

[Draft of June 18, 2023 – subject to continued review/revision.]

73 DUKE L.J. ONLINE __ (forthcoming 2023)

101 Lawyers: Attorney Appearances in *Twitter v. Musk*

Andrew K. Jennings*

INTRODUCTION

Corporate law’s trial of the century was set to begin October 17, 2022, in a small Wilmington, Delaware courtroom.¹ *Twitter v. Musk* had it all. Celebrity.² The world’s richest man.³ A product that helped foment revolutions around the world⁴ and aided the rise of perhaps the most consequential—for worse or better—political figure in this country.⁵ Leading law firms and lawyers.⁶ Important doctrinal questions around how contracts between sophisticated players would be enforced, or

* Associate Professor of Law, Emory University. I would like to thank Shina Bharadwaja, Yash Tiwari, and Steven Rozenfeld for their invaluable research assistance and Afra Afsharipour and Matthew Jennejohn for sharing data from their forthcoming study on gender and litigation in the Delaware Court of Chancery. See *infra* note 17 and accompanying text. All errors are my own.

1. *Twitter, Inc. v. Musk*, C.A. No. 2022-0613-KSJM, Scheduling Order (Del. Ch. Nov. 28, 2022).

2. Cf. James Hibberd, *Celebrities Say They’re Quitting Twitter as Elon Musk Takes Over: ‘I’m Out of Here’*, THE HOLLYWOOD REPORTER (Oct. 28, 2022), <https://www.hollywoodreporter.com/business/digital/elon-musk-twitter-celebrities-quit-1235250888/>.

3. *The World’s Real-Time Billionaires*, FORBES (Oct. 30, 2022), <https://www.forbes.com/real-time-billionaires/#f49726c3d788> (reporting as of October 30, 2022 that Elon Musk is the world’s richest person with a \$223.8 billion net worth).

4. See Christian Christensen, *Twitter Revolutions? Addressing Social Media and Dissent*, 14 COMM’N REV. 155 (2011) (considering Twitter’s influence on uprisings in Iran, Egypt, Tunisia, Libya, and Yemen).

5. See Galen Stolee & Steve Caton, 6 SIGNS & SOC’Y 147, 164 (2018) (“We have focused on Trump’s use of Twitter with his base, however, arguing that this may signal a shift in presidential rhetorical strategy from an address of a wide constituency (built on coalitions) to a core constituency (built on a base).”).

6. See *infra* Part I for a listing of the law firms representing Twitter, Musk, and third parties.

wouldn't.⁷ And then the small matter of a \$44 billion purchase price.⁸ The press, the public, and the markets watched the trial's approach with rapt attention. Even mundane discovery hearings received the kind of play-by-play reporting usually reserved to U.S. Supreme Court arguments.⁹ With hotels booked, reporters prepared to descend on Wilmington to cover an epic courtroom battle. The fates of Silicon Valley, national and global politics, contract doctrine, and \$44 billion all seemed to rest in the hands of Kathaleen St. Jude McCormick—the chancellor of Delaware—and, eventually, the five members of the state Supreme Court.¹⁰

And then . . . it never happened. Two weeks before the showdown, Elon Musk agreed to satisfy the agreement he was being sued for breaching.¹¹ Peace rang out in the land. Musk bought Twitter, fired the company's executive team,¹² and began a new era as “chief twit” of a company he accused just a few weeks earlier of trying to defraud him.¹³ And that was it. Delaware's trial of the century ended in a whisper as Chancellor McCormick dismissed the case.¹⁴

The story of Twitter and Elon Musk seems sure to have still more twists and turns. Perhaps that story will even one day visit a small courtroom in

7. See Robert Anderson, *Limited Specific Performance in the Musk-Twitter Case and Beyond* (Oct. 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4222557 for a discussion of the contract-doctrine questions (that were) at stake in *Twitter*.

8. See Jef Feeley, Ed Hammond, and Kurt Wagner, *Musk Revives \$44 Billion Twitter Bid, Aiming to Avoid Trial*, BLOOMBERG (Oct. 4, 2022), <https://www.bloomberg.com/news/articles/2022-10-04/musk-proposes-to-proceed-with-twitter-deal-at-54-20-a-share#xj4y7vzkg>.

9. See, e.g., THE CHANCERY DAILY, @chancery_daily, TWITTER (Sept. 27, 2022), https://twitter.com/chancery_daily/status/1574614016747454464 (reporting live on “tuesday's court hearing in *twitter v. musk* [on] seven discovery motions + morgan stanley's opp. to twitter's motion to compel production”).

10. Cf. *Twitter, Inc. v. Musk*, C.A. No. 2022-0613-KSJM, Scheduling Order (Del. Ch. Nov. 28, 2022).

11. *Elon Musk*, Amend. No. 12 to Sch. 13D, *Twitter, Inc.*, Ex. S (Oct. 4, 2022) (Lett. of Mike Ringler to Wilson Sonsini Goodrich & Rosati & Simpson Thacher & Bartlett LLP (Oct. 3, 2022)).

12. Ross Kerber, REUTERS, *'Golden Parachutes' for Fired Twitter Executives Worth \$122 Million, Research Firm Says* (Oct. 28, 2022), <https://www.reuters.com/technology/golden-parachutes-3-fired-twitter-executives-worth-122-mln-equilar-2022-10-28/>.

13. *Twitter, Inc. v. Musk*, C.A. No. 2022-0613-KSJM, Defs.' Verified Second Amend. Counterclaims, Ans. & Verified Defenses to Pl.'s Verified Compl., at 128 (Del. Ch. Sept. 27, 2022). Such accusations continued even after he closed the acquisition and took control of Twitter. See Elon Musk, @elonmusk, TWITTER (Oct. 30, 2022), <https://twitter.com/elonmusk/status/1586885887341645824> (“Wachtell & Twitter board deliberately hid this evidence from the court. Stay tuned, more to come . . .”).

14. *Twitter, Inc. v. Musk*, C.A. No. 2022-0613-KSJM, Order Granting Dismissal, (Del. Ch. Nov. 15, 2022).

Wilmington, Delaware.¹⁵ But for a trial that never happened, *Twitter v. Musk* achieved a remarkable litigation distinction: during the 126 days between the initial complaint and the case's dismissal, 101 attorneys made formal appearances in the case.¹⁶ That is a potential record in the Court of Chancery. Consider these comparisons. In a dataset constructed by Professors Afra Afsharipour and Matthew Jennejohn for their forthcoming article on gender and the Court of Chancery, between 2003 and 2020, the highest number of appearances in a single Chancery case was 78.¹⁷ That case—derivative litigation involving insurance behemoth AIG and alleged misconduct by its former CEO—was open for 2,645 days, compared to *Twitter*'s 126.¹⁸ *Twitter*'s appearances stick out even more. For the 15,000 cases in the Afsharipour and Jennejohn dataset, the median number of appearances was four and the mean was 5.2.¹⁹ The vast majority of those cases had below twenty attorney appearances whereas the ten cases with the highest number of appearances had a mean of 62.9.²⁰

101 lawyers is a lot, especially for a case that never went to trial or even saw a dispositive motion filed. Although *Twitter* did not pan out as the corporate trial of the century, the appearance record it set still merits some moment. This was a strange case across many dimensions and its legal staffing, at least in headcount terms, could hardly be said to be representative of other litigation. But its rapid beginning and end and high lawyer count offer a unique opportunity to think about the legal profession in the context of a single case. With its docket now complete,

15. See, e.g., *supra* note 13; Kate Conger, Ryan Mac, Sheera Frenkel & Mike Isaac, *Elon Musk Is Said to Have Ordered Job Cuts Across Twitter*, N.Y. TIMES (Oct. 29, 2022), <https://www.nytimes.com/2022/10/29/technology/twitter-layoffs-musk-jobs.html> (“Under the merger agreement, those executives . . . had been set to receive compensation . . . if they were fired. But Mr. Musk terminated the executives ‘for cause,’ meaning he did it because he alleged he had justification, which may void that agreement . . .”).

16. A total 100 attorneys, whether admitted to the Delaware bar or appearing pro hac vice, entered appearances on the docket. One Delaware-admitted attorney was named in each pleading and other papers filed by his client, but his appearance is not separately reflected in a docket entry. In this Essay, I treat that attorney as having appeared on the docket.

17. Email from Matthew Jennejohn to Andrew Jennings (Oct. 29, 2022) (on file with author) [hereinafter “Jennejohn Email”]; Afra Afsharipour & Matthew Jennejohn, *Gender and the Social Structure of Exclusion in U.S. Corporate Law*, 90 U. CHI. L. REV. — (forthcoming 2023) (on file with author) [hereinafter “Afsharipour & Jennejohn”].

18. Am. Int’l Group Inc. Consol. Deriv. Litig., C.A. No. 769 (Del. Ch. Oct 29, 2003) (opened on October 29, 2003 and closed on January 25, 2011).

19. See *supra* Jennejohn Email, note 17.

20. *Id.*

I use a hand-collected dataset of attorney appearances in *Twitter v. Musk* as a case study. This dataset and Essay contribute to several active conversations regarding the legal profession. First, to what extent does the gender gap in the profession persist? Second, to what extent does credentialing appear in legal hiring and staffing? And third, how does state-based regulation of the profession affect clients' hiring and firms' staffing decisions? In considering these questions, I find that these two sophisticated parties—each with tens of billions of dollars on the line—ended up at remarkable parity in terms of experience levels, rank, and educational credentials of their legal teams. The parties diverged, however, in terms of gender and clerkship experience. Compared to Musk, Twitter had both 75% more women among its docketed attorneys *and* 75% more lawyers who had completed a federal or Delaware-state judicial clerkship.

I. TWITTER V. MUSK'S 100 LAWYERS

In the run up to trial, I noticed an unusual number of attorneys entering appearances on behalf of Twitter, Elon Musk, and third parties. For the 86 days between Twitter's initial filing and the stay of trial, on average 1.17 lawyers joined the docket daily.²¹ Even for such a high-profile case, twenty appearances total seemed more apt,²² and so my curiosity prompted me to dig into the lawyer side of the story. The high count could be partly explained by the presence of eleven firms and 35 lawyers who appeared on behalf of third parties. Even so, the combined eight firms and 66 lawyers who represented Twitter or Musk could together put the case in the top ten of the Afsharipour and Jennejohn dataset had it occurred in their timeframe—and after only 86 days of active litigation.

To understand *Twitter's* firmscape,²³ I collected demographic data about each attorney appearing in the docket, using the docket itself and attorneys' online firm profiles. In addition to Twitter and Elon Musk (who was named individually along with two affiliate entities), ten other parties were involved. Eight of these third parties were financial institutions, law firms, or other market actors resisting subpoenas. One counseled third party, Luigi Crispo, was a Twitter shareholder suing Musk

21. See *Twitter, Inc. v. Musk*, C.A. No. 2022-0613-KSJM, Lett. Dec. Granting Stay, (Del. Ch. Oct. 6, 2022).

22. See *supra* text accompanying note 20.

23. This term was coined several years ago by Keegan Drake to denote—like a cityscape—the world of law firms and lawyers, particularly leading firms in major cities.

in a parallel case.²⁴ Crispo sought to intervene in *Twitter* after the merger closed but later withdrew his motion.²⁵ Another shareholder sought to intervene; because he filed pro se, he is not included in this dataset. Data collected from the docket included lawyer names, law-firm affiliations, date of first appearance, Delaware or non-Delaware bar status, and party represented. Data collected from online law-firm profiles included attorneys' office locations,²⁶ states of bar admission, ranks (partner, counsel, or associate),²⁷ law schools attended, years since law-school graduation,²⁸ judicial clerkships, and gender.²⁹ Although attorney racial and ethnic backgrounds were of interest, the docket and law-firm websites did not allow for reliably coding those demographics.³⁰

The number of lawyers who formally appear in a docket typically understates how many are actually working on a matter. In complex litigation, formal appearances might represent only a fraction of the legal staffing. Attorneys who formally notify the court that they represent a party tend to be the lawyers who might sign pleadings and other filings, argue at hearings or trial, or who otherwise have a senior leadership role in the case. Law-firm associates might dedicate the equivalent of months or even years of their lives to a matter without public acknowledgement of their involvement; lead partners on a case keep internal councils with fellow partners and firm management; and legions of review attorneys filter and sort voluminous discovery material into a form that can be used by other lawyers in depositions, hearings, and, potentially, trial. There is no easy way to know how many lawyers or lawyer-hours went into preparing for this trial—collecting and reviewing documents, researching and drafting filings, preparing for and taking depositions, or explaining memes to senior attorneys³¹—before it was called off. But its unusually

24. See *Crispo v. Musk*, C.A. No. 2022-0666-KSJM (Del. Ch.).

25. See *Twitter, Inc. v. Musk*, C.A. No. 2022-0613-KSJM, Pl.'s Mot. for Limited Intervention and for the Court to Retain Jurisdiction (Del. Ch. Nov. 2, 2022).

26. I.e., with what office of the law firm the lawyer was part of.

27. Some firms had different titles—such as “director”—for their senior lawyer rank. For purposes of this Essay, however, I coded those lawyers as partners.

28. I use years since law-school graduation as a proxy for years of legal experience.

29. Attorney gender was coded based on the use of gendered pronouns or honorifics in attorney biographies. E.g., she, her, Ms., he, and so on.

30. *Accord* Afsharipour & Jennejohn, *supra* note 17, at *7 n.15 (“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.”).

31. See Hannah Murphy, Sujeet Indap, James Fontanella-Khan, Ortenca Aliaj & Antoine Gara, *Mischief and Delay: How Musk and Twitter Finally Sealed the Deal*, FIN. TIMES (Oct. 30, 2022), <https://www.ft.com/content/9f58ec91-4b68-4399-bc0f-33c6a440fb77>

large appearance count provides a partial view of the lawyers behind the corporate non-trial of the century. The appearances by numerous associates representing Twitter and Musk—43.2% and 44.5% of their lawyers on the docket³²—suggests that the public can observe a significant share of those firms’ case teams because associates are the most junior rung of firm lawyers and so would be least expected to formally appear.³³

The following table gives an overview of the parties and the law firms representing them. To protect the privacy of individual lawyers, I report aggregate data. For parties that engaged multiple law firms, firms with primarily Delaware-based teams are treated as having served as local counsel and are indicated with an asterisk. Several third parties engaged only one firm, in which case those lawyers are Delaware-based.

(“At Twitter’s law firm, Wachtell Lipton, junior lawyers became ‘meme-splainers’ to their senior colleagues, deciphering Musk’s esoteric Internet postings and finding ways to use some of them — including an emoji of a pile of poo — against him.”).

32. See *infra* Appendix, Table 1.

33. Part II delves into the associate numbers and their possible explanations. Another explanation applicable to all the docketed lawyers, especially associates, is that appearing in this particular docket served as a “deal toy” for attorneys who worked on the case. That is, it was a public acknowledgment and record of their involvement. This possibility refers back to the Afsharipour and Jennejohn article, in which attorney appearances reveal networks of power and influence among litigators and judges. See *generally supra* Afsharipour & Jennejohn, note 17.

Twitter, Inc.	Elon Musk/ Musk Entities	Third Parties
Wachtell, Lipton, Rosen & Katz Kobre & Kim LLP ³⁴ Ballard Spahr LLP* Potter Anderson & Corroon LLP* Wilson Sonsini Goodrich & Rosati	Quinn Emanuel Urquhart & Sullivan, LLP Skadden, Arps, Slate, Meagher & Flom LLP* Chipman Brown Cicero & Cole LLP*	Luigi Crispo
		Prickett, Jones & Elliott, P.A.
		Morgan Stanley & Co. LLC
		Young Conaway Stargatt & Taylor LLP*
		Weil, Gotshal & Manges LLP
		Morgan Stanley Senior Funding, Inc.
		Davis Polk & Wardwell LLP
		Bayard PA*
		McDermott Will & Emery
		Connolly Gallagher LLP
		Craft Ventures Management, LP
		Sacks.com LLC
		Berger Harris LLP
		Santo Lira LLC
		Gellert Scali Busenkell & Brown, LLC
		Mastercard International Incorporated
		Dorsey & Whitney LLP
		Goldman Sachs & Co. LLC
		J.P. Morgan Securities LLC
		Sullivan & Cromwell LLP
		Landis Rath & Cobb LLP*

34. Kobre & Kim served as Twitter's conflicts counsel in connection with third-party discovery. *See* Twitter, Inc. v. Musk, C.A. No. 2022-0613-KSJM, Notice of Entry of Appearance of Jacob R. Kirkham as Conflicts Counsel on Behalf of Pl. (Del. Ch. July 27, 2022).

The Appendix breaks down the demographics of docketed lawyers. Toplines from those data include that Twitter had 43 attorney appearances compared to Musk's 22. This numerical disparity is understandable given that Twitter had the heavier discovery burden as plaintiff (and as data-rich counterclaim-defendant). But beyond these headline counts, there was remarkable parity between the Twitter and Musk teams along several dimensions. In terms of rank, partners comprised 50% of Twitter's team, with counsel making up 6.8% and associates 43.2%.³⁵ For Musk, those numbers were 45.5%, 9.1%, and 45.5%.³⁶ In experience terms, Twitter partners had an average 22.0 years' experience, counsel had 19.2, and associates had 5.7.³⁷ For Musk, it was 20.7, 16, and 7.1. The legal profession is influenced by law-school prestige,³⁸ and so in the Appendix I report breakdowns of lawyers based on graduation at law schools ranked in the "Top 20" by *U.S. News & World Report* 2023 rankings (released in 2022).³⁹ Again, there is parity between the two parties' legal teams: 68.2% of Twitter's lawyers attended "Top 20" law schools and 72.7% of Musk's did so. These rank/experience/credential similarities appear to reveal a parallel, but consistent, preference between the parties (or, rather, the law firms they hired) in terms of the compositions of legal teams and lawyers' backgrounds.

But two areas of significant divergence do appear between the Twitter and Musk teams: gender and judicial-clerkship experience.

Take gender first. A growing empirical literature has considered gender disparities within the legal profession and their effects not only on the individual careers and wellbeing of women in the legal profession, but on the course of the development of law, legal practice, and the American economy.⁴⁰ A subset of that literature investigates gender in the context

35. See *infra* Appendix, Table 1.

36. *Id.*

37. See *infra* Appendix, Table 3.

38. See generally Albert Yoon & Jesse Rothstein, Choice as Revelation: Using Students' Enrollment Decisions to Rank U.S. Law Schools (Feb. 3, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4023587 (identifying the role of law-school prestige in pre-law students' admission decisions).

39. U.S. NEWS & WORLD REPORT, 2023 *Best Law Schools*, <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings>; accord *id.* at *46 (finding that law-school applicants regard schools outside the Top 20 differently than other law schools).

40. See, e.g., Afra Afsharipour, *Women and MeToo*, 12 UC IRVINE L. REV. 359 (2022); Jordana Goodman, *Ms. Attribution: How Authorship Credit Contributes to the Gender Gap*, 25

of litigation.⁴¹ This Essay contributes anecdotal data from a particularly salient litigation to these more-systematic examinations. Only 31.7% of appearances across *Twitter* were by women, consistent with recent trends in Chancery litigation.⁴² This comparison masks party disparity, however. *Twitter*'s team was 31.8% women, quite close to the 32.9% found by Afsharipour and Jennejohn for 2020 Chancery litigation.⁴³ Only 18.2% of the members of Musk's team were women, however. And compared to both *Twitter* and Musk, the 37.1% representation by women on behalf of third parties brought up the overall average.⁴⁴

Second, consider clerkships. Judicial clerkships are a sought-after credential for law graduates and the firms that hire them. Federal clerkships are, traditionally, especially sought after, but certain state clerkships—including at Delaware's Court of Chancery and Supreme Court—would be considered similarly prestigious. Thus, to explore the place of clerkships on the *Twitter* teams, I coded attorneys as having completed either a federal clerkship or a Delaware Chancery/Supreme Court clerkship. Almost two thirds of *Twitter* lawyers had—63.6%—whereas only 18.2% of Musk lawyers had. This dichotomy can be explained in part by the fact that 80% of docketed lawyers from *Twitter*'s lead law firm—Wachtell Lipton—had completed either a federal or Delaware clerkship.

II. IN-STATE AND OUT-OF-STATE LAWYERS IN *TWITTER* V. *MUSK*

The merger agreement at the center of *Twitter v. Musk* included Delaware choice-of-law and forum-selection provisions.⁴⁵ Thus, when Elon Musk purported to call off the deal,⁴⁶ *Twitter*'s suit to force him to close joined

YALE J.L. & TECH. __ (forthcoming 2023); Tracey E. George, Albert Yoon & Mitu Gulati, Gender, Credentials and M&A (Aug. 9, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4010301.

41. See, e.g., Paul R. Gugliuzza & Rachel Rebouché, *Gender Inequality in Patent Litigation*, 100 N.C. L. REV. 1683 (2022); Afsharipour & Jennejohn, *supra* note 17.

42. See *infra* Appendix, Table 1; see also *supra* Afsharipour & Jennejohn, note 17, at *7 (finding that 32.9% of Chancery appearances in 2020 were by women).

43. *Id.*

44. *Id.*

45. *Twitter, Inc.*, Form 8-K, Ex. 2.1 at §§ 9.8, 9.10 (Agreement and Plan of Merger) (Apr. 26, 2022).

46. Elon Musk, Amend. No. 9 to Sch. 13D, *Twitter, Inc.*, Ex. P (July 8, 2022) (Lett. of Mike Ringler to Vijaya Gadde (July 8, 2022)).

earlier busted-deal cases filed in the Court of Chancery.⁴⁷ Twitter hired M&A powerhouse Wachtell, Lipton, Rosen & Katz as its lead firm and Musk hired the pugnacious trial lawyers of Quinn Emanuel Urquhart & Sullivan as his. Wachtell has only a New York City office and all but one of the Quinn Emanuel docketed attorneys work from that firm's New York office. Only one of the Wachtell or Quinn Emanuel attorneys who appeared was admitted to the Delaware bar. This hiring of New York lawyers to lead a litigation in Delaware provides a chance to think about the competitive effects of state attorney regulation and how lawyers work together in multi-firm, multi-jurisdictional teams.

The power of courts to control attorney admissions and conduct has a long provenance in the United States, where state high courts claim jurisdiction over attorney regulation as their constitutional prerogative.⁴⁸ Restrictions on who may practice law and where they may do so can be justified on process-integrity and client-protection grounds. Courts, for instance, seek to control the conduct of attorneys who appear before them and to protect their citizens from unscrupulous, careless, or incompetent counsel.⁴⁹ A political-economic analysis, however, points to protectionism as an alternative explanation for such restrictions. Under a protectionism lens, admissions rules are motivated by a policy of protecting incumbent lawyers by regulating entry into the industry and

47. *See, e.g.,* Snow Phipps Group, LLC v. KCake Acquisition, Inc., No. 2020-0282-KSJM, 2021 WL 1714202 (Del. Ch. Apr. 30, 2021); IBP, Inc. v. Tyson Foods, Inc., 789 A.2d 14 (Del. Ch. 2001).

48. *See, e.g.,* *Leis v. Flynt* 439 U.S. 438, 442 (1979) (“Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions. The States prescribe the qualifications for admission to practice and the standards of professional conduct.”); *Obrien v. Jones*, 999 P.2d 95, 100 (Cal. 2000) (“We retain our preexisting powers to regulate and control the attorney admission and disciplinary system, including the State Bar Court, at every step.”); *In re Bar Exam Class Action*, 752 So.2d 159, 160 (La. 2000) (“This court has the exclusive and plenary power, emanating from the constitutional separation of powers, to define and regulate all facets of the practice of law, including the admission of attorneys to the bar, the professional responsibility and conduct of attorneys, the discipline of attorneys, and the attorney-client relationship.”); *In re Senate Bill No. 630*, 523 P.2d 484 (Mont. 1974) (concluding that the Montana Supreme Court had exclusive authority under the state constitution to regulate attorney admissions).

49. *Cf.* MODEL RULES OF PROF'L CONDUCT PREAMBLE & SCOPE (2000) (introducing the aims of attorney regulation).

limiting outside competition.⁵⁰ Because such restrictions are overseen by state actors, antitrust scrutiny does not attend.⁵¹

Delaware takes things further than fellow states in restricting entry. In addition to the educational, bar-testing, and character-and-fitness requirements other states impose, Delaware also requires aspiring bar members to complete a five-month in-state legal-practice clerkship.⁵² State attorney regulation also controls competition from out-of-state lawyers.⁵³ Although states do permit nonlocal lawyers to handle individual cases via *pro hac vice* admissions, they require those lawyers to associate with local counsel, as Delaware does.⁵⁴

If such policies have protectionist motivations, that purpose would be troubling.⁵⁵ But the rules that forced Twitter, Musk, and some third parties to hire local counsel in addition to their lead counsel from New York can be justified beyond protecting a local industry from out-of-state competition. For instance, Delaware's success as a source of corporate law can be partly attributed to the quality of its judges and corporate bar.⁵⁶ Indeed, given that Delaware judges must be both Delaware citizens and lawyers, that bar is the sole source of Chancery and Supreme Court

50. See Elizabeth Chambliss, *Evidence-Based Lawyer Regulation*, 97 WASH. U.L. REV. 297, 299 (2019) (“[O]ne might imagine that the goal of the rule is lawyer protection: that lawyers are increasingly vulnerable to competition from alternative providers; thus, the proposed rule is necessary to shore up judicial protection for lawyers’ monopoly over legal services.”).

51. See *Parker v. Brown*, 317 U.S. 341, 350–51 (1943) (recognizing state regulatory actions as exempt from federal antitrust laws); *but see Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975) (clarifying that price fixing by members of a regulated learned profession would not be exempt from antitrust enforcement absent active state supervision of the pricing scheme).

52. Del. Sup. Ct. R. 52(a)(8). These clerkships can be judicial clerkships or other in-state legal work, including at law firms, public-interest firms, or government agencies.

53. See *supra* Chambliss, note 50, at n.9 (citing scholars raising competition concerns regarding attorney regulation).

54. See Del. Ch. R. 170(d) (requiring that local counsel “sign or receive service of all notices, orders, pleadings or other papers filed in the action [and] attend all proceedings before the Court, Clerk of the Court, or other officers of the Court,” but not requiring local counsel to attend depositions).

55. See Andrew K. Jennings, *Firm Value and Intracorporate Arbitration*, 38 REV. LITIG. 1, 46–47 (2018) (casting doubt on policies motivated by protecting the Delaware bar from external competition).

56. See William Savitt, *The Genius of the Modern Chancery System*, 2012 COLUM. BUS. L. REV. 570, 585 (2012) (“[T]he . . . Chancery judges are appointed on the basis of their expertise in Delaware corporate law and cannot help but become even more expert by virtue of their deep and continuous exposure to that law and their obligation to interpret and expound it daily and at length.”).

judges.⁵⁷ Requiring involvement by local counsel in all cases—especially those that sharpen lawyering skills and push doctrinal frontiers—could be justified as maintaining quality in the state’s corporate bar, and, ultimately, its judiciary.

Further, local counsel can add value. Local legal cultures are formed in the context of broader culture⁵⁸ as well as by state government’s policy choices around attorney regulation, judicial administration and procedural rules, and substantive law. The norms that grow up around how law is practiced in a place color the express command contained within local rules and judges’ orders. Although unwritten, norm violations could frustrate the working of judicial processes that assume attorneys and judges follow common practices. These norms represent a *savoir faire* that can require some inculcation to master. That Delaware is unusual in forcing its attorney hopefuls to complete a five-month clerkship before being admitted to the bar evidences that it finds particular value in ensuring that industry entrants absorb its legal culture. Requiring that nonlocal counsel engage local counsel—who know the courthouse byways—enforces the local norms. Local counsel can guide outsiders, for instance, to comport with what Chancery judges expect. Thus, even if there were no mandate to engage local counsel, out-of-state lead counsel might nevertheless recognize value in doing so and encourage their clients to embrace a team approach.

There is evidence in *Twitter* appearances that Delaware counsel were value-add members of the litigation teams. This evidence would counter a view that local-counsel requirements are merely, or even primarily, a regulatory subsidy to the local bar.

First, and perhaps most obviously, if the local-counsel requirement is but a regulatory subsidy, parties would be expected to spend as little as possible on Delaware counsel. Even when parties, as in *Twitter*, are largely insensitive to legal expense due to the high stakes of the litigation, there would be no point in engaging more than the minimum Delaware counsel if that counsel did not otherwise help advance a party’s interests. Indeed, excess counsel could impose time-costs for lead counsel, i.e., added

57. See DEL. CONST. art. IV § 2 (requiring judges to be “citizens of the State and learned in the law”).

58. Cf. *MY COUSIN VINNY* (20th Century Studios 1992) (depicting a clash of legal cultures when an attorney from Brooklyn, New York, defends a murder case in rural Alabama).

burden in managing legal staffing. Indeed, with an expedited trial schedule—as in *Twitter*⁵⁹—time-costs would be more important to avoid than incremental attorney fees. But despite hiring New York lead counsel, Twitter and Musk each engaged two leading Delaware law firms (including attorneys from the Wilmington office of Skadden). To comply with the court’s rule, they each only needed one.⁶⁰ Sixteen of Twitter’s appearances out of 44) and (six of Musk’s (out of 22) were Delaware-based lawyers. Presumably other attorneys at these firms worked on the case but did not appear in the public docket. These numbers support that there was considerable work to be done by *Delaware*-based lawyers, as opposed to lawyers at lead-counsel or other supporting out-of-state firms.

Second, for all parties, Delaware and non-Delaware lawyers had the same average experience for a given rank: around 21 years for partners, 16 years for counsel, and 6 years for associates.⁶¹ All in, Delaware lawyers had 15.5 years’ experience on average and out-of-state lawyers had 15.3.⁶² This striking convergence is consistent with legal teams needing a mix of lawyer labor specializations—for which experience and rank are proxies⁶³—and Delaware-based lawyers helping to fill those needs. In contrast, if Delaware-based lawyers had considerably more average experience, that would have been consistent with a small number of senior in-state lawyers holding ancillary roles as local counsel. The experiential balance between Delaware-based and out-of-state lawyers, however, is consistent with local counsel playing an integral, rather than ancillary, part.

Third, an important regulatory difference between Delaware and non-Delaware lawyers is that the former need not make an appearance in order to participate in depositions in a Chancery case, whereas the latter must seek *pro hac vice* admission to do so, even if there is no question

59. *Twitter, Inc. v. Musk*, C.A. No. 2022-0613-KSJM, Scheduling Order (Del. Ch. Nov. 28, 2022).

60. Del. Ch. R. 170.

61. *See infra* Appendix, Table 4.

62. *Id.*

63. For instance, the tasks of arguing before the court, conducting depositions, preparing for depositions, preparing first drafts of filings, editing first drafts of filings, doing initial review of documents, doing secondary and tertiary review of documents, and so forth would be allocated based on rank and experience. The parties needed to staff their teams to ensure that there was adequate labor available for anticipated tasks.

of them arguing in court or signing filings.⁶⁴ Dozens of depositions were noticed in *Twitter*. Given the short timeframe to conduct, and the work required to prepare for, those depositions, a number of junior lawyers were likely needed to help senior lawyers take or defend them. A comparison of Delaware and non-Delaware associates could spotlight this in-state/out-of-state divide. A higher rate of non-Delaware associate appearances compared to Delaware associate appearances could support that *Twitter's* high appearance count was influenced by this regulatory difference. Comparatively less experience on average among out-of-state associates would be consistent with their *pro hac vice* admissions being associated with their need to participate in depositions (whereas there would be no need for junior Delaware-admitted lawyers to appear in the docket before participating in depositions). There do not appear to be any such differences, however. Delaware-admitted associates made up 18% of all appearances and had 6.2 years' average experience, compared to out-of-state associates making up 20% of appearances and having 6 years' average experience.⁶⁵

And finally, one area of divergence between Delaware and nonlocal counsel points to a potential value-add Delaware lawyers offered in *Twitter*: although Delaware lawyers were six times less likely to have completed federal judicial clerkships, they were ten times *more likely* to have clerked for the Court of Chancery or Delaware Supreme Court, compared to nonlocal lawyers.⁶⁶ This point supports the possibility of local counsel adding value partly through their understanding of not only a jurisdiction's substantive law and procedural rules, but also its legal culture. That is perhaps especially so in a state whose bench and bar have a specialist interest in business litigation.

Twitter is likely not representative of other Delaware cases featuring nonlocal lead counsel, much less litigation in other state and federal courts with out-of-state lead attorneys.⁶⁷ It offers, however, an example

64. DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY, SECOND EDITION § 6.07[D] (2021) ("Each party represented at a deposition must be represented by a lawyer admitted to the Delaware Bar or one who has been admitted *pro hac vice*. Thus, before an out-of-state lawyer may participate in such a proceeding, he or she must be admitted *pro hac vice*.").

65. See *infra* Appendix, Tables 2 & 4.

66. See *infra* Appendix, Table 6.

67. Federal courts individually regulate practice before them. Some district courts require admission to their in-state bar before an attorney may be admitted to the district

of a case in which two well-resourced parties with much to lose (and much to gain) relied on Delaware counsel as integral parts of their litigation teams. Thus, at least under this case's circumstances, Delaware's rules restricting practice by out-of-state attorneys appear to have played a limited role, if any at all, on the parties' legal-staffing decisions.

CONCLUSION

Twitter could have been the corporate trial of the century. Had it been, there would be no surprise that countless lawyers—both seen in the docket and unseen back at the office—would be needed for a \$44 billion expedited litigation. The attorneys represented in this Essay can tell friends, family, and strangers for years to come that they worked on the *Twitter* case and have that claim be verifiable with a quick Google search—assuming “Twitter” and “Google” are words that mean much in years to come. The many lawyers who worked behind the scenes won't enjoy that public bauble. But, in any case, 101 lawyers is a lot. In hindsight, it's *really* a lot for a case active for under three months. Yet it contributes a case study to scholarly work on gender disparity in the legal profession, the role of state bar rules in regulating attorney competition, and the structure of legal teams in high-stakes litigation. This case study presents an incomplete picture, no doubt, but it hopes to serve as a reference for scholarship about critical concerns of the legal profession. It also implies a bit of a challenge to future Chancery litigants and their law firms. 101 lawyers: can you break that record?

court's bar. Out-of-state attorneys may be admitted pro hac vice but might be required by the district court to associate with local counsel. *See* 28 U.S.C. § 1654 (permitting each federal court to establish local rules and regulations).

APPENDIX

Table 1. Appearances by women, by party.

	Twitter	Musk Parties	Third Parties	Total
Partner	31.8% (7/22)	10% (1/10)	26.1% (6/23)	25.5% (14/55)
Counsel	0% (0/3)	50% (1/2)	100% (3/3)	50% (4/8)
Associate	36.8% (7/19)	30% (3/10)	44.4% (4/9)	36.8% (14/38)
Total	31.8% (14/44)	18.2% (4/22)	37.1% (13/35)	31.7% (32/101)

Table 2. Appearances by women, by admission.

	Delaware	Pro Hac Vice
Partner	28.6% (8/28)	22.2% (6/27)
Counsel	50% (1/2)	50% (3/6)
Associate	44.4% (8/18)	30% (6/20)
Total	35.4% (17/48)	28.3% (15/53)

Table 3. Average years since law-school graduation, by party.

	Twitter	Musk Parties	Third Parties	All
Partner	22	20.7	21.8	21.8
Counsel	19.3	16	13	16.1
Associate	5.7	7.1	6.4	6.2
Women	11.4	11.4	12.5	11.8
Men	16.3	14.9	19.5	17.1
All	14.7	14.1	16.6	15.4

Table 4. Average years since law-school graduation, by admission.

	Delaware	Pro Hac Vice
Partner	21.5	22
Counsel	15.5	16.3
Associate	6.2	6
Women	11.8	11.8
Men	17.5	16.7
All	15.5	15.3

Table 5. Clerkships, by party.⁶⁸

	Twitter	Musk Parties	Third Parties	Total
Federal	50% (22/44)	18.2% (4/22)	17.1% (6/35)	31.7% (32/101)
Delaware	13.6% (6/44)	18.2% (4/22)	31.4% (11/35)	20.8% (21/101)
Total	63.6% (28/44)	36.4% (8/22)	48.6% (17/35)	52.5% (53/101)

Table 6. Clerkships, by admission.

	Delaware	Pro Hac Vice
Federal	8.3% (4/48)	52.8% (28/53)
Delaware	39.6% (19/48)	3.8% (2/53)
Total	47.9% (23/48)	56.6% (30/53)

68. In Tables 5 through 7, attorneys who completed multiple federal or Delaware clerkships were counted only once. For example, an attorney who clerked for a federal district judge and then for a federal appellate judge would be counted as one attorney who completed a federal clerkship. There were no attorneys who completed both federal and Delaware clerkships. For attorneys who completed Delaware clerkships, all clerked for judges of the Supreme Court or the Court of Chancery.

Table 7. Clerkships, by gender.

	Women	Men
Federal	25% (8/32)	35.3% (24/68)
Delaware	28.1% (9/32)	17.4% (12/69)
Total	53.1% (17/32)	52.2% (36/69)

Table 8. “Top 20” law schools attended, by party.

Twitter	Musk Parties	Third Parties	Total
68.2% (30/44)	72.7% (16/22)	40% (14/35)	59.4% (60/101)

Table 9. “Top 20” law schools attended, by admission.

Delaware	Pro Hac Vice
31.3% (15/48)	84.9% (45/53)

Table 10. “Top 20” law schools attended, by gender.

Women	Men
50% (16/32)	63.8% (44/69)