



“IF YOU CAN’T JOIN ’EM, BEAT ’EM!”

THE RISE AND FALL OF THE BLACK CORPORATE
LAW FIRM

David B. Wilkins

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INTRODUCTION.....	1734
I. FROM SHARING SPACE TO SHARING DREAMS.....	1739
A. <i>A Starvation Profession</i>	1740
B. <i>A Typology of Black Corporate Law Firms</i>	1742
1. <i>First movers: Neotraditionalists and Start-Ups</i>	1742
2. <i>Act Two: The Dropouts drop in</i>	1744
II. BUILDING A BETTER MOUSETRAP: 1965-1990	1747
A. <i>Translating Public Power into Private Gain</i>	1748
B. <i>Cracking the Corporate Code</i>	1752
1. <i>Demonstrating corporate commitment</i>	1753
2. <i>Marketing change in a changing market</i>	1756
C. <i>Our Kind of Clients</i>	1758
D. <i>Making an Opportunity out of Blocked Opportunity</i>	1760
E. <i>Dreaming the Impossible Dream</i>	1761
III. THE OLD RULES OF THE NEW BUSINESS CYCLE: 1990-2000.....	1761
A. <i>The Perils of the Public Sector</i>	1762
1. <i>Live by the sword, die by the sword</i>	1762
2. <i>With friends like these . . .</i>	1764
3. <i>Just gettin’ paid</i>	1767
4. <i>Paying for playing</i>	1769
5. <i>Affirmative reaction—and inaction</i>	1772
B. <i>When the Hunter Becomes the Hunted</i>	1775
1. <i>The danger of democracy</i>	1775
2. <i>The return of the big boys</i>	1777
3. <i>Old habits die hard</i>	1779
C. <i>The Grass Is Always Greener—Especially When There Is Plenty of Green</i>	1781

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1. <i>On-the-job training</i>	1781
2. <i>Loyalty versus lifestyle</i>	1783
D. <i>The Death of the Black Corporate Law Firm?</i>	1787
IV. PARADISE OR PARADISE LOST?	1789
A. <i>Lessons from a Survivor</i>	1790
B. <i>Debunking Myths and Saving Souls</i>	1793
C. <i>The New Social Engineers</i>	1795
D. <i>The Vanishing Black Institution</i>	1796
V. CONCLUSION: TO REACH THE UNREACHABLE STAR	1800

“The premise was that we could grow a national firm from the bottom up. That was the unspoken dream of all of the participants.”¹

“It was the first time I had been in any office of any size, certainly the first time in a law office of any size, where you could go from office to office to office, floor to floor, and see black people practicing in commercial practice at the highest levels. It was a wee bit short of a spiritual experience for me. At the end of the day, the hiring partner said, ‘Clearly you have the talent to do the work. We only ask that you have the will to live our mission to build an institution of talented but purposeful black lawyers.’”²

“The number of African-American owned firms is rapidly decreasing. It is becoming very evident to those of us who are still in the practice or who continue a strong interest in the practice that there is a real sea change that we are living through now.”³

INTRODUCTION

There was a moment around 1990 when it all seemed possible. Finally, there was a way for black lawyers with ambition, skill, and determination to escape the frustrating limitations that seemed destined to block their progress at large law firms which, although finally willing to hire them, seemed unwilling or unable to treat them as full fledged participants. That way was to build “large” corporate law firms of their own that would compete directly with established firms for clients and talent.⁴

1. Interview with Brian Jones, at 72-73. [Editors’ note: This Article contains excerpts from many confidential interviews conducted by the author. Because he promised anonymity to his interview subjects in exchange for their candor, the author has revealed only the number which he used to catalog each interview along with the page number in his interview notes corresponding to the quotation. The author has also assigned his interviewees fictitious names. The *Stanford Law Review* has not reviewed the author’s interview notes for accuracy or for any other purpose.]

2. Interview with Bill Blakely, at 28.

3. Interview with Charles Robinson, at 3.

4. See Shelly Branch & Caroline V. Clarke, *The Nation’s Leading Black Law Firms*, BLACK ENTERPRISE, Aug. 1993, at 48; Michael King, *Making a Case for Choosing a Black*

Those who embarked on this path had big dreams. The most ambitious, as the first epigraph quoted above underscores, dreamed of creating national firms that would rival in size, scope, and profitability the “law factories” that had been built during the last century to service the needs of public and private institutional clients.⁵ But even those who dreamed on a more local level still thought that they could build stable and successful institutions in the image of Cravath and other similar firms.

And why not? The conditions for creating viable black corporate firms seemed ripe. A quarter century after the enactment of the Voting Rights Act—and a decade after the threat of school busing caused many whites to flee for the suburbs—black voters had finally begun to flex their muscles in major cities across the country. The result was a growing generation of black politicians with the ability to control (or, at a minimum, to influence) how public entities awarded the substantial amount of legal business under government control. At the same time, corporate America was beginning to awaken to its own obligation to promote diversity among its suppliers, including the suppliers of legal services. Finally a new generation of black entrepreneurs, entertainers, and athletes seemed poised to fulfill the promise of black capitalism. Surely, these forces were sufficient to create a client base with both the interest in and ability to sustain a new black legal elite.

Moreover, by the last decade of the twentieth century there was a growing supply of black (and other minority) lawyers with the credentials—and often the experience—to service the legal needs of public and private institutional clients. By 1990, there were more than 25,000 black lawyers in the United States—a tenfold increase from the size of the black bar in 1960, with more than 6700 black students entering law school every year.⁶ Nor was there much competition for this growing pool of talent from established corporate firms. Although most law firms were hiring a handful of black graduates by this time, the vast majority of the black lawyers who had entered these institutions during the proceeding two decades were no longer there.⁷ As a result, those seeking to create black corporate law firms could draw on a substantial pool of black recruits with experience in servicing the legal needs of institutional clients and, equally important, who understood the frustrations of life inside a large law firm for black lawyers.

Law Firm, BLACK ENTERPRISE, Feb. 1987, at 133; Frances A. McMorris, *Black Firms Tread Where Few Others Have Ever Gone*, 210 N.Y. L.J. 1, 2 (1993); E.R. Shipp, *Black Lawyers Joining the Chase for Big Money*, N.Y. TIMES, May 20, 1988, at B7.

5. See MARC GALANTER & THOMAS M. PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 16-17 (1991) (quoting a 1933 profile of Paul Cravath referring to the law firm Cravath founded as a “law factory”).

6. ELIZABETH CHAMBLISS, ABA COMM’N ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION, MILES TO GO 2000: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 1 tbl.1, 3 & 4 (2000).

7. See Shipp, *supra* note 4.

Finally, there was a precedent for the bold strategy these new black corporate entrepreneurs sought to implement. A generation earlier, Jewish lawyers, who in the first half of the twentieth century were even more excluded from “white shoe” corporate firms than black lawyers were in the 1990s, had built their own law firms whose size and profitability eventually rivaled their WASP counterparts.⁸ Although this lineage was rarely explicitly acknowledged, the black lawyers who launched corporate law firms in the latter decades of the century had reason to hope that they could emulate this successful strategy.

And yet, notwithstanding all of this potential and precedent, by the end of the twentieth century the dream of building black corporate firms that could rival their largely white counterparts had all but died. As the last epigraph indicates, by the dawn of the twenty-first century most of the firms that had been started with such promise and enthusiasm just a few years before had either shuttered their doors or shrunk in both size and ambition. Those black lawyers who continue to dream of building something beyond boutiques—some of which have indeed proven to be quite successful—are more likely to talk about creating “networks” or “franchises” as opposed to building a national firm comprised, in the words of the second epigraph, of “talented but purposeful black lawyers.” Indeed, to the extent that anyone continues to talk about building a national minority law firm, it is Hispanic lawyers who have been able to leverage their strong presence in Miami and connections to Latin America to create at least one law firm with more than 250 attorneys.⁹

What happened to the dream of building a national black law firm? Equally important, what can the fate of this dream tell us about ongoing efforts to integrate the corporate “hemisphere” of the bar and to eliminate inequality in the legal profession and in the rest of society generally?¹⁰ Finally, what, if any, difference will it make that these firms failed to achieve their ambitious goals? As we will see, many of the lawyers who created successful black corporate firms left these institutions to become partners in traditional large law firms. Moreover, the black corporate boutiques that have survived have had to find real niches in the marketplace, as opposed to trying to create what were, at best, likely to have been midsized full-service firms of the kind that are increasingly going the way of the dinosaur in today’s competitive marketplace.¹¹ Given this

8. Eli Wald, *The Rise and Fall of WASP and Jewish Law Firms*, 60 STAN. L. REV. 1803 (2008).

9. See *infra* notes 204-05.

10. See JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982) (arguing that the American legal profession is divided into “corporate” and “individual” hemispheres).

11. See Marie Beaudette, *D.C. Firm Drops Name to Get a Good Win: Shea and Gardner Agrees to Merger with Boston’s Goodwin Proctor in a Bid for Long-Term Security*, LEGAL TIMES, July 19, 2004, at 1 (discussing the difficult position of midsize firms in the current legal market place).

reality, should we mourn the death of the dream of building a national black law firm or should we celebrate it as a necessary and desirable step toward achieving true integration of the nation's elite corporate bar?

In this Article, I examine these questions by taking a close look at the lawyers who attempted to establish "black" or "minority" corporate law firms in the last three decades of the twentieth century.¹² I do so on the basis of over fifty in-depth interviews with lawyers who either dreamed of creating black corporate law firms or who were in a position to hand out the kind of business that would determine whether this dream could be realized. Based on these reports, I argue that five interconnected trends ultimately doomed the grand ambitions of those who sought to create "large" black corporate firms: the increasing difficulty of translating electoral power into legal business; the inherent limitations of various strategies to promote diversity and inclusion; the growing concentration and competition among traditional large law firms; the widening gap between the world views and expectations of the lawyers who founded black corporate firms and the new generation of black lawyers these founders needed to recruit to keep their organizations viable; and—paradoxically—their own success. Understanding how each of these developments undermined the dream of creating viable black corporate firms, I submit, has important implications for the likely success of a range of policies currently being advocated by those seeking to promote diversity in the legal profession.

Understanding the factors that led to both the rise and the fall of black corporate firms also highlights just what is likely to be lost as these pioneering institutions contract and perhaps die out altogether. As the second epigraph to this Article underscores, many of those who sought to build black corporate firms were interested in more than economic success. They also had a mission to create lasting black institutions that would reflect the sensibilities of the black community and help to serve its needs. In this respect, black corporate firms were very different from their Jewish predecessors which were, as Eli Wald documents, largely Jewish by default as a result of anti-Semitism in the mainstream corporate bar.¹³ The corporate law firms started by black lawyers beginning in the 1960s, on the other hand, were black by *design*. With few exceptions, the founders of these institutions sought to create corporate firms that would have a distinctly racial character, even as they acknowledged that

12. As indicated below, neither the sobriquet "black" nor "minority" is entirely apposite since white lawyers, including several white partners, also worked in many of these institutions. Nevertheless, as I also document, the lawyers I interviewed thought of their firms as being "black" and intended for these institutions to exemplify what they considered to be a black ethos—an ethos that distinguished these institutions from other "minority" firms in which a majority of the founding partners were not black. Given that many of my respondents also often referred to their own and other similar firms as "minority" institutions, however, I use these terms interchangeably as well.

13. See Wald, *supra* note 8, at 1833.

the barriers that had historically prevented black lawyers from joining mainstream corporate firms were beginning to recede. Like those who continue to support the nation's historically black colleges and universities (HBCUs), these founders believed that even in a world without formal barriers to integration that there was still an important place for black institutions dedicated to training young black lawyers and instilling in them a sense of pride, and to providing a range of services and support to the black community with whom these founders felt a deep spiritual connection. It remains to be seen whether a black bar that is increasingly divided between those who work in large, and still largely white, corporate law firms and those who work in traditional black law firms that service a clientele comprised almost exclusively of black individuals and small businesses will continue to provide these important services.

Moreover, like HBCUs, black corporate firms also provided the black lawyers who created and managed these organizations with an opportunity that even the most successful blacks in traditional elite firms almost never enjoy: the ability to be in charge of an institution that could pursue an approach to corporate law practice premised on the fact that blacks *as a group* hold decision-making authority. As Heather Gerken's important work on democratic theory reminds us, there is a crucial difference between minorities having the opportunity to *participate* in a decision and their having the authority to *make* that same decision—and make it in a context where they are no longer in the minority.¹⁴ Due in part to the competitive pressure created by black corporate firms, a few black lawyers are now able to participate in decision making in at least some traditional large law firms. But even those who do rarely have the authority to make their *own* decisions about how their work will impact the interests of the black community. Just as significantly, few *white* lawyers will learn what it means to participate in decision making within institutions in which people like them are not ultimately in control.

Finally, whatever one thinks about the continuing desirability—or even possibility—of creating a significant black corporate law firm today, it is important to remember the voices of those who dared to dream this impossible dream. I therefore let these dreamers speak in their own voices—voices that not only remind us of the barriers black lawyers faced just a few short years ago, but also of the courage and entrepreneurial spirit with which these pioneers confronted those barriers. As we consider the barriers that continue to impede the dream of building a truly integrated bar in this new century we would do well to remember both parts of this history.

The rest of this Article proceeds in five parts. Part I briefly recounts the history of black law firms and documents the evolution of three distinct types of black “corporate” firms in the latter decades of the twentieth century: “Neotraditionalist” firms, comprised of lawyers who attempted to adapt

14. See Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745 (2005).

traditional black law firms to compete for institutional clients; “Start-Up” firms, founded by the first generation of black lawyers to emerge from elite law schools in the late 1960s and early 1970s who rejected (or quickly abandoned) large law firms for the chance to establish their own competing enterprises; and “Dropout” firms, established in the late 1980s and early 1990s by black lawyers who had spent a significant amount of time in big firms (many of whom had even become partners) but who nevertheless decided to walk away from their privileged positions to start their own corporate firms. Although there were therefore significant differences among these institutions—differences, as we shall see, that had important implications for the strategies particular firms pursued and their success in pursuing them—all of these firms shared two common goals: to build “true” law firms (as opposed to the loose office-sharing arrangements typical of traditional black firms) catering to large public and private institutional clients (as opposed to the individuals and small businesses black lawyers typically served) and to do so in an environment in which black lawyers—and black culture—played a dominant (although as we shall see, by no means exclusive) role. Part II examines the forces that propelled the growth of the firms that shared these ideals in the three major markets in which black firms attempted to build their competitive edge: the “public” market for legal work from local, state, and federal programs; the “private” market for legal work from corporate clients; and the “labor” market for talented lawyers. Part III then describes how a set of overlapping changes in each of these three markets combined to undermine the most ambitious aspirations of the lawyers who started these firms. Part IV examines what this history can teach us about contemporary debates concerning how best to diversify the corporate hemisphere of the bar and investigates what might be lost in a world in which black institutions, like the firms these pioneers attempted to create, no longer exist. Part V concludes by asking whether even quixotic dreams are sometimes worth pursuing.

I. FROM SHARING SPACE TO SHARING DREAMS

To understand just how audacious the idea of creating a black “corporate” law firm must have seemed to the lawyers who dreamed of doing so in the latter decades of the twentieth century, it is important to remember the state of the black private bar in the years before the Supreme Court’s decision in *Brown v. Board of Education*.¹⁵ In addition to providing context, this history also played an important role in shaping the kinds of firms that black lawyers sought to create and the goals that these pioneers had for these new institutions.

15. 347 U.S. 483 (1954).

A. A Starvation Profession

When the Supreme Court decided *Brown* in 1954, there were no black corporate law firms. Indeed, with only rare exceptions prior to the late 1960s when the country finally began to get serious about enforcing *Brown's* integrationist mandate there were neither black corporate *lawyers* nor true black *law firms*. Although a few black lawyers managed to secure at least some business from corporate clients in the first half of the twentieth century,¹⁶ the overwhelming majority of black lawyers in private practice toiled as solo practitioners or in loose office-sharing arrangements with a handful of other black lawyers until well into the 1970s.¹⁷ There were virtually no black lawyers in the kind of downtown law firms that stood atop the power, prestige, and income hierarchies of the bar.¹⁸ Given this state of affairs, black lawyers lagged significantly behind white lawyers in both income and prestige.¹⁹

Notwithstanding these limitations, however, it is important to recognize the

16. In his masterful account of the history of black lawyers in the United States in the period before the end of the second world war, J. Clay Smith asserts that Deborcey Macon Webster, who joined the bar in the 1880s, established a successful private practice in New York—on Wall Street no less—that included work for a number of corporate clients, including “Messrs. Lord and Taylor, [and] Tiffany and Company.” J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944*, at 400 (1993).

17. Once again, there were exceptions. According to Charles Robinson—a self-described student of the history of the black bar and the founder of one of the most successful black corporate firms—a firm in Cleveland, Ohio, deserves pride of place for being the first “real” black firm to try to cultivate a business clientele. As he told me, in the 1940s this firm had “seven or eight lawyers—I don’t know how formal the linkage was—and was the first mega-combination I know of for purposes of serving business—well, at least non-criminal law representation.” Interview with Charles Robinson, at 4.

18. There were a handful of exceptions that largely proved the rule. According to his biographer, the great singer and activist Paul Robeson briefly worked in a small Wall Street law firm after his graduation from Columbia Law School in 1923—that is, before a white stenographer at the firm purportedly refused to work with him, saying, “I never take dictation from a nigger.” See LLOYD L. BROWN, *THE YOUNG PAUL ROBESON 122* (1997) (noting the “racial discourtesies expressed by the other employees” at Robeson’s “Wall Street firm”); Spartacus Educational, Paul Robeson, <http://www.spartacus.schoolnet.co.uk/USARobeson.htm> (last visited Apr. 10, 2008). With the exception of such cameo appearances, the color line at major corporate firms remained impenetrable until William T. Coleman, Jr. joined the law firm of Paul Weiss Rifkind Wharton & Garrison in 1949. Notwithstanding Coleman’s success, however, the corporate bar remained virtually all white until the late 1960s—and many firms did not hire their first black lawyer for a decade after that. See GERALDINE R. SEGAL, *BLACKS IN THE LAW: PHILADELPHIA AND THE NATION 75-94* (1983).

19. Indeed, given that many of the few black clients who could afford legal services preferred to hire white lawyers—either because they believed that white lawyers were more competent or feared the prejudice of the white judges and juries that these lawyers would have to appear before—black lawyers also significantly lagged behind black doctors and other professionals in both of these categories. See Jerome Shuman, *A Black Lawyers Study*, 16 *How. L.J.* 225, 231 n.21 (1971) (quoting a 1963 study by the U.S. Civil Rights Commission indicating that black clients often prefer to hire black lawyers). As a result, law was often called a “starvation profession” for blacks. See SEGAL, *supra* note 18, at 4.

significant role that black lawyers in private practice played in the black community during this period. Although full-time civil rights lawyers like Thurgood Marshall often get all of the credit, the Legal Defense Fund's network of cooperating attorneys was an essential part of the campaign that eventually culminated in *Brown v. Board of Education*.²⁰ Just as importantly, black lawyers in private practice were often the only ones both able and willing to provide ordinary blacks with even a modicum of access to the law—and, often even more crucially, protection from it. As the historian Paul Finkleman notes, black lawyers who were not full-time civil rights lawyers “ushered in many types of social change simply by doing their jobs well.”²¹

Traditional black law firms also played a crucial role in training the next generation of black attorneys. For newly minted black lawyers in the years prior to 1968 when mainstream law firms slowly began to open their doors, working for an established black attorney constituted one of the few places where these new graduates could learn their trade. Charles Robinson who would go on to found one of the most important black corporate law firms of the 1980s captured the importance of this apprenticeship function when describing one of the early black law firms in California:

Tom was sort of a legend among the older generation of black lawyers who are now in their 60s and 70s because everybody worked for him. He had 8 or 9 lawyers in the 1940s and '50s. Their identity and number kept changing but if you came of age in California during that time you couldn't get a job anywhere else.²²

Finally, traditional black law firms did more than provide access to the legal system for black clients and train black lawyers. They also played a crucial role in providing leadership to the black communities within which they were located, and, equally importantly, training *in* leadership for black lawyers who had few other opportunities to develop these skills. Notwithstanding their marginal incomes and status in the profession, black lawyers in the pre-*Brown* period were frequently chosen to head civic, religious, and philanthropic organizations in the black community.²³ Similarly, young people growing up in the black community looked up to the few black lawyers they encountered as role models whose outward trappings of success and accomplishment they might one day seek to emulate.²⁴

20. MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961*, at 38 (1994).

21. Paul Finkelman, *Not Only the Judge's Robes Were Black: African-American Lawyers as Social Engineers*, 47 *STAN. L. REV.* 161, 180 (1994).

22. Interview with Charles Robinson, at 5.

23. My grandfather, a solo practitioner in Chicago who shared office space with other black lawyers in what was then the only building in downtown Chicago that would rent space to blacks, headed the lay organization of his church, several national and local black fraternal and social organizations, and the neighborhood chapter of the PTA.

24. Another respondent who would go on to establish his own successful black law firm described how he decided that he wanted to become a lawyer: “There was a lawyer who

In each of these four ways—assisting in the black liberation struggle, providing important legal services to black individuals and businesses, training the next generation of black lawyers, and serving as leaders in the black community and as role models of professional excellence—traditional black law firms were an integral part of the structure that supported the black community in the period before *Brown* and the first decade thereafter. When the doors of opportunity finally began to squeak open in the beginning of the second decade after the Supreme Court’s historic decision, black lawyers both young and old began to look for ways to escape the limitations of their relatively constricted existence, while at the same time preserving the important role that the traditional black bar had played in the black community.

B. *A Typology of Black Corporate Law Firms*

There is no definitive record of when the first black “corporate” law firm officially opened its doors. After identifying the legendary California firm where “everyone worked” in the 1940s, Charles Robinson identified another California law firm that was formed in Los Angeles in the late 1960s as having pride of place.

Moving into what I think of as the modern era, the next combination I am aware of was a firm called Sanders, Tisdale, Tooks & Williams. The “Sanders” was Stanley Sanders,²⁵ who graduated from Yale around 1968 and who had been a Rhodes Scholar.

1. *First movers: Neotraditionalists and Start-Ups*

Whether or not this firm was indeed the first of its kind, the juxtaposition of the two California firms described by Robinson underscores an important transformation that began to occur in the black bar when the first wave of black lawyers emerged from the nation’s elite law schools in the late 1960s. As new opportunities began to open for black lawyers, a few traditional black law firms like the first one Robinson described where “everybody worked” began to look for ways to leverage their name recognition and deep roots in the black community to take advantage of the new opportunities for black lawyers that were beginning to emerge in post-*Brown* America. A few of the most

went to my church from the time I was a little kid and I remember him. He used to drive a big car and I thought that was good!” Interview with Marshall James, at 7. Or as another respondent put it: “I knew about black lawyers because a black lawyer closed on my parents’ house in 1966 and he was fancy!” Interview with Carl Malkin, at 10.

25. Interview with Charles Robinson, at 6. Robinson remembered the name of the firm as Sanders, Tisdale, Tooks & English but in commenting on a prior draft of this Article for the *Stanford Law Review*’s symposium on this issue, Roland Dumas noted that the firm’s name was actually Sanders, Tisdale, Tooks & Williams. I have therefore corrected the quote for the sake of historical accuracy. I am grateful to Mr. Dumas for bringing this error to my attention.

farsighted and ambitious of these older black lawyers moved to transform the loose confederations that had traditionally bound the lawyers within their ambit together into more formalized arrangements similar to those found in traditional law firms. These “Neotraditionalist” firms, as I will call them, would go on to play an important role in validating the idea of creating a black corporate firm and modeling how that dream might be achieved.

At the same time, a new generation of black lawyers like Stanley Sanders began to emerge from the nation’s elite law schools. Many of those in this cohort entered the country’s leading law firms and attempted to conquer corporate America from the inside. But a small number like Sanders quickly turned their backs on traditional elite firms and instead set about establishing firms of their own that could one day compete with established firms for clients and talent. Although these new legal entrepreneurs were often inspired by Neotraditionalist firms, they were also clear that they wanted to distance themselves from the traditional practices that they viewed as inhibiting the growth of these older organizations—and the older lawyers who ran them. Instead, they wanted to model their new “Start-Up” firms, as I will call them, on the large law firms that these children of the Supreme Court’s decision in *Brown* had been exposed to during law school.

Brian Jones’s career underscores this transition. Jones was in the first wave of blacks to attend elite law schools, enrolling in the University of Michigan Law School in 1967. As he prepared to graduate three years later, Jones received several offers to join prestigious corporate law firms in his native Detroit. To the surprise of many of his classmates, Jones turned these lucrative and prestigious offers down. Instead, Jones accepted a job with a ten-lawyer Neotraditionalist black law firm that was attempting to break into the market for legal work from public and private institutional clients. His reasons for doing so reflected both the inevitable limitations of life in a large law firm for a bright young black man in 1970 and the appeal of creating a new black institution:

As you know, there is the glass half empty/half full thing in terms of the perspective and culture and perception of big firms. Although there are very fine people trying to bridge the cultural gap and what have you, there really is a different set of aspirations in terms of what the firm was seeking to do, which was really not focused on the aspirations I had to make an impact on community uplift—on community growth and development, institutionalization, and things like that. The barriers were coming down and there were all these great opportunities, but where do you choose to make an impact on the growth and development of people of color? There are all sorts of ways to do it, clearly. But the one that appealed to me was in the context of a black law firm.²⁶

A year and a half later, however, Jones found himself chaffing under the dictatorial rule of the firm’s partners, all of whom had grown up in a different

26. Interview with Brian Jones, at 39-40.

era than the firm's associates. "The three named partners had all gone to Wayne State and worked for the IRS before opening the firm," Jones explained. By contrast, Jones and his fellow associates were products of the kind of elite schools that the firm's partners could not have attended in their day. "Three of us began complaining that we were all chaffing under the same sort of bridle. One fellow was from Harvard Law School and the other graduated a year or two ahead of me from Michigan. So we had a lot to contribute. But the atmosphere had to be an accepting atmosphere if our contributions were to be positive—but it wasn't."²⁷ So, the three decided to leave to form their own firm.

Jones's vision for his new Start-Up was very much the same as the one he had just left, only without the bureaucratic control and dictatorial hassles that he had experienced at the hands of the older partners:

Civil, corporate—no personal lines. No criminal work. That was the goal. From my experience at the old firm I could see first hand the depth and breadth of the black business and professional community and that the way that things were evolving that there would be a great opportunity for a number of black firms to succeed.²⁸

As we will see, subsequent events would prove that Jones's vision was indeed farsighted. But it was an event the year after the firm was started that ended up making all of the difference for the firm's future. "Coleman Young was elected [mayor of Detroit] in November of '73," Jones explained. "That door opened to us and brought us what became the cornerstones of our practice in the first decade."²⁹

Jones was not alone. Beginning in the 1960s, the rise of black political power in major cities around the country propelled the growth of both Neotraditionalist and Start-Up firms. The visible success of these new ventures, in turn, spurred another group of black lawyers to establish a third type of black corporate firm that they believed could compete effectively with Neotraditionalists and Start-Ups—and with mainstream law firms—for work from public and private institutional clients.

2. Act Two: *The Dropouts drop in*

By the late 1980s, efforts to promote diversity in large law firms had officially been underway for almost two decades. Yet notwithstanding some notable success stories, the overall percentage of black lawyers in these institutions remained vanishingly small. As late as 1989, blacks constituted just over two percent of the associates—and less than one percent of the partners—

27. *Id.* at 45.

28. *Id.* at 46.

29. *Id.* at 49.

in the nation's 250 largest law firms.³⁰ Moreover, even those few black lawyers who had managed to win the "tournament of lawyers" and become partners often found that their victory was as much Pyrrhic as real.³¹ As many law firms moved to a "two-tier" structure of equity and nonequity partners, black partners were much more likely to find themselves in the latter less remunerative (and more precarious) status.³² Even in firms that had retained their unitary partnership structure, black partners were much more likely to dwell at the bottom of the firm's financial and status pecking order. With very few exceptions, black partners did not hold leadership positions such as department chairmanships or membership on important firm committees. Nor did these lawyers control the kind of "book of business" likely to vault them into the top echelons of the compensation system. As one frustrated black partner reported, "the major issue is not so much moving from associate to partner, but from 'piddling partner to significant partner.'"³³

Given this reality, it is not surprising that many black partners expressed frustration with the slow pace of change inside traditional large law firms. What is surprising is that several decided to leave and go elsewhere. Although there are few reliable statistics on attrition rates among black partners during this period, anecdotal rates suggest that the number leaving their hard won and coveted positions was surprisingly high. For example, in 1991 eight black partners at major Chicago firms—according to one estimate, "more than 'twenty percent of the black partnership'"—left their prestigious positions.³⁴

30. See Rita Henley Jensen, *Minorities Didn't Share in Firm Growth*, NAT'L L.J., Feb. 19, 1990, at 1 (reporting that blacks constituted 2.2% of associates and 0.91% of partners at the nation's largest firms).

31. See GALANTER & PALAY, *supra* note 5 (describing the quest for partnership as a tournament of lawyers). For my own take on Galanter and Palay's seminal work, see 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). One of the points we make is that, contrary to the impression left by Galanter and Palay, promotion to partnership is merely one (albeit important) stage in a multiround competition that continues among partners for compensation, power, and prestige. *Id.* at 1588. It is this latter stage of the competition where many black partners have found themselves falling behind. *Id.* at 1677.

32. In 1996, for example, the National Law Journal concluded that 46.2% of minority partners in the nation's largest 250 firms were income partners as compared to only 30% of white partners—a difference of over 50%. See Ann Davis, *Big Jump in Minority Associates, But . . . Significant Attrition in Their Later Years Has Left Partnership Ranks Almost as White as Five Years Ago*, NAT'L L.J. Apr. 29, 1996, at A1. A 1998 study of Chicago law firms reached a similar conclusion. See Lynne Eckert Gasey, *Retention and Promotion Issues Face Minorities and Women at Firms*, CHI. LAW., May 1998, at 4 (reporting that minorities constitute 4.8% of all income partners but only 2.1% of equity partners and that there were only twenty-three black equity partners in firms over twenty lawyers in the entire city of Chicago).

33. Joel Reese, *Five Large Firms Note Major Gains in Minority Associates*, CHI. LAW., May 1997, at 20 (quoting a black partner in a large Chicago firm).

34. See Caroline V. Clarke, *The Diversity Dilemma*, AM. LAW., Oct. 1992, at S29 (quoting Linzy Jones Jr., a black partner at Chicago's Sidley Austin); Steven Keeva,

Reports from other cities paint a similar picture.³⁵ Although those leaving large law firms went many places—including in-house legal departments and investment banks—a significant number left to start their own competing corporate law firms.

Charles Edwards is representative of this last group of entrepreneurs who left traditional large law firms to create what I will refer to as “Dropout” firms. Born on the South Side of Chicago to a father who worked “pulling hot steel out of furnaces”³⁶ and a mother who was a teacher’s aid, Edwards by any objective measure had lived the American dream. Thanks to the “A Better Chance” program that placed inner-city black children in elite Eastern prep schools, Edwards was transported from his decrepit, underfunded, all-black junior high school to the manicured lawns and ivy covered walls of the Exeter Academy.³⁷ From there, it was on to Princeton, Harvard Law School, and a position as a first year associate—and the first black lawyer in the firm’s one hundred-year history—at a highly respected Chicago law firm. Seven years later, Edwards was elected to full equity partnership in the firm. He thought he had died and gone to heaven—although, as he told me with a chuckle, he also assumed that the firm’s founding partners were probably “turning over in their graves” at the thought of a black lawyer joining the partnership.³⁸

And yet seven years later, Edwards abruptly abandoned his hard won position to start a firm with two other black lawyers designed to provide high quality corporate and litigation services to public entities and private corporations. As we talked, it was clear that his reasons for doing so were complex. On the one hand, it was evident that his old firm was changing rapidly. Like many of its peers, the firm had grown substantially—quintupling from the day he started until the time he left. More importantly, the ethos of the firm had changed radically. “It had been more of a lock step place but it was becoming less so,” Edwards explained. “Traditionally, the firm paid people who did the work as well as the people who brought in the work. It was becoming much more important to be someone who brought in the work.”³⁹

But in the end, it was the allure of building a new kind of law firm—one where he could do the same kind of work that he had been doing at his old firm but that would reflect his own ethos and culture—that ultimately proved decisive. “It was the first time that a group of black lawyers from major

Unequal Partners: It's Tough at the Top for Minority Lawyers, 79 A.B.A. J. 50, 50 (1993) (noting that fourteen minority partners left Chicago firms during the period from 1991 to 1993, decreasing the total number of minority partners by one third).

35. Clarke, *supra* note 34, at S30 (reporting that minority partners from around the country contend that what happened in Chicago was similar to what they observed where they practiced).

36. Interview with Charles Edwards, at 2

37. For a description of the “A Better Chance” program, see RICHARD L. ZWEIGENHAFT & G. WILLIAM DOMHOFF, *BLACKS IN THE WHITE ESTABLISHMENT?* (1991).

38. Interview with Charles Edwards, at 38.

39. *Id.* at 56.

corporate firms—two of whom had been partners—started up their own shop,”⁴⁰ he told me with evident pride. As such, the firm had a value proposition that Edwards believed corporate clients would find attractive: “If you don’t have the large overhead that big firms have,” Edwards explained, “you can charge lower rates using the same lawyers that they have used before. Clients like that.”⁴¹ Moreover, that value proposition had a distinctly racial spin. As Edwards recalled: “Clients were saying: ‘I want more bang for my buck. If I’m going to use a minority lawyer, I want a minority firm. I don’t want to go to one of these big firms and just use a minority lawyer along with a bunch of others. So if you guys go off and do this, you’ll get more of my work.’”⁴²

The most important way that race affected Edwards’s decision, however, was not economic. “It’s the feel,” he explained, “like the feel when you walk into the office. The first couple of months were like ‘WOW!’ Not only is it ours, but it’s *black*. Here, take that Corporate America! Look at this! It felt great.”⁴³

By the early 1990s, therefore, “Neotraditionalists,” “Start-Ups,” and “Dropouts” were all competing with established corporate law firms for both clients and talent. All of these firms shared a common goal of escaping the constraints that had historically limited the growth and prestige of the black bar by building “true” law firms that could market themselves effectively to large institutional clients while maintaining their identity as “black” institutions. Given their varying structures, history, and personnel, however, it is not surprising that these three types of firms often chose different strategies in trying to achieve these common objectives. For the reasons set out below, these differing strategies often played a key role in determining whether a given firm was likely to succeed.

II. BUILDING A BETTER MOUSETRAP: 1965-1990

Four trends shaped the legal services market for aspiring black corporate lawyers in the waning years of the twentieth century: the rise of black political power, particularly in large metropolitan areas; the growing pressure on large corporations to develop effective supplier diversity initiatives that extended to legal services; the fledgling development of black entrepreneurs and businesses; and the increasing frustration among all lawyers—but especially lawyers of color—with the growing competitiveness and shrinking opportunities for advancement in large law firms. Neotraditionalist, Start-Up, and Dropout firms each sought to take advantage of these opportunities. As the

40. *Id.*

41. *Id.*

42. *Id.* at 55.

43. *Id.* at 57.

founders of these institutions soon discovered, however, not every opportunity was equally available to all three types of firms.

A. Translating Public Power into Private Gain

When Coleman Young became mayor of Detroit in November 1973, he made a simple proposition to the city's business and professional community: "His platform was essentially a 50/50 partnership,"⁴⁴ Brian Jones recalled. Black businesses and professionals who had been almost completely excluded from doing work for the city would now share equally with their majority counterparts. It was a proposition that black elected officials were beginning to enforce around the country. Beginning in 1967 with the election of Carl Stokes in Cleveland, black politicians took over the leadership in many important American cities, including Los Angeles (Tom Bradley, 1973), Atlanta (Maynard Jackson, 1974), Washington, D.C. (Marion Barry, 1979), Chicago (Harold Washington, 1983), and New York (David Dinkins, 1990). Each of these new leaders wasted little time in making clear that the old rules of city contracting were going to change—or to be more accurate, that the age-old rules based on the relationship between voting power and contracting power were going to be reasserted to reflect the new political reality that blacks were now in charge.

The change had an immediate and dramatic effect on the fate of black lawyers. Big cities produce a steady stream of big business for lawyers, including litigation, real estate and zoning matters, and, most importantly, creating and floating municipal bonds. Although some of this work is done by lawyers in the city attorney's office, the most lucrative and sophisticated matters are generally sent to outside lawyers. Prior to the election of black mayors and other important city officials, virtually none of this work was being given to black lawyers. Afterwards, having black representation became an explicit prerequisite for continuing to get the business.

Moreover, the effect of black political power in the cities was not confined to local politics. Black concentration in urban areas also produced a growing number of blacks in Congress. These black representatives also began to flex their political muscle to open up opportunities for black businesses and professionals.

The Resolution Trust Corporation's (RTC) Minority Counsel Program is a case in point. In the wake of the savings-and-loan crisis, in 1989 Congress created the RTC to "resolve thrifts that were insolvent or in imminent danger of becoming insolvent."⁴⁵ As part of this mandate, Congress charged both the Federal Deposit Insurance Corporation (FDIC) and the RTC to "prescribe

44. Interview with Brian Jones, at 23.

45. U.S. GEN. ACCOUNTING OFFICE, RESOLUTION TRUST CORPORATION: IMPLEMENTATION OF THE MANAGEMENT REFORMS IN THE RTC COMPLETION ACT 2 (1995).

regulations to establish and oversee a minority outreach program . . . to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services” in the agencies’ work.⁴⁶ The program, which was the brainchild of members of the Congressional Black Caucus, was strengthened in 1991 and again in 1993.⁴⁷ The end result was “one of the most ambitiously conceived and aggressively implemented preference efforts [ever instituted] by the federal government,” ultimately funneling millions of dollars in legal fees to hundreds of minority and women owned law firms.⁴⁸

Although black partners in established professional firms benefited from all of these new business opportunities in the public sector, the biggest beneficiaries of these programs were minority-controlled firms—at least in the early years. The comments of an informant who worked for a high-level government official about how her boss viewed the choice between hiring a minority *law firm* and a minority lawyer in a majority firm when awarding municipal bond work are typical of the preference that many decision makers charged with making these decisions had for minority firms:

He wanted to be able to say ‘we hired minority counsel’ so he would not go to a big law firm and hire a black lawyer because that would not serve his purpose of saying ‘we’ve opened up this project to minorities.’ So really a lot of the blacks in the large law firms were discriminated against because they

46. 12 U.S.C. § 1833e(c) (2000).

47. See Albert R. Karr, *Lawmakers Seek More RTC Business for Minorities: Strict Provision on Distribution of Contracts Is Inserted in House Funding Bill*, WALL ST. J., June 24, 1993, at B2. Although it is unclear from the legislative history which members of the Black Caucus were most responsible for the original legislation, an informant who benefited considerably from the program reports that Kweisi Mfume deserves the lion’s share of the credit. See Interview with Charles Robinson, at 33 (“Kweisi Mfume, with the help of a number of other people, backed the RTC into a corner and made them commit that something like 20% of all of their legal work would go to minority firms. There was a lot of gnashing of teeth, grumbling, complaints, threats and what have you but Congress passed the provision.”).

48. Benjamin Wittes, *Plenty of Fees to Go Around Under RTC Plan for Minority- and Women-Owned Firms*, AM. LAW., Sept. 1995, at 17; see also *Minority and Women Owned Business and Law Firm Program*, 60 Fed. Reg. 7660, 7661-62 (Feb. 8, 1995) (to be codified at 12 C.F.R. pt. 1617) (reporting that after the passage of the 1993 Act, fees going to minority- and women-owned firms peaked at \$60,344,296 or 26% of the total fees paid out); David Newdorf & Jane Elliot, *S&L Bailout Boosts Minority Firms: 35 California Practices Run by Women or Minorities Benefit, But More Want In*, THE RECORDER, July 26, 1991, at 1 (reporting that the number of minority-owned law firms approved by the FDIC and RTC grew from about a dozen in 1989 to 167 in 1991). As the informant quoted above giving Congressman Mfume credit for starting the program underscores, “even if it was only 10% that went to minority firms, when you are sending out \$100 million worth of legal work, that was a lot of business for minority firms. In Texas where the S&L crisis was first apparent, the minority firms that set the standard probably expanded 300-400 percent, maybe more, based on RTC work. They had more business than they knew what to do with. Files and boxes stacked up in their offices.” Interview with Charles Robinson, at 33.

couldn't get the business that I could give to a black law firm.⁴⁹

Neotraditionalist firms were particularly well positioned to take advantage of this new public work. The founders of these firms typically came from the same generation that produced the first wave of black elected officials and had frequently played a key role in securing their election. Not surprisingly, black politicians were eager to reward this loyalty.⁵⁰ Moreover, because Neotraditionalist firms had deep roots in the black community, politicians often believed, as the respondent above put it, they would get even more “bang for the buck” with black constituents by assisting these well-known institutions than they would by steering business to other black firms with fewer ties to the politician's black electoral base.

The spectacular rise of Warren Mitchell's law firm in Chicago in the period after Harold Washington's election as mayor demonstrates this trend. Mitchell came up the hard way. Raised by a single mother who worked in a factory, Mitchell attended the night program of one of the city's commuter law schools while working full time as a police officer. He graduated in four years without ever missing a class.⁵¹ After several years working in a succession of traditional black law firms, Mitchell was ready to see if he could build a better mousetrap. “I always really wanted to see whether it was possible to build a true minority law firm. Blacks back then had a lot of rent-sharing situations, where you rent an office in a suite and all of you chip in on the secretary and all that sort of thing, but I really wanted to see a real firm.”⁵² So, Mitchell set about trying to create one.

It wasn't until Harold Washington was elected mayor the following year, however, that Mitchell's new firm began to take off. Although Mitchell wasn't one of Washington's active supporters during the early days of his campaign, he still managed to be helpful in a way that black lawyers without such deep roots in the city could never have been. Proving that Chicago politics was even dirtier than its colorful reputation, Mitchell reminded me of an incident that occurred after Washington unexpectedly won the Democratic primary—which, in heavily Democratic Chicago, had traditionally been tantamount to winning the general election. “They were circulating copies of a police report in white

49. Interview with Kyla Jordan, at 52-53.

50. As one respondent observed about the lawyers who did not receive a substantial amount of public work when Harold Washington became mayor: “So when Washington is elected the mayor, all the black lawyers of that vintage are getting in the mix. The older lawyers, they were the ones going into the public trust. Suddenly, they all just discovered public finance.” Interview with Carl Malkin, at 19-20. As the respondent lamented, “Washington's election didn't change my life at all because I was too young.” *Id.* He also conceded, however, that he was not active in Washington's campaign. *Id.* at 20 (noting that he was just a “poll watcher” in the election).

51. Interview with Warren Mitchell, at 16. As he told me with pride “I once went 72 straight hours without sleeping so that I could work all of my shifts as a cop and get back to law school.” *Id.*

52. *Id.* at 29.

neighborhoods,” Mitchell recounted, “where they had taken the copy of the police report where Harold had been arrested for income tax violations—which everyone knew about—and cut off the top of that report and taken the bottom of someone else’s report who had been arrested for molesting children and had photocopied them together.”⁵³ Washington asked Mitchell to use his connections in the law enforcement community to disprove the charge. “I was able to diffuse that by showing that it was contrived because the numbers didn’t match the ones on Harold’s official arrest report.”⁵⁴

Not surprisingly, Washington did not forget the favor when he won the election. By the time Washington died in 1987—a subject to which we will return below—Mitchell’s firm had grown from a fledgling federation of seven or eight lawyers, many of whom had practices comprised of the small fare to which black lawyers had traditionally been confined, to a true firm of thirty to thirty-five lawyers—the largest in the city—built around a practice of representing public agencies and private corporations.

Although Neotraditionalist firms like Mitchell’s were often the first to profit from the rise of black political power, Start-Up firms were also able to take advantage of the political tide. Many of those who founded these first generation “corporate” firms were the sons (I use the term advisedly since there were very few daughters in this initial group) of prominent families in the black community. Brian Jones, for example, was the son of a prominent business leader whose father-in-law was a well-known judge. Charles Robinson’s father was a judge as well. These familial links often served as a substitute for the actual experience of pioneers like Mitchell.

Moreover, because of their strong ties to the black community, the lawyers who founded Start-Up firms tended instinctively to understand the need to show support for the black politicians from whom they were seeking work. As an informant who advised an important politician on how to dispense legal work to black law firms emphasized, “it is important to be involved in politics, to be supportive of the candidate or the politician or the elected official that you want to give you business.”⁵⁵

The lawyers in Start-Up firms knew how to play this game. As the founder of a successful Start-Up firm underscored: “It was critical that we had guys with good political skills and deep roots in the community. But we also gave more money to these political guys per capita than any other firm. . . . You had to do it if you wanted to do bond work. That was the only way.”⁵⁶

It was a reality that Dropout firms started by lawyers who did not have such deep ties to the black community were slow to pick up on. Charles Edwards discovered this new reality the hard way. When he opened his firm in

53. *Id.* at 39.

54. *Id.*

55. Interview with Marshall James, at 76.

56. Interview with Freddy Shoemaker, at 30-31.

the early 1990s, Edwards thought that he would be able to land some important public work. As a partner in his former firm, Edwards had done a small amount of work for Cook County (where Chicago is located). “I’d get the odd referral where someone was needed to help out on a bond deal and I would broker a deal for other lawyers in the firm.”⁵⁷ Edwards thought that his new firm could build on this relationship, particularly since a black lawyer had just been appointed the Chair of the Cook County Board. The work, however, never materialized. The reason, as Edwards soon discovered, was elemental. The new Chair, he conceded “had other people he’s got to take care of.”⁵⁸

Given that Neotraditionalists and Start-Ups had greater connections to—and understanding of—the first generation of black elected officials, it is not surprising that work from public clients became a staple for these firms. As Brian Jones underscored when we talked, “I’ve always said that for firms like ours that the real engine of growth to get us started was the public sector.”⁵⁹ But as Jones was also quick to point out, this reliance on public work was not how the large corporate firms that he and others were trying to emulate got their start. “For majority firms, the private sector was their engine of growth and then they branched out into the public work. . . . We were doing it the other way around,” Jones acknowledged, and “the real untold story is whether we can get into the private sector. That’s the real elephant.”⁶⁰ Ironically, it was in the private market that Dropout firms like the one started by Charles Edwards had a potential advantage.

B. *Cracking the Corporate Code*

It is not surprising that Charles Edwards and the other lawyers who founded Dropout firms believed that they would be able to build their institutions on private sector work. For most of their careers, these lawyers had been in the kind of firms that Brian Jones correctly identifies as being built on corporate clients, with public work as an occasional opportunity.⁶¹ Understandably, they wanted to start their new organizations on a similar foundation.

57. Interview with Charles Edwards, at 41.

58. *Id.* at 61.

59. Interview with Brian Jones, at 84.

60. *Id.*

61. Indeed, as I have argued elsewhere, many corporate firms were not interested in doing public work even when it was offered to them. Public clients often impose billing restrictions that make them less lucrative to serve than their private counterparts. And even when they are willing to pay full freight, many firms that consider themselves “national” do not want their images tarnished by having to curry favor with local politicians. As a result, as one of my informants put it, public work was often a “step-child” at many large law firms. Interview with Roberta Edison, at 39; see also David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 HOUS. L. REV. 1, 38-39 (2004).

Moreover, given their roots, these big-firm refugees had good reason to believe that they were well situated to appeal to corporate clients. Whereas Neotraditionalist and Start-Up minority firms often had deep ties in the black community that gave them an advantage in securing public work, Dropout firms like Edwards's were made up of lawyers who already had relationships with important corporate clients. In an era of increasing lateral mobility, it was reasonable to expect that some of these clients would follow their old lawyers to their new homes.⁶² Charles Edwards, for example, was "pleased" with the number of clients he had worked with in his prior firm who continued to send work to him in his new one.⁶³ But even corporate clients with whom lawyers in the firm had not previously worked might be expected to appreciate the value proposition that Dropouts presented—i.e., lawyers with the same kind of training and experience that these clients were used to working with, but with the lower cost structure and added visibility and legitimacy that accompanied their new location in a minority firm.

In addition, three trends gathering strength in the last decades of the twentieth century gave credence to the idea that the traditional reluctance by corporate clients to hire minority law firms was not only receding, but might actually turn 180 degrees in the other direction to become an affirmative preference for engaging minority firms. First, beginning in the late 1980s, the ABA and other bar organizations began pressuring corporations to give more of their legal business to minority lawyers, and in particular, to minority law firms. Second by the 1990, most companies employed at least a few blacks and other minorities in their general counsel's office, some of whom had advanced to senior decision-making positions with responsibility for assigning outside legal work. Finally, in part because of the growth of in-house legal departments, many corporations were beginning to rebel against the high fees traditionally charged by outside counsel. Given their smaller size and pricing structure, many of the new breed of black corporate law firms believed that they were well positioned to take advantage of this new cost-conscious attitude.

1. *Demonstrating corporate commitment*

Given its history, it is ironic, to say the least, that by the close of the twentieth century the ABA and other mainstream bar organizations had come to take a leading role in promoting diversity. Until 1943, the venerable lawyers' organization did not even admit black members. Yet, since the mid-1980s, the ABA and other

62. For the growth in lateral movement by lawyers—and the tendency of clients to follow them, see JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 127-28 (2005). Whether the new mantra routinely espoused by corporate clients that they hire "lawyers not firms" applies with equal vigor to black lawyers changing firms—particularly when they moved to small minority firms—remains, as we will see, an open question.

63. Interview with Charles Edwards, at 57.

bar organizations have played a leading role in advancing the interests of this once-excluded group.⁶⁴

Dennis Archer, who would eventually go on to become mayor of Detroit, and, perhaps even more impressively given the organization's history, the ABA's first black president, deserves much of the credit for pushing through this change. In 1986, Archer spearheaded the ABA's adoption of Goal IX, committing the organization to improve the status of minority lawyers.⁶⁵ Two years later, Archer launched a major initiative expressly designed to accomplish this goal.⁶⁶ The initiative, entitled the "Minority Counsel Demonstration Program," sought to increase the income and status of minority lawyers by encouraging corporations to give some of their legal work to minority law firms. To achieve this objective, the ABA organized a series of meetings between lawyers from a select group of minority firms and chief legal officers of six corporations who, at Archer's urging, had agreed to give a portion of their companies' work to firms that they met through the program.⁶⁷

Charles Robinson's firm was among the Demonstration Project's most important beneficiaries. From the moment Robinson's firm opened its doors in 1985, he and his partners made an unusual choice: "One of the unique things about my firm," he explained to me, "is that we were built on the private sector. . . . We made a judgment that the timing was right—and we proved to be correct—to convince corporations to use smaller firms and to overcome any disadvantage from being an African-American owned firm. And for the first two years of our practice we had no public sector clients."⁶⁸ Given this orientation, it is not surprising that Robinson worked hard to ensure that he and his firm would have the chance to participate when the ABA decided to get into the relationship-building business.

It would not be easy. The ABA program, as Robinson noted, "was conceived as an 'elitist' program, intended to benefit a very limited number of law firms and to create a black corporate elite."⁶⁹ Robinson was delighted when his firm was selected to be one of the thirteen minority firms allowed to participate.

64. See, e.g., Alexandre Deslongchamps, *We Have Overcome*, AM. LAW., Sept. 2003, at 19.

65. Am. Bar Ass'n, ABA Mission and Association Goals, <http://www.abanet.org/about/goals.html> (last visited Apr. 10, 2008) ("Goal IX[:] To promote full and equal participation in the legal profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities.").

66. See M.L. Elrick, *Consensus Builder: ABA's Chief-To-Be Is Detroit's Ex-Mayor*, NAT'L L.J., Apr. 15, 2002, at A1 (reporting Archer's efforts in creating "what is now called the ABA's Commission on Racial and Ethnic Diversity in the Profession"). Archer's 1988 initiative was titled the Minority Counsel Demonstration Program.

67. See 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, 595-96 (1996).

68. Interview with Charles Robinson, at 26-27.

69. *Id.* at 18-19.

The results for those admitted to this select club were dramatic. “It was fantastic,” Carl Malkin, whose Chicago-based firm was also one of the lucky thirteen, recalled.⁷⁰ “That’s what really grew our firm. We got work from Union Carbide. We got work from Prudential. We started getting work from just a lot of corporate clients who were sending us projects. After a while we just had no idea how to manage all of this.”⁷¹ The same was true for the other minority firms who were given a chance to participate.⁷² By the end of the first few years, several of these firms were among the largest and most prestigious minority law firms in the country.

Indeed, the program was so successful that it spawned an unexpected and potentially revolutionary kind of relationship building among the minority firms themselves. It is not surprising that it was Brian Jones who first saw the potential to use the ABA program to build something bigger. Having already created a network of public firms to do bond work in the early 1980s, Jones and his partners set about trying to create a similar affiliation among the corporate-oriented firms that the ABA had assembled. As Jones recalled, “I told my partner who attended the ABA’s first meeting on our behalf ‘why don’t we try to link some of the firms like ours together to do something on the corporate side?’”⁷³ Eventually, several of the firms agreed to develop a common marketing strategy and delivery service and presented it to the corporate participants in the Demonstration Project. With typical wit, Jones called this new affiliation “The Elephant.”⁷⁴

Jones believed that The Elephant presented the companies in the Demonstration Project with a compelling value proposition. “This was when corporations were very intent on expanding their outside counsel to include counsel of color,” Jones told me. “The Elephant really accentuated our national presence and put a spotlight on our firm.”⁷⁵ The network also offered benefits to majority firms seeking to expand their own reach or to tap into the new corporate interest in diversity:

It was a competitive advantage for us to get the attention of Wall Street firms to say “you’re out there seeking clients all over the country and you have offices all over the country. You may be covering one side of the relationship but we can present resources in those same communities that can possibly help you. And we can serve as sort of a sounding board for some of the things that you may want to do in those areas to keep your business up or to gain new business.”⁷⁶

70. Interview with Carl Malkin, at 20.

71. *Id.*

72. *See* Wilkins & Gulati, *supra* note 67, at 595 (documenting the success of the ABA program).

73. Interview with Brian Jones, at 69.

74. *Id.*

75. *Id.* at 69-70.

76. *Id.* at 71-72.

Indeed, even apart from diversity considerations, Jones and the other members of The Elephant believed that they had a value proposition that cost-conscious corporate clients would find appealing.

2. *Marketing change in a changing market*

Although programs like the ABA's could give the new black corporate firms an entrée with corporate clients, the only way that they were going to retain and expand the business beyond a token amount was by delivering high-quality and—perhaps even more important—cost-efficient service.⁷⁷ This is exactly where the best of the bunch tried to carve out their competitive edge.

In the early years, it was surprisingly easy to do. Throughout most of the twentieth century, large law firms felt little pressure to cut costs or otherwise deliver services efficiently. Longstanding relationships with major clients, and limited oversight from corporate officials who often had little understanding of what lawyers did or how they might do it more efficiently, meant that as a practical matter even the largest corporations rarely challenged the bills that they received from their trusted outside counsel.⁷⁸ In this cozy world, one-line bills “for services rendered” were the order of the day. Although many of the preconditions that gave rise to this deference by corporate clients had begun to erode by the time Neotraditionalist, Start-Up and Dropout black corporate firms began seriously competing for corporate business in the 1980s, a surprising number of big law firms were slow to understand the new reality.⁷⁹

Charles Robinson was quick to see the potential competitive advantage inherent in this state of affairs:

77. As Charles Robinson succinctly summed up the reality of even the best corporate relationship he got from the ABA program: “The general counsel was fairly up front about it. He said ‘We’re testing you.’ . . . [T]here were a number of corporations who wouldn’t say it publicly, but that’s exactly what they did. They would send a couple of small matters and if those worked out, then you might get some more.” Interview with Charles Robinson, at 24-25.

78. For a description of the “information asymmetry” that traditionally characterized the relationship between lawyers and their corporate clients, see Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869, 889 (1990). See also GALANTER & PALAY, *supra* note 5 (describing the relationship between law firms and their clients during the “golden age”).

79. As Gilson argues, the most important factor leading corporate America to shake off its surprising complacency about the cost of legal services was the rise of in-house counsel capable of both diagnosing legal problems and acting as a sophisticated purchasing agent for legal services. See Gilson, *supra* note 78, at 902-03; see also Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L.J. 1057 (1997). In addition, the breakdown of traditional taboos against lateral hiring of associates and even partners and the establishment of a more overtly competitive ethos in firms allowed the new breed of general counsel to wield their new purchasing authority in a much more competitive marketplace. See HEINZ ET AL., *supra* note 62, at 292. The combination of all of these trends placed large law firms under considerable pressure to try to cut costs—or at least to appear to be doing so.

Corporations in the 1980s had to diversify from their existing core of firms. They were too damn expensive. Corporate legal bills were enormous, even on the smallest matters. During the go-go expansionist economy, all that was simply absorbed. But as things got leaner, particularly in the late 1980s after the Savings and Loan crisis was moving through the economy, corporations started cutting back on their legal bills. And traditional corporate law America was very slow to respond—whether they believed it was a passing phase or that their relationships were so deep that they would never be changed, they were slow to respond. As a result, the timing was just impeccable for those of us who were getting into the corporate law business in the 1980s. We represented small, relatively efficient alternatives. The fact that we happened to be black-owned didn't matter because we were aggressive about cutting costs and delivering high quality services. We came at the forefront.⁸⁰

Bill Patterson agreed. “Black firms can take credit for revolutionizing—for better or for worse—cost issues, at least in the '80s and '90s,” he pointed out.⁸¹ Not only were black corporate law firms' rates relatively low but many also invested early in technology as a means of maximizing their reach and providing services more efficiently. Brian Jones's firm, for example, invested heavily in technology in the 1980s. “Technology was a great advantage for us,” Jones explained, “because it allowed us to devise a service-delivery mechanism without actually being on site.”⁸² Similarly, Patterson used technology to streamline the firm's billing system to provide clients with much more information than they were used to getting. “We had a billing system that is common today but was uncommon in those days that allowed us to identify for each matter, who did the work, how much time was involved down to a tenth of an hour, and all of the associated costs.”⁸³ Given the “growing interest in cost efficiency” among most clients,⁸⁴ Patterson had no doubt that the ability to provide verifiably lower-cost legal services “was a substantial part of the firm's success.”⁸⁵

Of course, the new emphasis on cost control was not the only change taking place in the legal marketplace. The identity of the lawyers making these purchasing decisions was changing as well. As Charles Edwards explained: “There are now a lot of minority lawyers who are working in-house at Fortune

80. Interview with Charles Robinson, at 26.

81. Interview with Bill Patterson, at 34.

82. Interview with Brian Jones, at 92.

83. Interview with Bill Patterson, at 34.

84. Surprisingly, not every client was initially interested. Patterson recalled a pitch he made to the general counsel of a major nonprofit institution in the late 1980s: “He was an old guy that had been there for something like twenty years and we were busy explaining to him some of the things that we did that we thought were pretty innovative and he just says, ‘When you send me a bill, don't bother with all of that stuff. All I want is Legal Services Rendered, dot, dot, dot—and the bill.’” Patterson knew enough not to say anything—since he certainly wanted the work—but he also knew that this GC wasn't long for his job. “Sure enough,” he told me with a chuckle, “a year or so later, he was out of there.” *Id.*

85. *Id.*

500 and even Fortune 100 companies and they are looking for black lawyers to hire and have a lot of discretion on what they give out.”⁸⁶

Moreover, just as many of the public sector initiatives that were started during this period placed an emphasis on hiring minority law firms—as opposed to just giving business to minority lawyers working in established large law firms—a significant number of the new black purchasing agents in major corporations also adopted a similar approach. As a high-ranking black lawyer in the general counsel’s office of a large bank explained: “We have targets for sending work to minority- and women-owned law firms that are separate from those for minorities and women in majority firms.”⁸⁷ As she went on to tell me, she has made it her business to ensure that the targets for minority-owned firms include significant matters—provided that they have the resources to do the work:

I make sure we give minority firms high-visibility work. We look at the resources they have—how many lawyers they have and how many we need on the deal. As minority firms get larger, they get bigger deals. I have some businesses that if you look at it, all of their work is going to minority firms.⁸⁸

Growing larger, of course, was just what these firms were trying to do. To do so, most were counting on being able to cash in on another trend that many believed held even more promise for developing new business for firms like theirs than the growth of minority in-house counsel.

C. *Our Kind of Clients*

Black-owned businesses have always been a key clientele for black law firms. In the 1950s and 1960s, small black businesses were the backbone of most black solo practitioners.⁸⁹ In the decades since then, black-owned companies like Johnson Publishing (publisher of *Ebony Magazine*) flourished, while new businesses such as BET Holdings (owner of Black Entertainment Television) and TLC Beatrice (the food company purchased by Reginald Lewis which made him the country’s first black billionaire) joined their ranks. At the same time, entertainers and sport stars such as Oprah Winfrey, Eddie Murphy, and Tiger Woods became household names—as well as multimillionaires. Not surprisingly, Neotraditionalist, Start-Up, and Dropout firms alike hoped that all of this new economic activity in the black community would generate a steady stream of business for their new enterprises.

Indeed, it was just this kind of steady diet of matters for emerging black businesses—and the government-funded effort to encourage corporations and

86. Interview with Charles Edwards, at 62.

87. Interview with Tanya Banks, at 51.

88. *Id.* at 52.

89. One of my father’s best clients as a solo practitioner in Chicago in the 1960s, for example, was White’s French Fried Shrimp, a small black business located on the city’s South Side.

banks to support these fledgling ventures—that put Reginald Lewis in the position where he could launch his own effort to become a black capitalist. Lewis was in the first wave of black graduates to emerge from the nation's elite law schools in the late 1960s, having been recruited to Harvard Law School in 1965 as part of the country's first significant affirmative action program.⁹⁰ Like many of his classmates, Lewis went on to work at a major New York law firm after graduation. But after two years at Paul Weiss, Lewis decided to strike out on his own to create the first black law firm on Wall Street since Deborcey Macon Webster's solo practice nearly one hundred years before. His goal was to serve the growing business needs of the city's black community.

Lewis's timing was impeccable. The year before his firm opened its doors, President Richard M. Nixon signed Executive Order 11458 creating the Office of Minority Business Enterprises (OMBE) within the Commerce Department.⁹¹ As part of this effort, OMBE created Minority Enterprise Small Business Investment Corporations (MESBIC).⁹² These corporations essentially acted like private venture capital funds for creating minority businesses. Private companies and foundations were encouraged by the Nixon administration to create pools of capital which the Small Business Administration would agree to multiply by investing or lending three dollars for every one that the MESBIC put into the deal.⁹³ By June 30, 1970, Nixon's Commerce Secretary, Maurice Stans, had signed up one hundred corporations and foundations to participate in the program.⁹⁴ By the mid-1970s, Lewis had become the outside general counsel of the American Association of Minority Enterprise Small Business Investment Companies and had been retained by many of the large insurance companies and nonprofit foundations that had set up MESBICs.⁹⁵

As the black capitalist class matured and strengthened during the 1980s and 1990s, many other aspiring black corporate lawyers sought to copy Lewis's success. Moreover, there appeared to be a growing supply of talented black lawyers willing to roll up their sleeves and get the job done.

90. See REGINALD F. LEWIS & BLAIR S. WALKER, "WHY SHOULD WHITE GUYS HAVE ALL THE FUN?": HOW REGINALD LEWIS CREATED A BILLION-DOLLAR BUSINESS EMPIRE 47-49 (1995). For a description of Harvard's program and its role in opening the doors of elite law schools to black students, see Louis A. Toepfer, Note, *Harvard's Special Summer Program*, 18 J. LEGAL EDUC. 443 (1966).

91. See DEAN J. KOTLOWSKI, NIXON'S CIVIL RIGHTS: POLITICS, PRINCIPLE, AND POLICY 134 (2001). As Kotlowski makes clear, Nixon was the unexpected author of many important policies in the area of affirmative action. See *id.* at 155-56. Although for Nixon these policies represented a convenient way to appease civil rights advocates without angering his conservative base, it appears clear that fueling black capitalism and assisting in the creation of a stable black middle class also appealed to Nixon's view of himself as a scrappy outsider.

92. *Id.* at 136.

93. LEWIS & WALKER, *supra* note 90, at 81. The program also made the SBC loans "nonrecourse," thus shielding minority entrepreneurs from personal liability if the business failed. *Id.*

94. KOTLOWSKI, *supra* note 91, at 136.

95. LEWIS & WALKER, *supra* note 90, at 76-87.

D. Making an Opportunity out of Blocked Opportunity

As indicated above, notwithstanding more than a decade of efforts to integrate large law firms, by 1990 these institutions had still made very little progress in hiring—and even more importantly, retaining—black lawyers. As a result, there was a growing supply of black lawyers with both the experience of representing public and private institutional clients and the need to find an alternative location to develop and exploit their skills. This was particularly true with respect to black women, who, like their white female counterparts, were exiting large law firms at especially high rates. As Freddy Shoemaker explained in underscoring why women were so much a part of his firm’s strategy in the 1980s: “One thing we discovered was that law firms were discriminating against women to beat the band! So there were plenty of smart women around who couldn’t get jobs—or didn’t want jobs—in big firms.”⁹⁶ When many established law firms began laying off associates like Ford and GM traditionally laid off autoworkers in response to the 1991 recession, the pickings for Neotraditionalist, Start-Up, and Dropout minority corporate firms became especially good.⁹⁷

Moreover, for many of these recruits, working for a black law firm was more than a job. It was, in the words of the second epigraph that begins this Article, also a mission to build viable black institutions that could act as a beacon for black professionalism and community uplift. Indeed, it was precisely the hope of creating such an institution that made these pioneers willing to endure the financial sacrifices associated with trying to build a black corporate firm. As Freddy Shoemaker poignantly observed:

What we were trying to do was to build an institutional black firm. And what that meant to us was that if we were lucky and managed to be successful, the best we could ever get out of the deal ourselves was maybe to get our picture up on the wall and by the time we got in our late fifties or sixties that we might make a little money. The guys who were going to make the money and be successful were the guys that would come behind. We knew that and we took it on as our responsibility. And it was going to be fun doing it.⁹⁸

To realize this dream, however, these founders understood that they had to recruit young black lawyers who shared their sense of mission. Those who did were willing to work incredibly hard to achieve the firm’s goals. As the recruit quoted in the second epigraph went on to explain:

I never worked so hard. I knew the price of a mistake. I was an associate. I didn’t care. I really didn’t care. I was so delighted to have this opportunity and to be a part of this thing that I never would have imagined existed if you had asked me when I was in law school. And to feel and to know that I am in some

96. Interview with Freddy Shoemaker, at 39.

97. See Otis Bilodeau, *Lessons of the Last Recession: Law Firms Recall the Early 90’s Downturn—and See Signs of a Repeat*, LEGAL TIMES, Jan. 7, 2002, at 1.

98. Interview with Freddy Shoemaker, at 38.

small way a part of its evolution was, I just can't describe it. I really loved doing what I did.⁹⁹

E. *Dreaming the Impossible Dream*

As the last decade of the twentieth century dawned, therefore, the founders of Neotraditionalist, Start-Up, and Dropout firms all had reason to be optimistic. An expanding number of public and private institutional clients were directing their legal business to black law firms. With the number of black corporations and individuals with the resources to use their services on the rise, and a steady supply of recruits being turned away by mainstream firms, the stars appeared to be aligning for the creation of a kind of black law firm that had never been seen before.

Brian Jones summed up the hopes of many of the firms that he helped to organize into “The Elephant” through their interaction in the ABA’s Minority Counsel Demonstration Project:

It was so successful for us in generating new clients in the late '80s and into the early '90s that we thought we could possibly grow a national firm from the bottom up—develop the network and relationships and the common interest and common ground to the extent that there would be an incentive and advantage for the participants to talk about a more serious relationship and a combined practice.¹⁰⁰

But by the end of the decade, it was clear that Jones’s dream of creating a national black law firm—and the dreams of so many of the other lawyers who started Neotraditionalist, Start-Up, and Dropout firms with such enthusiasm—would prove to be just that: dreams. To see why, it is necessary to understand just how difficult the task of building a sustainable law firm of any kind was in the waning years of the twentieth century.

III. THE OLD RULES OF THE NEW BUSINESS CYCLE: 1990-2000

Ironically, the seeds that ultimately doomed many black corporate firms were sewn in the strategic choices that had initially made so many of these firms successful in their first few years of existence. There was a reason, as many black corporate warriors would soon discover, that traditional large law firms had built their claim to fame (and profitability) on work from private clients, as opposed to the often shifting sands of public engagements. To make matters worse, the ground underneath all law firms began shifting dramatically in the last decade of the twentieth century. Although the seismic transformation that began in the 1990s—and which continues unabated to this day—has

99. Interview with Bill Blakely, at 45-46.

100. Interview with Brian Jones, at 72.

precipitated the demise of many established firms over the last twenty years,¹⁰¹ it is sadly predictable that firms that were already marginal would suffer the most. Finally, with respect to every market where black corporate firms had managed to establish a beachhead, the large law firms that for most of the century had a monopoly on this kind of lucrative work—often led by the growing number of black partners within these established institutions—began reasserting themselves in ways that impinged on the strategies of even the most successful Neotraditionalist, Start-Up, and Dropout firms. The combined effect of all of these forces was a gradual winnowing away of the business, legal, and perhaps most importantly, spiritual case that had persuaded so many ambitious black lawyers to embark on the perilous path of building their own corporate firms.

A. *The Perils of the Public Sector*

The first risk of building a firm based on political contacts is, of course, that one's political benefactors will be voted out of office. But even when your candidates win, the rewards may not be nearly as great as one might have been led to expect. It was a dual lesson that many aspiring black corporate law firms would learn the hard way.

1. *Live by the sword, die by the sword*

Bill Patterson is a case in point. Patterson dreamed of creating a new kind of black law firm focused on public and private institutional clients. "I wanted to have a fifty-person firm," he tells me when we talked, "and then possibly hook up with people in other cities who were doing similar things where you had black people that were capable of supporting the firm and then build from there."¹⁰² And that is exactly what he attempted to do. After apprenticing at a Neotraditionalist black firm and spending a few years in state government, where he helped to write legislation that would open up opportunities in public finance for black lawyers and investment bankers, Patterson opened his own black corporate firm in 1982. From its modest beginnings of four lawyers, the firm grew steadily on a mix of work for public and private institutions until it reached twelve lawyers at the beginning of the 1990s. But Patterson's big break came a few years later when an old family friend was elected the city's first black mayor.

It seemed destined to make Patterson's dream of having a fifty-person black corporate law firm come true. "It was a huge moment for me,"¹⁰³

101. See, e.g., Elizabeth Austin, *Alzheimer's Collapse Sparks Look at What Can Go Wrong*, CHI. LAW., Aug. 2003, at 26.

102. Interview with Bill Patterson, at 19.

103. *Id.*

Patterson admitted—and a potentially momentous one for his firm as well. At first it appeared that the new mayor’s election would bring about the realization of Patterson’s dream of creating a national black corporate firm. During the new black mayor’s administration, Patterson’s firm went from twelve lawyers to twenty-eight lawyers.¹⁰⁴ But then, just as suddenly, the moment was over. “The Republicans took over,” Patterson recounted with a laugh. Suddenly Patterson found himself completely frozen out:

It was horrendous. It was just, “boom, you’re gone!” At the city agency where we were underwriters counsel, they didn’t even bother calling us up and telling us. It was just done. And at the state level we got zoomed too. We really got cut back. It wasn’t a pretty scene.¹⁰⁵

Two years later, Patterson’s firm had shrunk back to the size it had been before his friend was elected mayor.

Needless to say, a political strategy is risky for any lawyer since the oldest rule in politics is that your candidate can always lose. As Bill Patterson and many other black lawyers discovered, however, this old rule has particular salience for those who put their fate in the hands of black politicians who often face special electoral risks, especially in cities where black voters do not constitute a solid majority. When Harold Washington died unexpectedly in 1987, he was replaced by Richard M. Daley, the scion of the Irish political boss who had run Chicago politics with an iron fist for more than thirty years. As a result, many of the minority firms that had prospered under Washington’s administration found themselves, like Patterson, on the outside looking in. Indeed, given the tendency of politicians to separate the world into “supporters” and “enemies,” the fact that a black firm had been close to the Washington administration counted *against* their efforts to get additional city business from the new Daley administration.

To protect against this risk, a few black firms tried to play both sides of the street. Freddy Shoemaker, whose Start-Up firm depended heavily on public work, was one of the few that managed this balancing act successfully. “We could always walk both sides of the aisle,” Shoemaker told me with pride. One of his partners had been prominent in Democratic circles for many years while another was one of the state’s most prominent black Republicans. And Shoemaker himself, he confided with a twinkle in his eye, has always been an independent.¹⁰⁶

As Shoemaker readily conceded, however, playing both sides of the street was expensive—a reality, Bill Patterson insisted, that favored his established competition. “The white firms in the business were of sufficient size to try to cover both bases,” he lamented.¹⁰⁷ Moreover, as a *black* small firm, Patterson

104. *Id.* at 20.

105. *Id.* at 28.

106. Interview with Freddy Shoemaker, at 32.

107. Interview with Bill Patterson, at 27.

went on to explain, the barriers to cozying up to politicians on both sides of the aisle were arguably even greater: “The Republicans never made it very appealing for anybody black to try to cover the bases with them. We weren’t averse to supporting the Republicans, but we didn’t get the opportunity to have that conversation, frankly.”¹⁰⁸

What Patterson, Shoemaker, and many other black lawyers did get to do was to work in partnerships with the very large law firms with whom they were actively competing for city business. Although these relationships were supposed to be cooperative, many of the lawyers I interviewed reported that they were in fact more combative than any electoral contest between Republicans and Democrats.

2. *With friends like these . . .*

When black mayors like Coleman Young and Harold Washington assumed the reigns of government, the prior exclusion of black professionals from city business ensured that there would be no black lawyers or investment bankers with any appreciable experience in doing important municipal work. This was particularly significant in the field of municipal bonds where credit agencies required that any firm that was to act as lead counsel had to be listed in the “Red Book” indicating that they had successfully taken the lead on a prior offering. Needless to say, there were no black law firms in the Red Book.¹⁰⁹ To get listed, minority firms had to find majority partners willing to work with them—and eventually, to train them sufficiently so that they were capable of doing transactions on their own. By making it clear that the only way a firm would be able to win city business was to find a suitable minority joint venture partner, black mayors and other elected officials ensured that the new generation of black corporate law firms would be cut in on some of this work. What they could not ensure, however, was that the majority firms would like it—or that the minority lawyers who got the opportunity would take full advantage of it.

Sometimes things worked just as they were supposed to. Brian Jones’s first such experience is an example of how the policy was supposed to work—and the conditions under which it is most likely to do so. Jones’s firm was hired to work on a major bond deal for a new hospital. Because his firm was not in the Red Book, Jones was told that he would have to partner with a majority firm to do the deal. But in a move that proved to be especially important, the chief of staff also told Jones that he could select the majority firm that would take the lead in the joint venture.

Jones chose the law firm where he had worked as a summer associate before deciding to skip out on big firm practice to pursue his dream of creating

108. *Id.* at 27-28.

109. *See King, supra* note 4, at 135.

a black corporate law firm. At first the firm wasn't interested in having to share the work—or the fee—with their inexperienced former employee. “But then,” Jones told me with a laugh, “I showed up at a bond conference with a partner from one of the other large firms and all of a sudden they were interested!”¹¹⁰ Notwithstanding this rocky start, it proved to be a terrific partnership:

It was a wonderful experience. The bond partner with whom I worked was a prince of a guy. He was very forthcoming. I'm sure he didn't relish the requirement that we worked together but it never showed. And he taught me everything I knew about the bond business at that point in time.¹¹¹

Significantly, the majority firm also benefited from the joint arrangement. “Prior to Coleman's election,” Jones confided, “there was another firm that had been doing the majority of the city's bond work.”¹¹² So in addition to receiving the lion's share of the fee, Jones also was helping his old firm get its foot back in the door to work on other deals. All things considered, not a bad reward for a few hours of teaching Jones the ropes.

For his part, Jones and his partners made sure that they made the most of the opportunity. “Getting the opportunity to do the work is one thing,” Jones stated emphatically, “continuing to do the work is another. The only way you can continue to do the work is to get this Red Book listing. So that's where we headed in terms of our strategic goal.”¹¹³ It didn't take long for the firm to accomplish its objective: “Because of market conditions, instead of selling one big bond, we had to break it down into a 30, 20, and 5 million dollar issuance at three separate times.” As luck would have it, a big bank where Jones had worked before going to law school had already bought some of the first two bond issues. Jones used his contacts at the bank to get in to see the head of the bond department to convince him to create the “C” bonds—and to let Jones and his firm work as lead counsel on the deal. “The only thing that was different was the opinion. It was the same security. So that's what won us a Red Book listing”—and the clout to demand to be sole or lead bond counsel on future deals.¹¹⁴

When this combination of fortuitous circumstances—i.e., an elected official who gives the minority firm the right to select its majority partner, a prior relationship with a majority firm that understands that it also stands to benefit from the arrangement, and a new client willing to allow the minority firm to leverage its joint venture experience into a leading role on a future deal—joint ventures proved to be very successful. Where these conditions were not present, however, the black firm's experience was often decidedly less rosy.

Bill Blakely recounted a particularly egregious example of the kind of

110. Interview with Brian Jones, at 54.

111. *Id.* at 55.

112. *Id.* at 56.

113. *Id.*

114. *Id.* at 57.

degradation and outright defiance that black firms routinely endured from their joint venture partners. After four years of doing bond work at a large law firm, Blakely left to join the new D.C. branch office of one of the country's premier minority bond firms. Suddenly, Blakely's new firm was appointed lead bond counsel for the city and all of the other firms that had been doing the city's work had to get in line just to be co-counsel—including Blakely's old firm. "I was giving my old boss assignments. We were joint counsel and she was working for me. I'm 24 years old. I can't lie, it felt really good!"¹¹⁵

Blakely's former boss and many of the other legal heavyweights who found themselves in this position were understandably less thrilled. "We had this sheet in which we would allocate responsibility on the deal," Blakely explained. "On one side was all of the core stuff: who would draft the primary financing documents, the debenture, the bond purchasing agreement, the official statement. All the meaty stuff. And then there was this other list of certificates and other miscellaneous stuff."¹¹⁶ Blakely was well aware of how these lists were typically divided: "Historically, the minority firms would do all of the miscellaneous stuff. That was their thirty percent." But Blakely was under instructions to do things a little bit differently. "I was told unless you absolutely can't—physically can't—do this work, you know how this allocation should work. And we worked and we would do it. We just did it."¹¹⁷

At first the firm's efforts were greeted with incredulity. "For the first year there was just disbelief that these black people would actually do it—actually take on the substantive responsibility," Blakely recalled. "They would constantly ask us: 'Do you really think you have the tax expertise to lead the tax law for this? Don't you need some help with the FCC disclosure?'"¹¹⁸ But after a year, the knives came out. "They just got out in the open," Blakely recounted, shaking his head. "They couldn't take it anymore." The first move was to go to the client. "They went to the mayor and actually threatened to resign if they weren't given a lead role in the deal," he told me in amazement. When that didn't work, firms would resort to open defiance:

I sat in deals where lawyers openly refused to deliver opinions because they did not think that they were getting paid enough. . . . I've seen lawyers in open meetings dispute positions that we were taking. We're co-counsel. We're supposed to be speaking with a single voice. And they are openly disputing what you're saying in a negotiation.¹¹⁹

115. Interview with Bill Blakely, at 30.

116. *Id.* at 33.

117. *Id.*

118. *Id.* at 34.

119. *Id.* at 35; *see also* Interview with Charles Robinson, at 38 ("[In joint ventures,] a co-counsel partner would not provide us with documents, would not advise us of the times for meetings, would not return our phone calls, and would come out and say, 'you're going to get your check, why are you bothering me?'"). As indicated below, some minority firms were willing to accept this definition of their role. *See infra* Part III.A.3.

It was an eye-opening experience. As Blakely explained, “this was behavior that was clearly unimaginable to any black practitioner. You do that once and you are gone. Out of business.”¹²⁰ Yet here were some of the top law firms in the country brazenly engaging in unprofessional behavior. And doing so, as Blakely underscored, for no reason. “My firm had done about a bazillion dollars worth of these deals over the last twenty years. So it was laughable that they didn’t know what they were doing.” Although looking back over those years, he finds the conduct of such prestigious lawyers amusing, the lesson he took away from the experience is deadly serious. “As soon as you move into a position of empowerment with respect to the disposition of fees,” he told me, “you figure out what the real deal is very, very quickly.”¹²¹

Eventually, Blakely’s competence, and the obvious competence of the other black lawyers around him, earned his firm the grudging respect—if not always the affection—of the big firm lawyers with whom he worked. Unfortunately, not every black firm rose to the challenge.

3. *Just gettin’ paid*

Undoubtedly, few majority law firms reacted with the kind of open defiance that Blakely encountered. Instead, most had a far simpler strategy for dealing with their new joint venture partners. Freddy Shoemaker succinctly summed up the most common strategy: “If they could get you to just take the money and not show up, they’d be happy to give it to you.”¹²² Shoemaker understood the cost of this free lunch and never took the bait. “We would never go for that. We had to do the work. We were trying to learn how to do this stuff.”¹²³

Others, however, were less fastidious. Not surprisingly, none of the black corporate lawyers I interviewed would admit that they had simply taken the money and ran. I interviewed enough lawyers who acknowledged seeing other black lawyers doing so, however, to leave little doubt that the practice was sadly all too widespread.

Marshall James is typical of those who witnessed this phenomenon first hand. As a solo practitioner who had never managed to develop a corporate clientele notwithstanding his reputation as one of the city’s best trial lawyers, James knew how difficult it was for black lawyers to escape the low expectations—and resulting low incomes—that came from only being able to represent black individuals and small businesses. So when James found himself appointed the city’s chief legal officer in the administration of its first black mayor, he made it his business to ensure that black lawyers would finally have

120. Interview with Bill Blakely, at 35.

121. *Id.*

122. Interview with Freddy Shoemaker, at 38.

123. *Id.*

a chance to share in the city's best work. To accomplish this goal, James mandated that any established firm that wanted to get significant city business had to have a minority joint venture partner. As he explained:

The most lucrative legal work that was available for us to send out was bond work. So I set up a plan whereby I would have the majority firms that sought to do business with us at least have a minority co-bond counsel. And I was always able to have a minority lawyer doing some of that work.¹²⁴

What James wasn't able to ensure, however, was that the minority lawyer included on the deal actually *did* the work. "I found out that the majority firm would simply do all the work and send the minority lawyers a check. And the minority lawyers, I found for the most part, were content to do that."¹²⁵

As James recognized, the reasons underlying the lack of ambition by so many in the black bar were complex. "There were lawyers who actually were enthusiastically trying to learn the business," he conceded, "but there was no encouragement by the majority firms for them to do so because they viewed them as potential competition. Their attitude was: 'If you can do it independently, you don't need me.'" Still James refused to put the blame entirely on the lack of cooperation by majority firms. "There were others who simply thought they'd died and gone to heaven to get all this money for so little paper pushing," he said with a shrug. "And so I don't think it was all one or the other. It was a combination."¹²⁶

Regardless of the ultimate cause, however, the end result of simply taking a handout was devastating for many aspiring black corporate firms. Firms that never learned to do the work—and therefore never made it into the Red Book—were dependent upon the new rules of the game for doing public deals staying the same. But as the century wound down, the new black corporate elite was about to find out that more than the calendar was changing. So too were the black politicians upon whom so many depended for their supper.

Bill Blakely captured a sentiment I heard expressed by many:

I began seeing a change of black leadership in some of these cities. It takes a special person to say to Merrill Lynch "you are not going to do a bond deal until you bring me a black law firm. Goldman, don't visit me unless I see some black investment bankers in your syndicate." It takes a special breed. I call them warriors. And I'm looking out there and I'm seeing fewer warriors. The people who when push comes to shove even at their personal and professional expense will make the unequivocal decision that white professionals make all the time—that this is who I want in the stream of opportunity. They don't equivocate. They aren't apologizing. That's your Coleman Young, your Marion Barry, your Harold Washington. The program changes when those warriors are replaced by folks who—albeit talented

124. Interview with Marshall James, at 18.

125. *Id.* at 19.

126. *Id.* at 20.

politicians—feel compelled to rationalize these types of decisions.¹²⁷

It was a refrain that I would hear often. Bill Campbell, who became mayor of Atlanta in 1994, was not as good for black law firms as Maynard Jackson, the city's first black mayor. Michael White, who became mayor of Cleveland in 1990, was not as good for black law firms as Carl Stokes, the city's first black mayor. Even Dennis Archer, who created the ABA's program to aid minority corporate law firms, is viewed by many in the black bar as not being as dedicated to funneling business to black lawyers as his predecessor Coleman Young had been. In each instance, the complaint was the same: the new breed of black politicians was afraid to play the political game the way it had always been played for fear that they would be accused of favoritism. As Freddy Shoemaker summed up derisively:

This is one of the real problems we have now. Jewish guys have always given it to the Jewish guys first. Italian guys give it to Italians; Irish guys give it to the Irish; and the Yankees give it to the Yankees. Now, that we've got work to give out, unless there is some real special need it should go to us. But more often than not, that's not the case. The black guys are always thinking: "Are we going to be showing some special favoritism to blacks?" The other guys never think that way.¹²⁸

What these informants only grudgingly acknowledged, however, was that the old rules of big city politics were changing. As so often is the case, just as black law firms moved into a position to master the old system of translating political influence into private wealth, a new—and in many respects more draconian—set of ground rules was being put into place.¹²⁹

4. *Paying for playing*

By the early 1990s, the "pay-to-play" system of lavishing political donations on elected officials in return for preferential access to lucrative bond business had become both open and notorious.¹³⁰ Spurred by a shift from competitive bidding, where bond business was given to the underwriting firm offering the lowest interest rate, to negotiated bidding, where the city and the underwriter negotiated the rate after the firm was selected, firms increasingly

127. Interview with Bill Blakely, at 47-48.

128. Interview with Freddy Shoemaker, at 30.

129. As the Oregon Treasurer Jim Hill argued in a speech decrying the new "pay to play" rules: "It is a common practice that once women and people of color understand the rules of the game, learn how to play the game, and start doing it successfully, then suddenly it is time for the rules of the game to be changed." Brad Altman, *Minority Firms, Not "Pay to Play" Are G-37's Target*, *Treasurer Says*, BOND BUYER, Aug. 31, 1994, at 1.

130. See Jon B. Jordan, *The Regulation of "Pay-to-Play" and the Influence of Political Contributions in the Municipal Securities Industry*, 1999 COLUM. BUS. L. REV. 489, 494 (reporting that that the practice had become so widespread that underwriting firms had come to consider political contributions and other pay-to-play-related expenses as an "ordinary cost" of securing municipal work).

used political contributions as a way of encouraging officials to select them to underwrite municipal bonds.¹³¹

Fearing government intervention—or perhaps just tiring of an escalating war of dollars that in the end only served to stuff the coffers of elected officials—the industry itself took the first step to crack down on the practice when seventeen of the largest underwriting firms initiated a voluntary ban on making contributions to elected officials with whom they were trying to do business.¹³² The SEC quickly followed suit and in 1994 issued a regulation prohibiting municipal securities dealers from participating in negotiated bids with any official to whom the firm had made a political contribution in the last two years.¹³³ Although the new SEC rule expressly exempted lawyers from its coverage, the Agency began a parallel effort to encourage the ABA and other bar leaders to issue a similar ban on pay-to-play.¹³⁴ After some wrangling over language and scope, the ABA adopted a resolution denouncing pay-to-play, which was later codified as an amendment to the Model Rules of Professional Conduct.¹³⁵

At first blush, it would seem hard to object to a set of reforms designed to curb a practice whose very name suggests a corruption of the public contracting process. Indeed, one might have thought that minority firms would be particularly happy to see the demise of pay-to-play. After all, these firms inevitably had less ability to pay than their majority counterparts.¹³⁶

Notwithstanding this reality, however, most minority- and women-owned firms opposed the regulation. In a statement to the SEC, the Coalition to Enact Fair Municipal Securities Practices argued that implementing the SEC's ban on contributions would prompt municipalities to abandon the negotiated contracting policies that had forced the inclusion of minority- and women-owned firms and lead to the return of the “old boy” system of distributing bond

131. *Id.* at 495 (“In 1992 and 1993, approximately 80% of all municipal bond offerings were sold in negotiated deals.”).

132. *Id.* at 496-98.

133. *Id.* at 503 (describing SEC Rule G-37).

134. *Id.* at 534-35. At the time the SEC was debating the pay-to-play rules, it was involved in a very public spat with the organized bar over its attempt to discipline lawyers involved in the savings-and-loan crisis. See David B. Wilkins, *Making Context Count: Regulating Lawyers After Kaye, Scholer*, 66 S. CAL. L. REV. 1145 (1993) (describing the feud between the SEC and the bar over the Kaye, Scholer case). Given this battle, it is not surprising that Chairman Leavitt decided that getting the bar to ban the practice itself was the better course of valor.

135. John Council, *ABA Takes Aim at Pay-to-Play, UPL: Critics Say Ban on Campaign Giving Hinders Free Speech*, NAT'L L.J., Feb. 28, 2000, at A5 (discussing new Model Rule 7.6); see also Patti Waldmeir, *Lawyers Face New Rule on Ethics*, FIN. TIMES, Feb. 16, 2000, at 4 (same).

136. As Freddy Shoemaker complained during our interview: “If you are in a big law firm and you’ve got 100 partners, raising \$2,500 or \$3,000, well that’s not that bad. But when you got four or five partners and people are still looking for \$1,000 contributions, man it ain’t in your pocket!” Interview with Freddy Shoemaker, at 30.

work from which these newcomers had always been excluded.¹³⁷ Senator Carol Moseley-Braun of Illinois, at the time the body's only black member, pressed a similar objection in a meeting with the SEC chairman.¹³⁸

These concerns sadly proved all too true. More than a few prominent black lawyers and politicians found their past practices being investigated under the harsh glare of the new ethics spotlight. Although the resulting charges did not always stem from a direct application of the new rules, the new environment was enough to cause many working in black corporate firms to reassess the viability of these enterprises. Bill Blakely's reaction is typical of many I heard:

Joe Barnes, one of our most notable bond lawyers, whose firm was incredibly successful in the municipal bond business with offices all over the place. He got indicted and went to jail. It is widely known in the black community that black lawyers and investment bankers are being targeted, particularly in black cities like Cleveland, St. Louis, Detroit, DC, and Chicago. Black mayors are also being targeted. Now white people have been donating to campaigns and getting business for a bazillion years. Now, all of a sudden there's an ethical concern for law firms that do business with governmental entities who are showing up on the contribution list of government officials.¹³⁹

Even if Blakely and others were simply being paranoid, the result was nevertheless devastating to the aspirations of black corporate firms since it caused many to doubt that they could continue to have the same kind of success in the future that these institutions had enjoyed in the recent past. As Blakely reluctantly concluded:

To use a football metaphor, the fellows that I was working for were pretty much in the third or fourth quarter of their careers. They had had a nice run with 20 years of Coleman Young and other strong black politicians. It wasn't clear to me that over my career horizon public finance would do the same for

137. See Ann Judith Gellis, *Municipal Securities Market: Same Problems—No Solutions*, 21 DEL. J. CORP. L. 427, 449 (1996) (summarizing objections to Rule G-37). Prominent leaders of minority-owned securities firms, including Atlanta's former mayor, Maynard Jackson, registered similar objections. See *In the Minority, and Mad; Black-Owned Investment Firms Say SEC's "Pay to Play" Curbs are Unfair*, WASH. POST, Jan. 29, 1995, at H1.

138. Lynn Stevens Hume & Niamh Ring, *Levitt, Senator, and Firms Start Talks on Minority Participation*, BOND BUYER, Nov. 15, 1996, at 4.

139. Interview with Bill Blakely, at 47. For a discussion of the Barnes case and other actions against black lawyers and elected officials, see, for example, Cathy Connors, *Black Lawyer Jailed on Tax Evasion Charges*, N.Y. AMSTERDAM NEWS, Dec. 9, 1995, at 1 (reporting that Joseph Barnes, senior partner of the firm of Barnes, McGhee, Segue & Harper pled guilty to failing to pay federal income taxes on more than \$600,000 in income he received from his firm); Richard Lezin Jones, *Mayor's Term, Full of Highs, Has Its Lows in Atlanta, Bill Campbell Gets Credit for Much of the City's Success—Now, He is Under Probe*, PHILA. INQUIRER, Feb. 11, 2001, at A3 (reporting on a series of corruption investigations against Atlanta Mayor Bill Campbell alleging, among other things, that he took illegal campaign contributions and other favors from companies doing business with the city).

me.¹⁴⁰

Those who stayed in the business found it even more difficult to compete with majority firms who could still funnel contributions through other parts of the firm.¹⁴¹ The result was a significant decline in black-owned firms. As Freddy Shoemaker lamented:

The big law firms and investment banks wanted this to happen. Now they can say, "I'd like to help you, but I can't do it." And the black firms that have been coming along and snatching all of that municipal business won't be able to do it anymore because they can't do the kind of support that would get their guy elected in the first place. You should take a look at the number of black investment banking and law firms that were around before this rule and the number that are around now. It's incredible, just like night and day.¹⁴²

The fact that the legal and political environment was also changing only compounded the problem.

5. *Affirmative reaction—and inaction*

By the mid-1990s, it was palpably clear that much of the country—and a majority of the Supreme Court—had turned hostile toward affirmative action, particularly in the area of public contracting. Brian Jones captured the magnitude of what he called the "sea change" that began to sweep over the country during the Reagan and Bush years:

America essentially had played out its conscience in terms of correcting the wrongs of the past. The heart strings were no longer being pulled by Martin Luther King's "do the right thing" message. The remedies hadn't been administered fully but the country is tiring. You get the emergence of the conservative right; of reverse discrimination; and of black conservatives who are questioning all the traditional strategies.¹⁴³

It was, as many black firms discovered, a potent combination that would sap the energy from many of the programs that had been responsible for their success.

The Supreme Court, once in the vanguard of pushing for greater opportunity for black Americans, turned particularly hostile as Republican appointees formed a tenuous—but nevertheless powerful—new conservative majority. In 1989, the Court in *Croson v. City of Richmond* struck down

140. Interview with Bill Blakely, at 46.

141. Echoing the fears of many black investment bankers, Bill Blakely summed up the reality of the new rules of engagement:

If you are Merrill Lynch, the regulation precludes your public finance department from making a contribution. It does not preclude your corporate finance department or your traders or sales force from making a contribution. Who does that disproportionately impact? The minority investment bankers who are singularly in the public finance business

Id. at 48.

142. Interview with Freddy Shoemaker, at 31.

143. Interview with Brian Jones, at 82.

Richmond's minority contracting ordinance requiring that thirty percent of city business go to minority- and women-owned firms.¹⁴⁴ A majority of the Court found that the ordinance violated the Fourteenth Amendment notwithstanding the fact that prior to the election of the city's first black mayor who spearheaded the program's enactment, the old capital of the Confederacy had expressly discriminated against blacks and that virtually no significant city business went to minority-owned firms. As Justice O'Connor declared in her opinion for the court, such a "generalized assertion" of past racial discrimination was insufficient to justify the use of a "rigid racial quota" for awarding public contracts.¹⁴⁵ Five years later in *Adarand Constructors, Inc. v. Pena*, the Court made clear that federal set-aside programs would be governed by a similar standard.¹⁴⁶ Applying strict scrutiny, the *Adarand* majority concluded that a general desire to remedy past discrimination against a particular group did not constitute a compelling state interest justifying the program's award of additional points in the bidding process to applicants who hired minority subcontractors. Turning the knife one final time, the Court acknowledged that programs which are truly designed to assist "disadvantaged" applicants could survive constitutional scrutiny, but concluded that race was not a sufficient proxy for disadvantage.

Croson and *Adarand* clearly spelled trouble for the black corporate bar's aspirations. At the state and local level, virtually all of the programs that had been instituted by black elected officials to guarantee minority participation in the issuance of municipal bonds had a structure similar to the set-aside program struck down in *Croson*. Although many local officials—particularly, as one might expect, in cities with large black populations—remained defiant for a surprisingly long time,¹⁴⁷ eventually, legal challenges forced most cities to

144. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

145. *Id.* at 499-500.

146. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995). *Adarand* overruled *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990), in which a different majority had held that federal programs should be governed by a more permissive standard.

147. In Atlanta, for example, the state's Supreme Court invalidated the city's minority-contracting program shortly after *Croson* was decided. See Steven Mufson, *Atlanta Seeks New Paths to Minority Contracting*, WASH. POST, Dec. 17, 1989, at H2. Yet rather than abandon the program, the city looked for ways to restructure it so as to preserve the gains made by minority firms. *Id.* A decade later, Atlanta mayor Bill Campbell was still vowing to "fight to the death" to protect the city's minority-contracting program and that "[t]here will be no compromise, no capitulation whatsoever." Vern E. Smith, *Who Needs a Fair Deal?*, NEWSWEEK, Aug. 30, 1999, at 32. Not surprisingly, minority lawyers in these cities and others where politicians took a strong stand to defend set-aside programs felt themselves to be far luckier than those in places where such leadership was lacking. As a lawyer in Atlanta put it: "With the retreat from affirmative action, it has put great pressure on black law firms and all black businesses. We're better off in Atlanta because we control more than other cities. I mean in Greensboro, North Carolina, where blacks have no influence in government, it's pitiful!" Interview with Patrick Arnold, at 22.

substantially modify their minority-contracting policies.¹⁴⁸

The fate of the RTC's minority counsel program was similarly dispiriting. Like the RTC itself, the program to funnel work to minority- and women-owned law firms was never intended to be permanent. Indeed, this was one of the reasons that some minority firms hesitated to become too invested in the work the program provided.¹⁴⁹ Nevertheless, the way the program died—without ever even attempting to implement many of its most important mandates—had much to do with *Adarand* and the country's declining support for affirmative action. By the summer of 1995, not quite two years after Congress wrote specific affirmative action practices into the law, and less than a month after *Adarand*, the federal government essentially pulled the plug on the RTC program.¹⁵⁰ As the GAO's Final Report on the initiative concedes, RTC never implemented the law's requirement to create a monitoring program to ensure compliance with its subcontracting goals for minority law firms.¹⁵¹

The effects of this neglect were all too predictable. Many aspiring black corporate law firms received far less work from the RTC than they expected. But even those who did benefit found themselves unable to build on this success when the program went away. As Charles Robinson—whose firm benefited as much as any other aspiring black corporate law firm from the RTC program—reported, his firm was unable to convert any of the contacts or experience it had gleaned in doing the RTC's work into future business once the program came to an end. "It had no tail," Robinson stated flatly. Although the FDIC continued to have a mandate to utilize minority-owned firms even after the specific work assigned to the RTC had been concluded, there was no longer the political pressure to hold the agency's feet to the fire. "Mfume beat up on the head of the RTC until it said uncle," Robinson explained. "And the word went out that we will implement this program. Period. And they did. But the FDIC did not get beaten up on—or they weren't as amenable to pressure, and the work went away."¹⁵²

148. After vowing to "fight to the death," Campbell was forced to agree to a compromise modification of Atlanta's set-aside program. Smith, *supra* note 147. Even with these changes, the program has been repeatedly challenged in court. *Id.* Although the city has so far survived these challenges, developments in other cities, including Chicago, seemed destined to fuel even more litigation. See Gary Wisby, *City Told to Change Law on Set-Asides for Minorities, Women*, CHI. SUN-TIMES, Dec. 30, 2003, at 12.

149. See Newdorf & Elliot, *supra* note 48, at 1 ("[Some minority law firms feared] sinking all [of their] hopes into the FDIC [when] this work [was] going to end in a few years.").

150. See Michael K. Frisby, *Some Agencies Stage Affirmative-Action Retreat While White House Still Debates Its Battle Plan*, WALL ST. J., Mar. 24, 1995, at A16 (noting that the RTC hired a consultant to study its affirmative action program and failed to implement many of the program's policies).

151. See U.S. GEN. ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL COMMITTEES: RESOLUTION TRUST CORPORATION IMPLEMENTATION OF THE MANAGEMENT REFORMS IN THE RTC COMPLETION ACT 60 (1995).

152. Interview with Charles Robinson, at 43-44.

As Robinson soon discovered, many of his private clients were going away as well.

B. When the Hunter Becomes the Hunted

1. The danger of democracy

If the countermajoritarian power of the Supreme Court was ultimately what undermined the power of the affirmative action programs adopted by black elected officials, the death knell of the ABA's program for steering private clients to black law firms was sounded as a result of the pressure to democratize this successful initiative. Once it was clear that there was real money to be made through the ABA program, everyone wanted to participate. The first to demand entry were other minority firms who claimed that they were just as competent as those that had been initially selected.¹⁵³ But soon, the minority partners in majority firms were knocking on the door as well. They, too, needed access to corporate work to survive—especially in an environment in which the old collegiality of “one for all and all for one” of the golden age was rapidly being replaced by an ethos in which you “eat what you kill,” and partners who don’t “kill,” don’t eat.¹⁵⁴

Given its status as an organization open to all lawyers, it was hard for the ABA to refuse these requests. After a series of bitter meetings in which the minority firms accused the minority partners at majority firms of seeking to subvert the initiative by redirecting work back to the same big firms that had always had the business (albeit with some credit going to minority partners), the ABA decided to drop any pretense of exclusivity (as well as the word “Demonstration” from the title) and open the program to all minority lawyers.¹⁵⁵ Within a few months, the original thirteen firms had ballooned to more than 200.¹⁵⁶ At the same time, several state and local bar organizations, often acting under the leadership of the newly emerging generation of black bar presidents, created similar programs designed to encourage corporations in their jurisdictions to hire minority lawyers.¹⁵⁷

153. These demands were sometimes quite forcefully stated. For example, one lawyer I interviewed confronted Dennis Archer in an ABA meeting with over 300 lawyers present and flatly stated that if he wasn't allowed into the program he would sue. Interview with Warren Mitchell, at 50.

154. See e.g., David B. Wilkins, *Partners without Power?*, 2 J. INST. STUD. LEGAL ETHICS 15, 19-23 (1999) (chronicling the difficulties faced by black partners in large law firms).

155. See David B. Wilkins, *supra* note 61, at 59-60 (describing the changes in the ABA program).

156. Interview with Charles Robinson, at 48 (“[W]hat you saw was an expansion to something like 200 minority firms in the last few years of the ABA program.”).

157. See COMM'N ON MINORITY EMPLOYMENT, BAR ASS'N OF S.F., 1993 INTERIM REPORT: GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT 5-6 (1993)

The results of this dramatic expansion were sadly predictable. What the program gained in breadth it lost in depth. Although some black lawyers continued to benefit,¹⁵⁸ most felt, in the words of a partner from another of the original thirteen firms, that as the program went from trying to create a “black corporate elite” to one that was open to “every minority lawyer in the world,” it generated less and less in the way of real opportunities for business development or relationship building.¹⁵⁹

Notwithstanding that they were arguably best positioned to handle corporate work, Dropout firms found themselves particularly hard hit by this development. As Charles Edwards lamented, “by the time I got involved corporations had formed relationships to a large measure with the people with whom they were going to do business—and there wasn’t a lot of new business being given out.”¹⁶⁰

By the mid-1990s, corporate America no longer felt that it needed to be educated about the existence of minority lawyers through programs like the ABA’s. As a general counsel from one of the project’s original corporate sponsors explained to Charles Robinson about why he no longer came to the ABA conference: “I already know every minority law firm.”¹⁶¹ Instead, what these increasingly sophisticated purchasing agents wanted to know was

[hereinafter S.F. REPORT] (describing a similar program in California).

158. Not surprisingly, the original thirteen firms were the most likely to continue to benefit even after the program was expanded. As Charles Robinson explained, even though the project no longer generated much new work, it still gave him a valuable opportunity to check in with his existing clients who continued to participate:

At a minimum, the meetings were incredibly good opportunities for me to touch bases with existing clients. To take two days to make one trip to get a chance to see nine or ten existing major clients and just press the flesh, I mean that is incredibly valuable. It’s the sort of thing that in a majority firm you’d kill to be able to do in that efficient a period of time. If I end up getting some work down the line from that, so much the better.

Interview with Charles Robinson, at 48. As Robinson acknowledged, however, it was much easier because, unlike the firms who were not a part of the original lucky thirteen, he had existing relationships with these corporate clients. *Id.* (acknowledging that “most of these folks though are coming in without those preexisting relationships and their chances of getting work down the line are limited”).

159. Interview with Warren Mitchell, at 50-52.

160. Interview with Charles Edwards, at 43.

161. Interview with Charles Robinson, at 49. Not surprisingly, as Robinson went on to explain when recounting what this general counsel had told him, this attitude—albeit understandable—contributed to the belief among many minority lawyers that the ABA’s program was more about image than about substance:

He had been to so many conferences at that point in time that he had probably met and interviewed 150 minority firms around the country. He did not need to come to these conferences to meet these firms again. Sure, there would be new people. Sure, there was some public image benefit to the company continuing to come to conferences. And therefore they did. But as a practical matter, the GC would say “I don’t need to come to these conferences anymore”—which would really piss off some guy who just formed his two person firm in Washington, D.C. and comes to this corporate counsel conference and here’s this guy saying “I know everybody” and he’s never met him.

Id.

whether hiring a minority firm would help their company better compete in an increasingly competitive global marketplace.

2. *The return of the big boys*

As indicated above, lower fees—and greater efficiency—were central to the value proposition that black corporate firms offered to their clients. Indeed, as Bill Patterson conceded, “in hindsight, I think it was a lot more of a factor than any of us were prepared to admit at the time in terms of why these corporations were using us.”¹⁶² Given the growing pressure from general counsels on even the most established firms to reduce costs and to become more efficient, it was only a matter of time before these sleeping giants awoke to the competition.

For Patterson, the realization hit home in the course of a pitch for business during the height of the recession in the early 1990s. As he explained, “by the end of the economic cycle we were bidding on some work—because that’s another new thing that was happening, instead of just interviewing people they wanted you to give them a price quote—and we were astounded to find out that a very large law firm had underbid us. I don’t mean by a little, I mean considerably!”¹⁶³ After recovering from his initial shock, Patterson realized that the sleeping giants were finally waking up to the new competitive realities—giants who could afford to offer the elephant a few peanuts in order to get access to a bigger piece of the pie down the line. “The only way that they could have bid that low was to just absorb this work as a loss leader to establish a toe hold with this particular entity,” he told me that he finally understood. “And it was also a way for them to keep some of their associates busy during the downturn instead of just throwing them out as so many firms were doing at the time. So yeah, we started getting competition from the big guys for stuff that in the true sense of the word should have been ours for the pickings. Yeah, it hurt.”¹⁶⁴

Moreover, it was not just the big guys who figured out the new rules of the game. As Charles Robinson bemoaned, “small white law firms have caught up too.”¹⁶⁵ It was a squeeze play, as Robinson explained, that would play out again and again for the new black corporate warriors: “IBM, Chrysler, Ford, Waste Management all went through this sort of downsizing of their outside counsel.”¹⁶⁶ And on each occasion, Robinson’s firm lost business—sometimes to larger firms and sometimes to small ones—but always to someone. Clearly, as Robinson succinctly put it, “small African American firms were no longer

162. Interview with Bill Patterson, at 34.

163. *Id.* at 35.

164. *Id.* For a description of the layoffs of the 1990s, see Bilodeau, *supra* note 97.

165. Interview with Charles Robinson, at 26.

166. *Id.* at 51.

the only game in town.”¹⁶⁷

Nor did things get much better when the legal economy began to rebound in the Clinton years. Although the rising tide lifted all boats to a certain extent, in the end it only served to accentuate the competitive pressures that were eroding the market position of black corporate firms. Big firms grew even bigger—often dramatically bigger—and so did the size of the corporate deals and major litigation that these firms were expected to handle.¹⁶⁸ The sheer size of the new legal marketplace put even the largest of the new black firms at a significant disadvantage. As Bill Patterson explained:

I was getting calls to do work that we couldn't do. A client would call and say “we've got a bankruptcy matter, can you help us out?” And I'd have to say “I'd love to but I don't have a bankruptcy lawyer.” Or another client for whom we were doing great work would call and say “we've got an extra deal but we've got to close it in a week” and I'd have to say “we can't, we don't have the capacity.”¹⁶⁹

At the same time, the cost advantage that should have come from being smaller was increasingly becoming not only less pronounced but paradoxically less important as well. It was not just that big firms and other boutique operations were cutting their prices to match the savings offered by black corporate firms. It was also that as the legal services market began to heat up again, many companies were much less concerned about the kind of modest savings that minority firms could reasonably offer. To be sure, corporations increasingly demanded across-the-board rate cuts from their outside counsel or offered to give firms all of the company's related litigation or transactions in return for a flat fee.¹⁷⁰ For the most part, however, even the largest of the new black corporate firms were too small to benefit from either of these trends even if they had wanted to do so. And with respect to the kind of work that black firms could do—and wanted to do—the good times once again made cost less of a determinative factor. The result, according to Charles Robinson, was sadly predictable:

Like in many human endeavors, what happens is that the firms that have traditionally been used ended up getting more of the work again—they may not be making more money than they used to make, in fact they are probably making less—but they are getting the work.¹⁷¹

Notwithstanding the dramatic growth in black capitalism, it was a dynamic that

167. *Id.* at 26.

168. See Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts The Justice System*, 98 MICH. L. REV. 953, 974 (2000); John P. Heinz et al., *The Scales of Justice: Observations on the Transformation of Urban Law Practice*, 27 ANN. REV. SOC. 337 (2001).

169. Interview with Bill Patterson, at 29.

170. See Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L.J. 1057, 1060-61 (1997).

171. Interview with Charles Robinson, at 26.

black corporate lawyers discovered operated in this arena as well.

3. *Old habits die hard*

Although the new generation of black entertainers, athletes, and entrepreneurs did provide some support to the new generation of black corporate firms, examples of where the synergy among these black capitalists ended up making a significant difference turned out to be few and far between. Successful black business owners and individuals often had longstanding relationships with lawyers who helped them in their climb to the top.¹⁷² In other cases, black superstars simply preferred the full service and reputation of an established law firm. Michael Jordan, for example, gave significant business to two black lawyers in Chicago, but both were partners at major law firms. No matter how accomplished, the new generation of black corporate firms could not provide this kind of service or protection.

Ironically, the larger a black business became, the less likely a black corporate firm was to win a significant amount of the company's legal business. Although black firms could often handle the legal needs of small black companies, bigger businesses typically needed capacities and expertise that most small minority law firms simply could not provide. Thus the same limitations that made Bill Patterson have to turn away potentially lucrative work from his Start-Up corporate firm in New York made black businesses of more than a certain size shy away from engaging these firms in the first place. As the General Counsel for Earl T. Graves Ltd., publisher of *Black Enterprise Magazine*, lamented in an article in 1999 when explaining why his company could not use a minority law firm, "[W]e needed lawyers to get involved in intellectual property; it never happened. Our intellectual property generated about \$15,000 each year. . . . That's not enough for a black law firm [to hire an IP attorney to do the work]."¹⁷³ The company now takes its business to a black partner in a large law firm.

In the end, for all of the impressive numbers, the growth of black economic power has not translated into a corresponding growth in the economic fortunes of black corporate firms. "I used to think that minority-owned businesses were going to be a real growth area for our firm," Charles Edwards confided, "but I'm not so sure now. On the one hand, I think minority companies always do some measure of work with minority law firms. And I certainly know that a lot of startup minority companies like to do work with minority lawyers. But the

172. See Arthur S. Hayes, *Non-Affirmative Actions: For Pragmatic Reasons, Black Companies Turn to White Firms*, NAT'L L.J., July 26, 1999 (quoting Charles Johnson, CEO of the auto transportation service company, as explaining why they continue to use the same white lawyer for their business interests: "Once you start making money, you don't turn around and kick (the people who helped you free of charge) in the butt.").

173. *Id.*

bigger companies are sometimes less interested.”¹⁷⁴

For Dropout firms like Edwards’, this was an especially bitter pill to swallow—particularly since he and many of his peers suspected that there was something more than simple size and expertise at issue. For those who had been raised in a world where many still believed, whether consciously or subconsciously, that, as one of my informants colorfully put it, “the white man’s ice is colder,”¹⁷⁵ it was hard not to feel that the reticence by many of the CEOs of black companies to hire black law firms was a modern manifestation of the reluctance of black clients a generation before to engage black lawyers when they could afford a white one. As Edwards complained, “there’s also the sense, certainly among some of the older black companies, that a white firm is a sign of prestige: ‘I’ve got white lawyers working for me’ or ‘I’ll call my white lawyers to take care of this.’”¹⁷⁶

Although it is easy to dismiss this criticism as either sour grapes by Edwards—or evidence of lingering self-hatred on the part of black business leaders (as Edwards seems to believe)—the reasons why many black businesses did not give the majority of their legal work to black corporate law firms are undoubtedly more complex than either of these simple shibboleths. Just as black criminal defendants in the pre-*Brown* South legitimately worried that a black lawyer, no matter how competent, would not be heard by white judges and jurors, the new generation of black companies trying to compete in a world increasingly hostile to affirmative action also are legitimately concerned about making sure that they are represented by lawyers whose credibility and experience will be recognized in the eyes of those who will determine their economic fate. As a black partner in a large law firm observed:

Black CEOs look for name brands because of the fear of doing business with the Fortune 500s. It’s another measure, right or wrong, of their sophistication. You want to get individuals to believe that you’re going to be first-tier, and you get credibility when your lawyers are, when your accountants are, first-tier.¹⁷⁷

A similar dynamic affected black lawyers working in in-house legal departments. When corporate counsel select lawyers, they face tremendous pressure to hire those whose “merit” is beyond question, in part to protect themselves in case something goes wrong. This pressure is likely to be especially acute for black in-house lawyers, who, like black politicians, face charges of favoritism if they select less prominent black lawyers over better-known whites—even if the black lawyers are arguably better qualified to handle the case.

In sum, as the 1990s came to a close, black corporate law firms were faced

174. Interview with Charles Edwards, at 62.

175. Interview with George Edward Fowler, at 6.

176. Interview with Charles Edwards, at 62.

177. Hayes, *supra* note 172 (quoting a black partner at Shaw Pitman, a D.C.-based law firm).

with a shifting and uncertain market with respect to both their public and private clients. Indeed, just about the only thing that was certain for these firms in this turbulent environment was the skyrocketing cost of keeping the doors open—and new lawyers coming in. More than any other factor, this escalation was what eventually drove a stake through the heart of the dream of creating black corporate law firms.

C. The Grass Is Always Greener—Especially When There Is Plenty of Green

Black corporate law firms, like their Jewish counterparts a generation ago, were built in large measure on the exclusion of black lawyers from mainstream practice. Although this exclusion helped to produce a steady supply of black lawyers who might be enlisted in building these new firms, it also ensured that almost none of these entrepreneurs would have any experience in actually running such a business. Moreover, to the extent that black corporate firms depended for their recruiting on traditional large firms keeping their own doors tightly shut, these new enterprises were vulnerable to anything that would improve the racial climate. As the century came to a close, both of these realities combined to undermine the dream of creating a national black corporate firm.

1. On-the-job training

Not surprisingly, a big factor that made the idea of starting a black corporate law firm so attractive to those who founded these institutions was the very fact that nothing like this had been done before. Just as predictably, however, the very fact that these institutions were unprecedented made it much more difficult for those who started them to succeed. Given that they had no experience in running a firm—or, for many, in working in a corporate firm at all—the black lawyers who created Start-Up firms were particularly vulnerable to this reality. The fact that these were also the lawyers with the most ambitious dreams for expansion only served to exacerbate the management difficulties they encountered.

Bill Patterson's experience was unfortunately typical. By the late 1990s, Patterson's firm, which had reached a high of almost thirty lawyers just a few years before, had shrunk to less than fifteen, and was in danger of contracting even further.¹⁷⁸ Although, as we have seen, many factors contributed to the firm's financial difficulties, in the end Patterson told me he believed that it was he and his partners' lack of experience with what it took to create a viable corporate firm that ultimately doomed the firm's chances.

I think the biggest problem was experience: experience with working in a partnership; experience with high levels of business. We simply didn't have

178. Interview with Bill Patterson, at 33.

the template to do it. And we didn't have the motivation or the access to get to others to find out how to do it. These were all super bright people, I'm not trying to say anything about that. But I'm just saying if you haven't done it before, if you don't know it, it's very hard to do. We just didn't have the experience factor.¹⁷⁹

Specifically, Patterson found that the firm did not have the capital structure to survive the downturn it inevitably faced—let alone to finance the expansionist dream of building a presence on a national stage. In the early 1990s, Patterson assured me, his firm, and many of the minority firms he hoped would eventually link together to form a national powerhouse, “were making plenty of money.”¹⁸⁰ But what they weren't doing was preparing adequately for the future they envisioned, let alone the one they actually experienced. “We weren't capitalizing the business right,” he explained with the benefit of hindsight. “So when we were looking at doing the things that would be necessary—the strategic planning, the issues about technology that would be necessary to pull different firms together—we didn't have the resources to figure out what kind of resources we needed or the capital to acquire them.”¹⁸¹ And when decisions were made, Patterson conceded, “we were all looking at pulling money out of our own pocket instead of looking at a capital reserve that was targeted toward strategic planning and new initiatives.”¹⁸²

Undercapitalization and lack of experience, of course, are the reasons that most small businesses fail. Small law firms, which are typically started by people with almost no experience or training in running their own business and who must finance their operations out of current revenue, are especially prone to these twin dangers.¹⁸³ It is therefore not surprising that these factors would play a role in the demise of the new generation of small minority corporate law firms.¹⁸⁴

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. See RICHARD L. ABEL, *AMERICAN LAWYERS* 180 (1991) (discussing the instability of small law firms).

184. In addition to failing to put money away for strategic development, many black law firms also fell into the trap of too quickly ramping up their fixed costs. Expensive office space was often the culprit. As Freddy Shoemaker conceded, his firm's decision to take over three floors in a downtown building and build it out “elegantly” eventually contributed to the firm's downfall: “It was costing us \$300,000 a month before a partner was paid a penny,” he conceded, “every month, you've got to go out and get this money, bam, bam, bam. . . . And what you end up doing is having to borrow more money than you want to borrow.” Interview with Freddy Shoemaker, at 46. Eventually, all of that borrowing drained the resources of the partners—and the will of several of them to stay in the firm. In fairness to Shoemaker, he also insists that the firm's elegant offices played a crucial role in convincing clients—both black and white—that this new group of black lawyers had the capacity to handle important matters. *Id.* Other more successful black firms, however, made a different choice. Reginald Lewis, for example, prided himself on the fact that his firm, although located on Wall Street, otherwise had little more than Spartan furnishings, instead investing

As with most phenomena that affect law firms generally, however, race accentuated these typical small business problems for minority corporate firms. Bill Patterson was willing to say openly what many others reluctantly conceded about the unique challenge of trying to build a cooperative alliance among black professionals:

I still feel that a part of that issue is cultural because we as black people still haven't gotten to the point where we relate well with one another in a business context. It's not exclusively a personality or an ego thing. It's very much, I think, a cultural thing. It's the way we were brought up and we think about the world. And that was the hurdle. How do you get beyond the trust factor and get to the point where people can say "let's come together."¹⁸⁵

It is an old complaint. Ever since Willy ran off with the money entrusted to Walter Lee for the down payment on the new family home in Lorraine Hansberry's classic *A Raisin in the Sun*, the story of black-on-black distrust in the business context has become a widely believed shibboleth, if one that often simmers just below the surface. How much of this is myth, and how much reality, is, of course, impossible to determine. And, as with the hesitation by black clients to hire black lawyers, to the extent that lack of trust does exist, the black lawyers who considered coming together to create a national black corporate firm often had reasons to be less than forthcoming in their interactions with each other. As Patterson conceded, "[E]verybody was in the hole and before they could think about the big picture, you first had to think about your local picture to try to do what was necessary to keep your position and dominance in the local market intact."¹⁸⁶

Nevertheless, the idea that the legacy of discrimination and exclusion from the business sector might make it more difficult for the first generation of black corporate lawyers to work together to build a national network out of competing enterprises is far from frivolous. If nothing else, the fact that someone as sophisticated and committed as Bill Patterson believes that this cultural factor continues to haunt the efforts to create thriving black corporate law firms is likely to make it more difficult to create such an entity whether or not the perception is true.

The same is likely to be true with respect to the perception that many of the founders of black corporate firms had about the new generation of lawyers they hoped would join them in their quest to create institutions capable of competing with established large law firms.

2. Loyalty versus lifestyle

As the legal economy picked up after 1993, the market for talent became

in a top-of-the-line copier which allowed him to be "more profitable than if he'd invested in fancy furniture." See LEWIS & WALKER, *supra* note 90, at 80.

185. Interview with Bill Patterson, at 33.

186. *Id.*

more competitive, and, just as important, much more expensive. Fueled by the enormous demand for labor resulting from the prolonged economic expansion, by the end of the century associate salaries had more than doubled from where they were before the recession. The impact on fledgling black corporate firms already reeling from the decline in public and private business documented above was predictably disastrous. Brian Jones underscored just how devastating this double whammy was for his firm:

Margins are being compressed like hell. General Counsel are trading volume for discount work and downsizing the number of firms they use. All sorts of economics that make it tough for us to compete. And at the same time starting salaries are going through the roof. You come out of law school and if you are top level at a national law school, you can do the twenty-four hour a day thing and earn \$100,000 in New York, \$85,000 in Chicago, and \$75,000 here in Detroit. So the aspirations of students of color who are burdened with debt from going to college and law school and who are coming out with \$50-\$100,000 in debt are pretty simple.¹⁸⁷

At the same time, a combination of market and regulatory pressures led many established firms to work to improve their hiring and retention of minority lawyers—or at least to make it appear that they were working to do so. Thus as large law firms have grown ever larger in both size and scope, recruiters have been forced to expand the pool of lawyers and law schools from which they draw their talent.¹⁸⁸ In addition, the significant cost of replacing associates has placed a renewed emphasis on retaining these new recruits—at least until they become profitable as midlevel or senior associates.¹⁸⁹ Finally, both bar organizations and corporate clients have continued to ratchet up the pressure on law firms to improve their diversity.¹⁹⁰

Needless to say, one can debate the overall success of all of these initiatives.¹⁹¹ Regardless of their actual effectiveness, however, there can be little doubt that these expressions of concern by bar officials, corporate America, and law firm leaders have at least raised the visibility of diversity issues in large law firms, and the corresponding hopes of many minority

187. Interview with Brian Jones, at 84.

188. See HEINZ ET AL., *supra* note 62 (documenting the expansion in law firm recruiting between 1975 and 1995).

189. See NALP FOUND. FOR RESEARCH & EDUC., KEEPING THE KEEPERS: STRATEGIES FOR ASSOCIATE RETENTION IN TIMES OF ATTRITION 9-10 (1998).

190. On pressure by bar associations, see Wilkins, *supra* note 61, at 60-61 (describing various bar associations goals for minority associates and partners). On pressure by corporate clients, see David B. Wilkins, *From "Separate Is Inherently Unequal" to "Diversity Is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1556 (2004) (describing a letter sent by the general counsel of Bell South encouraging corporations to pressure firms to hire and promote more minority lawyers).

191. For my own take on the overall effectiveness of these programs, see Wilkins, *supra* note 190.

lawyers.¹⁹²

Although undoubtedly laudatory from the perspective of racial justice, these policies had a devastating effect on the aspirations of black corporate law firms. As Brian Jones acknowledged, by the end of the century it was increasingly possible for black graduates from top law schools—and many from schools that would not previously have been ones where large law firms recruited—to at least try to build a career in a large law firm. “By and large,” he told me while reflecting on his own son, who was then a senior in college considering applying to law school, “I sense a great deal of freedom among young people who are choosing career paths. Many of them wouldn’t even think about some of the issues I thought about in deciding about where to spend their careers.”¹⁹³ He continued in a quiet voice:

The justification by race, you know, for having a black law firm. I thought of it as an advantage to have a black law firm. It’s a role model, it’s a beacon and what have you. But on the other hand, when we get to where we want to go, we may not want that assuming that there are opportunities for people to grow and develop and become leaders in all of the other firms that are out there. And we’re seeing that to some extent in the profession.¹⁹⁴

For Jones and his peers, creating a black corporate firm was more than a job—it was a mission. To achieve this mission, however, these founders needed to recruit lawyers who, in the words of the second epigraph that begins this Article, not only were capable of doing the work but also were willing to live the mission of building institutions of talented and purposeful black lawyers. But in a world in which a growing array of majority law firms were offering black lawyers opportunities that at least in the short run—and in fairness, probably for the long run as well—were likely to be far more lucrative, it was increasingly difficult, as Freddy Shoemaker conceded, to “get young lawyers to buy into that vision.”¹⁹⁵

Indeed, as far too many founders discovered to their dismay, the very idea of a black corporate firm as one driven by a mission as opposed to simple economics ended up attracting more than a few black associates who had no interest in doing the hard work required to make the mission attainable. Rather than accepting that having a mission to create a national black law firm meant working twice as hard as they would at some other firm, far too many of the associates hired by Neotraditionalist, Start-Up and Dropout firms appeared implicitly to believe that joining a black law firm ensured the opposite result. For these associates, abandoning the “twenty-four hours a day thing,” as Brian

192. See, e.g., Brian Zabcick, *Measuring Up (and Down)*, MINORITY L.J., May 2, 2002 (reporting on the 2001 Minority Score Card); Lily Henning, *Race Matters: Law Firms Are Recognizing That Diversity Is About Business. Just Ask Their Clients.*, LEGAL TIMES, March 17, 2003 (describing Kirkpatrick & Lockheart’s hiring of a Chief Diversity Officer).

193. Interview with Brian Jones, at 43.

194. *Id.* at 44.

195. Interview with Freddy Shoemaker, at 38.

Jones accurately summed up the life of an associate in a large law firm, and taking up residence in an all-black institution paying significantly less money was much more of a lifestyle choice than a political one. As a result, as Freddy Shoemaker bemoaned, many of the black associates they hired expected to work *less* hard than they had at their old firms—and that Shoemaker and his partners should accept this reality in the name of racial solidarity.¹⁹⁶ The result, as Shoemaker explained, was a disaster for a firm that had to fight every day for its survival. “Eventually we had to learn,” he told me sadly, “that if we kept people around who weren’t committed to do the work then we weren’t going to be around for long either.”¹⁹⁷ The pain of having to let people go, Shoemaker conceded, was one of the most difficult parts of his job—and one of the most important nails in the coffin for his dream of building a national black corporate firm.

In the end, many black corporate firms began to hemorrhage lawyers from all sides. Associates who were unwilling to work the long hours required to compete for increasingly scarce business opportunities were quickly counseled out. At the same time, those who showed promise in working on complex transactions were often stolen away by joint venture partners hungry to bolster their own diversity numbers. Charles Robinson’s experience was typical. In the first five years of his firm’s existence, he told me proudly, “no one left—not even support staff.”¹⁹⁸ The next five years, however, were unfortunately a far different story. “We would train people and they’d be lured away by the big salaries,” Robinson told me. “I can’t tell you how many times that happened in the bond field. We were the victims of our own success.”¹⁹⁹

As devastating as these defections were, however, it was the failure of so many of the founders of the new generation of black corporate firms to keep the faith that ultimately doomed the ambitious dreams of these fledgling institutions. By the dawn of the twenty-first century, many of the lawyers who founded the new generation of black corporate firms had abandoned the firms they started for partnership in majority firms. Of those profiled in this Article, Bill Patterson, Carl Malkin, and Sam Wrightfield are among those who have taken this path, as have several of the founding partners in the firms headed by Brian Jones, Charles Robinson, and Charles Edwards. Established rainmakers all, these lawyers were suddenly in high demand by large firms desperate to show progress on their own diversity—while picking up some important client relationships at the same time. When combined with a host of other defections to positions outside of the law firm world, ranging from in-house legal positions to judgeships, the resulting drain of senior talent has left many once proud black corporate law firms substantially smaller and weaker in the first

196. *Id.* at 39.

197. *Id.*

198. Interview with Charles Robinson, at 86.

199. *Id.* at 85.

few years of the new millennium than they were in the 1990s. And these are the lucky ones. Far too many, like Charles Robinson's pioneering firm, have shuttered their doors altogether. As Brian Jones lamented at the close of our interview: "It's a very tenuous existence at the moment. Very tenuous. And I think it's this way for many of the firms around the country that are firms of color."²⁰⁰

D. *The Death of the Black Corporate Law Firm?*

In the eight years since I last interviewed Brian Jones, the market conditions that eroded the competitive position of black corporate law firms during the 1990s have only intensified. On the public side, although blacks continue to hold important elected positions in local and state government—and blacks like Colin Powell, Condoleezza Rice, and Barack Obama continue to break barriers on the national level—the combination of mounting deficits and growing criticism of set asides and other minority programs has made public work less available—and when available, less profitable—than ever before for minority lawyers. Prospects are little better for building a national black corporate firm on the basis of the “elephant” of private work from large corporations. Notwithstanding the increased emphasis on diversity in corporate America, the law *firms*—as opposed to individual lawyers—that represent corporate clients are becoming increasingly homogenous. In an effort to cut costs and increase control, most companies continue to slash the number of law firms to which they give significant work. Those who receive a coveted spot on this list of preferred providers are expected to provide the kind of national—and increasingly global—coverage that even the largest of the minority firms discussed above would not have been able to provide. Finally, the “war for talent,” with its resulting escalation of associate salaries and competition for successful partners, has made it increasingly difficult for every firm to recruit and retain the best lawyers.²⁰¹ Not surprisingly, minority firms have been particularly disadvantaged by these soaring costs.

Notwithstanding all of these obstacles, however, the dream of creating a national minority law firm has not died altogether. In 2005, a group of eighteen minority firms banded together to form the National Minority Law Group (NMLG) for the purpose of providing, according to their website, “the highest quality of legal services on a national basis to Corporate America.”²⁰² A

200. Interview with Brian Jones, at 91-92.

201. See Leigh Jones, *Law Firms See Benefits Hike With Salaries*, NAT'L L.J., May 28, 2007, at 1 (noting that not only have firms raised starting salaries for first year associates to \$160,000, but many are throwing in other perks like retirement planning and dog walking services as well). Whether these Olympian salaries will actually improve the retention of associates remains to be seen. See Elizabeth Goldberg & Ben Hallman, *To the Moon: Is Raising Salaries the Best Way to Retain Associates?*, AM. LAW., Mar. 2007, at 20.

202. National Minority Law Group Website, <http://www.nmlg.org/about.asp> (last

review of the minority firms that comprise this group, however, makes clear that even this ambitious undertaking is unlikely to develop into the kind of significant black institution that Brian Jones envisioned when he attempted to create a similar network of minority law firms two decades ago. Thus unlike the affiliated firms in Jones's Elephant, most of the black members of the NMLG are relatively small and specialize in one or two areas of practice.²⁰³ Indeed, the only truly "large" law firm in the group is Adorno & Yoss, a 250-lawyer firm with offices in sixteen cities in the United States and Latin America which was started by three Hispanic attorneys in the mid-1980s.²⁰⁴

The fact that the few remaining black corporate firms have chosen to hitch their fate to a network that was the brainchild of Adorno's founding partner and which will inevitably be dominated by that firm and the other large Hispanic-owned firms in the group, speaks volumes about the continuing viability of the dream of creating a significant black corporate firm.²⁰⁵ As Stephen Pugh, of Chicago's Pugh, Jones, Johnson & Quandt acknowledged, the NMLG was formed in part "to answer the question of why we have not been sustaining the minority-owned law firms and why they have been vanishing"—a fact that undoubtedly encouraged Mr. Pugh's firm to form an alliance with Chicago's 700-lawyer Sonnenschein Nath & Rosenthal in 2004.²⁰⁶

As we have seen, the history recounted above goes a long way toward answering Mr. Pugh's question. It also, however, provides some important clues about whether an organization like the NMLG—or, for that matter, the

visited Mar. 20, 2008).

203. For example, Brown & Hutchinson, which claims to be western New York's largest minority-owned firm, *see* Brown & Hutchinson, <http://www.brownhutchinson.com/article-03.htm>, has eleven attorneys and specializes in civil litigation, *see* Brown & Hutchinson, Overview, <http://www.brownhutchinson.com/overview.htm>. By contrast, at its apex in the early 1990s, Bill Patterson's New York firm had almost thirty lawyers and was looking to open offices in Washington, D.C. and other cities. Interview with Bill Patterson, at 19.

204. *See* Adorno & Yoss, About Us, <http://www.adorno.com/about.asp> (last visited Apr. 10, 2008). Even Adorno has experienced its share of bumps and bruises on its way to building a truly national minority firm. *See* Jessica M. Walker, *Adorno & Yoss Trumpets Diversity but Loses Practice Groups in the Process*, DAILY BUS. REV., Feb 13, 2006.

205. *See* Jerry Crimmins, *Minority Firms Unite to Serve Corporations*, CHI. DAILY L. BULL., Sept. 19, 2005, at 1 (noting that Hank Adorno and Stephen H. Pugh of Chicago's Pugh Jones were the driving force behind the network and that at one point they tried to merge all of the participating firms into a single law firm). In addition to Adorno & Yoss's 250 lawyers, three other Hispanic-owned firms—Escamilla & Poneck, Inc. (39), Gonzales Saggio & Harlan (50), and Sanchez & Daniels (40)—provide another combined 130 lawyers to the 500 attorneys that the NMLG claims are part of the network. Of the remaining firms, only Chicago's Pugh Jones has more than twenty lawyers. National Minority Law Group, Member Firms, <http://www.nmlg.org/firms.asp> (last visited Mar. 17, 2008). As indicated below, Pugh Jones has entered into a long-term alliance with Chicago's Sonnenschein Nath & Rosenthal. *See infra* note 206.

206. Crimmins, *supra* note 205. On the alliance between Pugh Jones and Sonnenschein, *see* Molly McDonough, *Teaming Up for Diversity: Big Firm, Black Firm Form Alliance to Catch More Business*, A.B.A. J. EREP., July 23, 2004, at 29.

joint venture between Mr. Pugh's firm and Sonnenschein—is likely to succeed. I conclude by highlighting some of these lessons and by examining what might be lost if black corporate law firms such as Mr. Pugh's were indeed to “vanish” from the legal scene.

IV. PARADISE OR PARADISE LOST?

From the perspective of integrating the bar as a whole, it is easy to see why many might view the death of the dream of building black corporate firms as a cause for celebration rather than mourning. After all, black corporate firms were started as a result of either express discrimination or the more covert but equally exclusionary ethos that continued to make many black lawyers feel unwelcome in majority firms even after the express barriers to their entry had been removed. Viewed from this perspective, the fact that these firms are now disappearing, in part because majority firms are under increasing pressure to improve their own diversity numbers, looks like an important sign of progress.

Indeed, the case for abandoning the idea of creating *black* corporate firms might seem even more appealing than the transformation of what were once considered *Jewish* corporate firms into corporate firms *simpliciter* over the last half of the twentieth century. As Eli Wald chronicles elsewhere in this Issue, the fact that my students no longer think of firms like Weil Gotshal or Kaye Scholer as “Jewish” law firms is one of the bar's greatest success stories—just as the bar can justifiably celebrate the fact that there are now as many Jewish lawyers in formerly “WASP” firms such as Cravath and Sullivan & Cromwell as there are gentiles in firms like Weil Gotshal.²⁰⁷ Moreover, unlike their Jewish counterparts at midcentury, which Wald describes as Jewish only in the sense that they were populated primarily by Jewish lawyers, black corporate firms embraced an expressly *racial* identity. In a world in which many whites, and more than a few blacks, reject the idea of race consciousness, institutions where race plays such a central role in their organization and mission may seem to many to be a product of a world we should want to escape.

Even if one accepts this view, however, there are still important lessons to be learned from the fate of those who sought to create viable black corporate law firms—both for the few black lawyers who continue to cling to some part of the dream of creating such institutions, and for the many who now seek to build their careers in majority firms. Moreover, if black corporate firms are indeed headed for extinction, it is worth asking whether the important roles that these institutions have played for black lawyers and for the black community as a whole are likely to be performed in their absence. One can begin to get a

207. See Wald, *supra* note 8. Notwithstanding this important progress, however, Heinz et al. note that as of 1995, ethno-religious segmentation had not entirely disappeared. Jews, for example, were still somewhat underrepresented in some high-prestige areas of legal practice (for example, securities law) and overrepresented in some low-prestige areas such as criminal defense and divorce. See HEINZ ET AL., *supra* note 62, at 288-89.

sense of both these issues by taking a closer look at one of the few black corporate firms that managed to end the 1990s larger and more prosperous than it began the decade.

A. Lessons from a Survivor

With few exceptions, the black corporate firms that have continued to prosper in the new century are not the ones that had the most ambitious dreams for expansion in the 1990s. Instead, it has been the highly focused and often specialized boutique firms that have tended to do the best.²⁰⁸

Earl Langly's Neotraditionalist firm is a case in point. Langly's firm is one of the few that I visited that is larger today than it was in the early 1990s. The reason for the firm's success can be traced to Langly's shrewd decision to eschew many of the easy opportunities that ended up undoing other minority firms. "We don't market affirmative action," Langly told me bluntly. "Historically, there was no affirmative action when I started and therefore whatever reputation was built, we build in spite of the obstacles." This long historical lens allowed Langly to resist the siren call of programs like the ABA's Minority Counsel Demonstration Project and the RTC's Minority Counsel Program:

When the opportunity came where you could increase the business by participating in programs and marketing yourself as an efficient, minority firm, I declined—much to the distress of others in the firm. I thought in the long run it would not be profitable—that in the long run affirmative action would not be as popular as it was then—and as a result you would have built yourself up predicated on a base that was really quicksand.²⁰⁹

As we have seen, Langly's pessimistic predictions came true for far too many aspiring black corporate firms.

Instead of expanding on the shifting sands of "minority" work, joint ventures ("we don't do them!"), or the "drippings and leftovers" that corporations like General Motors and Sarah Lee were willing to hand out to minority firms, Langly chose to keep his firm small and specialized.²¹⁰ "We'd like to think that people come to us because we are the best at what we do," he told me with pride, "which means you can't do a lot of things. You have to get a specialty and stay in it."²¹¹ For Langly's firm, that specialty is municipal

208. The Cochran Firm, named after the late Johnny Cochran who achieved national prominence in the O.J. Simpson case, has also been successful in recent years. This firm, however, specializes in plaintiff's work (often against the very large corporations that black corporate firms hoped to defend) and in any event is little more than a franchise-based amalgamation of independent firms. See Justin Scheck, *LA Firm Brings Johnnie Cochran Name to San Francisco*, RECORDER, Apr. 21, 2005 (noting that some of the lawyers in the Cochran Firm continue to practice at other firms).

209. Interview with Earl Langly, at 3.

210. *Id.* at 9.

211. *Id.* at 3.

law, particularly zoning issues. “We have seventeen lawyers,” out of the twenty in the firm when I interviewed Langly in 1999, “specializing in municipal law. There’s almost no place you can go to get that.” Equally important, Langly insisted, was the firm’s size and cost structure. “Because you are small, you can operate at a lower cost level and give your clients the best service at a lower cost.” But in order to do so, Langly emphasized, actually keeping costs down is essential:

A basic rule in any business is you can’t get ahead of your capital. If you do, you can’t have two or three bad months, which we all have. If you have to say that there’s any discrimination with respect to the growth of minority professionals, I would say it’s lack of capital.²¹²

Once again, as Bill Patterson acknowledged above, this essential truth was often overlooked by more expansionist firms.

As a result of these shrewd decisions, Langly’s firm—as opposed to so many others—“did well” in the aftermath of the 1991 recession and grew slowly but steadily during the rest of the decade. Notwithstanding this success, however, Langly began the new century intent on sticking to his proven strategy: “We’re getting larger,” he confided to me, “and it’s getting to be a problem. Business is so good that you can’t turn it down. Would we make more money if we had five more lawyers? Probably so. But we’re committed to staying small”—perhaps, as he acknowledged with a laugh, “because of all the down times I’ve known and worrying about paying the rent.”²¹³

The success of Langly’s firm raises several important questions for both the NLMG and the kind of joint venture being pursued by Pugh Jones and Sonnenshein.²¹⁴ Both strategies, as we have seen, have been tried before.²¹⁵ Yet Langly’s firm ended up being far more successful than those who pursued these two paths. It is possible, of course, that the members of the NMLG are more sophisticated than the firms that Brian Jones recruited to be a part of the Elephant, or that the relationship between, for example, Pugh Jones and Sonnenshein, is more equal and therefore less subject to abuse than the joint

212. *Id.* at 5.

213. *Id.* at 14.

214. For another example of a firm pursuing a joint venture strategy similar to the one between Pugh Jones and Sonnenshein, see Press Release, Venable LLP, Law Firms Brown & Sheehan and Venable Form Strategic Alliance (Jan. 4, 2006), *available at* http://www.venable.com/press_releases.cfm?action=view&press_release_id=267 (announcing a strategic alliance between Brown & Sheehan, the largest minority firm in Maryland, and Venable, an Am Law 100 law firm).

215. See *supra* notes 73-74 (describing Brian Jones’ attempt to create The Elephant); Michael K. Frisby, *Odd Coupling: New York Law Firms, One Black, One White, Are Stronger Together*, WALL ST. J., Oct 10, 1995, at A1 (describing a new alliance between Cooper Liebowitz, a minority firm in New York City, and Hughes Hubbard to do work related to Resolution Trust Corporation, the federal agency created to clean up the savings-and-loan crisis). This is just one more reason why it is important to study the historical lessons presented here.

ventures between minority and majority firms in the 1980s and 1990s. But the fact that a focused and specialized firm such as Langley's has been able to stand the test of time when so many others have not ought to remind today's aspiring black corporate firms of the long-term value of independence and expertise.

Indeed, Langly's story—and the contrasting stories of those black corporate firms that attempted to build their reputations and practices on an affiliation with a majority firm—serves as an important cautionary lesson for diversity advocates operating outside of the context of building successful minority firms. In 2005, for example, the Boston law firm of Mintz Levin Cohen Ferris & Popeo undertook a bold strategy to improve its diversity.²¹⁶ Rather than looking to recruit black lawyers one at a time, the firm set about trying to create a “critical mass” by simultaneously hiring a large number of black partners and associates who would work together in the firm's labor and employment practice. Working through a headhunter, in three months the firm hired ten blacks, one Latino, and two whites to create a new team that would work with corporations on employment policies including those relating to diversity. By the end of 2007, however, nearly every one of the minority lawyers that the firm had welcomed with such fanfare just two short years earlier had left Mintz Levin for other opportunities.²¹⁷ Although there are undoubtedly many factors that helped to produce this dramatic turn around, the fact that the newly acquired minority lawyers may never have been fully integrated into the firm as a whole and instead operated much like an independent firm in a joint venture with Mintz Levin likely played an important role.²¹⁸

Langly's story also underscores many of the problems with the common view that the solution to today's diversity issues is simply to convince managing partners that hiring and promoting more minority lawyers is “good for business.” As I have argued elsewhere, this phrase has become both mantra and magnet for diversity advocates everywhere, including those seeking to integrate large law firms.²¹⁹ But much of the “business” that diversity is supposed to bring—work from black elected officials, supplier diversity initiatives from corporations, relationships with black in-house lawyers, the growth in black purchasing power—is exactly the kind of work that Langly felt it best to avoid. At a minimum, the fate of the black corporate firms that staked their future on “marketing affirmative action,” as Langly put it, underscores the danger of relying on policies and practices that are subject to the often fleeting commitment to diversity of key decision makers and which, even when

216. See T.J. DeGroat, ‘Critical Mass’: A Law Firm's Multimillion-Dollar Diversity Investment, DIVERSITYINC.COM, Oct. 20, 2005.

217. See Attila Berry, *Mintz Levin Diversity Bid Falls Apart Minority Group Hired With Fanfare; Most Have Left Firm*, LEGAL TIMES, Dec. 10, 2007.

218. *Id.*

219. See Wilkins, *supra* note 190.

successful, often are not viewed by those who implement them as implicating the core interests of either clients or firms.

As important as it is for today's diversity advocates to learn from the work that Langly avoided, however, those interested in the ultimate values that diversity is meant to produce can learn even more by examining the work that Langly and so many others who dreamed of creating black corporate firms actually did for the black bar, the black community, and ultimately for the cause of justice itself. Specifically, black corporate firms performed three complementary functions that played an important role in the development of the black bar and the black community generally. The first two echo the important role that traditional black law firms played in the era of separate but equal: training black lawyers who were often overlooked by mainstream firms and instilling these new recruits with a sense of pride in their abilities, and serving as a visible and important presence in the black community, providing both financial and tactical support for black causes and issues. In addition to these two traditional benefits, black corporate law firms also frequently served as an effective intermediary between black interests and the still largely white political and business elites with whom the black community must ultimately negotiate. It is this work that is most at risk if the dream of creating viable black corporate firms dies.

B. *Debunking Myths and Saving Souls*

Black corporate firms are justifiably proud of the role that they have played in training black lawyers. As Bill Patterson explained:

We had a lot of great people come in and out of the firm and all of them will tell you positive things about the experience they were able to have there. And we did train. We gave people a lot of opportunity because we always stayed pretty thinly capitalized, so to speak, in terms of person power. So if you were in there, you were working. And if you weren't working, you weren't in there.²²⁰

Indeed, firms like Patterson's were so good at training black lawyers that they ended up playing a key role in debunking one of the central arguments used by large law firms in the 1980s and 1990s to justify their failure to improve on their own diversity: the claim that big firms couldn't "find any qualified black lawyers."²²¹ As Patterson continued chuckling:

My partner who served on the New York City Bar Association Committee on Diversity was famous for saying: "white firms are always saying we can't find any, are there any qualified ones?" But if we get big enough, you won't have

220. Interview with Bill Patterson, at 29; see also Marie Beaudette, *Shattering Stereotypes: Leftwich & Ludaway Is Small and Minority-Owned, But Its Variety of Practices Promotes Loyalty and Staying Power*, LEGAL TIMES, Sept. 22, 2003, at 1 (quoting associates saying that they stayed at the firm because of the excellent training and development).

221. Interview with Bill Patterson, at 28.

to worry about them saying that anymore. We'll take care of their recruiting problems!²²²

Which, as we have seen, they did—to the ultimate detriment of building the kind of large and successful black firm that Patterson and his partners dreamed of creating. But by demonstrating that there were talented black lawyers out there who, with the right training and support, could do work that was the equal of that produced by mainstream firms that claimed to be looking for them, Patterson's firm and the others like it helped to bring about the modest but nevertheless important improvement in the diversity of large law firms that we see today.

But black corporate firms did more than turn out newly validated recruits for large law firms and other traditional legal employers. They also helped to create proud black men and women. As Bill Blakely poignantly explained:

At my old firm, I was headed for disaster. My confidence was shaken and I was asking myself questions that I wasn't supposed to be asking myself at such a young age. [But when I joined the minority firm] I went from being the eighth lawyer on the team . . . worrying about due diligence in dark rooms to having responsibility for transactions that not only mattered to the firm's bottom line but mattered to the very proposition of a black firm demonstrating excellence in the capital markets. It was just a blessing beyond blessing. I love these men like I love my father. They intervened and validated me as a substantive lawyer. But more importantly, put me in a position so that I could validate myself and in turn help them validate their mission.²²³

Ten years later, Blakely credits this experience with giving him the confidence to leave the security of the black corporate firm he joined and to flourish as a lawyer in the general counsel's office of one of the country's leading pharmaceutical companies.

Black corporate law firms offered an oasis of comfort and security in what was still an often frustrating and hostile world. Those who worked inside this protected zone "loved it," as Steve Wainwright said of his early experience in Boston's first black corporate firm.²²⁴ Or as Charles Robinson explained when telling me what was hardest about closing down his firm: "It's never been about control. What it has been about is that it is great to be at a place where you don't have to explain most of your jokes. I mean, there is no value that you can put on that."²²⁵

Nor is it easy to quantify the value of the "social engineering thing" that Steve Wainwright rightly identifies as being at the core of the identity of these pioneering black corporate firms.²²⁶

222. *Id.*

223. Interview with Bill Blakely, at 29.

224. Interview with Steve Wainwright, at 58.

225. Interview with Charles Robinson, at 91.

226. Interview with Steve Wainwright, at 59.

C. The New Social Engineers

Black corporate law firms were clearly in business to make money. But the mission also involved giving back to the communities they served. In its most elemental form, this often involved raising money for black politicians and causes. As Bill Patterson explained, “We raised an awful lot of money for black politicians, mostly out of our own pockets.”²²⁷ Or as Earl Langly lamented, “almost every night we are . . . required to go someplace. Every benefit. Every fundraiser. We’re supposed to go—and to give. We spend a lot of money in donations and a whole lot of effort, but all of that is part of being seen and being there.”²²⁸ To be sure, Patterson and Langly hoped that their firms would benefit from the contacts and good will that they expected their contributions to bring. It is also evident that the black community benefited from these good works as well.

As important as financial contributions are to the health of the black community, however, Langly made clear that in his view the most valuable service he performs is to act as a liaison between the black community and the leaders of the city’s white power structure to whom Langly’s status as one of the new breed of black corporate lawyers provides access. “My main involvement,” Langly succinctly stated, “is in bringing the business aspects of the minority community into everywhere we have connections.”²²⁹

Precisely because they were trailblazers, the black lawyers who started corporate law firms were often the only blacks with a seat at the table. As Bill Patterson underscored:

Very frequently, we were the only ones in the room—the deal room, the courtroom, or any other room we were working in. We helped to change that scenario by bringing other people in with us and giving them experience and exposure in all of those various places. People knew us and we were quite an institution in the city. . . . We were right in the middle of things that we thought we had some opportunity to influence.²³⁰

Two stories told to me by Earl Langly underscore just how important this voice has been—both to black business and community leaders and to the white politicians and business people who increasingly have to interact with these black leaders. As indicated above, Langly has worked assiduously to cultivate a reputation as one of the finest land use and zoning lawyers in the city. As a result, he is often contacted by developers seeking city approval for their projects, particularly when these projects are located in largely minority communities. Although this might seem to be just the kind of work that a firm like Langly’s needs to survive and prosper, he tells me that he ends up turning a great deal of it away:

227. Interview with Bill Patterson, at 48.

228. Interview with Earl Langly, at 12.

229. *Id.* at 13.

230. Interview with Bill Patterson, at 48.

A lot of developers will come to us. But if we think that they are trying to use us for a project that is not in the interest of the black community, we will turn them down. If the developer does not have the philosophy that minorities must be hired to work on the job and that there has to be a strong minority presence, then we will not do the work. We as a firm are going to make representations about the fact that minorities are going to be let into the deal and we want clients who are going to back us up. Often when we talk to them they understand this. But if they are just looking for ways not to have an affirmative action program, then we prefer that they go someplace else.²³¹

Langly made clear to me, however, that the communication needs to go both ways. Unlike some of the other black lawyers who have built their new firms on public business, Langly has not used raising money as the primary way of showing his value to elected officials. Instead, as he told me, “I try to figure out what I can do that is unique that will make a public client want to come to you.” When a white politician with whom Langly had a longstanding relationship was elected to high political office, replacing a popular black incumbent, Langly saw a unique opportunity to help both a potential new client and his own community. “I invited twenty leading black businessmen to a dinner,” he confided. As a testament to Langly’s stature in the black community, “everyone came. Everyone was on time.” The purpose of the meeting was to open up a dialogue between parties who had been wary of each other. Langly told the newly elected official that “we don’t want you to make a speech. We want you to talk about the issues.”²³² The evening was a smashing success for all involved. As Langly tells me proudly, “it was good for the minority community, which makes me feel proud about it.”²³³ But the newly elected white politician with few connections to the black community was thrilled as well. “He got to have an informal session where he got to talk about schools and crime and drugs on a face-to-face basis with those who are most concerned about these issues.”²³⁴

Langly also got something important out of that evening—something that went far beyond whatever business he may have received as a result of his role in putting the event together. He also had the opportunity to set the agenda—to *decide* how he and his firm were going to spend whatever capital they had in trying to bring about a better world. Perhaps more than anything else, it is this power that will be missed the most if indeed the dream of developing significant and sustainable black institutions dies forever.

D. *The Vanishing Black Institution*

One can applaud all of the contributions made by black corporate law firms

231. Interview with Earl Langly, at 19.

232. *Id.* at 4.

233. *Id.*

234. *Id.*

during their brief but brilliant existence and still believe that the time for such institutions has rightly passed. After all, many traditional black institutions that were formed as a result of discrimination and exclusion have suffered a similar fate. Although some blacks bemoan this reality, many others consider this to be a sign of progress.²³⁵ Integration, not segregation, ought to be both the goal and the standard by which we measure success.

In general, I am quite sympathetic to this position. As I have written extensively elsewhere, opening up large law firms and other institutions of power and prestige in this society to black talent—and black ideas—holds the best promise for advancing the interests of the black community and the wider community in which we all live.²³⁶ Nevertheless, it is hard not to feel that something important is lost when ambitious and talented black lawyers like Brian Jones, Charles Robinson, and Bill Patterson abandon the dream of building stable and successful black corporate law firms of significant size and scope.

Unlike their Jewish counterparts, the story recounted in these pages is not one of success and transformation, at least not in any straightforward way. Weil Gotshal continues to flourish, if not quite as a distinctly Jewish firm, then as a living testament to the hard work and entrepreneurial genius of the Jewish lawyers who created it and built it into a powerhouse capable of shaking traditional WASP firms out of their anti-Semitism and complacency. Whatever one thinks of the progress made by both traditionally WASP and Jewish firms in the area of racial diversity, few would assert that the need to shake these institutions out of their complacency has passed. Minorities in general—and blacks in particular—continue to leave elite law firms in disproportionately large numbers, just as partnership rates for these groups remain agonizingly small.²³⁷ Given this depressing reality, is it really so clear that there is no longer a need for a place where a disenchanting and humbled big-firm dropout like Bill Blakely can be trained in an environment filled with “talented but purposeful black lawyers” who see their mission as saving souls as well as turning profits?

By the same token, will those black corporate lawyers who now spend most or all of their careers inside predominately white law firms continue to

235. Compare Derrick A. Bell, *Bell, J., Dissenting*, in WHAT BROWN V. BOARD OF EDUCATION SHOULD HAVE SAID: THE NATION'S TOP LEGAL EXPERTS REWRITE AMERICA'S LANDMARK CIVIL RIGHTS DECISION 185, 185 (Jack M. Balkin ed., 2001) (arguing that it would have been better if the Supreme Court affirmed *Plessy v. Ferguson*), with ORLANDO PATTERSON, *THE ORDEAL OF INTEGRATION: PROGRESS AND RESENTMENT IN AMERICA'S "RACIAL" CRISIS* (1997).

236. See, e.g., David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981, 1991-92 (1993) (noting the potential social justice benefits of black lawyers working in corporate law firms).

237. See generally ELIZABETH CHAMBLISS, *MILES TO GO 2004: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION* (2004).

have the connections to, and interest in, the black community that those who sought to build black corporate firms maintained? To be sure, all black lawyers are less likely today than they were a generation ago to live and work in the black community. But those who work in major corporate firms often have fewer ties to traditional black communities and organizations.²³⁸ Certainly, few have the deep connections that Earl Langly and Bill Patterson developed both out of necessity and conviction. In the absence of these connections, will these black corporate leaders continue to play the leadership and intermediary roles in the black community that lawyers like Langly and Patterson have played?

And even if they do—and my research suggests that many black lawyers in established large law firms are taking up this challenge—there will nevertheless remain one important difference between the platform from which they launch these efforts and the one from which their Neotraditionalist, Start-Up, and Dropout predecessors operated from in the heyday of the new black corporate firms. With rare exceptions, black lawyers in elite firms will not be in charge of the institutions in which they work—or even their own time or effort within these organizations. Bill Patterson discovered the difference when he left his own firm for the relative safety and larger platform of a fast-growing national law firm. “I still am engaged in community work,” Patterson assured me.²³⁹ But he conceded that “it’s a little more dicey in an environment like this because I’m not as free in the decision-making process about what to do here. I’ve got more people I have to account to than in your own firm environment.”²⁴⁰

Dicey, unfortunately, can quickly turn to devastating, as many black lawyers working in large law firms have discovered. As I have documented elsewhere, pro bono is tolerated—even encouraged—at many large law firms, but only if it fits within the established guidelines set out by partners and is consistent with the firm’s profit-making goals.²⁴¹ As a result, blacks in these institutions may play a role in *shaping* the kinds of causes that firms will embrace, but given their status as minorities—often very small minorities—they will almost never have the opportunity to *decide* these questions for themselves. Nor will black lawyers have the primary *responsibility* for dealing with the consequences of deciding these often contested and difficult matters, let alone the *power* to impose their decisions on whites. Yet in black corporate law firms black lawyers had all three of these things, albeit only within their own limited sphere of influence. The loss of this state of affairs, as Heather Gerken argues in the context of democratic theory, should not be

238. I document this lack of participation in black bar organizations in Wilkins, *supra* note 61, at 66.

239. Interview with Bill Patterson, at 48.

240. *Id.*

241. See Wilkins, *supra* note 61, at 76 (chronicling the experience of Charlene Grant, who was told when she brought in a controversial pro bono client, that the firm would not allow her to “bring a skunk” to the party and that partners were there “to make money”).

underestimated.²⁴²

Consider, for example, the decisions that black lawyers made when they had the power do what they almost never can do as “minorities” in major corporate firms: select the lawyers who would constitute the organization. Although the firms profiled in this Article were typically known as “black” (or at best “minority”) corporate firms, most of these organizations were far more integrated than any of their “majority” counterparts. Brian Jones’s firm, for example, was never more than seventy-five percent minority, and many of these lawyers are Hispanic and Asian. “Our vision,” Jones told me emphatically, “was to be one of the most thoroughly integrated law firms in the country.”²⁴³ Similarly, in its heyday, only about half of the forty-five to fifty lawyers in Charles Robinson’s firm were black.²⁴⁴ Even Freddy Shoemaker, who confided that he put a premium on hiring black lawyers so that his firm could never be accused of being a “bullshit black firm” that was simply feigning minority status to gain access to set-aside programs and other forms of affirmative action, made it clear that it was a point of pride that his firm was open to any lawyer of talent who was willing to roll up his or her sleeves and do the work.²⁴⁵

Although the difficulty in attracting black lawyers with the credentials and experience made hiring whites and other minorities an economic necessity for many black corporate firms, for most of those who founded these institutions there was a deeper point of principle involved. As Sam Wrightfield explained, “I came out of government and I saw the value of diversity in a firm. We started with a black, a white, a Chinese American, and an openly gay lawyer. We made a statement that I am proud of in the legal landscape.”²⁴⁶ It was a statement that Wrightfield also hoped would be good for business.

It is easy to talk about how diversity is good for business. It is quite another thing to actually put this slogan into practice. Black corporate law firms not only allowed black lawyers to experience both the perquisites and the responsibility of being in control, but also gave these entrepreneurs the opportunity to develop their own understanding of the moral justification for building a diverse firm—and how the resulting diversity might also play a role in the firm’s economic success. As Wrightfield went on to explain:

242. See Gerken, *supra* note 14, at 1800-01.

243. Interview with Brian Jones, at 91.

244. Interview with Charles Robinson, at 84.

245. Interview with Freddy Shoemaker, at 39-40. As I discovered, the risk of being perceived as a black front trying to take advantage of various affirmative action programs intended to help minority firms was a very real one. Sam Wrightfield, for example, found himself working for a “minority” branch of a large law firm that was little more than a mail drop to get access to RTC work. As he confided “I thought we were either going to make it big or end up on *60 Minutes!*” After a few months, the “firm” fell apart when the Hispanic lawyer who was supposed to be the face of the operation turned out to know absolutely nothing about practicing law. Interview with Sam Wrightfield, at 81-87.

246. Interview with Sam Wrightfield, at 112.

The big law firms are traditional, and virtually all white and male. They do the same thing. They think the same ways and they sort of have the same machine. But we were a reflection of the way a lot of people look in society. You have a more dynamic process when you have a lot of different peoples and cultures contributing to it. It's just simply richer. And, quite frankly, it provides more access too.²⁴⁷

By building their own law firms, the black entrepreneurs profiled in this Article had a chance, in Professor Gerken's words, to "remap[] the politics of the possible,"²⁴⁸ not just for themselves, but perhaps even more importantly, for those whites who worked in these institutions and who interacted with them. Whites rarely have the "opportunity" to experience what life is like in institutions where members of their own group are not in control. The fact that black corporate firms were both integrated and influential gave many whites their first real contact with this alternative reality. Given the economic, political, legal, and social changes chronicled in Parts III and IV, however, it seems likely that the organizations that may have best modeled what a truly diverse workplace would actually look like are unlikely to be a significant part of the institutional diversity of the legal profession itself.

V. CONCLUSION: TO REACH THE UNREACHABLE STAR

In the last analysis, as Brian Jones astutely recognized, black corporate law firms like his may be destined to a fate similar to that of the country's historically black colleges and universities (HBCUs) in a world of at least formally integrated higher education. Like the black corporate firms profiled in this Article, there is ample evidence that HBCUs continue to play a vital role in addressing issues of critical concern to the black community while providing a supportive environment that enables certain black students to thrive and to develop leadership capabilities that they might not exhibit had they gone to schools that are not focused on this mission.²⁴⁹ Moreover, HBCUs, like their law firm counterparts, were among the first to integrate and remain among the nation's most integrated learning environments with respect to both students and faculty.²⁵⁰ And yet, as Jones acknowledged, "many HBCUs are struggling to keep up the physical plant and to attract top level students."²⁵¹

247. *Id.*

248. Gerken, *supra* note 14, at 1766.

249. See *A Bold Effort to Measure the Nurturing Environment at the Black Colleges and Universities*, 17 J. BLACKS HIGHER EDUC. 49, 49 (1997) (describing the "hands on" nurturing environment at HCBUs); Herman R. Branson, *The Hazards in Black Higher Education: Program and Commitment Needs*, 56 J. NEGRO EDUC. 129, 130 (1987) (discussing the importance of HBCUs and how they are adapting for the future).

250. See *It's America's Black Colleges that Have the Nation's Most Racially Diverse Faculties*, 36 J. BLACKS HIGHER EDUC. 62, 62 (2002) (discussing faculty diversity at black colleges).

251. Interview with Brian Jones, at 91.

In the years since Jones and I spoke, there has been a concerted effort to preserve HBCUs as a vital resource for the black community. It is doubtful, however, that anything like the same effort will be put into preserving black law firms. And the history of the ABA's Minority Counsel Demonstration Project recounted above suggests that the modest efforts that are being made today to preserve these institutions, such as the National Minority Law Group, will have a hard time counteracting the demand and supply pressures that undermined the effort to build significant black corporate law firms at the end of the last century.

Given this reality, Bill Patterson may very well have been right when he told me that black corporate firms were important—but only if the dream of creating a successful one could be achieved. “I don't think it is important for people to run the race and not achieve it,” Patterson told me with more than a trace of sadness:

What we want is the power, the influence, the forum and the voice that comes with having an institution that's capable of generating the kind of revenue and has the kind of contacts and relationships that you have to have to draw that kind of revenue in. That's what you want it for, to be the strong voice. But if you can't generate the revenue then you are not going to have that. So why bother? So it would be important but I don't know if it is achievable. So until there's a mindset change in corporate America—or until some of these black-owned companies that really make it big decide to really support some group of black lawyers where you can get that sort of guarantee of real income, I just don't know if it is doable.²⁵²

But then, just when I thought he was finished, he leaned forward with a smile and said “but oh, would it be nice!”²⁵³

For a time, it almost was.

252. Interview with Bill Patterson, at 47.

253. *Id.*

