

Moving Beyond The Partner Track

Sameera Mangena[†]

There is a pervasive belief in the United States that if you work hard, you will succeed. Many attorneys, particularly minority associates, have internalized this ethos by putting their heads down and racking up billable hours, despite narratives that suggest hard work is far from sufficient for advancement. *The Partner Track*, a novel by Chinese-American attorney Helen Wan, explores the complexities of this dynamic in the context of a major Manhattan law firm. As she tells the story of Ingrid Yung, a Chinese-American attorney on the cusp of partnership, Wan recognizes that promotion of an Asian woman to partner is unlikely in major law firms, and that promotion in and of itself is not wholly the result of nor does it result in curing the obstacles faced by minority associates and partners. Her narrative suggests that firms could substantively support minority attorneys¹ with initiatives that address underlying racial and gender dynamics. Reoriented diversity programs could more consciously address those dynamics by instituting more comprehensive mentorship for incoming minority attorneys; more than that, such programs could attract affluent clients and so facilitate profit-making and firm growth, in addition to making marked improvements for minorities.

The Partner Track begins with Ingrid as a senior associate advancing toward partnership at the fictional preeminent law firm Parsons Valentine. After years of high-quality work and assurances from senior partners, she expects a partnership offer within the year.² Other women who joined Parsons Valentine with Ingrid left to start families and embark on other ventures, but she persisted.³ Ingrid is pushed forward by the expectations of

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[†] J.D. Candidate, University of California, Berkeley, School of Law, 2017.

1. It should be acknowledged from the outset that the challenges faced by minorities in law firms are not uniform; black associates, for example, continue to be far more underrepresented in firms, as both associates and partners, than Asians. Additionally, some of the challenges faced by minorities are faced by white women, and of course minority men and minority women, and minority LGBT+ attorneys, face different sorts of challenges. That said, given the complexity of parsing out these multivariate barriers to partnership and the overlap in challenges that these groups face, I will refer largely to minorities generally.

2. HELEN WAN, *THE PARTNER TRACK* 101 (2013).

3. *Id.* at 30.

those who want her to prove that it is possible for a woman, a minority no less, to “make it” in the cutthroat law firm environment.⁴ Ultimately, despite her efforts, Ingrid is denied partnership when a white, male senior associate with a tenuous grasp of the law, but the advantage of being married to the daughter of an important client, is promoted instead.⁵

This overarching narrative of *The Partner Track* illustrates minority attorneys’ career trajectories in law firms. Diversity among groups of decision makers can have benefits for organizations and their constituents.⁶ However, firms continue to have fairly homogenous leadership, with low percentages of non-white partners.⁷ Nationally, 6.05% of law firm partners are minorities.⁸ Firms in major cities tend to exceed the national average; for example, 12.13% of law firm partners in Los Angeles and 10.25% of law firm partners in San Francisco are minorities.⁹ By contrast, smaller cities like Kansas City, MO, and Charlotte, NC, generally have percentages of minority partners below the national average.¹⁰ In some cases, cities with low percentages of minority partners also have populations with low percentages of minorities, but this is not uniform.¹¹ In Charlotte, NC, for example, almost half the population consists of minorities, a percentage not reflected among its law firm partners.¹² Even Los Angeles and San Francisco, however, have low minority representation among law firm partners as compared to their populations, and these averages mask the reality that about 30% of firms surveyed had no minority partners at all.¹³

Even more troubling, these statistics do not account for the fact that minority partners are disproportionately non-equity partners, as opposed to equity partners.¹⁴ Non-equity partners are colloquially called “partners without power.”¹⁵ They are formally ranked higher than senior associates but lower than equity partners, are paid on a salary basis, and have little input in firm decisions. By contrast, equity partners (“partners with power”) divide the profits of the firm and are given a proportionally greater

4. *Id.* at 101.

5. *Id.* at 225–30 (2013).

6. Orlando C. Richard, Tim Barnett, Sean Dwyer & Ken Chadwick, *Cultural Diversity in Management, Firm Performance, and the Moderating Role of Entrepreneurial Orientation Dimensions*, 47 ACAD. OF MGMT. J. 255 (2004).

7. Joseph M. Hanna & Soo-Young Chang, *Decisive Moves Still Necessary to Promote Minority Partners*, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/litigation/committees/minority/articles/081910-minority-partners.html> (last visited April 3, 2015).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. David Wilkins, *Partners Without Power? A Preliminary Look at Black Partners in Corporate Law Firms*, 2 J. INST. FOR STUDY LEGAL ETHICS 15, 20 (1999).

15. *Id.*

voice in firm decisions.¹⁶ The National Survey for Law Placement (NALP) reported that in 2013, only 16.5% of equity partners were women and 5.4% were minorities.¹⁷ Comparatively, 27.6% of non-equity partners were women and 9.1% were minorities.¹⁸ This data emphasizes how unlikely it is for attorneys like Ingrid Yung to not only become partners, but “partners with power” who have the clout to make advancing at a law firm easier for those who come after them. When women and minorities continue to be relegated to positions of lesser power, even when they are promoted, they are less able to advocate for minority associates who are candidates for and deserve partnership. They are also less able to implement substantive reforms that could lead to significant increases in minority partners with “power” at major law firms. Accordingly, increasing the number of minority partners at major law firms does not guarantee reform at those firms.

There are other complex dynamics that prevent Ingrid from attaining the partnership she was promised, but also cannot wholly be cured by promoting her and other minorities to positions of power. When Ingrid is asked to manage a top-secret merger, the CEO of the client company immediately dismisses her as incapable.¹⁹ The racial and gender biases involved in this interaction are intertwined and subtle, but Ingrid has clearly dealt with the presumption that as an Asian woman, she is meek and lacks a killer instinct. The CEO does not even begin to listen to Ingrid until a senior partner (a white male) emphasizes that she is eminently capable of handling this assignment.²⁰ Furthermore it is only when Ingrid demonstrates knowledge of details of the deal and articulates a cogent strategy that the CEO fully trusts her and engages her as an equal.²¹ It takes an affirmative demonstration of ability for clients to reevaluate their presumptions of weakness and incompetency in Asian women, as compared to the presumption of competency attached to white male attorneys.²²

The obstacles facing Ingrid become even more stark after a racially offensive skit at a firm outing that prompts Parsons Valentine to recruit Ingrid as the face of its renewed “commitment” to diversity.²³ When she resists this role, a senior partner hints that if she does not take on this responsibility, in addition to her current workload, she will not be offered

16. *Id.*

17. *The Representation of Women and Minorities among Equity Partners Sees Slow Growth, Disparities Remain*, NALP, <http://www.nalp.org/0414research> (last visited April 3, 2015).

18. *Id.*

19. WAN, *supra* note 2, at 24–27.

20. *Id.*

21. *Id.* at 27.

22. *Id.*

23. *Id.* at 69–73.

partnership.²⁴ Now, not only does Ingrid have to overcome greater barriers to being assumed competent, she is expected to take on the mantle of the face of diversity, with very little reward. She gets trotted out for publicity purposes but must continue doing high-quality work on a high-pressure, time-sensitive deal. And ultimately, even though she gets browbeaten into taking on this responsibility and told that her partnership is contingent on her participation, Ingrid is denied that goal.²⁵

These events in *The Partner Track* show that many minority associates and minority partners, particularly women, must overcome presumptions of incompetency and continue doing high-quality work without support systems within or outside their firms. Minority attorneys tend to have smaller networks and are less able to create those networks, with both clients and other attorneys.²⁶ Where white men are more often given the presumption of competence, minorities can find it difficult to establish rapport with clients.²⁷ It takes more for clients to have enough confidence in minority attorneys to establish relationships; minority attorneys are often perceived as less intelligent or less aggressive than a client desires, so those attorneys must affirmatively show the client that they are sufficiently intelligent and aggressive. This problem becomes exacerbated when attorneys do not have mentors to fight for and guide them.²⁸ While a senior partner initially shows confidence in Ingrid, it quickly becomes clear that he is not looking out for her best interests, and manipulates her desire to become a partner. He most notably does this when he browbeats Ingrid into leading the Parsons Valentine diversity initiative, threatening her with his ability to not offer her partnership. Ingrid's relative lack of connections both internally and externally hamper her chances at becoming partner, particularly when there are associates who are so replete with that currency.²⁹ No one offers her advice on how to navigate these situations, and no one in power has an altruistic interest in seeing her promoted to partner.

Crucially, Wan does not view these obstacles as unique to Ingrid, prior to partnership. Wan observes in *The Partner Track* that these institutional obstacles are not limited to minority associates,³⁰ and do not disappear even

24. *Id.* at 97.

25. *Id.*

26. Wilkins, *supra* note 9, at 18.

27. *Id.* at 32.

28. *Id.* at 29–30.

29. One associate, Hunter Russell, gets by doing little and low-quality work because he is married to the daughter of a client. WAN, *supra* note 2, at 116. An intern, Justin Keating, who comes from an affluent background also gets offered opportunities to network with senior partners that Ingrid never gets, despite spending 8 years at Parsons Valentine. WAN, *supra* note 2, at 14.

30. Another senior associate, a white man who does not come from an affluent background, also does not get a partnership offer because it is offered to the aforementioned white male associate who is married to the daughter of a client.

as minorities become partners. Both Ingrid and Tyler, a black, gay associate at Parsons Valentine, ultimately leave the firm; Tyler leaves for an in-house counsel position, and Ingrid leaves to start a new firm. Prior to their departures Ingrid and Tyler have conversations about the impossibility of changing the racial and gender dynamics at Parsons Valentine. They both recognize that partnership will not alleviate those dynamics, and so leave the firm. This decision is common; retention of minority associates and partners continues to be low. Attrition is common among minority partners, who leave law firms at greater rates than their white colleagues.³¹ Many minority partners leave their firms for in-house counsel positions and other equally lucrative positions. This can be attributed to several causes, including the difficulty of minority partners to bring in large clients, a phenomenon that can be traced to the relative difficulty for minority partners to establish connections in the same way that their white, male colleagues can.³² Many current and prospective clients of major law firms are affluent businesses that, like major law firms, are disproportionately led by white men. In addition to having to overcome the perceptions of minorities described above, it can be harder for minority associates to establish relationships with those clients simply by function of looking different and having more varied life experiences.

By addressing these complex dynamics, Wan highlights the futility of approaches that focus solely on getting more minorities into partnership, without addressing the underlying problems. Current diversity efforts by major firms comparable to Parsons Valentine have had some success recruiting minority associates, but those programs tend not to be oriented towards retention or cultivation of minority attorneys. More specifically, they do not support minority associates' efforts to develop internal and external networks that are crucial to success at a major firm.³³ Furthermore, these initiatives may in fact be counterproductive, by allowing firms to tout their commitment to diversity without substantively addressing underlying problems. As a result, it is not surprising that current diversity efforts at major firms have not resulted in significant improvements for minority attorneys.³⁴

These programs should be reoriented to more effectively address these problems, even in firms without many minority partners. Broadly, diversity initiatives should invest more in retention of minority attorneys and their advancement. Ideally a minority partner or senior associate would mentor

31. Wilkins, *supra* note 9, at 20.

32. *Id.* at 32.

33. *Big Law Firms Make Diversity Strides Yet Disparities Still Persist*, MINORITY CORPORATE COUNSEL ASSOC., <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=1889&nodeID=1> (last visited May 19, 2015).

34. *Id.*

every minority associate. This attorney would remain a consistent presence for the associate, advocate for her, and connect the associate to her professional network. Even in the absence of minority partners and senior associates, however, white attorneys can mentor and consistently support minority associates. This is not to say this mentor should not offer critiques when necessary, or reprimand an associate when she makes a mistake; that feedback is necessary for success, so long as it is constructive. With more consistent mentorship, minority associates can more easily develop a professional network and benefit from the long-lasting, comprehensive investment that white, affluent men receive naturally at firms.

Notably, more businesses are asking for diverse representation, and so firms that diversify their partnership in the present position themselves for growth in the future. Firms are first and foremost client-driven businesses. As such, major law firms might have a disincentive to diversify their partnership when, as noted above, many of their clients are businesses led by white men. The number of Asian American CEOs of Fortune 500 companies dropped from 15 in 2011 to 10 in 2014, and African American and Latino CEOs of Fortune 500 companies have declined similarly from previous peaks.³⁵ At the very least client-driven law firms may have minimal incentive to invest in minority attorneys and foster a culture that removes barriers to their success. This argument, however, assumes that these dynamics are not changing. Numerous chief legal officers of companies signed a statement of principle circulated by the general counsel of Bellsouth, in which those companies committed to giving significant weight to firms' commitment to and progress towards diversity when retaining outside counsel.³⁶ Firms do not limit their growth or harm their business prospects by promoting capable minority attorneys, and by doing so, they are poised to market themselves to the growing number of businesses looking for diverse representation.

This approach is not comprehensive by any means; indeed, only large-scale societal change will fully address these problems. It does, however, expand the conversation beyond the dogmatic refrain to increase the percentage of minority partners at law firms of all sizes. It is clear that the story is not that simple. Major law firms can do much more to alleviate underlying racial and gender dynamics at firms, particularly by addressing those factors that keep minority attorneys from experiencing the success of their white counterparts. If we are to see any sort of meaningful improvement in minority representation among law firm partners, we can

35. Richard L. Zweigenaft, *Diversity Among CEOs and Corporate Directors: Has the Heyday Come and Gone?*, WHO RULES AMERICA?, http://www2.ucsc.edu/whorulesamerica/power/diversity_among_ceos.html (last visited April 3, 2015).

36. Charles S. Johnson, III, and Lynne Faith Saunders, *More than Words: Update on Diversity in the Workplace, Statement of Principle*, COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION (2000).

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start by acknowledging that there is a problem, but we must progress from there. Undoubtedly, firms can and should implement long-lasting changes that ensure that success as an attorney does not remain out of reach for anyone, of any race, who works hard for it.

