characteristics and attributes. See Paul F. Lazarsfeld & Robert Merton, *Friendship As a Social Process: A Substantive and Methodological Analysis*, in FREEDOM AND CONTROL IN MODERN SOCIETY 18, 23–24 (Morroe Berger et al. eds., 1954) (introducing the term homophily); Miller McPherson et al., *Birds of a Feather: Homophily in Social Networks*, 27 ANN. REV. OF SOC. 415, 416 (2001).

17. See, e.g., Thomas J. Berndt, *The Features and Effects of Friendship in Early Adolescence*, 53 CHILD DEV. 1447, 1454 (1982) (“Friends are similar in their orientation toward contemporary teen culture. They like the same kind of music, have similar tastes in clothes, and enjoy the same kinds of leisure time activities.” (citations omitted)); Noah P. Mark, *Culture and Competition: Homophily and Distancing Explanations for Cultural Niches*, 68 AM. SOC. REV. 319, 320 (2003) (“[C]ultural similarities and differences among people provide bases for cohesion and exclusion. Empirical research shows that individuals who are culturally similar are more likely to be associates than are individuals who are culturally different.” (citations omitted)); Andreas Wimmer & Kevin Lewis, *Beyond and Below Racial Homophily: ERG Models of a Friendship Network Documented on Facebook*, 116 AM. J. SOC. 583, 607 n.20 (2010) (noting that “students display a significant preference for culturally similar [others]”).

18. For a more comprehensive discussion of the detrimental consequences of cultural homophily for black workers in high-status positions at elite corporate firms in several industries, see Kevin Woodson, *Beyond Bias: A Reassessment of Institutional Discrimination in the American Workplace*, WASH. & LEE J. CIVIL RTS. & SOC. JUST. (forthcoming).

19. Employment dynamics consistent with cultural homophily have been documented in several studies using predominantly non-black samples. See, e.g., ROBERT JACKALL, *MORAL MAZES: THE WORLD OF CORPORATE MANAGERS* (1988); ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* (1977); David Purcell, *Baseball, Beer, and Bulgari: Examining Cultural Capital and Gender Inequality in a Retail Fashion Corporation*, 42 J. CONTEMP. ETHNOGRAPHY 291 (2013); Catherine J. Turco, *Cultural Foundations of Tokenism: Evidence from the Leveraged Buyout Industry*, 75 AM. SOC. REV. 894 (2010).

20. See *infra* Part I.B. This discussion of cultural differences associated with race is by no means intended to essentialize racial identity or to downplay the rich intraracial cultural diversity amongst black and white Americans.

21. See *infra* notes 44–48 and accompanying text.

22. These interviews were conducted as part of my dissertation research, which consisted of interviews of a larger sample of black workers who held professional or

black attorneys of equal access to critical relationship capital in predominantly white firms,<sup>23</sup> thereby reinforcing racial inequality.<sup>24</sup>

This Article proceeds in three parts. Part I introduces the social tendency of cultural homophily and provides a brief overview of the social and cultural differences that separate many black and white Americans. Part II demonstrates the manner in which these dynamics deprive black associates of equal access to all-important relationship capital and premium opportunities, thus limiting their careers. Part III briefly considers some of the potential means by which law firms and individual attorneys might better manage the effects of this potent driver of law firm inequality.

## I. CULTURAL HOMOPHILY AND RACIAL DISTANCE

### A. Cultural Homophily

Recognized as “one of the most striking and robust empirical regularities of social life,”<sup>25</sup> homophily has been detected in a wide variety of social contexts and relationship types.<sup>26</sup> The term itself, derived from the Greek roots for love (-phily) and same (homo-), is encapsulated in the ancient truism that “birds of a feather flock together.”<sup>27</sup> The theory of homophily

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managerial positions in large corporate firms and a smaller comparison sample of white workers. See Kevin Woodson, *Fairness and Opportunity in the Twenty-First Century Corporate Workplace: The Perspectives of Young Black Professionals* (Nov. 2011) (unpublished Ph.D. dissertation, Princeton University) (on file with author).

23. As of 2012, 93.29 percent of law firm partners were white. See NALP Bulletin, *supra* note 8.

24. Other researchers have alluded to the effects of cultural differences in impeding the careers of black professionals in corporate firms. See Elijah Anderson, *The Social Situation of the Black Executive: Black and White Identities in the Corporate World*, in THE CULTURAL TERRITORIES OF RACE: BLACK AND WHITE BOUNDARIES 3, 27 (Michèle Lamont ed., 1999) (concluding that black professionals who did not assimilate into the cultural and social practices of their firm’s white elite were less successful than others); Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 L. & SOC’Y REV. 1, 42 (2007) (sharing an anecdote of a black attorney who chose not to work at a corporate law firm because of her social discomfort and lack of familiarity with the cultural terms of conversation (“golf and similar subjects”) at a law firm informational reception).

25. Thomas A. DiPrete et al., *Segregation in Social Networks Based on Acquaintanceship and Trust*, 116 AM. J. SOC. 1234, 1236 (2011) (“The homophily principle is so powerful that its existence is taken as a given in the social capital literature.”); Gueorgi Kossinets & Duncan J. Watts, *Origins of Homophily in an Evolving Social Network*, 115 AM. J. SOC. 405, 405 (2009); Lazarsfeld & Merton, *supra* note 16; McPherson et al., *supra* note 16.

26. See Denise B. Kandel, *Homophily, Selection, and Socialization in Adolescent Friendships*, 84 AM. J. SOC. 427 (1978) (finding homophily patterns in friendship according to behavior); J. Miller McPherson & Lynn Smith-Lovin, *Homophily in Voluntary Organizations: Status Distance and the Composition of Face-to-Face Groups*, 52 AM. SOC. REV. 370 (1987); McPherson et al., *supra* note 16; Lois M. Verbrugge, *The Structure of Adult Friendship Choices*, 56 SOC. FORCES 576 (1977) (finding homophily patterns in adult friendships); Aaron Retica, *Homophily*, N.Y. TIMES, Dec. 10, 2006 (Magazine), <http://www.nytimes.com/2006/12/10/magazine/10Section2a.t-4.html>.

27. In the words of Aristotle, “Some define [friendship] as a matter of similarity; they say that we love those who are like ourselves: whence the proverbs ‘Like finds his like,’ ‘birds of a feather flock together,’ and so on.” ARISTOTLE, NICOMACHEAN ETHICS bk. VIII, i,

has been firmly established as an important tenet of social life and friendship formation through sixty years of social science research.<sup>28</sup>

Cultural homophily, attraction on the basis of shared cultural traits (including cultural preferences, knowledge, and interests),<sup>29</sup> is a particularly important source of rapport and interactional ease.<sup>30</sup> It reflects the rather unremarkable observation that people generally find it easier to develop and enjoy relationships with others who share similar interests, tastes, and life experiences.<sup>31</sup> When given the choice, we prefer to spend time around people with whom we “get along,” and we tend to get along especially well with others when we share things in common (this should be apparent to anyone who has ever made new friends or sought romantic “matches” via internet dating sites).<sup>32</sup> Such common ground makes our social encounters with one another more mutually gratifying, which in turn leads us to feel more inclined to engage in future sociable interactions with each other.<sup>33</sup> These repeat encounters often eventually develop into friendships and other enduring relationships.<sup>34</sup>

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at 6 (H. Rackham trans., Harvard University Press 1968) (c. 384 B.C.E.); *see also* McPherson et al., *supra* note 16.

28. *See, e.g.*, DiPrete et al., *supra* note 25, at 1236 (“The homophily principle is so powerful that its existence is taken as a given in the social capital literature.”); Lazarsfeld & Merton, *supra* note 16; McPherson et al., *supra* note 16.

29. All people possess cultural repertoires and resources (often referred to as cultural capital) encompassing all of their many lifestyle-related tastes, practices, knowledge, and possessions. *See* Michèle Lamont & Annette Lareau, *Cultural Capital: Allusions, Gaps and Glissandos in Recent Theoretical Developments*, 6 SOC. THEORY 153, 156 (1988) (noting that “the forms of cultural capital enumerated by Bourdieu . . . range from attitudes to preferences, behaviors and goods”); Purcell, *supra* note 19, at 294 (discussing cultural capital as “cultural knowledge, tastes, practices, attitudes, and goods”). Our cultural repertoires include everything from the music we listen to (and how we listen to it), to the food we prepare and consume (and how we talk about it), the places we travel, the television shows and movies that we watch, the sports that we watch and play, the books and magazines that we read, and the alcoholic beverages that we drink (and the venues where we choose to drink them). *See, e.g.*, Douglas B. Holt, *Distinction in America? Recovering Bourdieu’s Theory of Tastes from Its Critics*, 25 POETICS 93, 101 (1997) (identifying sports, pop culture, dining, and travel as important culture-related activities).

30. *See, e.g.*, Berndt, *supra* note 17, at 1454 (noting “friends are similar in their orientation toward contemporary teen culture. They like the same kind of music, have similar tastes in clothes, and enjoy the same kinds of leisure-time activities” (citations omitted)); Mark, *supra* note 17, at 320 (“[C]ultural similarities and differences among people provide bases for cohesion and exclusion. Empirical research shows that individuals who are culturally similar are more likely to be associates than are individuals who are culturally different.” (citations omitted)); Wimmer & Lewis, *supra* note 17, at 607 n.20 (finding that “students display a significant preference for culturally similar [others]”).

31. *See, e.g.*, Daniel J. Brass et al., *Taking Stock of Networks and Organizations: A Multilevel Perspective*, 47 ACAD. MGMT. J. 795, 796 (2004) (“Similar people tend to interact with each other. Similarity is thought to ease communication, increase the predictability of behavior, and foster trust and reciprocity.”); Marshall Prisbell & Janis F. Andersen, *The Importance of Perceived Homophily, Level of Uncertainty, Feeling Good, Safety, and Self-Disclosure in Interpersonal Relationships*, 28 COMM’N Q. 22, 24–25 (1980) (listing “feeling good” as a benefit of homophily-based interactions).

32. *See* Prisbell & Andersen, *supra* note 31, at 23; Lazarsfeld & Merton, *supra* note 16; McPherson & Smith-Lovin, *supra* note 26.

33. Paul DiMaggio, *Classification in Art*, 52 AM. SOC. REV. 440, 443 (1987).

34. *Id.*

Thus, within a given work setting, some cultural traits are more easily leveraged than others to forge relationships with colleagues, depending upon the number and status of the workers who share them.<sup>35</sup> Those that are widely embraced, for example interest in a popular television program or a local sports team,<sup>36</sup> can provide valuable “ins” for an associate seeking to fit in and develop career-enhancing rapport with her colleagues.<sup>37</sup>

### B. Racial Distance

Though not as morally invidious or legally suspect as discrimination driven by racial stereotypes and bias, cultural homophily nonetheless functions as a critical source of institutional bias that imposes burdens and barriers upon many black law firm associates because of the considerable social and cultural distance that exists between them and their colleagues. Centuries of racial stratification have produced profound social separation between black and white Americans.<sup>38</sup> Even today, black and white Americans largely live in different neighborhoods<sup>39</sup> and attend different schools.<sup>40</sup> As children, they develop same-race friendship circles during their formative adolescent years,<sup>41</sup> a pattern that persists into adulthood,

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35. The values of specific forms of cultural capital vary considerably according to the cultural preferences predominant within particular social and organizational settings. See Prudence Carter, “Black” Cultural Capital, Status Positioning, and Schooling Conflicts for Low-Income African American Youth, 50 SOC. PROBS. 136 (2003) (discussing the different returns to dominant and nondominant forms of cultural capital in different institutional settings); Bonnie H. Erickson, *Culture, Class, and Connections*, 102 AM. J. SOC. 217, 249 (1996) (explaining that “more than one kind of culture is useful” within a given institutional context).

36. Several interviewees alluded to the value of sports-related cultural capital, particularly its impact on gender inequality. See also Turco, *supra* note 19, at 899–901 (discussing sports knowledge as a source of social closure in the leveraged buyout industry).

37. *Id.*

38. For general overviews of this history, see JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* (8th ed. 2000); and AUGUST MEIER & ELLIOT RUDWICK, *FROM PLANTATION TO GHETTO* (3d ed. 1976).

39. See JOHN R. LOGAN, *SEPARATE AND UNEQUAL: THE NEIGHBORHOOD GAP FOR BLACKS, HISPANICS AND ASIANS IN METROPOLITAN AMERICA* (2011), available at <http://www.s4.brown.edu/us2010/Data/Report/report0727.pdf> (finding considerable residential segregation for black Americans at all income levels); see also Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, 29 ANN. REV. SOC. 167, 169 (2003) (“Despite declines in black-white segregation [since 1980], blacks remain severely segregated in the majority of U.S. cities.”).

40. The magnitude of the continued racial separateness of American schools is staggering.

Forty percent of white students attend high schools that are 90 percent or more white, and close to 30 percent of African American and Latino students attend high schools that are 90 percent or more minority. Nearly three-quarters of Latino and African American students attend high schools where most students are minority. Robert Balfanz, *Can the American High School Become an Avenue of Advancement for All?*, 19 FUTURE OF CHILDREN 17, 20 (2009).

41. See Maureen T. Hallinan & Richard A. Williams, *Interracial Friendship Choices in Secondary-Schools*, 54 AM. SOC. REV. 67, 76 (1989) (discussing the rarity of interracial friendships); Kara Joyner & Grace Kao, *School Racial Composition and Adolescent Racial Homophily*, 81 SOC. SCI. Q. 810 (2000); James Moody, *Race, School Integration, and*



where they maintain racially defined social networks.<sup>42</sup> Black and white people rarely enjoy close friendships with each other.<sup>43</sup>

In light of these longstanding, ongoing patterns of social separateness, it is not surprising that black and white Americans have developed racially distinct cultural milieus.<sup>44</sup> Racial patterns are evident across a spectrum of cultural traits, including preferences and consumption practices relating to music,<sup>45</sup> television,<sup>46</sup> games,<sup>47</sup> humor, fashion, and art.<sup>48</sup>

The plain fact of this stark racial separateness was evident in interviewees' discussions of their college and law school careers. Although most had attended predominantly white universities, few had enjoyed close social relationships with their white classmates. Instead, many had led racially isolated social lives. One such interviewee described her time as an undergraduate at an elite public university:

[I]f you looked at my photo albums from school, you would have thought that I went to Howard or Hampton or Spelman because all my friends were black. And we just had the community . . . [A]ll your friends were black, you were going to the black mixers, the Kappa parties<sup>49</sup> . . . you were in the black organizations . . . . My [college] experience—it was an HBCU<sup>50</sup> experience, essentially.<sup>51</sup>

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*Friendship Segregation in America*, 107 AM. J. SOC. 679, 698 (2001) (noting that adolescent students' friendships are "highly segregated by race").

42. See generally SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 127–66 (2004) (finding that many middle-class black families seek out suburban black middle-class enclaves). See also LAWRENCE OTIS GRAHAM, *OUR KIND OF PEOPLE: INSIDE AMERICA'S BLACK UPPER CLASS* (1999); Kathryn M. Neckerman et al., *Segmented Assimilation and Minority Cultures of Mobility*, 22 ETHNIC & RACIAL STUD. 945, 952 (1999) ("Few in the black middle class socialize with white colleagues outside of the workplace."). For a characterization of this social separateness as "discrimination in contact," see generally GLENN C. LOURY, *THE ANATOMY OF RACIAL INEQUALITY* 95–104 (2002).

43. Elizabeth Flock, *Poll: White Americans Far Less Likely to Have Friends of Another Race*, U.S. NEWS & WORLD REP. (Aug. 8, 2013), available at <http://www.usnews.com/news/articles/2013/08/08/poll-white-americans-far-less-likely-to-have-friends-of-another-race> (discussing results of Reuters/Ipsos poll finding that 40 percent of white Americans had no nonwhite friends).

44. See LAWRENCE W. LEVINE, *BLACK CULTURE AND CONSCIOUSNESS: AFRO-AMERICAN FOLK THOUGHT FROM SLAVERY TO FREEDOM* (1977) (providing a detailed overview of the evolution of various black American cultural traditions).

45. See MARK ANTHONY NEAL, *WHAT THE MUSIC SAID: BLACK POPULAR MUSIC AND BLACK PUBLIC CULTURE* (1999).

46. See Jane D. Brown & Carol J. Pardun, *Little in Common: Racial and Gender Differences in Adolescents' Television Diets*, 48 J. BROAD. & ELEC. MEDIA 266 (2004).

47. See Alex Johnson, Jr., *Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again*, 81 CAL. L. REV. 1401 (1993) (discussing black cultural and social traditions involving the card games of bid whist and tonk).

48. Paul DiMaggio & Francie Ostrower, *Participation in the Arts by Black and White Americans*, 68 SOC. FORCES 753 (1990) (finding differences in black and white Americans' consumption of art).

49. "Kappa" here refers to Kappa Alpha Psi, one of the most prominent African American Greek-letter organizations. See LAWRENCE C. ROSS, JR., *THE DIVINE NINE: THE HISTORY OF AFRICAN-AMERICAN FRATERNITIES AND SORORITIES* 46–48 (2000). These organizations were founded to provide social and civic outlets for black students in an era when blacks were widely excluded from white fraternities and sororities. Their continuing

Another interviewee explained that even the fairly small black student population at his Ivy League college provided enough of a critical mass for black students to maintain their own “black environment” with “black Greek organizations [and] . . . different social organizations.”<sup>52</sup>

Stories like these were common and consistent with research on racial patterns in campus social life at American universities.<sup>53</sup> But while black students can thrive academically and socially without engaging in in-depth interracial interactions, doing so causes them to miss out on opportunities for interracial acclimation and acculturation that might prove to be valuable later on, during their careers in predominantly white firms.

Though this race-based distance potentially impedes black and white attorneys alike from developing rapport with attorneys of other racial backgrounds, given the skewed racial demographics of large law firms, black associates bear the brunt of this problem. As a practical matter, they suffer more from their difficulties establishing relationships with white attorneys than those white attorneys suffer from their inability to develop rapport with them. The following part explains the importance of relationship capital in large law firms, and presents interviewees’ firsthand accounts to further illuminate the effects of these subtle disadvantages in undermining the careers of many black attorneys.<sup>54</sup>

## II. RACE-BASED DISTANCE AND HOMOPHILY DISADVANTAGE IN LARGE LAW FIRMS

“[T]he biggest thing is that ultimately what you want is for one person with clout here to like you.”<sup>55</sup>

These social and cultural dynamics can carry considerable professional consequences in large law firms, where careers are contingent upon rapport

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role in shaping the social lives and networks of many black college students and graduates exemplify the complex manner through which social and cultural distance between black and white Americans that originate in racial stratification become self-sustaining over time.

50. Woodson, *supra* note 22, at 184.

51. Interview with Attorney (Jan. 28, 2010).

52. Interview with Attorney (Nov. 11, 2009).

53. *See, e.g.*, MAYA A. BEASLEY, OPTING OUT: LOSING THE POTENTIAL OF AMERICA’S YOUNG BLACK ELITE 57–82 (2011) (noting that many black college students at majority white colleges immerse themselves in their school’s black communities and have limited contact with white students); Elizabeth R. Cole & Kimberly R. Jacob Arriola, *Black Students on White Campuses: Toward a Two-Dimensional Model of Black Acculturation*, 33 J. OF BLACK PSYCHOL. 379 (2007); Rachel F. Moran, *Diversity and Its Discontents: The End of Affirmative Action at Boalt Hall*, 88 CAL. L. REV. 2241, 2270 (2000) (finding that white students wanted friendships with black students while black students “preferred same-race friendships”); Sandra S. Smith & Mignon R. Moore, *Intraracial Diversity and Relations Among African-Americans: Closeness Among Black Students at a Predominantly White University*, 106 AM. J. SOC. 1 (2000). This social separateness has several causes, including both homophily and racial alienation. *See generally* WENDY LEO MOORE, REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY 99–100 (2008); Meera E. Deo, *Separate, Unequal, and Seeking Support*, 28 HARV. J. ON RACIAL & ETHNIC JUST. 9, 29–31 (2012).

54. *Infra* Part II.

55. Interview with Attorney (Feb. 10, 2010).

and relationships with colleagues.<sup>56</sup> For associates in these firms, relationship capital can be every bit as important as work performance. The mutual affinity, trust, and empathy that some attorneys develop through sociable interactions with each other renders them more likely to help and bestow preferential treatment on one another.<sup>57</sup> Regardless of race or gender, law firm associates who manage to develop the right relationships enjoy greater access to high quality work opportunities, advice, advocacy, and generous performance reviews.<sup>58</sup> Conversely, those who are less able to develop rapport with colleagues face longer odds of success.<sup>59</sup>

To understand the power of relationship capital in these firms, one need only consider the process through which associates receive work assignments and other opportunities. As senior attorneys generally enjoy considerable autonomy in allocating work assignments,<sup>60</sup> associates are not guaranteed equal access to the scarce,<sup>61</sup> high quality “training work” vital for their careers.<sup>62</sup> Instead, junior attorneys who have the strongest relationships and rapport with senior colleagues tend to receive greater

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56. See, e.g., Wilkins, *supra* note 10, at 1943–44 (“[T]hose who make it must have . . . ‘relationship capital,’ consisting of strong bonds with powerful partners who will give the associate good work and, equally important, report the associate’s good deeds to other partners.”). These observations about the importance of relationships in large law firms is consistent with the extensive, multidisciplinary body of social science research on social capital, the goodwill and access to preferential treatment that is available to people based on their membership in groups and relationships. See James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. SUPPLEMENT S95, S100–05 (1988).

57. See Herminia Ibarra, *Race, Opportunity, and Diversity of Social Circles in Managerial Networks*, 38 ACAD. MGMT. J. 673 (1995) (investigating the informal networks of white and minority managers); Paul Ingram & Xi Zou, *Business Friendships*, 28 RES. ORG. BEHAV. 167 (2008) (finding that friendships with colleagues offer numerous career enhancing benefits).

58. Wilkins & Gulati, *Reconceiving the Tournament*, *supra* note 10, at 1609.

59. See Wilkins, *supra* note 10 (discussing how highly credentialed black attorney Lawrence Mungin’s seemingly promising career at a large law firm interested in racial diversity was nonetheless doomed by his lack of relationship capital). See generally PAUL M. BARRETT, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA* (1999) (discussing Mungin’s failed career and subsequent employment discrimination lawsuit against Katten Munchin Rosenman LLP).

60. See Diaz & Dunican, *supra* note 11, at 974–76. Though many firms have developed centralized assignment systems in recognition of the potential inefficiency and unfairness of “free market” assignment practices, these rules are frequently ignored as partners and senior associates often staff their own cases and allocate assignments outside of the formally prescribed procedures. *Id.* at 974–78. Furthermore, these formal systems do little to curb the discretion of partners in allocating follow-up assignments amongst the multiple associates who are already working for them on a given matter. *Id.* at 975–76.

61. Wilkins, *supra* note 10, at 1944 (noting that premium work is “inherently in short supply”).

62. See Wilkins & Gulati, *Reconceiving the Tournament*, *supra* note 10, at 1644–51 (explaining that some associates have more or less access to high quality assignments than others); Wilkins & Gulati, *Why Are There So Few Black Lawyers*, *supra* note 10, at 541–42 (referring to “training” assignments as the “royal jelly” of corporate law firms, in that a steady diet of this work allows a select few associates to rise from worker bees to queen bees); see also Diaz & Dunican, *supra* note 11, at 974–76.

access to the scarce supply of training work.<sup>63</sup> As one interviewee explained:

Though law firms have formal ways to distribute assignments, the way that you're really going to get the assignment that you want to get is to know senior associates, to know partners . . . by being someone that they want to have a conversation with, being somebody that they wouldn't mind talking to outside of the [office].<sup>64</sup>

In the path-dependent realm of law firm careers,<sup>65</sup> even modest advantages in access to premium assignments can cumulatively result in attorneys ending up on very different career paths.<sup>66</sup>

This relational dimension of law firm careers works to the disadvantage of black attorneys. On average, black associates have less relationship capital with colleagues than their white peers: they have less social contact with colleagues<sup>67</sup> and are less likely to receive sufficient mentorship support.<sup>68</sup> Although these disparities frequently have been attributed to racial bias,<sup>69</sup> they are just as consistent with the workings of homophily. The logic of homophily dictates that black associates, who share fewer social and cultural characteristics with their colleagues, will receive less preferential treatment from them, not as a covert form of invidious group-

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63. See Diaz & Dunican, *supra* note 11, at 975–76 (observing that assignments in some firms are “socially constructed” and occur “based on existing relationships”).

64. Interview with Attorney (Feb. 17, 2010). Other interviewees concurred with this assessment. Some viewed the inability to find work outside of their firms’ formal assignment processes as an indicator that an associate was not held in particularly high regard and lacked adequate relationship capital. Rapport with partners and senior associates also enables some associates to avoid the less desirable, and more abundant, “paperwork” assignments. See Wilkins & Gulati, *Reconceiving the Tournament*, *supra* note 10, at 1609; Wilkins & Gulati, *Why Are There So Few Black Lawyers*, *supra* note 10, at 565.

65. See Wilkins & Gulati, *Reconceiving the Tournament*, *supra* note 10, at 1646 (observing that “[a]ssociates who do well on their initial training assignments are given preferential access to additional training opportunities”).

66. *Id.* at 1646–47.

67. Payne-Pikus et al., *supra* note 7, at 566 (finding black attorneys were less likely to report joining partners for meals and more likely to report desiring more mentoring). Most large firms have attempted to mitigate the disparities produced by informal mentorship by instituting formal mentorship programs. See, e.g., *Attorney Development and Retention*, SKADDEN, <http://www.skadden.com/diversity/development> (last visited Mar. 25, 2015) (“Skadden’s formal mentoring program pairs junior associates with a partner and an associate or counsel.”). Though well-intentioned, these types of formally imposed mentorship relationships tend to be less useful than those that develop organically, through interpersonal rapport. See Belle Rose Ragins & John L. Cotton, *Mentor Functions and Outcomes: A Comparison of Men and Women in Formal and Informal Mentoring Relationships*, 84 J. APPLIED PSYCHOL. 529 (1999) (demonstrating that workers perceive organic mentorship to be more effective than formal mentoring relationships).

68. Payne-Pikus et al., *supra* note 7; Sander, *supra* note 8, at 1798 (“Nonwhites—especially blacks—exhibit a striking concern over the absence of mentoring and training in their jobs, relative to white men.”).

69. Payne-Pikus et al., *supra* note 7.

based discrimination,<sup>70</sup> but quite simply because they have less rapport with them.<sup>71</sup>

Nearly half of the attorneys (thirty-five of seventy-five) interviewed for this project reported that issues of racial distance—racially-influenced differences in attorneys’ personal backgrounds and cultural repertoires—hindered some, if not all, of the black associates working in their firms from developing relationship capital with colleagues.<sup>72</sup>

For example, one interviewee, a former associate at a Washington, D.C. firm, explained how social and cultural differences rendered informal firm-related social events and gatherings problematic for some of his black colleagues.

[T]here’s another layer of complication, stress, and almost like another layer of the job that you have to go through if you’re not comfortable. So for example, if you don’t like to go out and drink beer. . . . [T]here’s small annoyances. If you go to a firm event you know there’s gonna be shitty music. That’s just the way it is. [Y]ou almost ignore it but why should you? Why is it that there are only certain genres . . . what it meant to go out and have a good time was very monolithic. I’m sure there are certain people who have a very difficult time adapting to that or have no desire to adapt and don’t think it’s worth the price.<sup>73</sup>

As this interviewee’s reflection suggests, some black associates who are not acclimated to the cultural preferences that are predominant in their firms eventually disengage socially and forego potential opportunities to develop relationship capital with colleagues, thereby reinforcing their isolation.

This lack of relationship capital reduces their access to premium work opportunities.<sup>74</sup> One interviewee, a senior associate at a West Coast firm who spoke of the “undeniable” affinity between associates and partners at

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70. *But see* Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 719–28 (2000) (discussing this process as a form of racial discrimination driven by racial stereotyping).

71. Researchers have found a great deal of evidence consistent with this. Several of the classic qualitative studies of corporate careers found that sharing cultural traits and common leisure-time activities with one’s employers was critical for career advancement. *See* JACKALL, *supra* note 19; KANTER, *supra* note 19. More recently, sociologists including Rivera concluded that “employers prioritized cultural similarity because they saw it as a meaningful quality that fostered cohesion, signaled merit, and simply felt good.” Lauren Rivera, *Hiring As Cultural Matching: The Case of Elite Professional Service Firms*, 77 AM. SOC. REV. 999, 1016 (2012). Sociologists Catherine Turco and David Purcell each found that workers who lacked cultural common ground with their senior colleagues suffered greater marginalization and alienation. Purcell, *supra* note 19; Turco, *supra* note 19.

72. To provide context for this finding, only twenty-three interviewees, including four of the thirty-five who reported disadvantages relating to their dissimilar cultural repertoires and personal backgrounds, reported observing acts of discrimination rooted in anti-black racial biases or stereotypes.

73. Interview with Attorney (Feb. 19, 2010).

74. *See* Sander, *supra* note 8, at 1801 tbl.19. Compared to the white attorneys in the AJD sample, a lower percentage of black attorneys reported handling an entire matter on their own, being involved in formulating strategy on half or more of their matters, or being responsible for keeping their clients updated on matters. They were more likely to report spending “100+ Hours Reviewing Discovered Documents/Performing Due Diligence on Prepared Materials.” *Id.*

his firm with “similar backgrounds,” explained how this dynamic left many black associates on the outside looking in while some of their white counterparts bonded with influential partners.

I don't have the same experiences [as the white partners]. I didn't play golf growing up. I didn't have much to offer to a conversation that was talking about how [golfer Arnold] Palmer was doing. . . . It also goes to where people vacation, stuff like that. The chit chat varies according to whose experiences are being discussed. . . . If African Americans don't have those experiences, then often times we won't get as close to the partners. It's not racial but the appearance is that the white attorneys will get a lot of the more posh assignments that can lead to greater things.<sup>75</sup>

Although this particular interviewee ultimately was able to forge relationships based on his superlative work product, eventually being promoted to partner, these dynamics made his upward trajectory more difficult.<sup>76</sup>

Another interviewee, a junior associate in the southern office of a large national firm, discussed her difficulties in developing rapport with colleagues with dissimilar backgrounds and interests as the primary cause of her inability to secure enough work assignments.<sup>77</sup> She described her difficulties, which she sensed were related to race but not a matter of racial bias.

[T]here's just nothing that goes on that feels race related; I just don't feel plugged in . . . that would be the only thing that I could say would be race but then it's not racism, it's just that I'm different and I have no idea how to fit in here. I have no idea how to be the person that you want to drink with.<sup>78</sup>

At the time of our interview, she was chronically unable to meet her firm's billable hour expectations and feared that she would be amongst the first attorneys let go if the firm conducted layoffs.<sup>79</sup> As her account reveals, the disadvantages of racial distance can be just as frustrating and just as impactful as those caused by racial bias.

Another interviewee, a former associate in an East Coast office of a large West Coast firm, explained that one of his black classmates from law school had a far more successful law firm career because her cosmopolitan background better enabled her to build rapport with partners.

[W]hereas we were doing the same in law school, and I even had an easier time getting a job . . . she excelled and just did really, really well [at her firm] . . . . I always attribute the difference to being [that] she knows how to get along better with those sort of people who are decision makers . . . and it had huge differences in how she was perceived and how

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75. Interview with Attorney (Aug. 12, 2009) (partner).

76. This interviewee explained that many black associates were also disadvantaged by their own homophily preferences, which led them to gravitate toward each other and forego networking with more influential white partners. *Id.*

77. Interview with Attorney (Sept. 27, 2009) (associate).

78. *Id.*

79. *Id.*

work went for her . . . that's something that comes a little easier for [her], she'll go out to drink with a partner from her law firm . . .<sup>80</sup>

While his friend excelled at her firm and ultimately made partner, he bounced between multiple law firms before landing in an in-house position at a small company.<sup>81</sup> This stark contrast between the careers of these two similarly situated attorneys—both black and both possessing comparable educational credentials—underscores the role of obstacles other than colleagues' stereotypes and biases in shaping the careers of black attorneys. The fact that those black associates who, like this interviewee's friend, are equipped to navigate the social and cultural terrain of their firms, may tend to enjoy more satisfying and successful careers suggests that difficulties arising from race-related social and cultural differences may be every bit as determinative as racial bias in shaping the fates of many black attorneys.

Whether or not the attorneys discussed in this part were also subjected to the types of racial stereotypes and biases contemplated in the previous scholarship,<sup>82</sup> many were undoubtedly handicapped by their inability to develop rapport with colleagues. The recognition of homophily as a formidable, independent source of institutional discrimination capable of perpetuating racial inequality in predominantly white firms should inform all future efforts to promote racial diversity. The following part will briefly discuss some proposed policies and strategies that might promote better career experiences and outcomes for black attorneys in these firms, in light of racial distance and cultural homophily.

### III. ADDRESSING THE RACIAL DISTANCE PROBLEM

Scholars and practitioners concerned about law firm diversity already have proposed a wide-ranging assortment of sensible organizational reforms that might help improve the career prospects of black attorneys.<sup>83</sup> Rather than attempting to reinvent the wheel, this part focuses on how firms might enhance some of these proposals to better address the racial disadvantage that arises from homophily and racial distance. Though these strategies certainly will not eradicate this problem—the tendency of homophily is simply too pervasive and the reality of racial distance too deeply entrenched—they should help ensure greater access to critical opportunities and support for many black associates who would otherwise be deprived of these career-defining resources.

#### A. Organizational Reforms

There are several organizational tools that could be implemented to better address the effects of homophily and racial distance: (1) universal management practices, (2) diversity staff and infrastructure, (3) training

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80. Interview with Attorney (Nov. 11, 2009) (former associate).

81. *Id.*

82. *See supra* note 14 and accompanying text.

83. *See infra* notes 84–100 and accompanying text.

programs, (4) enhanced mentorship programs, and (5) affirmative assignment action.

### 1. Universal Management Practices

Several observers have posited that law firms may be able to improve the careers of minority associates by implementing management practices that facilitate more equitable outcomes for all associates.<sup>84</sup> These proposed measures include formal assignment systems,<sup>85</sup> efforts to provide greater transparency with respect to performance standards and expectations,<sup>86</sup> and enhanced professional development training.<sup>87</sup> Though these measures have the potential to help all associates, they may prove particularly valuable for the many black associates who would otherwise “fall through the cracks” and miss out on opportunities and information because cultural and social dissimilarities have impeded them from securing sufficient relationship capital with the partners in their practice groups.

### 2. Diversity Staff and Infrastructure

Other proposals have emphasized the importance of retaining diversity professionals,<sup>88</sup> and creating robust diversity infrastructures, including diversity committees<sup>89</sup> and affinity groups.<sup>90</sup> Although experience has demonstrated that these steps are far from sufficient as means of achieving racial diversity, they seem indispensable as foundational measures that

84. *See generally* Wilkins, *supra* note 10, at 1955–62 (discussing the role of poor management practices in exacerbating the problems of minority associates). *But see* Fiona M. Kay & Elizabeth H. Gorman, *Developmental Practices, Organizational Culture, and Minority Representation in Organizational Leadership: The Case of Partners in Large U.S. Law Firms*, 639 ANNALS AM. ACAD. POL. & SOC. SCI. 91, 108 (2009) (finding that “an organizational culture of fostering and taking responsibility for employees’ professional development works to decrease the proportions of minorities in management”).

85. *See* N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, *supra* note 3, at 2. *But see* Wilkins & Gulati, *Why Are There So Few Black Lawyers*, *supra* note 10, at 591–92 (positing that formal assignment procedures do not work because powerful partners are free to bypass them).

86. *See, e.g.*, N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, *supra* note 3, at 2; REEVES, *supra* note 3, at 13.

87. *See* N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, *supra* note 3, at 2.

88. *See* ABA, *supra* note 3, at 27–28 (firms should retain diversity experts); Brereton, *supra* note 3, at 4 (hire full-time diversity professionals); N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, *supra* note 3, at 1 (same).

89. There appears to be a consensus that firms should form diversity committees with representation, commitment, and support from firm leaders. *See, e.g.*, ABA, *supra* note 3, at 28; REEVES, *supra* note 3, at 14; N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, *supra* note 3, at 1. Some observers have emphasized the importance of incentivizing white male attorneys to prioritize diversity and champion its virtues, for example, by tying diversity measures to compensation. *See* Root, *supra* note 1, at 623–28 (advocating that firms provide billable credit for time spent participating in firms’ diversity programming); *see also* ABA, *supra* note 3, at 29; Brereton, *supra* note 3, at 4; N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, *supra* note 3, at 1.

90. *See* ABA, *supra* note 3, at 27–28; REEVES, *supra* note 3, at 12. *But see* Deborah L. Rhode, *Women and the Path to Leadership*, 2012 MICH. ST. L. REV. 1439, 1469 (noting that affinity programs have yielded mixed results).



enable issues of racial disadvantage to be articulated, monitored, evaluated, and addressed.

### 3. Training Programs

One common diversity management strategy targets the presumed racial biases of partners through mandatory diversity education and training programs.<sup>91</sup> Though well intended, the existing data suggests that diversity training efforts have not been particularly successful thus far.<sup>92</sup> Law firms should enhance these efforts by incorporating information about the tendencies toward homophily and their systemic racial consequences. This improved training would, at the very least, help expand and refine partners' understanding of their firms' diversity problems. This training regarding homophily, a universal human tendency, may especially resonate with partners who react defensively or skeptically to bias-centered training programs, which many may interpret as all but accusing them of being closet racists.

### 4. Enhanced Mentorship Programs

The need for firms to provide better mentoring for black associates has also been a central emphasis of the existing commentary.<sup>93</sup> Employers might be able to ameliorate some of the racial effects of cultural homophily through greater commitment to formal mentorship and sponsorship programs aimed at providing minority workers greater access to relational capital and its professional benefits.<sup>94</sup> These programs should work to ensure that black associates have access to a constellation of mentors within their firms,<sup>95</sup> including some who will be responsible for providing these protégés substantive work opportunities. Although formal mentorship programs have thus far yielded mixed results,<sup>96</sup> there is evidence that they

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91. See ABA, *supra* note 3, at 27–28; N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, *supra* note 3, at 2.

92. Several scholars have questioned the effectiveness of training programs. See Rhode, *supra* note 90, at 1469 (noting the limited effectiveness of such programs); Wilkins & Gulati, *Why Are There So Few Black Lawyers*, *supra* note 10, at 592–94 (questioning the value of diversity training efforts).

93. See, e.g., REEVES, *supra* note 3, at 11–14; N.Y. BAR COMM. ON MINORITIES IN THE PROFESSION, *supra* note 3; Brereton, *supra* note 3; Payne-Pikus et al., *supra* note 7, at 577 (“Affirmative action mandates with regard to partner contact and mentoring of minority associates may be essential to achieve an effective racial integration of the upper reaches of the legal profession.”).

94. Kay & Gorman, *supra* note 84, at 95 (discussing potential value of formal mentorship program for racial minorities).

95. *Id.*; see Monica C. Higgins & David A. Thomas, *Constellations and Careers: Toward Understanding the Effects of Multiple Developmental Relationships*, 22 J. ORGANIZATIONAL BEHAV. 223, 236–38 (2001) (emphasizing the value of a protégé’s having multiple mentors).

96. See *supra* note 67 and accompanying text.

enhance the careers of minority professionals.<sup>97</sup> Given the laxity of many existing programs,<sup>98</sup> firms have considerable room for improvement on this front by imposing greater expectations and requirements concerning the partners who serve as mentors. Where feasible, in designing mentorship programs, firms should seek to take advantage of homophily by pairing black associates with mentors who have similar interests or backgrounds.<sup>99</sup> Identifying and calling attention to such cultural and experiential common ground may better enable these attorneys to develop rapport with each other across racial lines.

### 5. Affirmative Assignment Action

Recognizing that many black associates will not receive equal access to premium assignments without active, sustained interventions, some observers have suggested that firms should essentially develop affirmative action assignment procedures to ensure that all minority associates receive access to premium work opportunities.<sup>100</sup> There is much to commend in such policies. Given the pervasiveness of homophily and its power in ordering relationships in the workplace, such proactive, affirmative efforts will be necessary to ensure equitable treatment for black associates.

#### B. Strategic Acculturation

Though these organizational reforms may be able to manage and ameliorate some of the potential harms of homophily, they do nothing to disrupt the root causes of the problem—the race-related social and cultural distance that exists between black and white attorneys. To address this dimension of the problem, attorneys of all races must strive to develop greater interracial acclimation and acculturation.

As a normative matter, all attorneys, particularly partners, should shoulder the considerable burden of crossing the social and cultural disconnects that often divide black and white attorneys. Though law firms have limited institutional capacity to effect change on this front, firms could promote greater cosmopolitanism by emphasizing the value of all attorneys

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97. Alexandra Kaley et al., *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589, 590, 604 (2006).

98. See Rhode, *supra* note 1, at 1072 (explaining that most law firm mentorship programs fail to “specify the frequency of meetings, set goals for the relationship, or require evaluation”).

99. See generally Stacy Blake-Beard et al., *Matching by Race and Gender in Mentoring Relationships: Keeping Our Eyes on the Prize*, 67 J. SOC. ISSUES 622, 638 (2011) (suggesting that shared background experiences between mentors and protégés may be more important than demographic similarities); Connie R. Wanberg et al., *Mentor and Protégé Predictors and Outcomes of Mentoring in a Formal Mentoring Program*, 26 J. VOCATIONAL BEHAV. 410, 420–21 (2006) (protégés’ perceptions of similarity with mentors may contribute to higher quality mentorship relationships).

100. See, e.g., ABA, *supra* note 3, at 29; REEVES, *supra* note 3, at 12; Wilkins & Gulati, *Why Are There So Few Black Lawyers*, *supra* note 10, at 605 (arguing that firms must extend affirmative action to assignments and other personnel decisions).

taking deliberate, self-conscious efforts to expose themselves to the interests and experiences of other groups during their diversity training programs.

As a practical matter though, the burden of interracial acclimation will in all likelihood continue to fall disproportionately upon black associates. As members of an underrepresented, marginalized group, black attorneys have far greater personal incentives to seek out opportunities to develop common ground with their white colleagues, and face far greater costs for failing to do so. Rather than waiting—quite possibly futilely—for firms to stamp out homophily-based behavior and for white attorneys to more fully embrace the moral imperative of greater interracial acclimation, black attorneys (and aspiring attorneys) can work to equip themselves with the social and cultural resources that might better enable them to develop relationship capital in their firms. By strategically working to gain greater experience and comfort in predominantly white social settings and familiarity with the cultural capital that holds currency in their offices, some black associates may be able to improve their career prospects within their firms.

The potential value of this approach was evident in the accounts of several of the interviewees who had arrived at their firms with extensive prior acclimation to their white counterparts through high quality interracial social relationships and interactions. A few of these interviewees explained that their background experiences had provided them the comfort and acclimation necessary to develop relationship capital in their firms. For example, one interviewee who had attended several elite, predominantly white schools and who counted several white men amongst his closest friends, described the difficulties of his black peers while distinguishing his own experience. He explained:

From the day you walk in the door, it's based on who you know, who you can create relationships with, so it's a very tricky place to navigate . . . . For me, to be clear, this wasn't really a problem because I've pretty much been operating in these environments . . . for most of my life. . . . [i]t didn't feel any different than anywhere else I've ever been.<sup>101</sup>

Similarly, another interviewee noted, “I’ve just been in a lot of different social environments, and I have a lot of different types of friends so for me fitting in is not something that’s that difficult . . . but I think for other [black attorneys] it is a lot more difficult.”<sup>102</sup>

Another interviewee who had held close interracial friendships throughout her life provided a vivid account of the benefits of her interracial acculturation. She explained that her interactional ease in all white social settings and cultural interests in the fine and performing arts enabled her to bond with a number of colleagues, including one of the most powerful partners at the firm, an older white man.

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101. Interview, *supra* note 73.

102. Interview with Attorney (Feb. 12, 2010).

I knew he liked art . . . [s]o I sat down with him at a big dinner . . . sort of a black tie event, and I said, “I really want to tell you about this exhibit that I saw recently when I was in New York.” And all the other partners are looking around . . . [a]nd finally someone said, “I thought you were talking about a *trial* exhibit” and he says, “Oh no—she knows where my heart is really at; she’s talking about an exhibit at the Metropolitan Museum of Art.”<sup>103</sup>

This partner eventually became a valuable sponsor who greatly enhanced her experience at her firm.<sup>104</sup> Although her success in strategically availing herself of her cultural resources was particularly striking, a number of other interviewees also spoke of leveraging their prior interracial exposure more subtly.

Developing this type of acclimation will not be easy going for law firm associates, as the acculturation that helps some workers develop and sustain positive interracial relationships often reflects the embodied learning of many years of prior life experiences. Many of those associates who reach these law firms without such background exposure will find that it is too late for them to make up for lost time.

Therefore, efforts to promote this acclimation should begin before attorneys start their legal careers. “Pipeline” diversity efforts should seek to raise black students’ awareness of the importance of developing relationship capital in predominantly white settings and the value of interracial acculturation in equipping them with resources that may enable them to do so. This information may induce aspiring black attorneys to more purposefully take advantage of the opportunities to develop greater interracial interactional comfort while still in college and law school.<sup>105</sup>

To be clear, this approach raises important normative problems and is not without its costs.<sup>106</sup> Even some of the interviewees whose backgrounds enabled them to develop rapport with white colleagues spoke with evident frustration of the psychological and dignitary costs of feeling perpetually forced to accommodate the cultural and social sensibilities of others while suppressing some of their own. Notwithstanding these legitimate concerns, given the magnitude of the stakes involved—the very careers of thousands of black attorneys—and the lack of viable alternatives, this strategy demands serious consideration.

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103. Interview with Attorney (Jan. 27, 2010) (emphasis added).

104. *Id.* She also explained that because this partner shared and respected her cultural tastes and interests, he in some instances even spared her from certain unpleasant assignments that would have prevented her from attending particular performances. *Id.*

105. Parents might also make more concerted efforts to ensure that their children develop acclimation to their white counterparts and the interactional comfort useful for navigating these predominantly white organizational settings.

106. See Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1288–90 (2000) (discussing the potential dignitary and expressive harms of identity work); Tristin K. Green, *Discomfort at Work: Workplace Assimilation Demands and the Contact Hypothesis*, 86 N.C. L. REV. 379, 397–99 (2008). The strategic acculturation that I advocate in this part does not call for the type of assimilationist conformity criticized in these works, but rather a cosmopolitanism in which associates of all races develop greater cross-racial acclimation.

## CONCLUSION

The challenges of racial inclusion and diversity in America's largest, most prestigious law firms have produced a substantial and important body of legal scholarship. This Article contributes to this research by introducing an additional source of racial disadvantage that heretofore has been overlooked in commentary on this topic. This insight underscores that black associates face a number of subtle, complex difficulties in these firms, including some that are distinct from the more widely understood processes of racial bias and stereotyping. Acknowledging and addressing the detrimental impact of racial distance and cultural homophily on the careers of many black attorneys represents an important step toward facilitating greater racial diversity in the legal profession.