

Gender and the Social Structure of Exclusion in U.S. Corporate Law

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Law develops through collective effort. A single judge may write a judicial opinion, but only after an (often large) group of lawyers chooses litigation strategies, crafts arguments, and presents their positions. Despite their important role in the legal process, these networks of lawyers are almost uniformly overlooked in legal scholarship—a black box in a discipline otherwise obsessed with institutional detail.

This Article focuses on a particularly crucial way that the structure of professional networks may shape the path of the law. Prior qualitative research suggests that networks are an important source of information, mentoring, and opportunity, and that those social resources are often withheld from lawyers who do not mirror the characteristics of the typically male, wealthy, straight, and white incumbents in the field. We have a common nickname for the networks that result, which are ostensibly open but often closed in practice: “old boys’ networks.”

For the first time in legal scholarship, this Article quantitatively analyzes gender representation within a comprehensive network of judges and litigators over a significant period of time. The network studied is derived from cases before the Delaware Court of Chancery, a systemically important trial court that adjudicates the most—and the most important—corporate law disputes in the United States. Seventeen years of docket entries across more than fifteen thousand matters and two thousand seven hundred attorneys were collected as the basis for a massive network.

Analyzing the Chancery Litigation Network produces a number of important findings. First, we find a dramatic and persistent gender gap in the network. Women are not only outnumbered in the network but also more peripheral within it

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compared to men. Second, we find that law firm membership and geographical location interact with gender—women’s positions within the network differ by membership in certain firms or residence in particular geographies. Finally, as we drill down into the personal networks of individual women, we find arresting evidence of the social barriers female Chancery litigators regularly confront: from working overwhelmingly—sometimes exclusively—with men in the early years of their careers to still being shut out of male-dominated cliques as their careers mature.

The Article’s findings set the stage for subsequent research to test the connection between gender representation in litigation networks and discrete outcomes, such as the incidence of bias in judicial opinions. It also demonstrates how subsequent research can incorporate network structure into quantitative and qualitative studies of not only gender bias but also other forms of inequality in law. With respect to policy, it provides the necessary first step to crafting normative interventions that improve equitable access to social resources by making networks more empirically concrete. With that added clarity, the network approach then allows us to calibrate remedial options available to bar associations, law firms, and individual attorneys, leaving no level of the institutional setting untouched.

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INTRODUCTION

A familiar argument, with origins in Legal Realism, is that *who* decides cases matters for the development of the law.¹ In varying degrees, judges bring their heuristics, biases, and political commitments to the bench.² Of course, the “who” of legal development is not limited to the judiciary. Jurists are situated within a broader political economy where interest groups shape litigation strategies. As attorney Felix Cohen memorably put it some time ago, “[a] judicial decision is a social event.”³

Between the solitary jurist deciding a given case and the full social milieu operating within the broader arc of history, there is a crucial institution that is often overlooked. A judicial opinion is the outcome of a collective endeavor that includes not only a judge (or panel) but also judicial law clerks, legal counsel, and experts. This network of professionals is the connective tissue between the judiciary and society, providing the transmission belt by which interests are translated into legal arguments.

The structure and characteristics of these professional networks may then matter in the development of the law. The individuals frequently included in these networks may have significant influence on legal evolution. That influence may accumulate as repeatedly participating in the network gives an attorney more connections and, in turn, greater access to information and experience. Of course, the opposite may also be true. Whoever is excluded from these networks may have a diminished opportunity to affect the law’s trajectory.

This Article illuminates the structure of these networks. For the first time in legal scholarship, it studies a comprehensive network of judges and litigators in a discrete area of law over nearly two decades, mapping the social topology of the litigation process with unparalleled detail.

¹ See, e.g., JEROME FRANK, *LAW AND THE MODERN MIND* 120 (1930) (“If the personality of the judge is the pivotal factor in law administration, then law may vary with the personality of the judge who happens to pass upon any given case.”).

² For an overview of the literature on judicial behavior, see generally Lee Epstein, *Some Thoughts on the Study of Judicial Behavior*, 57 WM. & MARY L. REV. 2017 (2016).

³ See Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 843 (1935) (“A truly realistic theory of judicial decisions must conceive every decision as something more than an expression of individual personality, as concomitantly and even more importantly a function of social forces, that is to say, as a product of social determinants and an index of social consequences.”). For a more recent perspective, see generally Lee Epstein & Tonja Jacobi, *The Strategic Analysis of Judicial Decisions*, 6 ANN. REV. L. SOC. SCI. 341 (2010) (noting that judges consider the preferences and likely actions of other relevant actors—including their colleagues, judicial superiors, and members of the other branches of government—in deciding a case).

Professional networks may affect legal evolution in many respects,⁴ of which this Article considers one: it asks whether women and men tend to have different positions within the professional network, thereby systematically limiting women's influence (and magnifying men's) on the law.⁵ The motivation for focusing on this particular implication of network structure arises from scholarship that continues to probe whether the underrepresentation of women on the bench and in the profession more broadly leads to particularly gendered perspectives emerging in the law.⁶

A growing collection of qualitative studies suggest that networks contribute to the underrepresentation of women—often referred to as the “gender gap”—that arises from lack of access to professional connections.⁷ In the words of a Black woman attorney:

⁴ See generally, e.g., Matthew Jennejohn, *The Architecture of Contract Innovation*, 59 BOS. COLL. L. REV. 71 (2018) (analyzing the role that attorney networks within law firms play in the innovation of mergers and acquisitions (M&A) deal terms).

⁵ This Article often uses binary terms, such as women/men and female/male, throughout its discussion of gender. This focus on women and men reflects this study's methodological constraints, which we discuss in further detail in Part II.D below. We do not wish to exclude other identities and expressions of gender that exist beyond that simple binary. Rather, we hope this study, which focuses on the experiences of women in U.S. corporate governance litigation, is a first step—a launchpad for later work to analyze the exclusion that attorneys with other gender identities experience. Furthermore, the data we collect here and the approaches we take can be used in subsequent work to study not only gender-based exclusion but the effects of bias with respect to race, ethnicity, sexual orientation, class, etc. In short, we hope this Article's limits invite a wide range of future studies on those important adjacent issues.

⁶ Much of business law doctrine has ignored issues of gender. See generally Afra Afsharipour, *Commentary on Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, in FEMINIST JUDGMENTS: CORPORATE LAW REWRITTEN 134 (Anne M. Choike, Usha R. Rodrigues & Kelli Alces Williams eds., 2023); Ann M. Lipton, *Capital Discrimination*, 59 HOUS. L. REV. 843 (2022). For an examination of how gender politics have shaped the foundations of corporate law and corporate governance, see generally Sarah C. Haan, *Corporate Governance and the Feminization of Capital*, 74 STAN. L. REV. 515 (2022). Outside of corporate law, there is a vast literature that examines the connection between gender and judging. See, e.g., Dermot Feenan, *Editorial Introduction: Women and Judging*, 17 FEMINIST LEGAL STUD. 1, 3–7 (2009). See also generally Christina L. Boyd, Lee Epstein & Andrew D. Martin, *Untangling the Causal Effects of Sex on Judging*, 54 AM. J. POL. SCI. 389 (2010); Stephen J. Choi, Mitu Gulati, Mirya Holman & Eric A. Posner, *Judging Women*, 8 J. EMPIRICAL LEGAL STUD. 504 (2011); Christina L. Boyd, *She'll Settle It?*, 1 J.L. & CTS. 193 (2013).

⁷ See, e.g., DESTINY PEERY, PAULETTE BROWN & EILEEN LETTS, LEFT OUT AND LEFT BEHIND: THE HURDLES, HASSLES, AND HEARTACHES OF ACHIEVING LONG-TERM LEGAL CAREERS FOR WOMEN OF COLOR viii–x, 22, 24 (2020). See generally, e.g., ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE (2019); ANNA JAFFE, GRACE CHEDIAK, ERIKA DOUGLAS & MACKENZIE TUDOR, STAN. L. SCH., RETAINING & ADVANCING WOMEN IN NATIONAL LAW FIRMS 31–37 (2016).

[I]n order to ultimately continue advancing, you need to have a partner and/or senior associates that take a liking to you You just know that people tend to gravitate to people who are similar to them, and I know I'm different than a lot of the people at the firm.⁸

Or as another woman attorney noted: "I don't feel like I have anyone in a position of power who can personally relate to me."⁹ In short, despite their merit, women struggle to succeed professionally when they are excluded from networks.¹⁰

This Article undertakes a descriptive analysis of the structure of a network of lawyers that is crucially important to the U.S. economy, as well as women's positions within that structure, raising questions about how that structure may contribute to the exclusion of women from influence. Our study shows that women disproportionately occupy peripheral positions within the network, consistent with individuals' perceptions of exclusion identified in prior qualitative research. Occupying peripheral positions in the network may cut women off from the information, experiences, and mentorship that are readily available to those individuals—overwhelmingly men—within the core of the network. The situation does not improve materially over time. Women tend to occupy peripheral positions in the network in the first year of our sample, and their positions hardly improve by the final year. The problem is widespread and persistent.

The setting for this Article's analysis is a large and systemically important legal market: corporate litigation in the Delaware Court of Chancery (Chancery). Chancery adjudicates many of the most important corporate-governance disputes in the United States, ranging from Elon Musk's efforts to terminate his \$44 billion

⁸ Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear "You Don't Look Like a Lawyer"*, HARV. BUS. REV. (Aug. 7, 2019), <https://perma.cc/5CJB-LFPY>; see also DEEPALI BAGATI, CATALYST REPORT, WOMEN OF COLOR IN U.S. LAW FIRMS 22–30 (2009).

⁹ JOYCE STERLING & LINDA CHANOW, IN THEIR OWN WORDS: EXPERIENCED WOMEN LAWYERS EXPLAIN WHY THEY ARE LEAVING THEIR LAW FIRMS AND THE PROFESSION 16 (2021).

¹⁰ See Olga Stoddard, Christopher F. Karpowitz & Jessica Preece, *Strength in Numbers: A Field Experiment in Gender, Influence, and Group Dynamics* 30 (IZA Discussion Paper No. 13741) (studying student group dynamics in an accounting program, showing that women in groups of men spoke less, were interrupted more, and were perceived as less influential—regardless of the women's superior credentials).

Relatedly, women experience higher levels of attrition within the profession. While women make up nearly half of new law firm associates, few make it to partnership: only 20% of law firm equity partners are women. See Liebenberg & Scharf, *supra* note 7, at 1. The percentage of law firm partners who are women of color is far lower. PEERY ET AL., *supra* note 7, at iii (2020); NAT'L ASS'N FOR L. PLACEMENT, 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS 25, chart 7 (2021).

acquisition of Twitter¹¹ to the Tesla stockholder litigation¹² to the wave of disputes over mergers and acquisitions (M&A) deals busted by the COVID-19 pandemic.¹³ Chancery is also an attractive empirical setting given its specialization and relatively tight-knit legal community. Finally, the court is widely followed by other jurisdictions—the most pressing new issues in corporate governance are typically adjudicated in Chancery, and the rapidity of Chancery decisions keeps the court at the forefront of corporate law and policy.¹⁴ It is not an exaggeration to refer to the Delaware Court of Chancery as the heart of U.S. corporate law.¹⁵

A unique dataset was collected for the study.¹⁶ Seventeen years of Chancery litigation was scraped from docket sheets and supplemented through extensive hand collection. The result is a dataset comprised of 15,077 unique civil actions from 2004 through 2020 involving 2,769 lawyers. For each lawyer in the dataset, gender was predicted,¹⁷ and law firm membership and

¹¹ Kalley Huang, *What Is Delaware's Court of Chancery and Its Role in Elon Musk's Twitter Deal?*, N.Y. TIMES (July 11, 2022), <https://perma.cc/6976-KP4G>.

¹² Lewis H. Lazarus & K. Tyler O'Connell, *M&A, Stockholder Cases to Watch in Delaware Courts in 2022*, BLOOMBERG L. (Jan. 28, 2022), <https://perma.cc/SA8H-6926>.

¹³ Matthew Jennejohn, Julian Nyarko & Eric Talley, *Contractual Evolution*, 89 U. CHI. L. REV. 901, 902–05 & n.16 (2022); Guhan Subramanian & Caley Petrucci, *Deals in the Time of Pandemic*, 121 COLUM. L. REV. 1405, 1407–10, 1435–43 (2021) (providing a review of the unprecedented amount of COVID-19-related merger litigation).

¹⁴ Jill E. Fisch, *The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters* *Corporate Law Symposium: Contemporary Issues in the Law of Business Organizations*, 68 U. CIN. L. REV. 1061, 1074–81 (2000).

¹⁵ As Professor Mark Roe pointed out some time ago, the Delaware courts share this role with the federal government. Mark J. Roe, *Delaware's Competition*, 117 HARV. L. REV. 588, 596–632 (2003).

¹⁶ The only other study of gender representation in litigated cases is Professors Paul Gugliuzza and Rachel Rebouché's recent excellent study on women's and men's relative participation in appellate patent litigation. Paul R. Gugliuzza & Rachel Rebouché, *Gender Inequality in Patent Litigation*, 100 N.C. L. REV. 1683 (2022). Our study focuses on gender disparities in Chancery litigation as, at this stage, we are unable to reliably code for race or ethnicity. Yet we recognize that lawyers of color, and women of color in particular, are vastly underrepresented in law firms. For example, the 2020 National Association for Law Placement's Report on Diversity in U.S. Law Firms found that only 10% of all partners at law firms are people of color, and less than 4% of partners are women of color. Nat'l Ass'n for Law Placement, *supra* note 10 at 25, chart 7. Other scholars have examined the bleak experiences of Black women at elite law firms. See generally, e.g., TSEDALE M. MELAKU, *YOU DON'T LOOK LIKE A LAWYER: BLACK WOMEN AND SYSTEMIC GENDERED RACISM* (2019). We plan on studying these other forms of bias in future research.

¹⁷ As explained further below, we predict gender using the “gender” package in R, a statistical software program. This package predicts gender based on the first name of an individual and gendered-naming trends in U.S. Social Security data. The binary conception of gender used in the software package may be inconsistent with the way any given individual in our dataset identifies their gender. To prevent the personal harm that would result through a misprediction of an individual's gender, all results reported here are anonymized.

office location were collected. Data on the rank (i.e., partner, counsel, or associate) of a subset of lawyers at key Delaware and non-Delaware firms was also collected.

That docket data was then transformed into a social network (the “Chancery Litigation Network”), where judges and attorneys are represented as nodes and links are formed between them when they work on a case together.¹⁸ Standard methods for social network analysis were then deployed to study the structure of relationships within the Chancery Litigation Network at increasing levels of detail, ranging from the macro level all the way down to the individual attorney. Four key findings emerge.¹⁹

First, at the macro level, we examine the network in its entirety to determine the relative “centrality” of women and men within the full network.²⁰ In 2004, women accounted for 23.6% of litigators appearing in Chancery cases. By 2020, that number had only increased to 32.9%.²¹ We find many more men than women among the most connected—or “central”—attorneys in the network of Chancery litigators. Women lack the connections—and the information endowments those connections provide—that men in the network enjoy.

Second, we examine the gender gap over time. We find a significant amount of attrition among women practicing in Chancery litigation over the course of our dataset. For instance, while the percentage of women and men is nearly equal among associate ranks, men vastly outnumber women among partners.²² We find a similar pattern when we examine attorneys’ network centrality: over time, far more men become highly connected lawyers in the network than women.²³

Third, we study how attorneys’ network centrality varies according to the law firm of which they are a member or according to the geographic location of their office. This level of analysis shines light on whether particular law firms or geographies have more (or less) connected women attorneys in the network. We find that the percentage of women and the centrality of those women in the network differs materially by law firm. For instance,

¹⁸ See *infra* Part II.D.1.

¹⁹ Readers are also encouraged to compare our findings with those presented in Andrew Jennings’ insightful, complementary study of the attorneys involved in the *Twitter v. Musk* litigation. See Andrew Jennings, *101 Attorneys: Attorney Appearances in Twitter v. Musk*, 73 DUKE L.J. ONLINE (forthcoming 2023).

²⁰ See *infra* Part II.E.1.

²¹ See *infra* Part II.E.1, fig.6 and accompanying text.

²² See *infra* Part II.E.2, fig.10 and accompanying text.

²³ See *infra* Part II.E.2, fig.12 and accompanying text.

certain law firms such as Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (Skadden) have litigation teams with an above-average percentage of women, while other firms such as Wachtell, Lipton, Rosen & Katz (Wachtell Lipton), have litigation teams with a below average number of women.²⁴ We see corresponding differences in the distribution of women's network connections by law firm. Importantly, however, we find that at times the percentage of women on a firm's corporate litigation team does not correlate with those women's network centrality—for instance, some firms have a low percentage of women, but those women are highly connected.²⁵ We see similar dynamics with respect to geographic location. Over the seventeen years we study, women's greatest gains in connectivity relative to men were found among the New York-based lawyers in the dataset, while women's smallest gains were among Delaware-based attorneys.²⁶

Finally, we drill down into the dataset further to analyze the professional networks of individual attorneys.²⁷ That is, we zoom in on the personal connections a given attorney has from year to year, illuminating the immediate social environment in which that lawyer operates. This level of analysis uncovers powerful examples of the social barriers that women face.

For instance, analyzing the personal networks of individual women shows that men regularly dominate the networks of female Chancery litigators—even the networks of the most highly connected women.²⁸ It is not unusual, particularly during their early careers, for women to work only with men. Relatedly, the men in the personal network of a woman typically enjoy thicker connections to one another, forming a dense gendered subnetwork to which women are only loosely connected. Furthermore, we find that the personal networks of individual attorneys change significantly from year to year. When a female attorney works with women in one year, those women rarely repeat in her personal network the following year.²⁹ Relatedly, while men also experience significant turnover in their personal networks from year to year, one thing is always constant for them: men consistently encounter a large number of other men from matter to matter. That familiarity gives men a potentially valuable social anchor in a

²⁴ See *infra* Part II.E.3, fig.14b and accompanying text.

²⁵ See *infra* Part II.E.3, fig.15 and accompanying text.

²⁶ See *infra* Part II.E.4, fig.16 and accompanying text.

²⁷ The results reported in this Article are anonymized so that no individual judge or attorney is identified.

²⁸ See *infra* Part II.E.5, fig.18 and accompanying text.

²⁹ See *infra* Part II.E.5, fig.19 and accompanying text.

volatile professional environment—a benefit unavailable to women litigating in Chancery.

In summary, this Article illuminates the social network of judges and attorneys that produces the jurisprudence underpinning a major part of the U.S. economy. In particular, it highlights an important aspect in which that network may influence the path of the law. It may restrict opportunities by gender and thereby serve as a conduit for bias entering the legal system.³⁰

One limitation of a descriptive study like this is, of course, that it does not identify causal relationships between network structure and biased outcomes. As a result, one might argue that policymaking directed toward remediating gender imbalances such as those identified here is therefore still flying blind. Our response is that, without the first step that this study provides, we do not even know what type of craft we are trying to fly in the first place, much less the direction we hope to go. By providing a rich descriptive account of the structure of an important litigation network, this study sets the stage for subsequent research directed at identifying correlations and, eventually, causal relationships between network structure and certain outcomes, such as (but not limited to) the incidence of bias in judicial opinions.³¹ In short, a central goal of the Article is to awaken scholarly interest in the important but overlooked role networks play within our legal system. We hope this piece sparks a literature as robust, for instance, as the body of scholarship on judicial decision-making,³² because the broader legal community plays as meaningful a role as our judges.

This Article also contributes immediately to important normative debates about how to improve representation in the legal profession. First, it sheds new light on what remedial steps might be taken to address gender inequality in our legal system. By illuminating the role professional networks play in gender inequality, it raises the critical question of whether network structure

³⁰ In that respect, this Article extends earlier work that analyzed data on women's participation in the M&A advisory market, widely considered one of the most sophisticated legal-services areas. Afra Afsharipour, *Women and M&A*, 12 U.C. IRVINE L. REV. 359 (2022). Analyzing a dataset of seven hundred transactions between 2014 and 2020, the study found that gender disparities in leadership on large M&A transactions exceeded disparities in law firm leadership. For instance, while women make up 20% of equity partners at elite law firms, on large M&A deals women account for approximately 10.1% of lead counsel positions for buyers. *Id.* at 380, 382–83.

³¹ It is also worth noting that the quantitative analysis here is not a substitute for careful qualitative research but rather a complement—a starting point from which to pursue the fine-grained detail that ethnography achieves.

³² For sources that examine the connection between gender and judging, see *supra* note 6.

can be adjusted to pursue more equitable representation. While the evidence above suggests that the inequalities found in networks are durable, the tools introduced here for making network structure visible raise the possibility that networks might be re-wired on a normative basis.

Second, and relatedly, this Article provides a reckoning for existing policy interventions that were meant to reduce the gender gap. The persistence of the gender gap above highlights the inadequacies of some existing policies to reduce gender inequality, but it also suggests what might be more effective going forward.

Third, this Article raises the question of how policy interventions should be used together. By making social relationships more concrete, the network analysis invites us to think more carefully about aligning targeted interventions with discrete remedial goals. Instead of one-size-fits-all approaches, we can develop more nuanced policies. That in turn introduces the possibility of deploying multiple interventions at once. But do policies necessarily work in complementary fashion? Or might one interfere with another? The network approach pursued in this Article provides a framework for approaching that difficult question of what combination of tools should we select from the toolkit.

This Article unfolds as follows. Part I provides a brief introduction to the basics of network structure and how networks affect institutional change. Networks are widely recognized in social science as key institutions but are largely unstudied in legal scholarship. Part II fills that gap in our understanding by reporting the results of the first empirical study of gender representation within a network of legal practice—corporate litigation in the Chancery, the leading court for corporate law disputes in the United States. This Part introduces new data, empirical tools, and findings that open new doors for the study of gender (and other forms of) inequality in law. Part III discusses the implications of the empirical study. Finally, we conclude with reflections on extending this research beyond gender inequality.

I. LAW WITHIN NETWORKS

Although network analysis is a relatively new tool in legal scholarship, it is the subject of a massive literature rooted in sociology but now encompassing economics, physics, and ecology.³³

³³ See generally M. E. J. Newman, *The Structure and Function of Complex Networks*, 45 *SIAM REVIEW* 167 (2003) (reviewing the literature on the theory of complex networks);

Most of what we know about professional networks and the role they play in the development of the law is derived from intuition and casual empiricism. For practitioners immersed in the day-to-day of counseling clients, the importance of relationships and networks may be obvious.³⁴ However, systematic analysis of professional networks is in many respects uncharted territory in legal scholarship.

The idea that networks of attorneys shape legal outcomes is intuitive enough. An institution characterized by complexity—i.e., one with many subparts that interact in nontrivial ways with one another³⁵—requires orchestrated adjustment across its entire system if change is to be successful.³⁶ As the complexity of the system scales, no single individual can manage the various moving parts alone. Rather, labor divides, specialization occurs, and teams of lawyers come together to manage the evolutionary process across the system. It is here where the network rises to the fore. As task forces of attorneys at law firms and agencies coalesce on an issue that spans different domains, institutional change becomes embedded within a social network.³⁷ In that sense, the network serves as the fundamental platform upon which change across different components of the legal system unfolds.³⁸

The law—and particularly corporate law—is embedded in professional networks in that fashion. Reflecting on the Chancery’s central role in U.S. corporate governance, the well-known New York litigator William Savitt has identified the network of lawyers regularly involved in Chancery litigation as a key

MATTHEW O. JACKSON, *SOCIAL AND ECONOMIC NETWORKS* (2010) (providing an overview of social network analysis with a particular focus on economics applications).

³⁴ Legal services is a famously relational industry. Lawyers often work in teams, particularly on complex matters, and advancement often depends upon the relationships one cultivates. For instance, Professor John Coates has noted that legal advice is a “credence good” that relies on the reputational capital that accrues within commercial relationships. John C. Coates IV, *Explaining Variation in Takeover Defenses: Blame the Lawyers*, 89 CAL. L. REV. 1301, 1311–14 (2001).

³⁵ See Herbert Simon, *The Architecture of Complexity*, 106 PROC. AM. PHIL. SOC. 467, 468 (1962).

³⁶ We observe such complexity in our legal system all the time, where developments in one domain require adjustments in an adjacent domain. This may occur within a given representation. For instance, it is not unusual for an antitrust investigation in a major M&A transaction to affect stockholder litigation or contractual claims. Or adjacent doctrines may interact with one another. For instance, changes in a jurisdiction’s pleading standards may affect substantive doctrines, or evolution in one area such as the federal securities regulations may spark changes in another such as Delaware corporate law.

³⁷ See generally Mark Granovetter, *Economic Action and Social Structure: The Problem of Embeddedness*, 91 AM. J. SOCIO. 481 (1985).

³⁸ *Id.* at 506–07.

element to Delaware's success.³⁹ The expertise of the Delaware judges is well known and well earned.⁴⁰ However, unlike a regulatory agency, the Chancery does not have a large internal staff to assist the court in decision-making. Rather, Chancery achieves the market familiarity of a regulatory agency through a combination of "expert decision makers and . . . a cadre of government-supervised enforcement attorneys."⁴¹ That network of lawyers in Delaware assists Chancery in framing issues, analyzing the complex facts in corporate law disputes, and developing decisional law.⁴²

If the connections between attorneys in that network are evenly distributed, then the structure of the network—the distribution of links among participants in the network—and individuals' positions within that structure is unimportant. However, if those connections are distributed unequally, then the network's structure may be crucial, giving some participants advantageous access to information or opportunities that others are denied. In that respect, the shape of the network may affect the extent to which it serves as a transmission mechanism for the information on which the process of institutional change relies.⁴³

To appreciate how network structure shapes access to information and influence in specific settings, we need some basic concepts from network analysis. Our starting point is the simple notion that relationships among individuals, or the "nodes" of a network, can be represented as connections, or "links," among them.⁴⁴

As a network expands, it is common for the distribution of links in the network to differ between nodes. Not all nodes have the maximum number of links possible, and as a result most

³⁹ William Savitt, *The Genius of the Modern Chancery System*, 2012 COLUM. BUS. L. REV. 570, 586, 591–94.

⁴⁰ For instance, the Chancery judges regularly engage with academic-grade empirical work as they craft their decisions. *Id.* at 591–92 ("The members of the Court make time to participate in [academic] conferences dedicated to corporate and transactional law . . . [and] have a long tradition of authoring and responding to scholarly articles on corporate law subjects."); Leo E. Strine, Jr., *The Inescapably Empirical Foundation of the Common Law of Corporations*, 27 DEL. J. CORP. L. 499, 500 (2002) (discussing the necessity of staying abreast of "emerging developments in such areas as capital markets, shareholder activism, SEC regulations, and transactional structures, through active interaction with transactional planners, the print media, and corporate law scholarship").

⁴¹ Savitt, *supra* note 39, at 586.

⁴² *Id.*

⁴³ See John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOCIO. 340, 348–49, 352 (1977); Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOCIO. REV. 147, 148 (1983).

⁴⁴ "Nodes" and "links" are likely familiar to anyone who uses social media—for instance, one's friends on Facebook or followers on Twitter are the nodes in one's social network, and liking or commenting on posts is one way links between nodes may be formed.

networks are incomplete, or partially transitive.⁴⁵ Because some nodes have many links and others have only few, networks have “structures,” which are patterns in which nodes in a network are connected to one another.

The unequal distribution of links in a network has two important implications. First, network structures may differ from network to network.⁴⁶ Information often flows differently through different network structures. The second implication of network structure relates to the individual nodes within a network. An unequal distribution of links in a network means that nodes’ positions within the structure of the network differ. For instance, some nodes may be more central within the network than others—i.e., some nodes may have many connections to a widespread number of nodes and therefore be at the heart of a network, while others may have few connections and be relegated to the periphery. Or some nodes may be “brokers” between two clusters within a network, while other nodes may be thickly embedded within one of the two clusters.⁴⁷

To date, very little scholarship has applied even these basic concepts of network analysis to legal phenomena.⁴⁸ Complexity is

⁴⁵ JACKSON, *supra* note 33, at 28.

⁴⁶ Not all networks are alike, though they may fall, more or less, into some common categories. To get a sense of the possibilities, it may help to begin with the extremes. First, imagine a network in which each node in the network is connected only to two immediate neighbors, with links running through the network like a daisy chain. Second, on the other extreme, imagine a network with the exact opposite characteristics. Instead of being only connected to near neighbors, nodes are connected to one another randomly, so that it is equally likely that a node will be connected to its immediate neighbors as to far distant nodes on the other side of the network. Third, many networks inhabit a zone between these two extremes, where network structure exhibits internal clustering (some nodes are more connected than others). We encounter these clusters all the time in social life—for example, think of the different cliques that often exist within the social network of a U.S. high school. *See generally, e.g.*, THE BREAKFAST CLUB (A&M Films 1985) (providing an example of when members of those separate cliques interact). For further discussion on variation in network structure, see Robin Cowan, *Network Models of Innovation and Knowledge Diffusion*, in CLUSTERS, NETWORKS, AND INNOVATION 34–37 (Stefano Breschi & Franco Malerba eds., 2005).

⁴⁷ For instance, although centrality measures are the subject of a massive literature, Professor Ronald Burt persuasively argues that nodes occupying “brokerage” positions between two or more clusters within a network enjoy unique information endowments and influence. RONALD S. BURT, BROKERAGE & CLOSURE: AN INTRODUCTION TO SOCIAL CAPITAL 7, 16–19 (2005).

⁴⁸ Professional networks are a longstanding subject of study in the social sciences. *See generally, e.g.*, Luc Renneboog & Yang Zhao, *Director Networks and Takeovers*, 28 J. CORP. FIN. 218 (2014) (studying corporate director networks and their relationship to takeover activity); Marcus Antonius Ynalvez & Wesley M. Shrum, *Professional Networks, Scientific Collaboration, and Publication Productivity in Resource-Constrained Research Institutions in a Developing Country*, 40 RSCH. POL’Y 204 (2011) (studying the relationship between collaboration, professional networks, and research productivity among Filipino

a hallmark of the modern legal system, but one of social science's primary tools for illuminating complexity and rendering it tractable remains largely unexploited. In that respect, legal scholarship sits at the edge of a broad, open intellectual frontier.

Because the use of network analysis in law is so young, legal scholarship lacks the most basic building blocks for progress: we do not have detailed analyses of the characteristics of many networks that are relevant to the law. Perhaps the longest-standing line of legal scholarship incorporating network theory is the work on relational contracting, though even there empirical analysis of transactional networks is in its infancy.⁴⁹ Additional work is

scientists); Michael D. Siciliano, *Professional Networks and Street-Level Performance: How Public School Teachers' Advice Networks Influence Student Performance*, 47 AM. REV. PUB. ADMIN. 79 (2017) (analyzing public school teachers' professional networks and their relationship to student outcomes).

A young but growing body of research incorporates network analysis in the study of legal issues. Professors Maria Lucia Passador and Alessandro Romano make a convincing argument for legal scholars to invest in network analysis and provide a useful introduction to its conceptual principles and applications, focusing primarily on corporate law. See Maria Lucia Passador & Alessandro Romano, *Why Legal Scholars Should Study Network Theory* (Feb. 27, 2022), <https://perma.cc/S4CR-36TK>. See also generally Jeremy McClane & Yaron Nili, *Social Corporate Governance*, 89 GEO. WASH. L. REV. 932 (2021) (reviewing the literature on network analysis and identifying the significance of network analysis for corporate governance research); Ryan Whalen, *Legal Networks: The Promises and Challenges of Legal Network Analysis*, 2016 MICH. ST. L. REV. 539 (2016) (reviewing the existing literature on legal network analysis, suggesting directions for future work, and noting some important caveats for scholars hoping to adopt network analytic methods).

⁴⁹ See generally Alan Schwartz & Robert E. Scott, *Third-Party Beneficiaries and Contractual Networks*, 7 J. LEGAL ANALYSIS 325 (2015); Matthew Jennejohn, *The Private Order of Innovation Networks*, 68 STAN. L. REV. 281 (2016); Ariel Porat & Robert E. Scott, *Can Restitution Save Fragile Spiderless Networks?*, 8 HARV. BUS. L. REV. 1 (2018). Empirical legal studies that map network structure are limited to Lisa Bernstein, *Beyond Relational Contracts: Social Capital and Network Governance in Procurement Contracts*, 7 J. LEG. ANALYSIS 561 (2015); Lisa Bernstein, *Contract Governance in Small-World Networks: The Case of the Maghribi Traders*, 113 NW. U. L. REV. 1009 (2019); Matthew Jennejohn, *Do Networks Govern Contracts?* 47 J. CORP. L. 333 (2022); Kristina Bishop, Matthew Jennejohn & Cree Jones, *Top Ups and "Telephone"* (Dec. 27, 2022) (unpublished manuscript).

developing on citation networks,⁵⁰ financial contagion,⁵¹ insider trading,⁵² shareholding networks,⁵³ tort law,⁵⁴ and the role of networks in patenting.⁵⁵ However, those studies typically focus on networks among actors in a market, rather than networks of judges and attorneys within the legal system itself.⁵⁶ Other than a couple studies of attorney networks at administrative agencies or corporate law firms,⁵⁷ sustained analysis of the networks of attorneys that participate in legal processes has yet to occur.

To be clear, the missing link is not just an absence of empirical studies identifying causal relationships between network structures and legal outcomes. Rather, the problem is even more basic. Scholars have not taken the very first step of developing a collection of rich descriptive analyses that simply identifies what the structure of legal networks are. We are not just piloting blind; we do not even know the characteristics of the craft we are trying to fly. Addressing this gap in the literature is the task undertaken in the next Part.

⁵⁰ See generally James H. Fowler, Timothy R. Johnson, James F. Spriggs II, Sangick Jeon & Paul J. Wahlbeck, *Network Analysis and the Law: Measuring the Legal Importance of Precedents at the U.S. Supreme Court*, 15 POL. ANALYSIS 324 (2007); Martin Gelter & Mathias M. Siems, *Language, Legal Origins, and Culture Before the Courts: Cross-Citations Between Supreme Courts in Europe*, 21 SUP. CT. ECON. REV. 215 (2013); Joost Pauwelyn, *Minority Rules: Precedent and Participation Before the WTO Appellate Body in ESTABLISHING JUDICIAL AUTHORITY IN INTERNATIONAL ECONOMIC LAW* (Joanna Jemielniak et al eds., 2016); Adam B. Badawi & Giuseppe Dari-Mattiacci, *Reference Networks and Civil Codes*, in LAW AS DATA: COMPUTATION, TEXT & THE FUTURE OF LEGAL ANALYSIS (Michael A. Livermore & Daniel N. Rockmore eds., 2019); Krzysztof J. Pelc, *The Politics of Precedent in International Law: A Social Network Application*, 108 AM. POL. SCI. REV. 547 (2014).

⁵¹ See generally Luca Enriques, Alessandro Romano & Thom Wetzer, *Network-Sensitive Financial Regulation*, 45 J. CORP. L. 351 (2020).

⁵² See generally Kenneth R. Ahern, *Information Networks: Evidence from Illegal Insider Trading Tips*, 125 J. FIN. ECON. 26 (2017).

⁵³ See generally Alessandro Romano, *Horizontal Shareholding and Network Theory*, 38 YALE J. REG. 363 (2021); Alessandro Romano, Luca Enriques & Jonathan R. Macey, *Extended Shareholder Liability for Systemically Important Financial Institutions*, 69 AM. U.L. REV. 967 (2020); Luca Enriques & Alessandro Romano, *Institutional Investor Voting Behavior: A Network Theory Perspective*, 2019 U. ILL. L. REV. 223.

⁵⁴ See generally Anat Lior, *The AI Accident Network: Artificial Intelligence Liability Meets Network Theory*, 95 TUL. L. REV. 1103 (2021).

⁵⁵ See generally Laura G. Pedraza-Fariña & Ryan Whalen, *A Network Theory of Patentability*, 87 U. CHI. L. REV. 63 (2020).

⁵⁶ But see generally Daniel M. Katz & Derek K. Stafford, *Hustle and Flow: A Social Network Analysis of the American Federal Judiciary*, 71 OHIO ST. L.J. 476 (2010) (studying the social networks between judges and their law clerks).

⁵⁷ See Verity Winship, *Enforcement Networks*, 37 YALE J. REG. 274 (2020) (administrative agencies); Jennejohn, *The Architecture of Contract Innovation*, *supra* note 4 (corporate law firms).

II. A GENDERED NETWORK IN CHANCERY LITIGATION

In this Part, we introduce network analysis as a method for studying exclusion in the legal profession. Network analysis is an intuitively attractive approach in the highly relational market for legal services. It opens a window into how those relationships are structured, as well as in doing so, a sense of how accessible they are to members of the network.

In doing so, this Part fills an important gap in the literature. As noted above, legal scholars are only beginning to scratch the surface of what network analysis can contribute to the law, and there are no systematic quantitative studies of litigation networks in the literature. This Part takes an important first step in that regard, providing a roadmap for future research.

This Part also sheds new light on the topic immediately at hand: gender equity in the law. Prior studies of gender representation in the law tend to focus on the entire profession and not discrete markets.⁵⁸ Academic research has largely left unexplored the trajectory and causes of the gender gap in specific areas of elite legal practice.⁵⁹ Thus, we know little about women's participation in and opportunities for success in specific types of legal practice areas, such as shareholder litigation or securities offerings, or about how law firm characteristics or regional differences may impact gender disparities.

A handful of studies have recently begun to assess how gender disparities play out as women move up the ranks in specific practice areas.⁶⁰ For example, two recent studies examine the

⁵⁸ See, e.g., PEERY ET AL., *supra* note 7, at 2 (describing the selection of participants from four different cities “selected due to their large legal markets, the variety of legal sectors represented [and] regional diversity”); JAFFE, CHEDIAK, DOUGLAS & TUDOR, *supra* note 7, at 6 (describing focus on the “representation of women in elite, U.S. national law firms”); BAGATI, *supra* note 8, at 56 (describing the sample as including lawyers in corporate, litigation, tax, estate planning, labor and employment, real estate and other practice areas); Ronit Dinovitzer, Nancy Reichman & Joyce Sterling, *The Differential Valuation of Women's Work: A New Look at the Gender Gap in Lawyers' Incomes*, 88 SOC. FORCES 819, 836 (2009) (noting that the sample includes different “fields of practice” and “geographic locale”).

⁵⁹ Tracey E. George, Mitu Gulati & Albert Yoon, *Gender, Credentials and M&A* 5–7 (Va. Pub. L. & Legal Theory Rsch. Paper No. 2022-10, 2022).

⁶⁰ See generally, e.g., Gugliuzza & Rebouché, *supra* note 16 (patent litigation); Afsharipour, *supra* note 30 (M&A); George, Gulati & Yoon, *supra* note 59 (M&A); Kimberly Strawbridge Robinson, *Men Repeat at Lectern—Firms, U.S. Drive Supreme Court Gender Gap*, BLOOMBERG L. (May 10, 2021), <https://news.bloomberglaw.com/us-law-week/men-repeat-at-lectern-firms-u-s-drive-supreme-court-gender-gap> (Supreme Court advocacy); Jake Holland, *Pipeline for Female Supreme Court Advocates Shows Some Cracks*, BLOOMBERG L. (July 15, 2019), <https://news.bloomberglaw.com/us-law-week/pipeline-for-female-supreme-court-advocates-shows-some-cracks-1> (Supreme Court advocacy).

leadership gap in M&A dealmaking.⁶¹ Both studies find that the leadership gap in elite M&A practice is far more significant than the leadership gap in law firms more generally, with women making up around 10% of deal leaders.⁶² Moreover, an earlier study by Professors Stephen Choi, Mitu Gulati, and Adam C. Pritchard examines the gender gap with respect to attorneys at the Securities and Exchange Commission (SEC).⁶³ While they do not find a gap in compensation between male and female attorneys, they find that over time men work on “more complex, high-profile assignments.”⁶⁴ Furthermore, male attorneys at the SEC “are more likely to leave” and when they leave, they are more likely to move to lucrative private sector jobs.⁶⁵

The results reported below corroborate and also shed new light on the trends identified in prior research. We also find that women are underrepresented in the litigation network we examine. Network analysis also reveals that, even when they are present in the network, women tend to be more peripheral players. We find that this situation improved only slightly over the course of our seventeen-year sample. Our results also show intriguing patterns where women’s centrality in the network differs materially based on their law firm and geography. Finally, we dive deep into the personal networks of well-connected women in the network and find a professional environment dominated by men to such an extent that these women, though highly central in the overall network, are on the periphery of their own personal collection of professional connections.

We begin this Part with a discussion of why Delaware is our focus. Second, we explain how the data analyzed in our study was collected. Third, we discuss the questions that informed our approach to the data and the scholarship that motivated us to ask those questions. Fourth, we present the results of our analysis. Finally, we conclude with a reflection on how our results compare to prior qualitative research on gender inequality in the law.

⁶¹ See generally Afsharipour, *supra* note 30; George, Gulati & Yoon, *supra* note 59.

⁶² Afsharipour, *supra* note 30, at 382 fig.1; George, Gulati & Yoon, *supra* note 59, at 21.

⁶³ See generally Stephen J. Choi, Mitu Gulati & A. C. Pritchard, *Should I Stay or Should I Go? The Gender Gap for Securities and Exchange Commission Attorneys*, 62 J.L. & ECON. 427 (2019).

⁶⁴ *Id.* at 429.

⁶⁵ *Id.*

A. Why Delaware?

We examine elite business litigation in the leading venue for business litigation in the United States, the Chancery. Delaware is typically recognized as the “the creator of our de facto national corporate law.”⁶⁶ A majority of publicly listed firms and over 60% of the Fortune 500 are incorporated in Delaware.⁶⁷ Delaware is even the jurisdiction of choice for many large, closely held businesses.⁶⁸ The Delaware courts are widely recognized as having an experienced and sophisticated judiciary along with well-developed corporate case law.⁶⁹ Many large companies choose the Delaware courts as the sole forum for corporate governance litigation.⁷⁰ Many acquisition agreements for large M&A transactions are governed by Delaware law.⁷¹ Moreover, litigation over significant corporate transactions, such as large M&A deals, frequently occurs in Chancery.⁷² Given its specialized and relatively tight-knit legal community, Chancery is a particularly attractive empirical setting for network analysis.

Despite Delaware’s prominence in corporate law and litigation, there has been surprisingly little examination of gender and racial disparities in elite legal practice in the state.⁷³ Until recently, women were absent as judges and lawyers in the Delaware courts.⁷⁴ For example, by 2004—the first year for which we

⁶⁶ Marcel Kahan & Edward Rock, *Symbiotic Federalism and the Structure of Corporate Law*, 58 VAND. L. REV. 1573, 1622 (2005); see also ROBERTA ROMANO, THE GENIUS OF AMERICAN CORPORATE LAW 6–8 (1993).

⁶⁷ *Why Businesses Choose Delaware*, DELAWARE.GOV, <https://perma.cc/4M8X-KVFM>.

⁶⁸ Jens Dammann & Matthias Schündeln, *The Incorporation Choices of Privately Held Corporations*, 27 J.L. ECON. & ORG. 79, 84 tbl.1 (2011); Bruce H. Kobayashi & Larry E. Ribstein, *Delaware for Small Fry: Jurisdictional Competition for Limited Liability Companies*, 2011 U. ILL. L. REV. 91, 113–17 (2011).

⁶⁹ See Matthew D. Cain & Steven M. Davidoff, *Delaware’s Competitive Reach*, 9 J. EMP. LEGAL STUD. 92, 97–98 (2012). Jurists on the Chancery are “renowned” for their expertise in corporate law. William J. Moon, *Delaware’s Global Competitiveness*, 106 IOWA L. REV. 1683, 1694 (2021).

⁷⁰ See Jill E. Fisch, Sean J. Griffith & Steven Davidoff Solomon, *Confronting the Peppercorn Settlement in Merger Litigation: An Empirical Analysis and a Proposal for Reform*, 93 TEX. L. REV. 557, 605 (2015); see also John C. Jorgensen, Note, *Drafting Effective Delaware Forum-Selection Clauses in the Shadow of Enforcement Uncertainty*, 102 IOWA L. REV. 353 (2016).

⁷¹ Albert Choi & George Triantis, *Strategic Vagueness in Contract Design: The Case of Corporate Acquisitions*, 119 YALE L.J. 848, 866 (2010); John C. Coates IV, *Managing Disputes Through Contract: Evidence from M&A*, 2 HARV. BUS. L. REV. 295, 322 tbl.4 (2012).

⁷² Fisch et al., *supra* note 69, at 579 tbl.I(C).

⁷³ See Afsharipour, *supra* note 6, at 134–39.

⁷⁴ Claire M. DeMatteis, *Women and the Delaware Bar and Bench: It Takes Generations*, 14 DEL. L. REV. 125, 128 (2014) (noting that Chancery did not have a female judicial officer until 1984 and the Delaware Superior Court did not have a female judge until 1988);

gathered data—only one woman had served on Chancery in its entire 211-year history, while thirty-three men had served on Chancery.⁷⁵ Over the course of the next ten years, the representation of women on Chancery was unchanged until the appointment of Judge Tamika Montgomery-Reeves in 2015. In addition, only three women have ever served on the Delaware Supreme Court.⁷⁶ Only four women had served on the Delaware Chancery Court in its entire 225-year history, while thirty-seven men had served on the Chancery.⁷⁷ In addition, only two women had served on the Delaware Supreme Court.⁷⁸ Over the last few years, however, Delaware has made great strides in enhancing gender diversity on the court. In 2021, Chancery saw a historic change to its membership.⁷⁹ After first joining Chancery as Vice Chancellor in November 2018, Chancellor Kathaleen St. J. McCormick was sworn in as the first woman Chancellor on May 6, 2021.⁸⁰ Moreover, in 2023, the Delaware Chancery Court consisted of six women (including the Master in Chancery positions) and four men.⁸¹

More recently, Delaware has experienced, as has the United States nationally, calls for greater attention to its gender and racial disparities.⁸² For example, in 2018, leading Delaware attorneys presented a report to the Delaware Judiciary that touched on ways to improve work-life balance for Chancery litigators in a way that could foster greater inclusion.⁸³ Several of the report's

id. at 133 (noting that, in the early 1980s, only a handful of female attorneys practiced before Chancery and the Delaware Supreme Court, and all as associates or government attorneys, not as law firm partners).

⁷⁵ See *Judicial Officers*, DEL. CTS., <https://perma.cc/99DA-N6TP>.

⁷⁶ See *Historical List of Delaware Supreme Court Justices*, DEL. CTS., <https://perma.cc/V33B-HFRQ> (identifying three women to have served on the Delaware Supreme Court: Carolyn Berger, sworn in in 1994, Karen Valihura, sworn in in 2014, and Tamika R. Montgomery-Reeves, sworn in in 2019); see also *Judicial Officers*, *supra* note 75 (identifying five women to have served on Chancery: Carolyn Berger, sworn in in 1984, Tamika R. Montgomery-Reeves, sworn in in 2015, Kathaleen St. J. McCormick, sworn in in 2018, Morgan T. Zurn, sworn in in 2018, and Lori W. Will, sworn in in 2021).

⁷⁷ See *Judicial Officers*, *supra* note 75.

⁷⁸ See *Historical List of Delaware Supreme Court Justices*, *supra* note 76.

⁷⁹ See *Judicial Officers*, *supra* note 75.

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See Anat Alon-Beck, Michal Agmon-Gonnen & Darren Rosenblum, *A Duty to Diversify*, 75 VAND. L. REV. EN BANC 97, 109–10 (2022).

⁸³ See generally PATRICIA L. ENERIO, WILLIAM M. LAFFERTY & GREGORY P. WILLIAMS, SHAPING DELAWARE'S COMPETITIVE EDGE: A REPORT TO THE DELAWARE JUDICIARY ON IMPROVING THE QUALITY OF LAWYERING IN DELAWARE (2018). The report noted that its recommendations were aimed to "benefit lawyers regardless of gender." *Id.* at 1.

recommendations were adopted by the Delaware courts.⁸⁴ Moreover, in 2021 a group called Citizens for Judicial Fairness (formerly Citizens for a Pro-Business Delaware) spent more than half a million dollars on advertising that criticized the Delaware judiciary for its lack of diversity.⁸⁵

Significantly, the Delaware courts have undertaken a sustained effort to address diversity concerns in the legal profession in Delaware. In 2021, the Delaware Supreme Court established the Delaware Bench and Bar Diversity Project.⁸⁶ The resulting 100-page report was issued on January 31, 2022 by the National Center for State Courts (NCSC) and AccessLex Institute,⁸⁷ organizations that worked with a nineteen-person “Steering Committee composed of judicial officers, individuals and organizations.”⁸⁸ The detailed report offers concrete steps to improve the diversity of the Delaware bench and bar with a “comprehensive action plan to effectuate change with a commitment from the bench and the bar at the highest levels, which provides for both immediate and long-term approaches to achieving inclusion for everyone.”⁸⁹ The report emphasizes the need to tackle diversity in the Delaware

⁸⁴ Press Release, Delaware Supreme Court, The Delaware Supreme Court Adopts Policies to Improve Work Life Balance (July 18, 2018), <https://perma.cc/U73Q-89AG>.

⁸⁵ Cf. Alon-Beck, Agmon-Gonnen & Rosenblum, *supra* note 82, at 109 & n.66 (discussing racial diversity). The origins of Citizens for Judicial Fairness are not without controversy. The group was created by employees of TransPerfect Global, a worldwide language-services-provider company, in connection with bitter litigation between two founders over the ownership of the company. *Who We Are*, CITIZENS FOR JUDICIAL FAIRNESS, <https://perma.cc/JN6V-2ALC>; *In re Shawe & Elting LLC*, 2015 WL 4874733, at *1 (Del. Ch. Aug. 13, 2015), *aff’d sub nom.* *Shawe v. Elting*, 157 A.3d 152 (Del. 2017). For an overview of the TransPerfect case, *Shawe v. Elting*, and the gender-based harassment that female co-founder Elizabeth Elting experienced from male co-founder Philip Shawe, see Ann M. Lipton, *Capital Discrimination*, 59 HOUS. L. REV. 843, 848–52 (2022); see also *Shawe v. Elting*, 157 A.3d 152, 154, 156–57 (Del. 2017) (detailing Shawe’s behavior toward Elting as well as his “litigation misconduct”). Commentators also noted that Shawe and Citizens for a Pro-Business Delaware engaged in a “smear campaign” against members of the Court of Chancery, including the then-Chancellor. See Jeff Montgomery, *Delaware Bar Blasts TransPerfect Chancery ‘Smear’ Campaign*, LAW360 (Oct. 1, 2019), <https://www.law360.com/articles/1204968/delaware-bar-blasts-transperfect-chancery-smear-campaign>.

⁸⁶ Press Release, Admin. Off. of the Cts., Delaware Bench and Bar Diversity Project (May 17, 2021), <https://perma.cc/L4RR-NMBE>.

⁸⁷ NAT’L CTR. FOR STATE CTS. & ACCESSLEX INST., IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR: STRATEGIC PLAN REPORT AND RECOMMENDATIONS (2022).

⁸⁸ Press Release, Admin. Off. of the Cts., Delaware Bench and Bar Diversity Project, (May 17, 2021), <https://perma.cc/L4RR-NMBE>; NAT’L CTR. FOR STATE CTS. & ACCESSLEX INST., IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR: STRATEGIC PLAN REPORT AND RECOMMENDATIONS 73 (2022).

⁸⁹ Press Release, Admin. Off. of the Cts., Bench and Bar Diversity Committee Issues Report and Recommendations to the Delaware Supreme Court (Feb. 22, 2022) <https://perma.cc/WGH2-HRGM>.

legal profession through a system-wide approach.⁹⁰ For example, to improve advancement in the legal profession, the report suggests that the Delaware Supreme Court should reinforce law firm partners' engagement in mentorship programs and increase training for female attorneys and attorneys of color.⁹¹

In short, we study the Chancery for three reasons. First, Chancery has a robust and dynamic litigation community, providing sufficient data for a quantitative empirical analysis. Second, Delaware corporate litigation is systemically important to the U.S. economy—what happens in Delaware moves U.S. and global capital markets. Third, and finally, concerns about diversity, equity, and inclusion issues have been front and center in Delaware, making the analysis here a timely contribution to that dialogue.

B. Orientation to Chancery Data

Our study's data on attorneys participating in Chancery litigation was collected from Chancery's dockets using *Bloomberg Law*. Electronic docket information for Chancery is available beginning on January 1, 2004, and data from that date until December 31, 2020, was collected. That seventeen-year time period incorporates 15,077 unique civil actions.

Data on all members of the Delaware bar—both judges and attorneys—involved in a matter was collected from the dockets of those 15,077 civil actions using the export function in *Bloomberg Law*'s Docket Search tool. The CSV files exported from *Bloomberg Law* include, in relevant part, the civil action number of a given matter, the date that the docket for that case was opened, the judge or judges assigned to the case,⁹² the parties to the litigation, and the Delaware attorneys involved in the matter.

Of course, Delaware attorneys are not the only lawyers involved in Chancery litigation. Many non-Delaware lawyers participate in cases as of counsel or attorneys admitted pro hac vice. Thus, the original dataset was supplemented through a round of hand collection, which involved reviewing pro hac vice motions and other case filings for non-Delaware lawyers. Those non-Delaware attorneys were then added to the dataset for the cases in which they were involved.

⁹⁰ NAT'L CTR. FOR STATE CTS. & ACCESSLEX INST., IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR: STRATEGIC PLAN REPORT AND RECOMMENDATIONS 2 (2022).

⁹¹ *Report Recommends Steps to Increase Delaware Bench and Bar Diversity*, DEL. BUS. NOW (Feb. 23, 2022), <https://perma.cc/E9Q5-9WUB>.

⁹² From time to time, the handling of a case transfers from one Chancery judge to another.

For both the Delaware and non-Delaware lawyers, an additional round of hand collection was undertaken. The names of the law firms and office locations of all the lawyers were collected from case filings. Additionally, for a small subset of key Delaware and non-Delaware firms, discussed below, a further step involved searching law firm websites to identify the rank of the attorneys at those firms—partners, of counsel, counsel, and associates.

Finally, the gender of all judges and attorneys was predicted in R using the “gender” package, a method used in prior work examining gender disparities.⁹³ This package estimates gender based on the first name of an individual and gendered naming trends in U.S. Social Security data.⁹⁴ It is important to note that the binary conception of gender used in the software package may well be inconsistent with the way any given individual in our dataset identifies their gender. To prevent the personal harm that would result through a misprediction of an individual’s gender, all results reported here are anonymized. The resulting dataset provides the basis for the descriptive statistics that follow below.

We recognize that several limitations arise from inferring gender representation using docket information. First, our statistics reflect information on women’s and men’s participation in Chancery litigation taken from filed matters. It is not uncommon for teams of attorneys to form and work on matters that do not result in a formal complaint being filed. We do not have visibility on those matters. If the staffing of women and men on pre-litigation matters and litigated matters differed systematically—for instance, if women were consistently involved in pre-litigation matters more than filed matters—then this lack of visibility might introduce sampling bias in our dataset. However, based on our experience, such systematic bias is highly unlikely. If anything, it seems likely that, if there is sampling bias, our results here underreport the appearance of men. As we discuss in Part II.E.2 below, men make up a significant majority of partners and other senior lawyers in a

⁹³ See *Gender: Predict Gender from Names Using Historical Data*, <https://perma.cc/FS98-9QJC>. For a description of the “gender” package in R, see Cameron Blevins & Lincoln Mullen, *Jane, John . . . Leslie? A Historical Method for Algorithmic Gender Prediction*, 9 DIGIT. HUMANIT. Q. ¶¶ 1–35 (2015). Other studies on gender imbalances similarly use the R “gender” package. See Molly M. King & Megan E. Frederickson, *The Pandemic Penalty: The Gendered Effects of COVID-19 on Scientific Productivity*, 7 SOCIUS 1, 7 (2021). See generally Jordan D. Dworkin, Kristin A. Linn, Erin G. Teich, Perry Zurn, Russell T. Shinohara & Danielle S. Bassett, *The Extent and Drivers of Gender Imbalance in Neuroscience Reference Lists*, 23 NATURE NEUROSCI. 918 (2020) (detailing use of the R “gender” package in the “Methods” appendix).

⁹⁴ Blevins & Mullen, *supra* note 92, at ¶¶ 19–20.

subsample we took of top firms in the Chancery Litigation Network. Pre-litigation matters may be particularly partner-heavy because the strategic counseling that is frequently undertaken in the early stage of a matter often does not involve more junior attorneys, who are typically engaged later to assist with discovery, motion practice, and trial.⁹⁵

Second, there are other social mechanisms by which attorneys in the Chancery Litigation Network can interact. For instance, expertise can be shared and mentorship opportunities found through participation in local bar associations, inns of court, or other groups. These relationships are excluded from our dataset, which means we may be missing important transmission lines for professional resources in the field. At the same time, in our experience, these associational ties are at most complements, and not substitutes, for the relationships and information flows that occur through actual practice. An important task for future research is exploring the role these institutions play in exacerbating or remediating the gender gap we observe based on docket data.

Third, and finally, we note that, although corporate law is our focus here, it not the only substantive area of law that is included within Chancery's equitable jurisdiction. In addition to corporate governance disputes, Chancery adjudicates other fiduciary matters, such as those relating to trusts and alternative entities, disputes over title to real estate, a variety of commercial and contractual matters, etc.⁹⁶ Our data collection encompasses all those areas, which raises the possibility that substantive subcommunities, where attorneys cluster around certain case types, may exist within the Chancery Litigation Network. Our preliminary explorations of that possibility, which are unreported here, did not suggest such clustering exists, but a completely definitive conclusion awaits further research.

⁹⁵ See DAVID MCCOMBS, EUGENE GORYUNOV, BROOKE COHEN & BRADEN DAVIES, BLOOMBERG L., RAINMAKER SKILLS FOR A JUNIOR ASSOCIATE 2 (2023) (“[M]anaging clients is usually the responsibility of partners and senior associates.”); *Training & Attorney Development*, MUNGER TOLLES & OLSON LLP, <https://perma.cc/SA7S-ZG53> (noting that new/junior attorneys are trained on, inter alia, “Preparing for Depositions,” “Propounding Written Discovery,” “Nuts and Bolts of Motion Practice,” “Jury Selection Training,” “Opening Statements,” “Direct and Cross Examination at Trial,” and “Closing Arguments.”); 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, 1608–10 (1998) (identifying “work that must be done by associates” as including “writing a draft motion or brief,” “writing, answering, and supervising discovery requests,” and “writing legal memos to the file or for review by [more senior lawyers]”).

⁹⁶ *Jurisdiction of the Court of Chancery*, DEL. CTS., <https://perma.cc/Y8QJ-UJR4>.

C. Questions Framing Our Approach to the Data

This study is directed toward providing a rich descriptive account that suggests potential relationships between network structure and legal outcomes. We approached the data with a series of questions regarding the patterns we might find and their possible causes.

Our first question is simple: Do women appear less frequently and in less prominent positions in the network than men? We measured women's participation in three senses: by straightforward headcount in the sample as a whole, by women's participation in senior leadership positions, and by women's centrality within the network. Second, we ask whether any gender gap observed in the first year of our sample, 2004, persists until the last year, 2020. Third, we ask whether the gender gap differs by law firm, due perhaps to different firms' hiring strategies and/or policies adopted to address gender bias. Relatedly, our fourth question is whether the gender gap differs by geography, due perhaps to differences in applicable law between jurisdictions or variations in regional cultures. Fifth, we drill down into the individual experiences of particular attorneys over time and ask whether the personal networks of specific women attorneys are dominated by men.

These questions are motivated by a well-documented gender-inequality problem in the legal services industry.⁹⁷ Prior work shows that women are routinely underrepresented in law, particularly in positions of seniority.⁹⁸ According to a 2020 report by the National Association of Law Placement (NALP), over the almost thirty years that NALP has been compiling demographic information, women (and people of color) "have made steady incremental—though *excruciatingly slow*—progress in . . . the partner ranks."⁹⁹ Women made up about 25% of all law firm partners in 2020.¹⁰⁰ Studies indicate that women attain equity partner status

⁹⁷ See *supra* notes 6–10, 58–65, 74–79, and accompanying text.

⁹⁸ *Women and Minorities at Law Firms—What Has Changed and What Has Not in the Past 25 Years*, NALP BULL. tbls.1 & 2 (2018), <https://perma.cc/DCK3-TYS9>. For a detailed account of inequality in law firm partnership compensation, see Katrina Lee, *Discrimination as Anti-Ethical: Achieving Systemic Change in Large Law Firms*, 98 DENV. L. REV. 581, 589 (2021). Over the last few years, women have made some progress in being selected as managing partners at the largest firms. See AM. BAR ASS'N, A CURRENT GLANCE AT WOMEN IN THE LAW 2 (2018) (reporting that in 2017, 25% of firmwide managing partners were women).

⁹⁹ NAT'L ASS'N FOR L. PLACEMENT, *supra* note 10, at 7 (emphasis added).

¹⁰⁰ *Id.* at 25, chart 7.

at much lower rates than men.¹⁰¹ The numbers are more bleak for women of color who make up less than 4% of law firm partners, a small increase from about 1.5% in 2006.¹⁰² Women and associates of color exit the profession earlier and report a variety of barriers to advancement.¹⁰³

Biases, both explicit and implicit, plague the experiences of women and people of color at law firms.¹⁰⁴ For example, many women lawyers report pressures to conform to feminine stereotypes such as expectations to take on “higher loads of non-career-enhancing ‘office housework’”¹⁰⁵ or “support role” work” while men are given the plum assignments that further enhance their leadership and client connections.¹⁰⁶ Women face biases about

¹⁰¹ RONIT DINOVTZER, ROBERT L. NELSON, GABRIELE PLICKERT, REBECCA SANDEFUR, JOYCE S. STERLING, TERRY K. ADAMS, BRYANT G. GARTH, JOHN HAGAN, GITA Z. WILDER & DAVID B. WILKINS, *AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS* 63 (2009); MARC BRODHERSON, LAURA MCGEE & MARIANA PIRES DOS REIS, MCKINSEY & COMPANY, *WOMEN IN LAW FIRMS* 4 ex.2 (2017) (finding that women are 29% less likely than men to be promoted to partner).

¹⁰² NAT’L ASS’N FOR L. PLACEMENT, *supra* note 10, at 12 tbl.1. In 2020, Black women and Latinx women accounted for less than 1% each of partners at law firms, and Asian women made up less than 2% of partners at law firms. *Id.* at 17 tbl.2. Studies recount the bleak experiences of many women of color at large firms. *See generally, e.g.*, MELAKU, *supra* note 16; PEERY ET AL., *supra* note 7.

¹⁰³ Joni Hersch & Erin E. Meyers, *Why Are Seemingly Satisfied Female Lawyers Running for the Exits? Resolving the Paradox Using National Data*, 102 MARQ. L. REV. 915, 920, 929–30 & fig.1 (2019). There is a discrepancy in explanations about why a gender gap in leadership ranks persists. Some ascribe the persistent gender gap in partnership to women’s different “choices” and “disproportionate family responsibilities.” *See* Deborah L. Rhode, *Law Is the Least Diverse Profession in the Nation. And Lawyers Aren’t Doing Enough to Change That.*, WASH. POST (May 27, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/> (reporting managing partners of large law firms “explain[ing] the ‘woman problem’ by citing women’s different choices and disproportionate family responsibilities”). In some surveys of women lawyers, they report that “they were considered to be ‘flight risks,’ to leave because of family demands,” JANET E. GANS EPNER, AM. BAR ASS’N COMM’N ON WOMEN IN THE PRO., *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* 15 (2006), or to be viewed as “less available, less dependable, and less worthy of extensive mentoring,” DEBORAH L. RHODE, *WOMEN AND LEADERSHIP* 79 (2017). Yet, as Professor Deborah Rhode argued, explanations attributing gender disparities in leadership in law firms “capture only a partial truth.” Rhode, *supra*. Instead, women lawyers “experience greater dissatisfaction than men with key dimensions of practice such as level of responsibility, recognition for work and chances for advancement.” *Id.*

¹⁰⁴ *See* STERLING & CHANOW, *supra* note 9, at 19–23. *See generally* JOAN C. WILLIAMS, MARINA MULTHAUP, SU LI & RACHEL KORN, AM. BAR ASS’N COMM’N ON WOMEN IN THE PRO., *YOU CAN’T CHANGE WHAT YOU CAN’T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION* (2018).

¹⁰⁵ WILLIAMS ET AL., *supra* note 104, at 8.

¹⁰⁶ Joan C. Williams & Marina Multhaup, *For Women and Minorities to Get Ahead, Managers Must Assign Work Fairly*, HARV. BUS. REV. (Mar. 5, 2018), <https://perma.cc/9JPY-CFWG>; Joan C. Williams & Veta Richardson, *New Millennium, Same Glass Ceiling?*

their commitment and availability to work, as well as about their competence and ability to successfully develop business, thus hindering their path to professional advancement.¹⁰⁷ Women with children face even greater biases.¹⁰⁸ In addition to these implicit biases, women lawyers frequently report experiencing disrespect,¹⁰⁹ as well as discrimination and harassment.¹¹⁰

The lack of adequate access to opportunities and networks has long been cited as an important factor in undermining women's advancement to leadership at law firms. At many elite firms, leadership experiences and mentorship are "reserved for those who have traditionally been granted a large amount of privilege within the profession."¹¹¹ At many of the largest and most profitable law firms (often referred to as the Am Law 100), women constitute less than 25% of all equity partners.¹¹² Women face significant barriers to accessing informal support networks and contacts. According to research by the American Bar Association (ABA), "62 percent of women of color and 60 percent of white women, but only 4 percent of white men, felt excluded from formal and informal networking opportunities."¹¹³ Similarly, a 2017 McKinsey & Company study found that women are less likely to think that they have an opportunity to advance, with 46% of women (versus 7% of men)

The Impact of Law Firm Compensation Systems on Women, 62 HASTINGS L.J. 597, 644–46 (2011); see also Dinovitzer et al., *supra* note 58, at 835–36.

¹⁰⁷ See RHODE, WOMEN AND LEADERSHIP, *supra* note 103, at 78–81; see also ANNA JAFFE, GRACE CHEDIAK, ERIKA DOUGLAS & MACKENZIE TUDOR, STAN. L. SCH., RETAINING & ADVANCING WOMEN IN NATIONAL LAW FIRMS 13 (2016) (stating that biases "affect the allocation of work assignments to [women lawyers], because partners may assume that a woman lawyer cannot handle a high-status project as well as a male colleague could, or that she is too busy with familial commitments").

¹⁰⁸ Miranda McGowan, *The Parent Trap: Equality, Sex, and Partnership in the Modern Law Firm*, 102 MARQ. L. REV. 1195, 1206–07 (2019); JOAN C. WILLIAMS & RACHEL DEMPSEY, WHAT WORKS FOR WOMEN AT WORK: FOUR PATTERNS WORKING WOMEN NEED TO KNOW 132–44 (2014). Interviews with experienced women lawyers are replete with stories of the discrimination they experienced once they had children. See STERLING & CHANOW, *supra* note 9, at 9, 19, 21, 27.

¹⁰⁹ Liane Jackson, *Why Do Experienced Female Lawyers Leave? Disrespect, Social Constraints*, ABA Survey Says, ABA J. (Aug. 3, 2018), <https://perma.cc/86TL-KLFT>.

¹¹⁰ See Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299, 306–07 (2008); see also STERLING & CHANOW, *supra* note 9, at 19–23 (sharing women's recounting of sexist, discriminatory, and racist experiences at law firms).

¹¹¹ Veronica Root Martinez, *Combating Silence in the Profession*, 105 VA. L. REV. 805, 819 (2019).

¹¹² Vivian Chen, *Am Law 100 Firms That Are Failing Women*, AM. LAW. (June 25, 2020), <https://www.law.com/americanlawyer/2020/06/25/am-law-100-firms-that-are-failing-women/>; AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION 82 (2021) (reporting that between 2006 and 2020, the percentage of equity partners who are women grew from 16% to 21%).

¹¹³ See EPNER, *supra* note 103, at 35.

reporting that their gender has played a role in “missing out on a raise, promotion, or chance to get ahead.”¹¹⁴

Recent studies reveal dramatic differences between men and women’s access to opportunities. For example, in the ABA’s 2019 survey of over one thousand two hundred lawyers at big law firms, *Walking Out the Door*, 10% of men but 67% of women report a lack of access to business development opportunities; 3% of men but 46% of women report a lack of access to sponsors; 11% of men but 48% of women report missing out on a desirable assignment; and 7% of men but 28% of women report experiencing a client requesting someone else handle a matter.¹¹⁵ Despite these reported differences, the survey indicates that almost 90% of senior male attorneys believe that gender diversity is a firm priority, and almost 80% believe that that their firm has been successful at promoting female attorneys into equity partnership.¹¹⁶

Women of color, in particular, report that they face a lack of opportunities: they “are not exposed to major clients or major assignments,” are excluded from the “opportunities to work on the most challenging assignments,” and have trouble finding sponsors.¹¹⁷

In a qualitative study commissioned by the ABA and the American Bar Foundation, *In Their Own Words*, women recount a variety of negative experiences that reduced their access to opportunities and played a significant role in why they left private practice after many years. For example, women of color reported being included as part of a pitch to clients as essentially “window dressing but not given any credit” when the firm gets the business.¹¹⁸ Other women reported how the hypercompetitiveness of law firms impacted their access to opportunities. For example, even when women worked to develop business opportunities, male partners aggressively either claimed the credit for the client or “tried to steal” the client, an experience that lowered morale and led women attorneys to feel further isolated.¹¹⁹

Women’s lack of access to opportunities has pernicious effects on their advancement. A lack of adequate networks results in women attorneys being “out of the loop of career development.”¹²⁰ Without the mentoring and sponsorship that arise from being

¹¹⁴ BRODHERSON ET AL., *supra* note 101, at 7 ex.5.

¹¹⁵ LIEBENBERG & SCHARF, *supra* note 7, at 7–8.

¹¹⁶ *Id.* at 14–15.

¹¹⁷ STERLING & CHANOW, *supra* note 9, at 23; *see also* PEERY ET AL., *supra* note 7, at 4–11.

¹¹⁸ STERLING & CHANOW, *supra* note 9, at 12.

¹¹⁹ *Id.* at 13–14.

¹²⁰ DEBORAH L. RHODE, AM. BAR ASS’N COMM’N ON WOMEN IN THE PROF., THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 16 (2001).

ensconced in a professional network, women “aren’t adequately educated in their organization’s unstated practices and politics. They aren’t given enough challenging, high visibility assignments. They aren’t included in social events that yield professional opportunities. And they aren’t helped to acquire the legal and marketing skills that are central to advancement.”¹²¹

D. Methods

We measure gender representation in Chancery litigation in two ways. First, we examine straightforward participation statistics—i.e., head counts—of women and men in matters on the Chancery docket. These participation statistics are calculated on an annual basis. That is, in each year, we count the number of women and men who appear in Chancery filings. Those counts are not weighted by the number of matters in which an attorney appears that year. In other words, a lawyer appearing once and a lawyer appearing in ten matters in a given year are tallied the same.¹²²

Second, in addition to those simple headcount statistics, we introduce empirical tools from the field of network analysis that, while used for some time in the social sciences, are relatively new to legal scholarship.¹²³ In the discussion that follows, we discuss how the information contained in Chancery’s dockets is transformed into a professional network, which we refer to as the Chancery Litigation Network. We then introduce the network measures we use to compare women’s and men’s relative positions within the Chancery Litigation Network.

1. Mapping the Chancery Litigation Network.

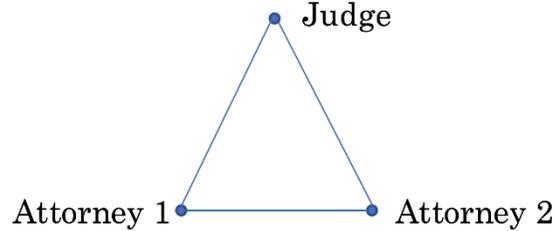
In this study, all judges and attorneys in the dataset are treated as the nodes of the network. Links between nodes were then inferred where judges and lawyers worked on the same matter. For example, imagine a simple case, where one judge, one counsel for plaintiff, and one counsel for defendant were involved. Links connecting all three nodes would be inferred, as depicted in Figure 1 below.

¹²¹ *Id.*

¹²² The network statistics, particularly the total degree centrality measure that we report in Part II.E.1 below, capture differences between attorneys appearing within a given year.

¹²³ See *supra* notes 33, 48–57, and accompanying text.

FIGURE 1: ILLUSTRATIVE DEPICTION OF A SINGLE CASE LITIGATION NETWORK

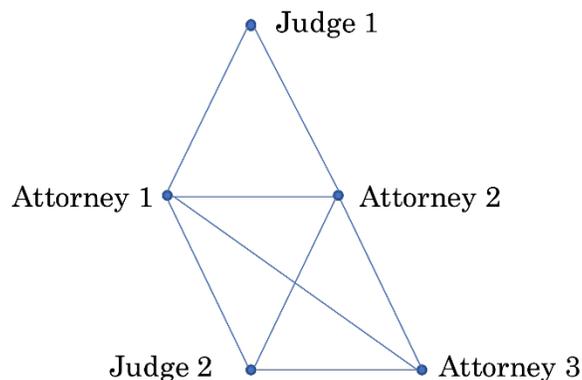


In that respect, links in the network represent information that circulates among the judges and attorneys as they work on a case.¹²⁴

As the number of matters increases, and attorneys' and judges' involvement grows, the size of the network expands. For instance, imagine that the two attorneys in the case depicted in Figure 1 above were then involved in another matter, this time with a different judge (Judge 2), and Attorney 2 invited a junior associate (Attorney 3) to participate in the representation. Once the second case's network is constructed, the two cases' networks are simply summed, as depicted in Figure 2 below.

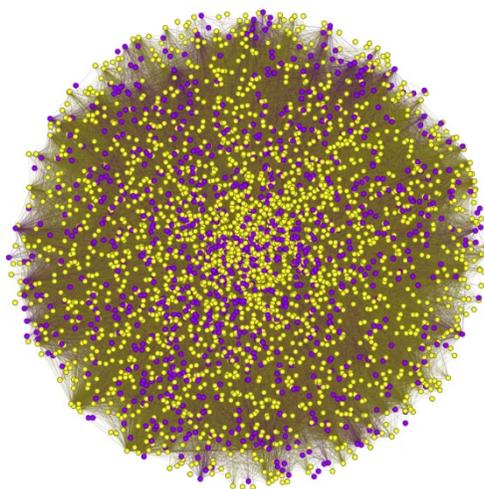
¹²⁴ Note that this approach to link inference has a number of limitations. First, links between attorneys are not weighted in any way to reflect the quantity of the information passing between the individuals in the network. For instance, in cases with large litigation teams, it is unlikely that the same quantity of information available to, say, the lead partner on the matter is also available to the most junior associate. Second, this approach to link inference does not differentiate between the quality of different types of information that may pass between attorneys on a matter. For instance, information that may be valuable to a lawyer's development—such as substantive legal expertise, client confidences, or specific career advice—may transfer between two attorneys working on a matter. Or less valuable information, such as obscure factual details particular to a given case, may circulate. Third, this method of link inference assumes information flows within a litigation team representing a single client are symmetrical to the flows occurring between the lawyers on opposite sides of a matter, which obscures the reality that restricting information flows between the two sides on a case is surely pursued. Finally, and most obviously, this approach to link inference excludes other possible avenues by which information flows among lawyers, from social events to bar association meetings to gathering around the proverbial water cooler. Those limitations can only be remedied, if at all, through the (typically quite costly) collection of additional data or more detailed fine-tuning of the link inference function, worthy efforts which we defer to later research.

FIGURE 2: ILLUSTRATIVE DEPICTION OF A TWO-CASE LITIGATION NETWORK



That process for aggregating cases proceeded until all case networks for matters initiated in a single calendar year were summed. To illustrate, Figure 3 below depicts the complete Chancery Litigation Network for the year 2020.¹²⁵ The 2020 network includes 2,769 unique judges and lawyers, with 19,699 links among them. Node coloring reflects the estimated gender of the individuals in the network: yellow nodes represent men; purple nodes represent women.

FIGURE 3: THE 2020 CHANCERY LITIGATION NETWORK, NODES COLORED BY ATTORNEY GENDER ESTIMATION



¹²⁵ All network visualizations and measure calculations were performed in ORA-Netscenes v1.0 for Mac.

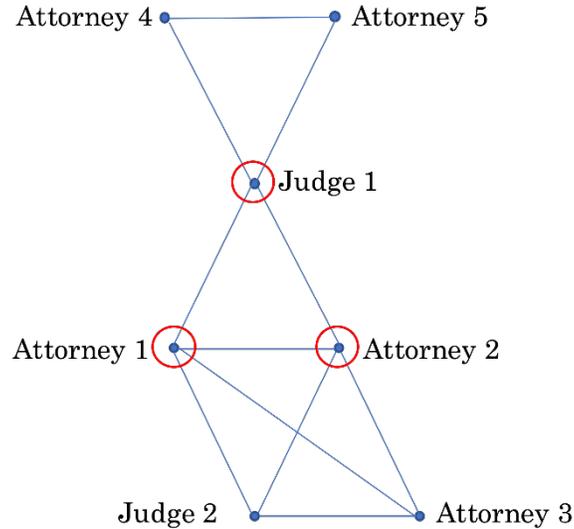
The Chancery Litigation Network exhibits a core-periphery structure. In the core of the network are a small number of highly connected nodes, while most nodes are in the periphery with fewer links. Information may reach nodes in the core and periphery differently. For instance, information often reaches central nodes in the core quickly, especially if it originates in another part of the core.¹²⁶ On the other hand, information flows more slowly to the periphery, as it must traverse more links to get there.

2. New methods for measuring exclusion.

Since this Article is a first step, we will focus on a conceptually straightforward measure of a node's centrality in the network. The simplest way to measure a node's centrality is its "degree centrality"—i.e., a count of the number of links it has with other nodes. For example, consider the nodes in an exemplary litigation network of three cases, depicted below in Figure 4. In this hypothetical network, Judge 1 has an additional case—which involves two new attorneys, Attorney 4 and Attorney 5. Judge 1, for instance, has a degree centrality of four, because Judge 1 has a link to each of Attorneys 1, 2, 4, and 5. Attorneys 1 and 2 also have degree centralities of four, as they likewise have four links apiece. Those three individuals are the most highly connected—or central, by this definition of centrality—nodes in the network. The other individuals have only two or three links apiece.

¹²⁶ Peter Csermely, András London, Ling-Yun Wu & Brian Uzzi, *Structure and Dynamics of Core/Periphery Networks*, 1 J. COMPLEX NETWORKS 93, 107–08, 111–12 (2013).

FIGURE 4: ILLUSTRATIVE DEPICTION OF NODES WITH HIGHEST DEGREE CENTRALITY IN A THREE-CASE LITIGATION NETWORK



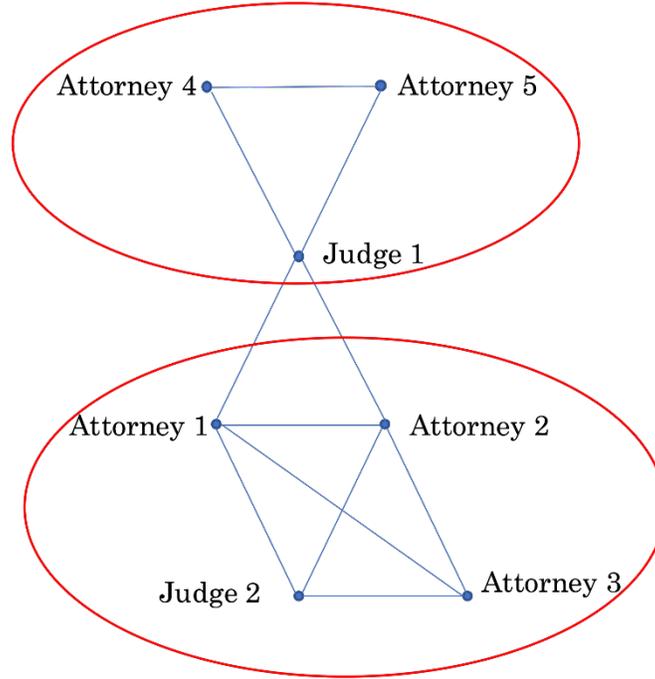
There are many other measures of centrality that we might use to study the position of the attorneys in the Chancery Litigation Network.¹²⁷ One might use “betweenness centrality,” for instance, to gain a sense of how much influence a node has on the flow of information within a network.¹²⁸ For the time being, however, we defer using additional measures to later research. A simple measure like degree centrality is a useful tool for a study that is a first of hopefully many steps.

While degree centrality is the primary metric we use throughout the study to assess the differing positions of men and women within the network, we also examine clustering patterns in certain individual attorney’s personal networks. Figure 5 below provides a graphical depiction of clustering behavior in the same hypothetical litigation network as Figure 4. Attorneys 4 and 5 have not worked with Attorneys 1, 2, or 3 or with Judge 2, which leads to two relatively discrete clusters emerging in the overall network, as identified in the figure.

¹²⁷ See Jackson, *supra* note 33, at 37–43.

¹²⁸ Nodes with high betweenness centrality are those that sit along the shortest paths between the other nodes in the network. *Id.* at 5–6, 38–39. See also generally Marc Barthélemy, *Betweenness Centrality in Large Complex Networks*, 38 EUR. PHYSICAL J. B 163 (2004).

FIGURE 5: ILLUSTRATIVE DEPICTION OF CLUSTERING WITHIN A THREE-CASE LITIGATION NETWORK



When we examine the personal networks of certain key women in the Chancery Litigation Network, we identify any clusters that exist within those personal networks and then ask whether the woman in question is included in the primary cluster or falls outside of it.

E. Findings

Below we report the findings of our analysis, which include a comparison of both head count statistics and degree centrality for women and men in the Chancery Litigation Network. We highlight five main findings. First, we find evidence along both measures for a significant and persistent gender gap among Chancery litigators. Second, we find evidence suggesting that the persistence of the gap may be explained by elevated levels of attrition among women in the network. Third, we find evidence that the gender gap differs by law firm, suggesting that some firms may have policies or cultures more conducive to gender equality than others. Fourth, evidence suggests that the gender gap also differs by geography for possibly similar reasons. Fifth, and finally, we drill down into the personal networks of women who are

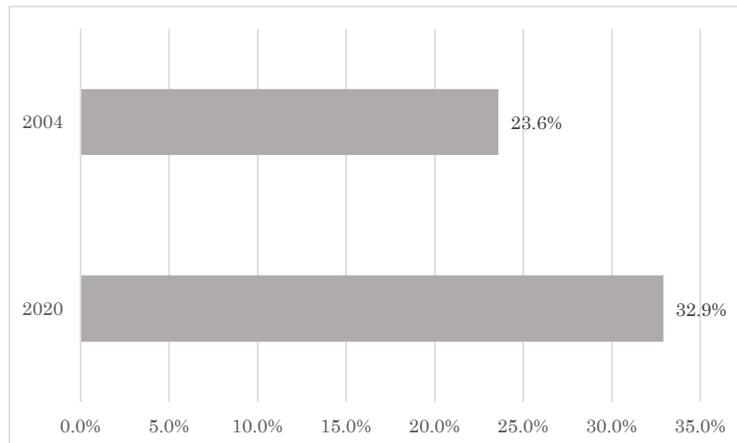
highly central in the Chancery Litigation Network in the year 2020 and look back at the gender composition of their personal networks over time. There, we find preliminary evidence of the striking social barriers these women confront over the courses of their careers. We also examine the clustering behavior in their personal networks and find instances where even these highly connected women are on the periphery of the largest cliques in their personal networks.

1. A persistent gender gap in access to social resources.

We begin by focusing on the big picture, or, in other words, trends across the dataset as a whole, before we drill down into particular law firms, geographic locations, or individual attorneys' experiences.

Our headline finding is that a simple comparison of the number of women and men participating in Chancery matters reveals a dramatic and persistent gap in gender representation in Delaware corporate litigation. Women attorneys are a minority of all lawyers involved in Chancery litigations throughout our seventeen-year dataset. As depicted in Figure 6 below, women comprised only 23.6% of all attorneys in 2004, the first year for which we collected data. By 2020, that percentage had only increased to 32.9%. In summary, at the beginning of our time period, not even one quarter of lawyers participating in Chancery matters were women, and in the final year not even one third were women.

FIGURE 6: PERCENTAGE OF WOMEN AS TOTAL ATTORNEYS



Identifying that persistent gender gap shapes much of the analysis that is to follow. With rare exceptions, men enjoy greater numbers and, as we will see in the results of our later network analysis, more advantageous social connections than women along all dimensions. Chancery has been, and continues to be, a man's world.

We begin by comparing the total degree centrality distributions for women and men in the dataset. We find that, while women have a slightly higher median total degree centrality, men have a longer right tail in their distribution. As depicted in the box plots of Figure 7 below, which reports results for 2020, men's upper quartile and maximum are higher than women's.¹²⁹ This provides a more nuanced picture of the gender gap introduced above: the median woman has slightly better informational access, as measured by total degree centrality, while women lag behind men among the most centrally positioned lawyers in the network.

¹²⁹ In unreported results, we find similar differences in women's and men's distributions in prior years of the dataset.

FIGURE 7: TOTAL DEGREE DISTRIBUTION BY ESTIMATED GENDER, 2020

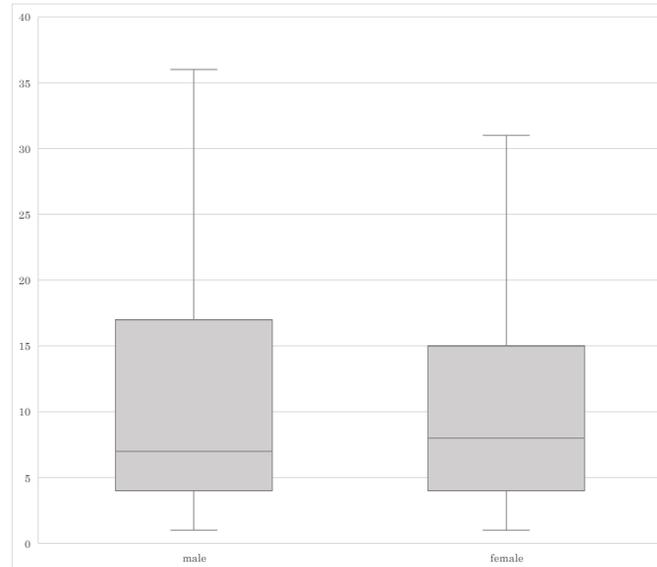
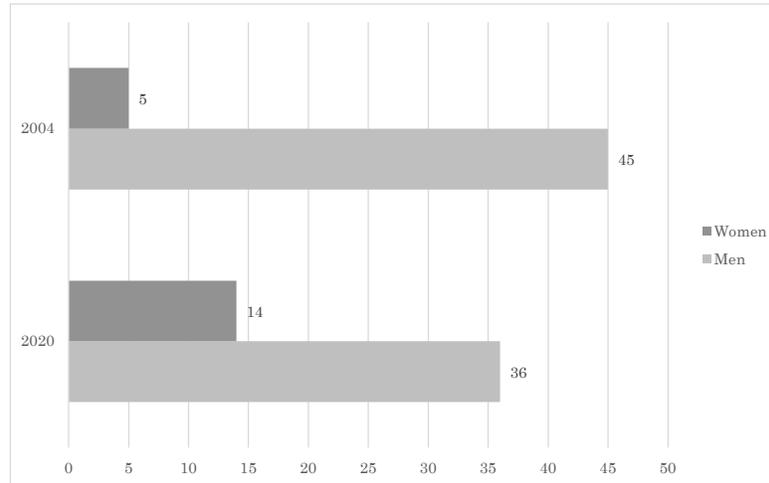


Figure 8 below provides another view of the gap between men and women in the network. Here, we identify the top fifty most-connected lawyers in the network in 2004 and 2020 (i.e., the fifty lawyers with the highest total degree centrality) and then predict their gender. In 2004, only five of the fifty most central attorneys were women. By 2020, that number had increased only to fourteen. It is important to note that a significant part of that growth comes from the bench itself, since the number of women judges increased dramatically over that time period.¹³⁰

¹³⁰ See *supra* notes 76–81 and accompanying text.

FIGURE 8: GENDER REPRESENTATION IN THE TOP FIFTY MOST CENTRAL ATTORNEYS



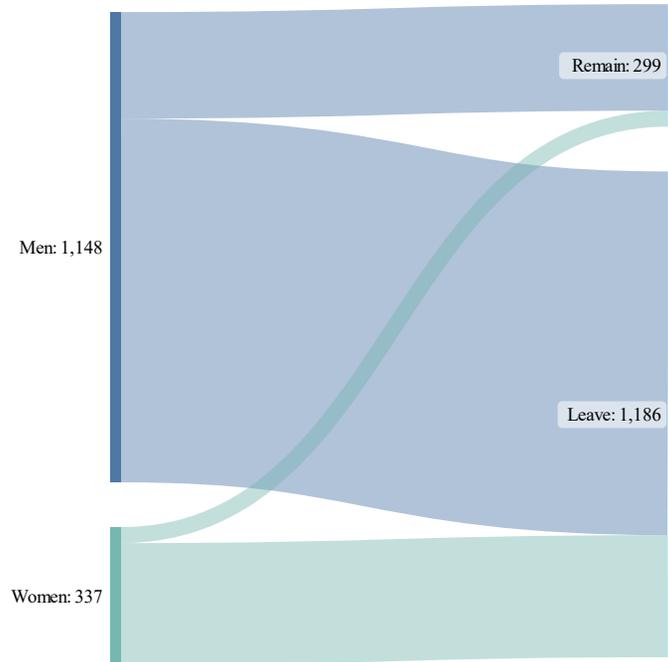
In short, we find further evidence of a gender gap in Chancery litigation, measured here by the number of lawyers' connections in the network. This tells us that women are not only underrepresented within the community of Chancery litigators, as shown above, but also that those women who are involved in Chancery do not have equal access to informational resources relative to men. Parity between women and men may be found on the periphery of the network, but a significant gap emerges when we examine who occupies the core of the Chancery Litigation Network.

2. Female attrition on the path to prominence.

Collecting seventeen years of data also allows us to study the dynamics of gender representation in Chancery litigation over time. For instance, we can observe how many of the women and men who participated in Chancery litigation left the market and how many remained involved by 2020. As Figure 9 below depicts, most of the attorneys involved in Chancery matters in 2004 were not involved in 2020. On the left-hand side of the alluvial plot are the 1,448 men and 337 women who were in the Chancery Litigation Network in 2004. On the right-hand side of the plot are the 260 men and thirty-nine women who were still in the Chancery Litigation Network in 2020. Of the 1,448 men working in Chancery litigation in 2004, only 260—or 18.0%—were still doing so in 2020. The percentage of women was even lower, however. Of the 337 women involved in Chancery matters in 2004, only thirty-

nine—or 11.6%—were still doing so in 2020. In short, a significant amount of attrition happens across the board, but relatively more women are dropping out than men.

FIGURE 9: NUMBER OF WOMEN AND MEN IN CHANCERY MATTERS IN 2004 WHO CONTINUE TO BE IN PRACTICE IN 2020



There are limitations, of course, to measuring attrition this way. Simply comparing representation trends between two years makes it difficult to determine why attorneys are leaving the field. Ideally, we would have data on the full arc of attorneys' careers in Chancery—the year they began and the year they left—allowing us to measure attrition with high fidelity. Comparing whether the attorneys appearing at the start of our dataset continue to be involved at the end of it does not take into consideration the different career stages lawyers may be in at the outset. In 2004, some lawyers may be entry-level associates, while others are nearing the ends of their careers. As a result, we cannot tell, for instance, whether some leave the market over the course of our data due to retirement. Furthermore, some attorneys who drop out of our dataset may not in fact be leaving practice but rather representing clients in other venues. For instance, a woman litigating in Chancery may later redirect her practice to,

say, intellectual property claims in the District Court for the District of Delaware, and what may appear to be someone leaving the profession is not, at least in a general sense. All of that said, the simple fact is that there is a gender gap, it is persistent, and a relatively smaller percentage of women practicing at the start of our dataset are found at the end of it compared to men.

To shed some additional light on the role gender might play in attrition, we selected a subsample of major Delaware and non-Delaware firms for further analysis. We hand-collected data on the ranks—associate, partner, or other senior lawyer (such as counsel)—of the attorneys at those firms who are involved in Chancery litigation in 2020.¹³¹ We first determined which law firms to survey based on the number of cases firms were involved in.¹³² Once law firms were selected, we filtered for attorneys that fell within practice groups related to corporate and Chancery litigation.¹³³ If a firm focused on a limited number of practices, all attorneys from the firm were surveyed.¹³⁴ If a firm had multiple practice groups, we read descriptions of each practice group to determine which practice groups to filter. Since practice groups are described differently across firms, this step was necessary to decide which practices were relevant for purposes of this dataset. For instance, some firms include corporate and Chancery litigation attorneys under the firm’s broad litigation or securities litigation practices,¹³⁵ while others designate specific groups such as

¹³¹ We primarily looked to the websites of specific law firms to determine the attorneys involved in Chancery litigation. Given the large number of lawyers and firms in our dataset, and the time and costs involved in a detailed hand-collection process, we surveyed only a select number of firms.

¹³² The top three Delaware firms, top ten non-Delaware plaintiff-side firms, and top ten non-Delaware defense-side firms were examined in this dataset.

¹³³ Examples of related practices include “Shareholder Derivative,” “M&A Litigation,” and “Corporate Governance Reform.”

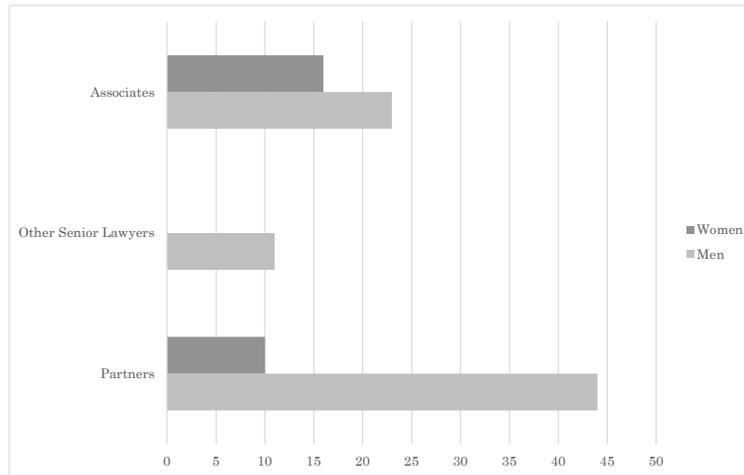
¹³⁴ Abrams & Bayliss LLP, Friedlander & Gorris, P.A., and Prickett, Jones & Elliot, P.A. are examples of boutique firms focused on corporate counseling and litigation. *Firm Profile*, ABRAMS & BAYLISS, <https://perma.cc/U99J-G68B> (“Abrams & Bayliss is a corporate, business and fiduciary law boutique focusing on high stakes litigation and transactional advice where there is a substantial risk of litigation or complex issues of Delaware law.”); *About the Firm*, FRIEDLANDER & GORRIS, P.A., <https://perma.cc/3YWQ-R99S> (“Friedlander & Gorris, P.A. is a litigation boutique focusing on corporate law litigation, alternative entity disputes, commercial litigation, and federal securities law cases in Delaware state and federal courts.”); *About the Firm*, PRICKETT, JONES & ELLIOTT, <https://perma.cc/4X9R-EH5M> (“The firm’s primary practice is Delaware corporate law.”).

¹³⁵ Attorneys listed within Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates’s broad “Litigation” group were surveyed. *Litigation*, SKADDEN, <https://perma.cc/KHF9-GRYJ> (“Skadden’s lawyers have extensive experience with such complex, ‘bet-the-company’ litigation matters, and we are widely recognized for our ability to handle our clients’ most critical litigation issues. . . . Skadden was the first national law firm to

“Delaware Practice” or “Mergers & Acquisition Litigation.”¹³⁶ After attorneys were filtered based on practice, information about attorneys’ names, title, gender, and whether they practiced corporate and Chancery litigation was extracted from their firm profiles.¹³⁷ If an attorney’s gender was not apparent based on pronouns used in their firm profile, we searched for pronouns used on other online profiles they might have.¹³⁸

Figure 10 below reports the summary statistics for the three major Delaware defense-side firms, Morris Nichols, Potter Anderson, and Richards Layton.¹³⁹ Of the Chancery litigators at those firms, only 18.5% of partners and 0.0% of other senior lawyers were women. On the other hand, 41.0% of associates were women.

FIGURE 10: NUMBER OF FEMALE AND MALE ATTORNEYS AT DELAWARE DEFENSE-SIDE FIRMS, BY RANK IN 2020



establish a presence in Delaware nearly 40 years ago, and our Delaware litigation attorneys have unparalleled experience in the renowned Court of Chancery.”).

¹³⁶ Quinn Emanuel Urquhart & Sullivan, LLP separates attorneys into specific groups such as “Delaware Practice,” “Mergers & Acquisitions Litigation,” “Securities Litigation,” and “Shareholder Activist Litigation,” which were all considered relevant practice groups to survey attorneys for this dataset. *Practice Areas*, QUINN EMANUEL TRIAL LAWS., <https://perma.cc/SA32-UCKJ>.

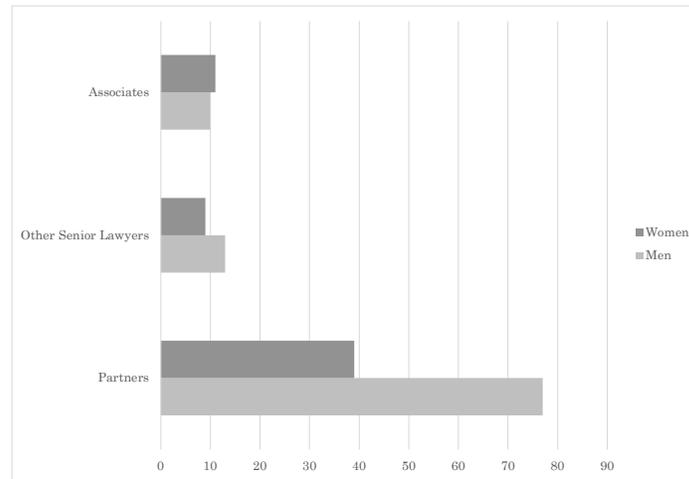
¹³⁷ If an attorney was listed under a practice group that was limited to attorneys with litigation experience in Chancery, the attorney was marked as practicing corporate and Chancery litigation. Other indicators included mentions of Chancery in an attorney’s firm profiles, such as “Delaware Court of Chancery” or “Del. Ch.”

¹³⁸ If available, LinkedIn, Chambers and Partners, and Super Lawyers profiles were reviewed to determine an attorney’s gender.

¹³⁹ See *supra* note 132 and accompanying text.

We observe similar patterns in a sample of ten major non-Delaware defense-side firms that appear in our dataset, as reflected in Figure 11 below.¹⁴⁰ Of the partners who are Chancery litigators at those firms, only 33.6% are women. Women account for 40.9% of other senior attorneys at those firms, which is materially larger than the percentage of women in Delaware firms at that rank, as indicated in Figure 10 above. Finally, unlike at the Delaware firms, women make up the majority of associates at the non-Delaware firms we study, comprising 52.4% of this most junior class of lawyers.

FIGURE 11: NUMBER OF FEMALE AND MALE ATTORNEYS AT NON-DELAWARE DEFENSE-SIDE FIRMS, BY RANK IN 2020



Those results are consistent with the rationale that one reason women drop out of the market is due to the particular barriers to advancement they encounter, unlike men.

Finally, we examine the gender gap, as measured by network centrality, over time. In the discussion above, we found evidence of greater attrition among women than men in the market. While 18.0% of men involved in Chancery litigation in 2004 were still participating in the field in 2020, only 11.6% of women were doing so.

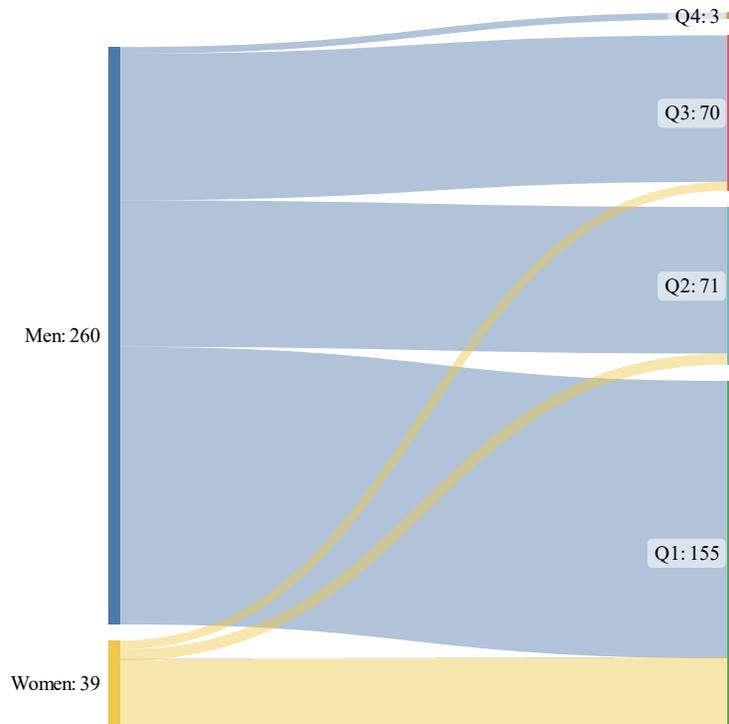
We see a similar dynamic over time when we examine attorneys' network positions. Instead of simply asking how many women and men in 2004 were still in practice in 2020, here we ask what the network centrality is in 2020 of the attorneys who

¹⁴⁰ The top ten law firms based on the number of matters in which they were involved were selected for this subsample.

appear in our dataset in both 2004 and 2020. In other words, if an attorney was practicing in Chancery in 2004 and was still practicing in Chancery in 2020, what is their network centrality at the end of the period?

Figure 12 below depicts the answer to that question. It shows how the women and men, who were Chancery litigators in 2004, fall within the total degree centrality distribution for 2020 by quartile. On the left-hand side of the alluvial plot are the 260 men and thirty-nine women who were in the Chancery Litigation Network in 2004 and still in 2020. On the right-hand side of the plot are the four quartiles, based on attorneys' degree centrality in 2020, with the total number of attorneys falling within each quartile (i.e., 155, seventy-one, seventy, and three, respectively).

FIGURE 12: TOTAL DEGREE CENTRALITY IN 2020 BY QUARTILE OF THE ATTORNEYS PRACTICING IN BOTH 2004 AND 2020



Relatively fewer women achieve higher quartiles in the centrality distribution than men. The top quartile—the most connected individuals in the network—is dominated entirely by men: 0.0% of women Chancery litigators in 2004 made it into the fourth

quartile, while 1.2% of men did. Similarly, only 10.2% of women but 25.4% of men fall within the third quartile, and 12.8% of women but 25.4% of men are in the second quartile. In the bottom quartile, 76.9% of women but 48.1% of men can be found. In summary, not only are more women dropping out of the field than men, but those women who do remain active in Chancery litigation are achieving lower levels of professional connectivity than men.

3. Women's network positions vary by law firm.

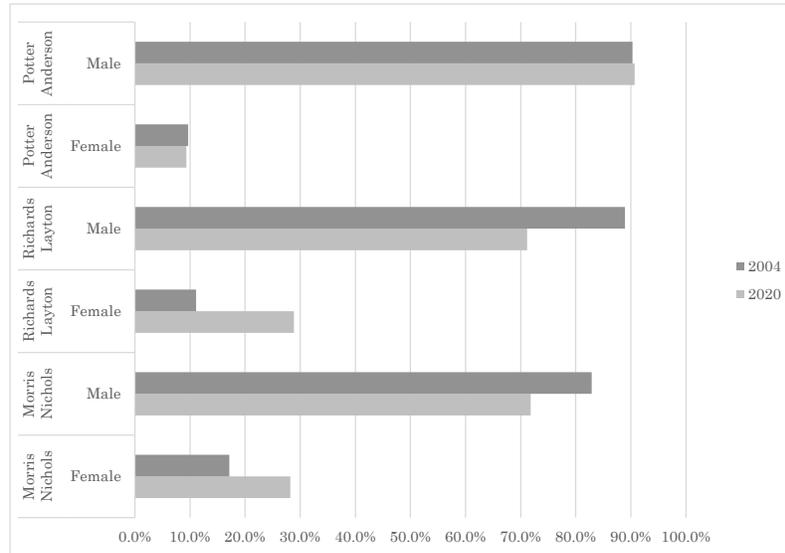
We next examine trends based on law firm membership or the geographic locations of the attorneys in the dataset. We see the gender gap every way we slice the data. However, the gender gap is not entirely consistent across law firms nor geographic location.

First, we report the breakdown of women and men participating in Chancery matters on a law firm basis. Our dataset includes hundreds of firms, and so we focus here only on the top firms, measured by the number of matters in which they are involved in the most recent year of the dataset. We report the results for major Delaware firms and non-Delaware firms separately, based on where law firms' headquarter offices are located.

For both Delaware and non-Delaware firms, it is very rare to find a law firm where women outnumber men in their involvement in Chancery litigation. Rather, we continually observe men outnumbering women from firm to firm. However, some law firms have a gender gap that is smaller than others.

Figure 13 below reports the number of women and men participating in Chancery matters for the three major defense-side Delaware firms, Morris Nichols Arsht & Tunnel LLP, Richards Layton & Finger, P.A., and Potter Anderson & Corroon LLP. In 2004, Morris Nichols had the highest percentage of women involved in Chancery matters, with 17.1%, and Potter Anderson had the lowest, with 9.7%. By 2020, the percentage of women participating in Chancery litigations had increased at Morris Nichols and Richards Layton to 28.2% and 28.9% respectively, but actually decreased at Potter Anderson to 9.3%.

FIGURE 13: PERCENTAGE OF WOMEN AND MEN BY DELAWARE FIRM



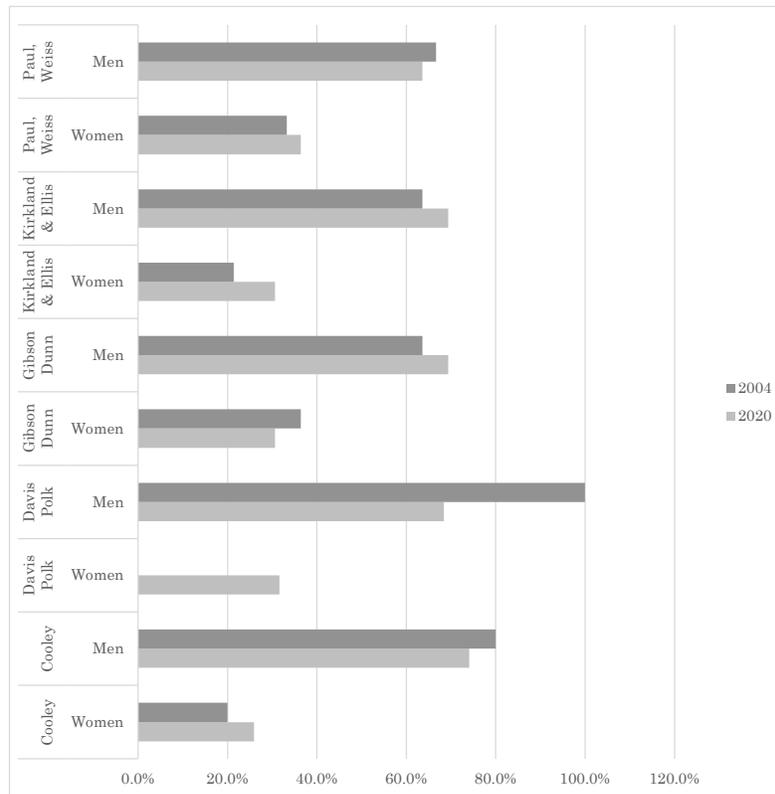
In summary, for most, but not all, of the three major Delaware defense-side firms, the gender gap closed a bit over the time period studied. Notably, however, the percentage of women participating at these three Delaware firms was below the overall averages reported above in Figure 6. In 2004, the average percentage of women participating from the three major Delaware firms was 12.6%, while the percentage of women across the entire dataset for that year was 23.6%. In 2020, the average percentage of women at those three firms increased to 22.1%, which is still well below the overall average of 32.9%.

We observe similar patterns at the major non-Delaware defense-side law firms that are involved in Chancery litigation, as reported in Figures 14a and 14b below. All ten firms have a gender gap, where men outnumber women. However, compared to the three major Delaware firms analyzed above, these non-Delaware firms tend to have greater percentages of women on their litigation teams. For instance, Quinn Emanuel actually had more women (66.7%) than men involved in Chancery matters in 2004, an outlier among the reported firms. Cooley, Davis Polk, and Wachtell Lipton had the lowest percentages of women in 2004,

with 20%, 0.0%, and 20% respectively.¹⁴¹ The overall average percentage of women in 2004 among the ten firms was 25.3%, which is double the average of the three Delaware firms reported above.

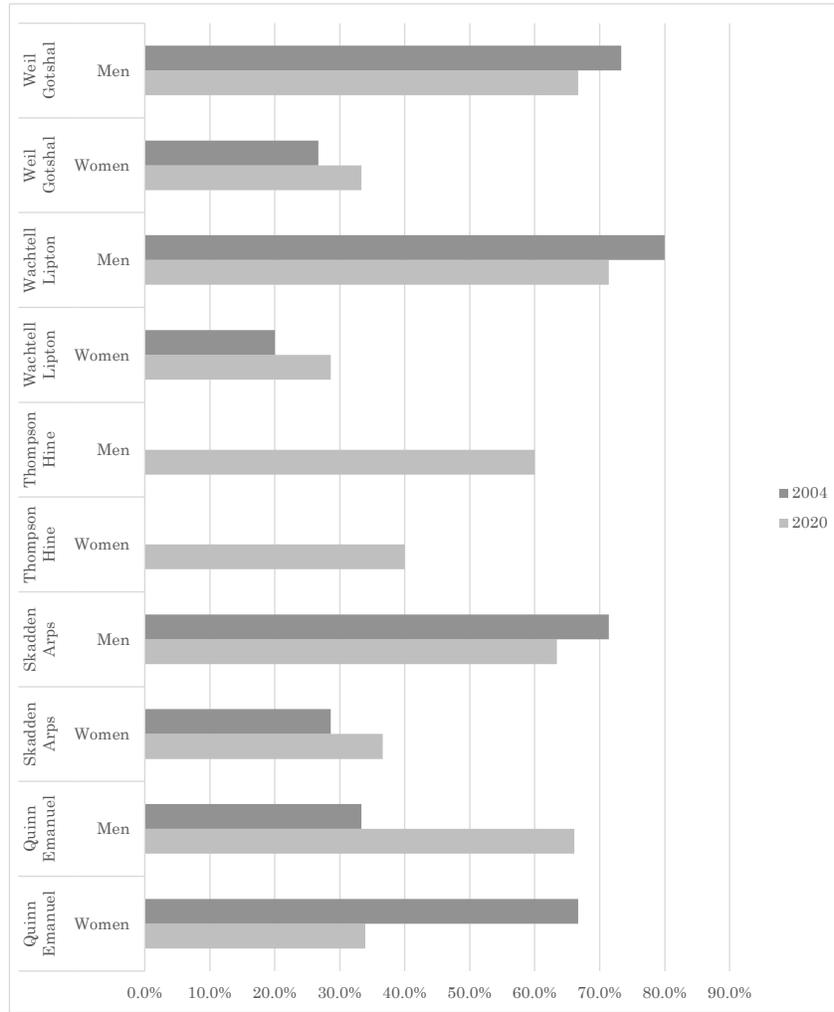
By 2020, the gender gap had narrowed but nevertheless persisted at the ten non-Delaware defense-side firms reported in Figures 14a and 14b. Paul, Weiss; Skadden; and Thomson Hine had the greatest percentage of women in 2020, with 36.4%, 36.6%, and 40% respectively. Cooley and Wachtell Lipton were still at the back of the pack, with 25.9% and 28.6% respectively. Overall, the average percentage of women across these ten firms was 32.8%, which was greater than the average for the three Delaware firms reported in Figure 13 above and nearly the same as the average among all firms in the dataset, as reported in Figure 6 above.

FIGURE 14A: PERCENTAGE OF WOMEN AND MEN BY MAJOR NON-DELAWARE DEFENSE-SIDE LAW FIRM



¹⁴¹ Note that according to our data, Thompson Hine was not active in Chancery litigation in 2004 at all, and so we do not include them in our list of firms with the lowest percentages of women.

FIGURE 14B: PERCENTAGE OF WOMEN AND MEN BY MAJOR NON-DELAWARE DEFENSE-SIDE LAW FIRM

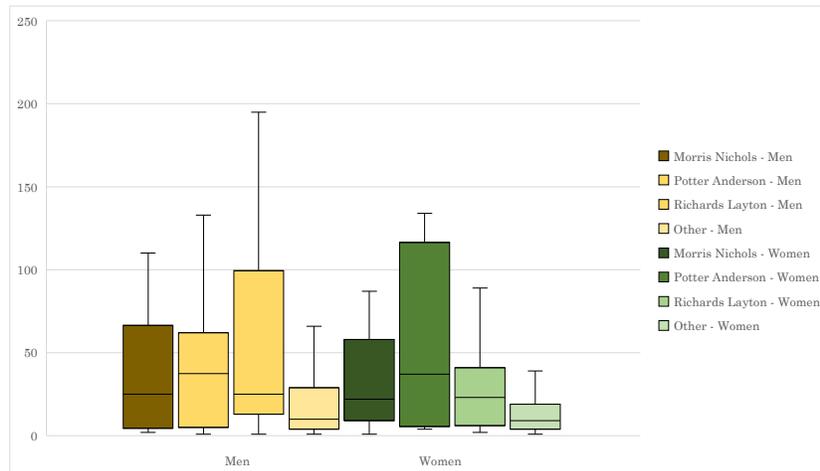


We then analyze how attorneys’ network centrality differs across the major firms. Like the participation statistics in Part II.B above, we find that the distribution of network links among men and women differs between firms. Interestingly, however, the patterns here do not necessarily track the law firm patterns observed above. In that respect, the network analysis reveals things that are otherwise obscured by straightforward headcount statistics.

First, consider the distribution of network links in 2020 among men and women for the major Delaware firms, Morris Nichols, Potter Anderson, and Richards Layton & Finger. As

depicted in Figure 15 below, those firms' distributions of network links among their attorneys are not equal. Richards Layton, for instance, exhibits a particularly stark difference between women and men, with the most connected men at that firm having more than two times the number of connections in the network than women. Note, however, that in 2020 Richards Layton had the highest percentage of women participating in Chancery litigation (28.9%) compared to the other major Delaware firms.¹⁴² We see a similarly interesting relationship at Potter Anderson, though the interplay is in the opposite direction. In 2020, Potter Anderson had the lowest percentage of women participating in Chancery litigation—less than 10% of its total attorneys in this market. However, as Figure 15 shows, Potter Anderson's women and men are most evenly balanced.

FIGURE 15: TOTAL DEGREE DISTRIBUTION BY ESTIMATED GENDER AND ATTORNEY'S LAW FIRM, 2020



4. Women's network positions vary by geographic location.

In addition to law firm patterns, we also examine gender representation based on attorneys' locations. Of course, by dividing the firms above based on whether they were Delaware-based or non-Delaware based, we have already shed some light on the possibility that location effects may contribute to the gender gap. The step we take here is different. Instead of looking at law firms, we identify the office location (based on office addresses disclosed in the court filings that make up the dataset) of each individual

¹⁴² See *supra* fig.13 and accompanying text.

attorney involved in Chancery matters during the time period we study. For instance, a Skadden attorney based in the Wilmington, Delaware, office is characterized as a Delaware-based attorney, even though Skadden is headquartered in Manhattan and traditionally associated with New York.¹⁴³ We then study the breakdown between women and men based on the jurisdiction in which they are located. For example, we count all the women and men with offices in the states of California, Delaware, New York, etc.¹⁴⁴

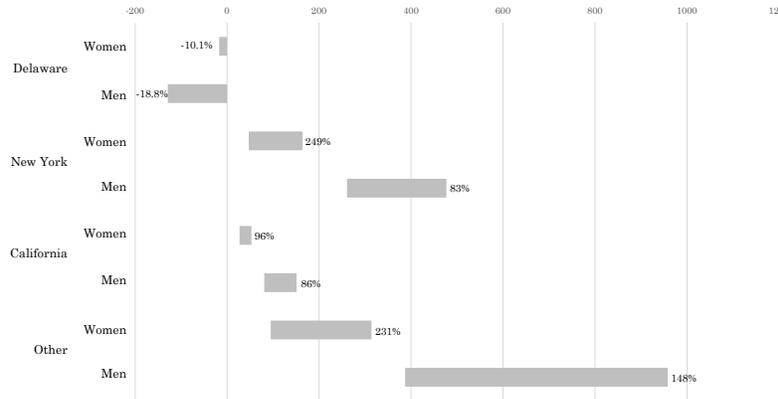
Examining geographic trends reveals a familiar pattern. As depicted in Figure 16 below, there is a gender gap in all the major geographic locations we study—men outnumber women in California, Delaware, New York, and all other jurisdictions in our dataset. That gender gap is also receding over time. However, the extent to which the gender gap has closed differs across locations. In California, New York, and all other jurisdictions besides Delaware, the share of attorneys who are women increased from 2004 to 2020, though the relative growth of women to men has been most pronounced in New York and all other jurisdictions. For instance, the number of women based in New York participating in Chancery litigation has increased by nearly 250%, while the number of men from New York has grown only by 83%.¹⁴⁵ Interestingly, our data captures the relative decline of Delaware lawyers in the share of attorneys involved in Chancery matters—the percentage of both women and men based in Delaware actually falls from 2004 to 2020, though the decline is slower among women than men.

¹⁴³ See *About The Firm*, SKADDEN, <https://perma.cc/N73Z-65ZX> (“Skadden began as a scrappy upstart among a sea of established ‘white shoe’ law firms in New York.”); *New York*, SKADDEN, <https://perma.cc/JVK2-LXAR> (“The New York office of Skadden, Arps is our largest office and headquarters of our broad-based international practice.”).

¹⁴⁴ We break out New York and California from all “Other” jurisdictions in our analysis because they have a materially larger number of litigators appearing in our dataset than all other states in the United States.

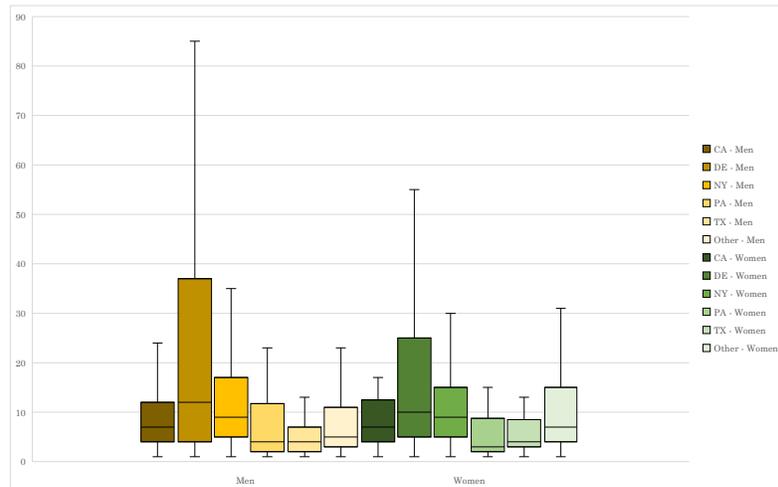
¹⁴⁵ Many of the New York firms in our study are large elite firms. The percentage of women associates and partners at the largest law firms has grown over the time period in our study. In 2004, women made up approximately 17% of partners at large law firms and 43% of associates. *Women and Attorneys of Color Continue to Make Only Small Gains at Large Law Firms*, NALP (Nov. 5, 2004), <https://perma.cc/S955-B9KR>. By 2020, women represented approximately 25% of all partners and 47% of all law firm associates at the largest firms. NALP Bulletin+, *Representation of Women and People of Color in U.S. Law Firms in 2020*, NALP (June 2021), <https://perma.cc/WVL5-JUHL>.

FIGURE 16: CHANGE IN GENDER REPRESENTATION BY ATTORNEYS' LOCATION



Second, we study the distribution of network links among attorneys based on their office location. We also find evidence that the gender gap differs by geographic location when we measure the gap by the number of network links among attorneys. Despite the recent advances in women’s representation in Chancery litigation in all jurisdictions, men still tend to have more network connections. As depicted in Figure 17 below, men based in California, Delaware, New York, Pennsylvania, and Texas all have more connections at the maximum than women. Interestingly, however, women in all other jurisdictions have more connections at the maximum than men.

FIGURE 17: TOTAL DEGREE DISTRIBUTION BY ESTIMATED GENDER AND ATTORNEY LOCATION, 2020



In unreported analyses, we examine the distributions of degree centrality among men and women for the years 2004–2019. In those years, we see distributions highly similar to what is reported in Figure 17 above.

5. The personal gender gaps that individual women confront.

Network analysis also illuminates a possible reason that women are relatively less connected than men over time: their personal networks are overwhelmingly populated with men.

Using our highly detailed map of attorneys' professional connections, we can identify the direct (or "first-degree") connections that every lawyer has. This allows us to construct a view of each attorney's immediate neighbors—i.e., the people with whom they work directly in Chancery litigation. We can also do so across time, following the development of an attorneys' connections in the network from year to year.

Analyzing the data this way, we repeatedly find women operating in first-degree networks characterized by a gendered form of social isolation. For example, Figure 18 below depicts two networks for the same lawyer, who was one of the most highly connected women in the Chancery litigation network in 2020. The left-hand panel shows her first-degree network at an early stage of her career. In that year, she worked on Chancery matters with twelve other attorneys, all of whom were men. The right-hand panel depicts her first-degree network ten years later. In that year, she worked on Chancery matters with seventy-five lawyers, fourteen of whom were women. In terms of the likelihood of interacting with other women on cases, to work as a woman in Chancery litigation is largely to be alone.

FIGURE 18: EARLY-CAREER AND MID-CAREER NETWORKS OF A HIGHLY CONNECTED WOMAN IN 2020



One might wonder whether the small number of women in the network nevertheless repeatedly encounter one another from matter to matter. That might perhaps allow women to become a tight-knit corps within the broader professional environment, which is dominated by men. While such a community certainly may exist, relationships among women litigators appear to grow through other means. The dynamics we observe within women's first-degree networks suggest that repeated interactions among women from case to case are infrequent.

For instance, Figure 19 below reports the frequency by which attorneys repeat from year to year in the first-degree networks of the highly connected woman whose early-career and midcareer networks are depicted above in Figure 18. For each year in the graph, the percentages of women and men who were connected to our focal female attorney also in the year prior are reported. So, for example, the results for 2005 indicate that 0.0% of the women, if any, appearing in her 2004 first-degree network also appeared in her 2005 network, and that 8.3% of the men in her 2004 first-degree network carried over to 2005.

In Figure 19, the percentage of women repeating from year to year typically lags the percentage of men. In ten of the thirteen years analyzed, a greater percentage of men repeated than women. Furthermore, in six years, no women at all from the respective prior year reappear in the first-degree network of our focal female attorney. In only two years do the percentages of women carrying over from the prior year exceed the percentage of men. It is particularly interesting to compare 2015, when the largest percentage of women carried over from the previous year

(25.0%) relative to men (13.6%), to the following year, 2016, when the percentage of women repeating dropped to 0.0%, suggesting that 2015 was an exception rather than the start of a trend.

FIGURE 19: PERCENTAGE OF WOMEN AND MEN REPEATING FROM YEAR TO YEAR IN A HIGHLY CONNECTED WOMAN'S FIRST-DEGREE NETWORK

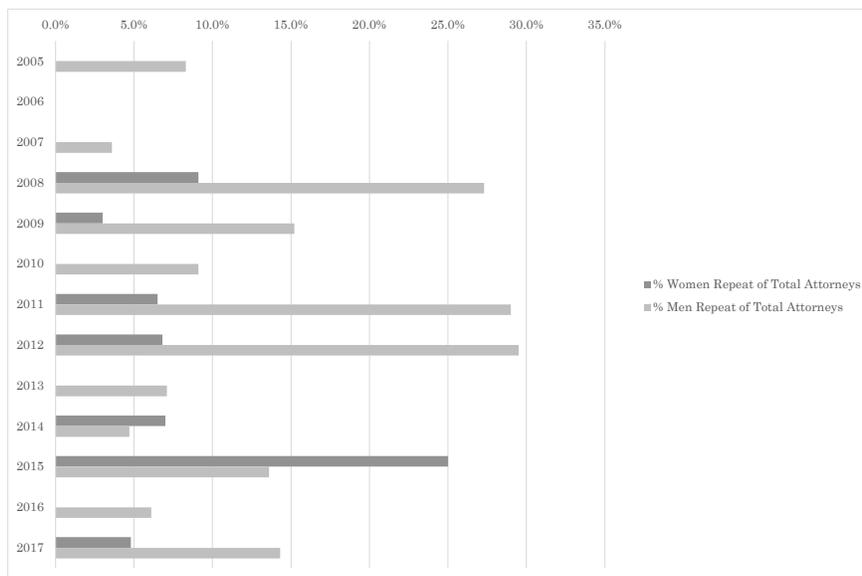


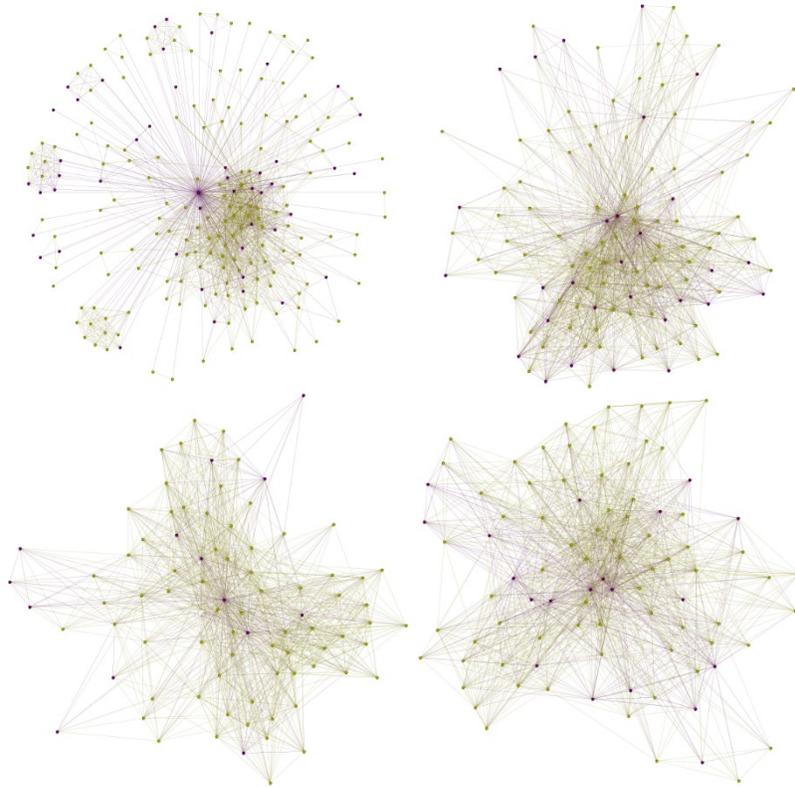
Figure 19 provides an additional lesson. Note the overall infrequency by which attorneys repeat in the personal first-degree network of Figure 18's focal attorney. Although men repeat more frequently, the highest percentage of repeating male attorneys is still only 29.5% in 2012. There is a great deal of volatility in this woman's first-degree network: the majority of attorneys with whom she works changes from year to year.

In such an environment where change is constant, the gender gap may be a particularly difficult challenge to women's advancement. Men navigating that volatile professional landscape can rely on gender as an anchor: though the particular attorneys they work with change regularly, they consistently encounter lawyers of their same gender from matter to matter, year to year. Women do not have the same advantage.

Finally, our data suggest that this gendered form of isolation does not subside for women who climb to the top of the field. For example, Figure 20 below depicts the first-degree networks of four female attorneys who are among the top fifty most central

lawyers in the Chancery Litigation Network in 2020. The upper networks are of two different women who typically represent defendants in Chancery litigation. The lower networks are of two women who commonly represent plaintiffs. All four first-degree networks are dominated by men. Of the 205 lawyers in the upper left-hand network, only forty-six are women, or 22.4%. Of the 111 attorneys in the upper right-hand network, only twenty-nine are women, or 26.1%. We similar patterns among the two plaintiffs' lawyers. Of the ninety attorneys in the lower left-hand network, only twelve are women, or 13.3%. And, of the ninety lawyers in the lower right-hand network, only twenty are women, or 22.2%. In summary, even the most highly connected women in the Chancery Litigation Network are outnumbered.

FIGURE 20: THE FIRST-DEGREE NETWORKS OF FOUR TOP-FIFTY WOMEN, 2020



Our data also reveals a more subtle, and likely persistent, form of isolation that these four women experience. Each of the network graphs in Figure 20 exhibit community structure,

though it is particularly easy to see it in the top two graphs. Community structure refers to the presence of distinct sub-networks, or communities, where links between nodes are particularly dense.¹⁴⁶ Like cliques in a high school, these subnetworks may be important sources of professional advantage in the broader network. For instance, membership in a thickly connected subnetwork may provide one with quick access to information or a set of shared norms.

It is possible to quantitatively identify the particular subnetworks in each of the four graphs in Figure 20 and study women's positions within them.¹⁴⁷ Table 1 below reports the results of this analysis. For each of the four focal attorneys in Figure 20, it

¹⁴⁶ M. E. J. Newman & M. Girvan, *Finding and Evaluating Community Structure in Networks*, 69 PHYSICAL REV. E 026113-1, 026113-1 (2004).

¹⁴⁷ Specifically, this can be done by calculating Professor M. E. J. Newman's "modularity" measure. See M. E. J. Newman, *Modularity and Community Structure in Networks*, 103 PROC. NAT'L ACAD. SCI. U.S. 8577, 8578–80 (2006) [hereinafter Newman, *Modularity*]; Newman & Girvan, *supra* note 146, at 026113-7. For an overview of various approaches for studying network substructure, see Robert A. Hanneman & Mark Riddle, *Introduction to Social Network Methods: Embedding*, UNIV. OF CAL. RIVERSIDE (2005), <https://perma.cc/TAQ5-LMKP> and Robert A. Hanneman & Mark Riddle, *Introduction to Social Network Methods: Cliques and Sub-Groups*, UNIV. OF CAL. RIVERSIDE (2005), <https://perma.cc/QL3Z-MYHH>. Over time Newman modularity has become one of the most widely used metrics for identifying community structure. M. E. J. Newman, *Communities, Modules, and Large-Scale Structures in Networks*, 8 NATURE PHYSICS 25, 28 (2012) ("A variety of different measures for assigning scores [to network divisions] have been proposed, such as the so-called E/I ratio, likelihood-based measures and others, but the most widely used is the measure known as the modularity." (citations omitted)).

In Newman's formulation, the modularity of a network is defined as "the number of edges falling within [discrete] groups minus the expected number in an equivalent network with edges placed at random." Newman, *Modularity*, *supra*, at 8578. As that formulation suggests, Newman's modularity measure is based upon the premise that modular boundaries are best identified by comparing the actual structure of a network to the allocation of links in a random network with an equal number of nodes. *Id.* That is, the algorithm identifies a boundary between discrete node groupings, or "modules," where there is a "fewer than expected" number of links between nodes. *Id.* (emphasis added). That conception of substructure employs probability fundamentals familiar to any statistician: subsystems are defined by analyzing when the number of links between a collection of nodes is statistically different from a random allocation of links. *Id.*

Newman and collaborators have developed two algorithms using the metric. The calculations for each are quite complicated; the interested reader is encouraged to consult the original sources. The first algorithm will be referred to as Newman-Girvan Modularity. This algorithm identifies subgroups within a network by, first, identifying the links in the network with the highest betweenness values—i.e., the links that are along the shortest paths between large numbers of nodes within the network. It then iteratively removes those links from the network (recalculating the betweenness values each time), and then, chooses the iteration that optimizes an expression in order to determine the number of discrete subgroups. Newman & Girvan, *supra* note 146, at 026113-3, 026113-7. The second algorithm, which will be referred to as Newman Modularity, uses a comparison of the actual network and random network's eigenvalues, rather than link removal, to identify module boundaries. Newman, *Modularity*, *supra*, at 8578–79.

provides for the year 2020: (1) the number of lawyers (nodes) in their respective first-degree networks; (2) the number of connections (links) the focal attorney has to those nodes; (3) the number of subnetworks identified in the focal attorney’s first-degree network; (4) the percentage of women in the largest subnetwork in the focal attorney’s first-degree network; and (5) an indication of whether the focal attorney is a member of that largest subnetwork.

TABLE 1: COMMUNITY STRUCTURE OF FIRST-DEGREE NETWORKS OF FOUR TOP FIFTY WOMEN, 2020

Focal Attorney	No. of Nodes	No. of Links	No. of Sub-Networks	Percentage of Women in Largest Sub-Network	Whether Focal Attorney is Member of Largest Sub-Network
Female Defense Lawyer 1	205	1,500	10	28.60%	Yes
Female Defense Lawyer 2	111	1,604	5	21.90%	Yes
Female Plaintiffs Lawyer 1	90	1,331	5	22.20%	No
Female Plaintiffs Lawyer 2	90	1,436	5	18.80%	No

We see in Table 1 that, once again, women are in the minority—this time as a percentage of the largest subnetworks in these four women’s first-degree networks. In other words, women are a minority in the largest distinct clique that each of these four focal attorneys have in their personal networks. What is more, the two female plaintiffs’ lawyers are not members of the largest clique in their personal networks. In fact, both fall in the smallest cliques identified in their networks.

F. Summary and Looking Forward

In this Section, we report what is, to our knowledge, the first use of network analysis to reveal the gender gap in a major field of the U.S. legal system. The analysis proceeds in a spirit of exploration—identifying important trends that will provide the bases for further empirical analysis in subsequent research. To that end, it reports a wide range of statistics that identify the breadth and depth of the persistent gender gap that exists within the network of attorneys at the heart of Delaware corporate law.

We identify five main findings. First, we find evidence along both measures for a significant and persistent gender gap among Chancery litigators. This alone is significant: our headcount statistics corroborate the results of prior studies, which have

identified a gender gap in other areas of legal services. We also identify a gender gap with respect to women's and men's respective network positions. This adds additional color to the quality and depth of the gap—we can observe women's lack of access to professional resources in an unprecedented level of detail.

Second, we find evidence suggesting that the persistence of the gender gap might be explained by elevated levels of attrition among women in the network. We can see that relatively fewer women than men advance from the associate ranks to partnership, which is consistent with prior scholarship.¹⁴⁸ However, we can also trace the relative advances women and men make within the professional network, and there too we find evidence of attrition. Women do not increase in centrality over time to the same extent as men. This application of network analysis is particularly promising for future research, since it gives us a much more fine-grained variable by which to study a given attorney's progress in the profession.

Third, we find evidence that the gender gap differs by law firm, suggesting that some firms may have policies or cultures more conducive to gender equality than others.

Fourth, evidence suggests that the gender gap also differs by geography for possibly similar reasons. Taken together, the law firm and geographic trends raise the important normative possibility that particular policies, cultures, or practices at the law firm or geographic level might explain the differing outcomes.

Fifth, and finally, we drill down into the personal networks of women who are highly central in the Chancery Litigation Network in the year 2020 and look back at the gender composition of their personal networks over time. There, we find evidence of the striking social barriers these women confront over the courses of their careers. We also examine the clustering behavior in their personal networks and find instances where even these highly connected women are in the minority of the largest cliques in their personal networks. This detailed level of analysis opens new doors for both quantitative and qualitative research. On the quantitative side, it points the way to a wide range of new potential variables that might be used to understand the aggregate

¹⁴⁸ NALP Bulletin+, *supra* note 145 (noting that women represented approximately 25% of all partners and 47% of all law firm associates at the largest firms); Liebenberg & Scharf, *supra* note 7, at 1 (noting that, while women make up nearly half of new law firm associates, only 20% of law firm equity partners are women); Dinovitzer, Nelson, Plickert, Sandefur & Sterling, *AFTER THE JD II*, *supra* note 101, at 63 (indicating that women attain equity partner status at much lower rates than men); BRODHERSON ET AL., *supra* note 101, at 4 ex.2 (finding that women are 29% less likely than men to be promoted to partner).

patterns of inequality we observe in a field. On the qualitative side, this detailed analysis provides rich context for deeper ethnographic study of gender inequality in law. Of all our findings, this one is perhaps the most exciting, in that it shows most clearly how network analysis can be used as a bridge between the macrolevel and microlevel dynamics in a field.

It bears noting the study's key limitation: the analysis reported here in Part II is entirely descriptive. We have not asked what phenomena might correlate with, or even cause, the patterns we observe, though we speculate from time to time on what likely factors may be. We defer that natural next step to subsequent research. We do so in an effort to raise awareness on the new gender gap we identify and to focus interest on the novel suite of empirical tools we introduce.

In summary, our findings corroborate and enrich qualitative studies of the gender gap in law. Women lawyers often recount in qualitative studies of their experience at elite law firms that a major factor in gender disparities in leadership at law firms is women's inadequate access to opportunities and networks. As one Black woman associate described:

A law firm is relationship-driven. . . . You work with partners who choose whether they see something that you are not. As an associate, if the work you do is of a certain caliber, you will advance. But in order to ultimately continue advancing, you need to have a partner and/or senior associates that take a liking to you. And in terms of taking a liking, that's a very personal choice. . . . You just know that people tend to gravitate to people who are similar to them, and I know I'm different than a lot of the people at the firm.¹⁴⁹

III. POSSIBILITIES FOR REMEDIATING EXCLUSIONARY NETWORK STRUCTURE

This Article's most fundamental contribution is the variety of new avenues it opens for future empirical research. The network-based approach introduced here allows us to connect developments within formal legal institutions more clearly to the social ecosystem that produces them. For instance, we can now study with a high level of precision the social milieu—including its gender breakdown—that produces the most impactful judicial decisions in U.S. corporate law. On the flip side, we can also observe

¹⁴⁹ Melaku, *supra* note 8.

how the participation in market-moving litigation affects the later careers of the women and men involved. One reason we canvassed so many different trends in Part II above is to suggest fruitful avenues for studying such questions in subsequent research.

Drawing firm normative conclusions from an exploratory study such as this would be premature. We believe, however, that this Article nevertheless contributes in a meaningful way to normative debates over ways to address the gender gap in the legal profession, as well as debates about the role of Delaware courts and doctrine in the development of corporate law doctrine. We highlight four such implications here. First, by illuminating the role professional networks play in gender inequality, this Article raises the critical question of whether networks are manipulable. The evidence above suggests that the inequalities found in networks are durable, while at the same time raising the possibility that networks may be rewired in a more equitable way.

Second, the Article sheds new light on the age-old question of which policy interventions will reduce the gender gap. The persistence of the gender gap above highlights the inadequacies of prior policies to reduce gender inequality. It also sheds new light on what might be more effective going forward.

Third, this Article raises the question of how policy interventions should be used together. By making social relationships more concrete, the network analysis above invites us to think more carefully about aligning targeted interventions with discrete remedial goals. Instead of one-size-fits-all approaches, we can develop more nuanced policies. That in turn introduces the possibility of deploying multiple interventions at once. But do policies necessarily work in complementary fashion? Or might one interfere with another? The network approach pursued in this Article provides a framework for approaching the difficult question of what combination of tools should we select from the toolkit.

A fourth implication of our analysis is that it may serve as a way to investigate deeper questions both about the changing makeup of Chancery, and about the relationships between the makeup of the court and Delaware corporate law doctrine. Until recently, the Delaware bench and bar were dominated by men. Might the changing nature of the bench and bar shift Delaware's jurisprudence with respect to critical fiduciary duty questions?

A. Can Networks Be Intentionally Rewired?

The persistent gender gap we observe in the Chancery Litigation Network has both good and bad news for efforts to achieve

gender equality in the law. Let's take the bad news first. By exposing the social infrastructure of inequality, the analysis in Part II above shows how much must change in a field, like U.S. corporate litigation, to achieve more equitable outcomes. The gender gap in Delaware corporate litigation has been persistent and durable because rewiring connections within the network of lawyers takes significant time and effort. The problem is distributed, rather than centralized within a few institutions or actors, and rife with coordination problems. To view the social network is in some sense to grasp the enormity of the task, and it raises the basic question of whether these social networks are manipulable. Can we more consciously engineer the social interactions within a field to achieve more equitable outcomes?

At the same time, illuminating the network and its role suggests that the project of achieving gender equality is not Sisyphean. If network analysis reveals the challenges that effort faces, it also clarifies the path forward. We now have visibility on an important mechanism—the professional network—by which access to social resources is constrained. In a way not available before, we can observe those constraints and track their evolution over time. That is, we can observe whether and how the professional network structure changes—and what might instigate those changes—from one time period to another. This also gives us a new way to measure progress that is both more nuanced than headcount statistics while also remaining concrete. This study may not provide a full set of prescriptions we can follow to achieve gender equality in law, but it supplies a new set of tools that we can use to build them.

To the question of whether networks are manipulable, it appears that the best answer now is, having illuminated network structure in a legal field, that change is not guaranteed but it is possible. The best analogy here may be to the problem of orienting oneself when attempting to traverse difficult terrain. This Article provides a new set of surveying techniques—rather than a definitive map—that allow us to see and measure important aspects of the terrain before us that, up until now, was acknowledged but not fully understood. As we begin to survey with these new techniques, we come to appreciate the challenges in the landscape, but we also now have a surer hope in charting a course ahead.

B. What Interventions Will Reduce the Gender Gap?

The network approach we use in this Article highlights the durability of networks and illuminates the challenges to

inclusion. We recognize, of course, that there is copious literature that addresses deep-rooted cultural and structural barriers that contribute to gender inequalities within professions and in the practice of law more specifically.¹⁵⁰ For example, the combination of long work hours and caretaking roles, which loom more significantly for women attorneys because of existing gender norms, may push women out of corporate litigation.¹⁵¹ Our modest aim is to reflect on the implications of our network analysis for the most common interventions—diversity trainings, affinity groups, mentoring, and bar association diversity efforts—used by law firms and the bar. We recognize, however, that other important structural reforms will likely be necessary to advance inclusion in corporate governance litigation.¹⁵²

1. Diversity trainings.

Firms have long used diversity trainings to promote inclusion and address bias in various professions, and antibias trainings are a mainstay of law firm programs.¹⁵³ Social scientists lament, however, that “[d]iversity training has borne too much of the burden of addressing inequality at work.”¹⁵⁴ Instead, research by Professors Frank Dobbin and Alexandra Kalev indicates that the “positive effects of diversity training rarely last beyond a day or

¹⁵⁰ See generally, e.g., Jane R. Bambauer & Tauhidur Rahman, *The Quiet Resignation: Why Do So Many Female Lawyers Abandon Their Careers?*, 10 U.C. IRVINE L. REV. 799 (2020); Naomi Cahn, June Carbone & Nancy Levit, *Gender and the Tournament: Re-inventing Antidiscrimination Law in an Age of Inequality*, 96 TEX. L. REV. 425, 445–71 (2018); Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245 (2010); Cynthia Fuchs Epstein, Robert Sauté, Bonnie Oglensky & Martha Gever, *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291 (1995).

¹⁵¹ See DEBORAH L. RHODE, WHAT WOMEN WANT: AN AGENDA FOR THE WOMEN’S MOVEMENT 59 (2014). Research has found that the inflexibility of a woman’s work environment plays a causal role in pushing her out of the labor force at motherhood. Jane Leber Herr & Catherine D. Wolfram, *Work Environment and Opt-Out Rates at Motherhood Across High-Education Career Paths*, 65 INDUS. & LAB. REL. REV. J. WORK & POL’Y 928, 949 (2012). Moreover, in families with parents who are professionals, traditional gender roles persist, with women doing the vast bulk of caretaking. See Bambauer & Rahman, *supra* note 150, at 828–29.

¹⁵² For a discussion of some of the structural barriers to inclusion, see Gugliuzza & Rebouché, *supra* note 16, at 1737–42.

¹⁵³ Deborah L. Rhode & Lucy Buford Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel*, 83 FORDHAM L. REV. 2483, 2495 (2015); see also Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1069–70 (2011) (criticizing the effectiveness of diversity trainings).

¹⁵⁴ Alexandra Kalev & Frank Dobbin, *Companies Need to Think Bigger Than Diversity Training*, HARV. BUS. REV. (Oct. 20, 2020), <https://perma.cc/H9E6-U2TX>.

two” and they may even “activate bias or spark a backlash.”¹⁵⁵ Nevertheless, a survey of managing partners and law firm leaders found that many believe such programs are useful for increasing awareness and facilitating dialogue.¹⁵⁶

Our data cast doubt on whether two decades of diversity trainings, as currently designed, have proven effective in enhancing inclusion at law firms. The network approach suggests that more structural reforms are necessary. For example, law firms may be best served by designing programs that engage partners and other leaders in understanding barriers to inclusion and hold them accountable for enhancing the involvement and connections of underrepresented attorneys over time.¹⁵⁷ Research indicates that programs that go beyond discussing legal requirements and unconscious bias to engage managers in designing strategies to increase inclusion are more effective at enhancing management diversity.¹⁵⁸

2. Affinity groups.

Law firms have also typically used affinity groups or women’s initiatives to address networking and professional development.¹⁵⁹ Many of these initiatives include programs on business development and networking, such as networking with clients and with other women within their law firms.¹⁶⁰ Typically affinity groups or women’s initiatives do not involve those in top managerial positions as regular participants.¹⁶¹ Surveys of women lawyers suggest that they find these groups helpful for developing contacts and informal mentoring relationships.¹⁶² Yet a recent study by the National Association of Women Lawyers found that

¹⁵⁵ Frank Dobbin & Alexandra Kalev, *Why Diversity Programs Fail*, HARV. BUS. REV. (July–Aug. 2016), <https://perma.cc/Y2FW-LDUJ>; see also Alexandra Kalev, Frank Dobbin & Erin Kelly, *Best Practices or Best Guesses: Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOCIO. REV. 589, 604, 611 (2006).

¹⁵⁶ See Rhode & Ricca, *supra* note 153, at 2495.

¹⁵⁷ See Kalev et al., *supra* note 155, at 602; Frank Dobbin & Alexandra Kalev, *The Architecture of Inclusion: Evidence from Corporate Diversity Programs*, 30 HARV. J.L. & GENDER 279, 293–94 (2007).

¹⁵⁸ See FRANK DOBBIN & ALEXANDRA KALEV, GETTING TO DIVERSITY: WHAT WORKS AND WHAT DOESN’T 16–28, 31–32 (2022).

¹⁵⁹ See RHODE, WOMEN AND LEADERSHIP, *supra* note 103, at 92; DESTINY PEERY, NAT’L ASS’N OF WOMEN LAWS., 2019 SURVEY REPORT ON THE PROMOTION AND RETENTION OF WOMEN IN LAW FIRMS 14 (2019).

¹⁶⁰ See PEERY, *supra* note 159, at 14.

¹⁶¹ See Frank Dobbin, Alexandra Kalev & Erin Kelly, *Diversity Management in Corporate America*, 6 CONTEXTS 21, 25 (2007).

¹⁶² See Rhode & Ricca, *supra* note 153, at 2503.

“[d]espite the now universal adoption of women’s initiatives, there is little evidence that these initiatives have led to substantial increases in the representation of women at the highest levels of the law firm.”¹⁶³ Furthermore, outside of the legal sector, research suggests that the impact and efficacy of women’s affinity groups vary.¹⁶⁴ For example, a leading study found that programs that address social isolation among women, such as affinity groups, only lead to modest changes in managerial diversity, with white women benefiting the most from such programs.¹⁶⁵

Our network analysis suggests that our understanding of affinity groups could be enhanced by further qualitative research that explores the availability and role of social connections for women who have been able to achieve centrality in a network. It would be helpful to understand with greater specificity what factors help certain women achieve greater centrality in a network. For example, did these women have, early in their career, access to the types of social resources and connections needed to enhance their standing among Chancery litigators? Are there certain points in their careers where connections to others in the network of Chancery litigators proved especially critical for the advancement of these women lawyers? What types of attorneys served as their formal and informal mentors? What are the programs and incentive structures in place at law firms that provide greater opportunities for women lawyers to build deeper social connections?

3. Mentoring and sponsorship.

By illuminating social connections that were once obscured, the approach we take in this paper also provides a path for measuring and achieving progress. For instance, research from a variety of fields documents the value of mentoring for career advancement.¹⁶⁶ Effective mentors can “buffer an individual from overt and covert forms of discrimination, lend legitimacy to a person or position, provide guidance and training in the political operation of the organization, and provide inside information on job-related

¹⁶³ See PEERY, *supra* note 159, at 15.

¹⁶⁴ See Kaley et al., *supra* note 155, at 590. See generally Cindy A. Schipani, Terry M. Dworkin, Angel Kwolek-Folland & Virginia G. Maurer, *Pathways for Women to Obtain Positions of Organizational Leadership: The Significance of Mentoring and Networking*, 16 DUKE J. GENDER, L. & POL’Y 89 (2009).

¹⁶⁵ Kaley et al., *supra* note 155, at 590.

¹⁶⁶ Schipani et al., *supra* note 164, at 100–01 & nn.61–66; Dobbin et al., *supra* note 161, at 25.

functions.”¹⁶⁷ Powerful mentors can “provide reflected power by signaling that an individual has a powerful sponsor.”¹⁶⁸

Studies suggest that creating formal mentoring and sponsorship programs may be particularly important for advancing the careers of women and people of color.¹⁶⁹ Yet, research suggests that law firms typically rely on “natural” mentorship relationships that often leave behind women and people of color.¹⁷⁰ Interviews of women attorneys indicate that they lack access to mentors with the greatest degree of professional connections and social clout.¹⁷¹ Women of color, in particular, receive much fewer mentoring or sponsorship opportunities.¹⁷² A recent study found, for example, that women of color report “that they lack access to mentors or sponsors who are well-connected and have power and influence to both clue them into important dynamics of the workplace and effectively advocate for them.”¹⁷³ Thus, a question that could be explored is whether law firms that have made relatively more progress on closing the gender gap have in place programs that institutionalize, measure, and reward mentoring and sponsorship for all leaders.¹⁷⁴

Given the centrality of men in the Chancery litigation network, our study suggests that engaging *all* leaders in mentoring and other professional development programs is essential for

¹⁶⁷ Schipani et al., *supra* note 164, at 100; *see also* 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, 568 (1996); Wilkins & Gulati, *supra* note 95, at 1609–11.

¹⁶⁸ Schipani et al., *supra* note 164, at 100.

¹⁶⁹ *See* Herminia Ibarra, Nancy M. Carter & Christine Silva, *Why Men Still Get More Promotions Than Women*, HARV. BUS. REV. (Sept. 2010); Dobbin et al., *supra* note 161, at 25.

¹⁷⁰ *See* PEERY ET AL., *supra* note 7, at 22. With respect to large law firms, Professors David Wilkins and Mitu Gulati show how such firms mentor certain superstar associates by providing them preferential access to training, plum assignments, and information about the partnership track. *See* Wilkins & Gulati, *supra* note 95, at 1644–57, 1665–73. Scholars argue that such processes disproportionately harm women and minority lawyers. *See* Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1137–38 (2011).

¹⁷¹ Research from management scholars has found that informal cross-gender and cross-race mentoring rarely occurs. *See generally, e.g.*, David A. Thomas, *Mentoring and Irrationality: The Role of Racial Taboos*, 28 HUM. RES. MGMT. 279 (1989); Raymond A. Noe, *Women and Mentoring: A Review and Research Agenda*, 13 ACAD. MGMT. REV. 65 (1988).

¹⁷² *See* RACHEL THOMAS, MARIANNE COOPER, KATE M. URBAN, GINA CARDAZONE, ALI BOHRER, SONIA MAHAJAN, LAREINA YEE, ALEXIS KRIVKOVICH, JESS HUANG, ISHANAA RAMBACHAN, TIFFANY BURNS, TIJANA TRKULJA, WOMEN IN THE WORKPLACE 32–33 (2021) [hereinafter THOMAS ET AL., WOMEN IN THE WORKPLACE].

¹⁷³ *See* PEERY ET AL., *supra* note 7, at 22.

¹⁷⁴ Qualitative interviews of women leaders indicate that they feel that they bear the disproportionate burden of mentoring, nurturing, and developing more junior attorneys. *See* Sterling & Chanow, *supra* note 9, at 15–17, 31.

advancing inclusion.¹⁷⁵ As Professors Paul Gugliuzza and Rachel Rebouché noted in their study on gender inequality in patent litigation, to advance inclusion, “firms’ most powerful lawyers must sometimes be willing to use their high-profile roles for the career advancement of lawyers who do not look like them.”¹⁷⁶ Too often, law firms consign mentoring of women—like most critical “office work”—to other women.¹⁷⁷ Qualitative studies of women leaders in the law indicate that they bear the disproportionate burden of mentoring, nurturing and advocating for women attorneys at their firms.¹⁷⁸ Studies suggest that senior-level women are twice as likely as men with similar experience to devote time on diversity, equity, and inclusion service.¹⁷⁹ Surveys indicate that men often do not proactively engage in organizational efforts, such as affinity groups, focused on advancing gender equity.¹⁸⁰ And junior-level women frequently report being excluded—whether intentionally or unconsciously—from social engagement with male attorneys.¹⁸¹

Research in leadership and ethics has elucidated that mentoring by men plays a critical role in advancing gender equality in the workplace.¹⁸² Not only can women gain from cross-gender mentoring, but men and organizations also benefit from cross-gender mentoring.¹⁸³ Despite these benefits, “[c]oncerns about the appearance of sexual harassment or sexual affairs discourage some men from forming mentoring relationships with junior

¹⁷⁵ Dobbin & Kalev, *supra* note 155.

¹⁷⁶ Gugliuzza & Rebouché, *supra* note 16, at 1731.

¹⁷⁷ See Margaret McKeown & Roberta Liebenberg, *The Hazards of Female Lawyers Being ‘Office Moms’*, LAW360 (Nov. 12, 2021), <https://www.law360.com/articles/1439423/the-hazards-of-female-lawyers-being-office-moms->.

¹⁷⁸ See STERLING & CHANOW, *supra* note 9, at 15–17, 31.

¹⁷⁹ THOMAS ET AL., *WOMEN IN THE WORKPLACE*, *supra* note 172, at 17.

¹⁸⁰ See ABA COMM’N ON WOMEN IN THE PROFESSION, *MEN IN THE MIX: HOW TO ENGAGE MEN ON ISSUES RELATED TO GENDER IN THE LEGAL PROFESSION 2–4* (2021).

¹⁸¹ See Deborah L. Rhode, *Leadership in Law*, 69 STAN. L. REV. 1603, 1652–53 (2017).

¹⁸² See W. BRAD JOHNSON AND DAVID SMITH, *ATHENA RISING: HOW AND WHY MEN SHOULD MENTOR WOMEN* (2016); cf. Tammy D. Allen, Lillian T. Eby, Mark L. Poteet, Elizabeth Lentz & Lizzette Lima, *Career Benefits Associated with Mentoring for Protégés: A Meta-Analysis*, 89 J. APPLIED PSYCH. 127, 133 (Feb. 2004) (noting that “the dyadic composition of the mentorship (e.g., male-male vs. male-female) may impact the benefits realized by protégés”).

¹⁸³ Schipani et al., *supra* note 164, at 123 (arguing that “[p]roviding men in power with female perspectives will not only help the men to become better managers, but it is also likely to improve the overall work environment for all employees”); see also Rania H. Anderson, *Challenging Our Gendered Idea of Mentorship*, HARV. BUS. REV. (Jan. 6, 2020), <https://perma.cc/LCW4-6NE2> (illustrating the benefits to men of being mentored, led, and sponsored by women).

women.”¹⁸⁴ These concerns have heightened since the #MeToo movement with some firms, worried about the risk of sexual harassment or misconduct, attempting to minimize contact between women employees and senior male leaders.¹⁸⁵ Surveys have found some men reporting “that they have excluded women from social interactions and have avoided meetings with women with no others present.”¹⁸⁶ Our data suggests, however, that such practices may be quite harmful for women. Not only are men more prevalent in the Chancery Litigation Network, but they also have more central and dense networks. Moreover, our research suggests that, as women have often anecdotally remarked, male allies can play a critical role in advancing inclusion and building the social capital of women and attorneys from other marginalized communities.¹⁸⁷

4. Bar association efforts.

The differences we see in progress in the gender gap across regions also raises the possibility of qualitatively assessing the type of work that has been done in different regions to promote inclusion. Bar associations and other industry groups, for example, typically provide networking opportunities to attorneys. “Diverse networks are especially useful in getting lawyers out of their own echo chambers and in touch with individuals in similar positions who can supply advice and innovative ideas.”¹⁸⁸ Bar associations in some areas, such as New York, have long focused on advancing diversity and inclusion in the profession.¹⁸⁹ In

¹⁸⁴ Rhode, *supra* note 181, at 1653–54.

¹⁸⁵ See generally Anthony Michael Kreis, *Defensive Glass Ceilings*, 88 GEO. WASH. L. REV. 147 (2020). For example, a national survey in 2019 found that 60% of male managers in the US reported being “uncomfortable participating in a common work activity with a woman, such as mentoring, working alone, or socializing together.” *Working Relationships in the #MeToo Era*, LEAN IN, <https://perma.cc/UQ34-CR9P>.

¹⁸⁶ See Leanne E. Atwater, Rachel E. Sturm, Scott N. Taylor & Allison Tringale, *The Era of #MeToo and What Managers Should Do About It*, 64 BUS. HORIZONS 307, 308–09 (2021); see also *The #MeToo Backlash: New Data Shows Negative Effects for Women*, HARV. BUS. REV. (Sept.–Oct. 2019).

¹⁸⁷ See, e.g., Rachel Rippetoe, *How This Calif. Firm Plans to Become More Diverse in 2021*, LAW360 (Jan. 12, 2021), <https://www.law360.com/articles/1343010/how-this-calif-firm-plans-to-become-more-diverse-in-2021>; Kathleen Nalty, *Practical Steps for Engaging White Male Attorneys as Champions for Diversity and Inclusion*, AM. BAR ASS’N (Sept. 11, 2014), <https://perma.cc/6GKX-77TQ>.

¹⁸⁸ Rhode, *supra* note 181, at 1644.

¹⁸⁹ See, e.g., N.Y. STATE BAR ASS’N, MINORITIES IN THE PROFESSION (noting that the New York State Bar association established a Committee on Minorities in the Profession in 1985); N.Y. STATE BAR ASS’N, 2007 SECTION DIVERSITY REPORT CARD (2008).

Delaware, in contrast, the intensity of such efforts is relatively new.¹⁹⁰ Our network analysis also suggests that bar associations may benefit from designing leadership programs that engage lawyers consistently over time, allowing them to build connections and gain expertise by engaging with other attorneys outside of their own firms.

Bar associations are not only involved in advancing access to networks for attorneys, but they can be a source for innovation in addressing the structural aspects of law firm practice that hinder inclusion. As law has become an even more twenty-four seven practice, the cost is typically borne by those with caretaking responsibilities—often women.¹⁹¹ Research by scholars such as Professor Claudia Goldin has found that around-the-clock availability and the demands of “greedy professions” such as law have in general enabled and exacerbated gender inequality.¹⁹² Yet, while there is widespread recognition of the work-life imbalance in legal practice, as Professor Deborah Rhode and other scholars have long noted, leaders of the bar and law firms “often place responsibility for addressing [imbalances] anywhere and everywhere else.”¹⁹³ Studies of law firm practices indicate that while large law firms are willing to undertake some bias reduction efforts, few firms are willing to make structural changes that may support women as they progress in their careers.¹⁹⁴ Yet, studies indicate that ambitious work-life programs, such as universal flexible scheduling and family leave policies or full-time child support, can have significantly positive effects on enhancing management diversity.¹⁹⁵ Our analysis of the network of Chancery litigators suggests that

¹⁹⁰ See Mark Eichmann, *It is Inadequate: Delaware Launches New Effort To Diversify Judges And Lawyers*, WHY?, (May 20, 2021), <https://perma.cc/QPK7-9PBV>; see generally DeMatteis, *supra* note 74 (starting a dialogue about the need to continue to improve the representation of women attorneys as judges in Delaware); Maureen Milford, *Del. Judiciary: Women Lack Key Seats*, DEL. ONLINE (Apr. 5, 2014), <https://perma.cc/M2DK-227R> (noting that DeMatteis’ law review article “start[ed] the conversation,” and finally put the issue of diversity on the Delaware bunch front and center).

¹⁹¹ See Wald, *supra* note 150, at 2263, 2271–76, 2283–85.

¹⁹² See Claire Cain Miller, *Women Did Everything Right. Then Work Got ‘Greedy’*, N.Y. TIMES (Apr. 26, 2019), <https://perma.cc/V8HK-RRMD>; Amy Bernstein, Amy Gallo & Emily Caulfield, *If We Want Equity, Work Needs To Be Less Greedy*, WOMEN AT WORK PODCAST: INTERVIEW WITH CLAUDIA GOLDIN (SEASON 7; EPISODE 5), (Nov. 8, 2021) at <https://perma.cc/QWJ9-TDXD>; CLAUDIA GOLDIN, CAREER & FAMILY: WOMEN’S CENTURY-LONG JOURNEY TOWARD EQUITY 9–10 (2021).

¹⁹³ Rhode, *supra* note 181, at 1657.

¹⁹⁴ PEERY, *supra* note 159, at 9–14. The need for such structural changes has long been discussed by leaders in the legal profession. See, e.g., Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111, 123–24 (1988).

¹⁹⁵ DOBBIN & KALEV, *supra* note 158, at 130–31, 135–53.

structural reforms will necessarily need the cooperation and innovation of attorneys working across law firms.

C. How Do Policy Interventions Interact with One Another?

By combining more nuanced empirical tools with a range of potential policy levers, as discussed in Part III.B above, this Article raises the question of how policy interventions should be used together. That is, by making social relationships more concrete, the network analysis may give us an opportunity to craft more targeted interventions. And we may be able to align those policies more carefully with discrete remedial goals. This raises the possibility of moving beyond a one-size fits all policy framework that simply clicks “all of the above” to the available policy options.

For instance, we may be able to fine-tune policies for particular network structures. We might eventually be able to craft policies for law firms based on their positions within those network structures. Hopefully, we may also design strategies at the level of individual attorneys, depending on where they fall within their given professional network.

As we fine-tune policies in those respects, the question arises of how those targeted interventions interact with one another. For instance, do network-level and law firm-level policies necessarily work in complementary fashion? Or might one interfere with another? Will certain policies interact with each other to have differential impacts on different groups?¹⁹⁶ This is a critical question for future research, and the network approach pursued in this Article provides a framework for approaching the difficult question of what combination of tools we should select from the toolkit.

D. Approaching the Question of Biased Outcomes

Gender disparities in the Chancery Litigation Network may also have important implications for Delaware practice and doctrine. Feminist scholars have argued that corporate law and practice venerate the performance of masculinity.¹⁹⁷ This includes the promotion of hypercompetitive practices that work to the detriment of women.¹⁹⁸ Important corporate governance litigation is often depicted as a battle between powerful men, who are advised

¹⁹⁶ For example, recent research by the ABA Commission on Women in the Legal Profession finds that policy interventions disproportionately benefit white women more than women of color. See PEERY ET AL., *supra* note 7, at 9–10.

¹⁹⁷ See, e.g., Ronnie Cohen, *Feminist Thought and Corporate Law: It's Time to Find Our Way Up from the Bottom (Line)*, 2 AM. U.J. GENDER & L. 1, 11 (1994).

¹⁹⁸ Gugliuzza & Rebouché, *supra* note 16, at 1737–39.

by other powerful men.¹⁹⁹ Leading cases in Delaware have used gendered words that can demean and exclude women.²⁰⁰ Moreover, feminist scholars argue that Delaware doctrine—including classic cases such as *Revlon, Inc. v. MacAndrews & Forbes Holdings*²⁰¹—have created incentives for directors and management to focus on shareholder wealth maximization in ways that exacerbate masculinity contests that work to the detriment of a firm’s stakeholders.²⁰² While in this Article, we cannot examine in detail the connection between our empirical study of gender disparities in the Chancery Litigation Network and corporate law doctrine, we join other scholars who have recently urged further inquiry into the relationship between gender and the evolution of corporate law doctrine and narratives.²⁰³

CONCLUSION

The persistence of gender disparities in the heart of corporate law litigation is dramatic. And women’s frustration with persistent inequalities as they seek to advance into senior roles has led to experienced women lawyers walking out the door. The significant attrition of women attorneys undermines the goals of a profession that espouses a commitment to equal opportunity.

Women have long ascribed the lack of access to professional networks as a primary reason for gender disparities in the legal profession. Yet, to date we have known very little about gender inequality in these networks.

For the first time in legal scholarship, we apply network analysis to a vast dataset of over fifteen thousand civil actions, and over two thousand seven hundred attorneys, spanning seventeen years. Through this analysis, we illuminate how professional networks are structured and how that structure maintains and shapes gender inequality. A lawyer’s ability to advance in corporate law is dependent on the networks that underlie corporate

¹⁹⁹ See STEVEN M. DAVIDOFF, *GODS AT WAR: SHOTGUN TAKEOVERS, GOVERNMENT BY DEAL, AND THE PRIVATE EQUITY IMPLOSION* 6–10 (2009).

²⁰⁰ See Afsharipour, *supra* note 6, at 130, 135, 154.

²⁰¹ 506 A.2d 173 (Del. 1986).

²⁰² See Kellye Y. Testy, *Capitalism and Freedom: For Whom?: Feminist Legal Theory and Progressive Corporate Law*, 67 L. & CONTEMP. PROBS. 87, 98 (2004); Naomi Cahn, June Carbone, & Nancy Levit, *Women, Rule-Breaking, and the Triple Bind*, 87 GEO. WASH. L. REV. 1105, 1110–29 (2019).

²⁰³ See Haan, *supra* note 6, at 572–601; Carol Liao, *Power and the Gender Imperative in Corporate Law*, in *CREATING CORPORATE SUSTAINABILITY: GENDER AS AN AGENT FOR CHANGE* 282, 292–93 (Beate Sjøfjell & Irene Lynch Fannon eds., 2018); see also Theresa A. Gabaldon, *Like a Fish Needs a Bicycle: Public Corporations and Their Shareholders*, 65 MD. L. REV. 538, 543–46 (2006).

governance litigation—networks that are critical for access to information, practice norms, opportunities, and other social resources. We show that women lack the connections—and the information endowments those connections provide—that men in the network gain. Not only do women leave the corporate litigation profession, but over time far more men become highly connected lawyers in the network. To craft more nuanced normative interventions to address these persistent disparities, we also reveal how disparities in attorney’s network centrality varies according to the law firm of which they are a member or according to the geographic location of their office. Our study dives deeper to analyze the personal network of individual attorneys. This analysis sets the stage for future studies that can examine the correlation between the characteristics of lawyers’ personal networks and professional outcomes.

Our study also sheds light on the larger importance of network analysis in understanding gender, racial, and other disparities in the legal professions. Such analysis is a critical step in crafting normative interventions necessary to increase equitable access to social resources in the profession. While some of these interventions are incremental, others involve significant changes to the culture of law practice. We urge future work to better understand the role professional networks play in the legal profession, as well as how such networks shape continuing inequalities in the profession.

Finally, this study opens new possibilities for the study of institutional change within corporate law and governance. Important recent work highlights the systemic aspects of the corporate governance ecosystem in the United States, where an interlocking set of institutions has embraced shareholder primacy for decades.²⁰⁴ Advocates for a shift to stakeholder primacy see a possibility for incremental change away from the status quo in the “cultural and market forces” that underpin the broader system.²⁰⁵ This study illuminates the social substrate of those cultural

²⁰⁴ See generally Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563 (2021).

²⁰⁵ *Id.* at 2567–68:

What does this mean for the future of corporate governance? On the one hand, absent a large shock to the system, such as a major federal intervention that would force multiple institutional gatekeepers to change their orientation, the corporate governance machine will likely impede a true paradigm shift away from shareholderism. On the other hand, our account reveals how incremental change could take place. As shifts in understanding regarding the merits of various ESG

and market forces, allowing us to more finely examine their qualities and predict their trajectory. What was once taken on faith is made real, and so a new avenue is opened for researchers and policymakers exploring the possibilities of corporate-governance's future.

initiatives occur through cultural and market forces, the promotion of stakeholder interests can be reconciled with pursuing long-term shareholder value.