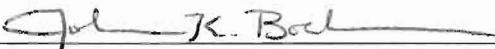


TEMPORARY LAWYERS: A QUANTITATIVE AND QUALITATIVE
EXAMINATION OF INTRAPROFESSIONAL STRATIFICATION

by

Angela M. Edwards
A Thesis
Submitted to the
Graduate Faculty
of
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in Partial Fulfillment of
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of
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Committee:

 _____ Director

 _____

 _____

Department Chairperson

 _____

Dean, College of Humanities
and Social Sciences

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Temporary Lawyers: A Quantitative and Qualitative Examination of Intraprofessional
Stratification

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By

Angela M. Edwards
Bachelor of Science
University of Mary Washington, 2006

Director: Johanna Bockman, Professor
Sociology

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DEDICATION

This project is dedicated to my husband, Brian Edwards, for being a constant source of inspiration, encouragement, and friendship.

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LIST OF ABBREVIATIONS

| Phrase | Abbreviation |
|-----------------------------------|--------------|
| American Bar Association..... | ABA |
| <i>After the JD</i> study..... | <i>AJD</i> |
| One-Way Analysis of Variance..... | ANOVA |

ABSTRACT

TEMPORARY LAWYERS: A QUANTITATIVE AND QUALITATIVE EXAMINATION OF INTRAPROFESSIONAL STRATIFICATION

Angela M. Edwards, MA

George Mason University, 2011

Thesis Director: Dr. Johanna Bockman

This exploratory study uses quantitative and qualitative data to describe temporary lawyers who perform routinized professional tasks. Temporary lawyers working in the large law firm have been largely overlooked by the scholarly literature, perhaps because they are a relatively new and evolving part of the legal profession or because of the transitory nature of their work. To compensate for this lack of scholarly literature, formal sources from within the profession, such as law journals, bar associations' published ethics opinions, and court cases, are used as qualitative source to explore the issues surrounding temporary lawyers and lawyering and how they are incorporated into the profession. Statistical analyses of wave two of the American Bar Foundations' *After the JD* study are used to describe temporary lawyer's and compare them to permanent lawyers across sociodemographic variables, professional activities, and workplace satisfaction. Experiential data taken from informal sources, legal media and blogs, present information regarding the working lives of temporary lawyers and their

experiences within the legal labor market. Through these quantitative and qualitative sources this study finds evidence of limited mobility and disparate working conditions between temporary and permanent lawyers within large law firms though the experiences of temporary lawyers can vary greatly and they do not necessarily exist as a homogeneous group as originally thought. The existence of these professionals has implications for the routinization of professional labor, the segmentation of professions, and the organization of abstract labor and service work within the global economy.

CHAPTER 1: The Stratification of Professions and the Emerging Market for Temporary Lawyers

Globalization has increased the complexity of even the most abstract professional work, work that was previously thought to be indivisible (Susskind 2008). Abstract service work, such as financial and legal services, is foundational in the postindustrial world (Smith 2001). Despite their importance, these service industries are not immune to vulnerability and change in the complex global economy. For instance, the practice of corporate law has changed. Large law firms which serve corporate clients and are instrumental in the global economy as a highly prestigious form of law practice, have recently come to rely upon temporary lawyers to maintain their structure and power while remaining economically competitive in the marketplace. These temporary lawyers hold Juris Doctorates from accredited law schools and are licensed to practice law, similar to full time associates of the firm. The use of temporary lawyers allows firms to respond more quickly, efficiently, and cheaply to client demand than if they used a larger group of more experienced permanent professionals, associates, who are well compensated and who are nurtured by the firm. Temporary professionals often perform tedious, routinized, professional work, such as document processing related to a firm's obligation to due diligence, freeing the permanent professionals' time for more professionally prestigious and substantive work.

These temporary lawyers represent a significant change the traditional

professional legal career path, although the latter is also changing. The presence of these workers within large law firms may denote a shift in the way legal work is done, how firms are organized, and how the legal profession functions. There is little scholarly literature on these new types of lawyers, their working environments, and their career paths. This study examines quantitatively and qualitatively temporary lawyers in relation to permanent lawyers.

Research Questions

This study asks: are there any significant differences in socioeconomic demographics, qualifications, formal and informal, or working conditions, such as their workplace environment, the type of work they perform, and career outcomes, between permanent and temporary lawyers? If temporary lawyers represent new workplace stratum within the large law firm environment, is there limited mobility between temporary and permanent lawyer positions? What implications, if any, do these temporary workers hold for the organization of legal work within the large law firm environment, with regards to potential deprofessionalization, and the legal labor market, with regards to intraprofessional stratification within the workplace?

Literature Review

Temporary lawyering is but one small part of the professional legal landscape. Professions do not exist as monoliths in an empty field, rather they are relational. Professions seek to maintain or expand their own power relative to other professions. This competition also extends to different parts within the profession. As the relationships between professions are subject to change, so too are professions

themselves. From a sociological perspective, professions are studied as abstract social constructs, which compete with each other seeking to dominate sectors of the market through a monopolization of expert knowledge and the accompanying jurisdictional tasks (Abbott 1988; Freidson 1986; Larson 1977). Professions justify their monopolistic control over knowledge by ascribing to accepted ideologies of the larger society, such as free market principles or scientific rationalization (Larson 1977). A change in jurisdictional control of a task by one profession means a loss or gain of control, or overlapping control, over that same task for another (Abbott 1988). To maintain control over a particular jurisdiction and reduce competition over a given task, professions seek state sponsorship through the creation of licensing bodies and governmental control on the provision of certain services (Freidson 1986; Larson 1977). State regulation also serves to control the supply of professionals through the regulation of professional licensing titles (Freidson 1986). State regulation on professional titles can help define professional boundaries but also heightens intraprofessional divisions by legitimizing existing professional stratification impeding both public and professional acceptance of change within the profession. The maintenance of professional legitimacy is a broad sociological issue, and the conflicts both between and within professions have profound social consequences.

Changing Interprofessional Hierarchies

Interprofessional hierarchies and competition can change depending on historical events. Recent effects of globalization have affected the legal profession and the relationship it has with other professions in the marketplace. The rise of the global

economy has increased the demand for legal service serving corporate business clients. Businesses have moved beyond their local markets to other countries, expanding where goods and services are created, moved, and consumed. Information technology has helped create an environment where business corporations exist relatively independent of spatial limitations such as national boundaries. Within this new, global economy, markets for goods and services have expanded at an unprecedented rate. Leading economic nations have moved from an industrial, or manufacturing, base of economic subsistence towards more service-oriented industries (Sassen 2001) with a strong tie between the legal and financial services growing together in parallel (Abu-Lughod 1999). Such shifts in power between professions in the globalized market place can change the dynamics of interprofessional relations (Abbott 1988). Among the services whose demands have increased exponentially within the past decades is legal service relating to global, corporate businesses. The demand for legal services follows the growing complexities of maintaining an international business and law firms continue to grow larger and more complex due to a consolidation of firms and a growth in market demand (Heinz, Nelson, and Lauman 2001).

Coinciding with the increased demand for legal services by corporate business clients, the intraprofessional relationship between firms and clients has also been changing. The relation of corporate law firms to corporate clients has changed as these clients became more abstract. As clients become more incorporeal and abstract, being defined by contracts rather than relationships between individuals, this personal aspect of the relationship between the firm and the client diminishes while market-based factors,

namely time and money, become more important than lasting relationships between firms and clients (Hanlon 1997), creating a shift to a more market-based model for legal services. Traditionally, relationships between firms and clients were lifetime affairs, heavily influenced by personal relationships between owners of the business corporations and the partners of the firm (Flood, 1991; Hanlon, 1997; Heinz et. al, 2001). The nature of clients and their relations with each other came to rely more and more on a web of contracts binding them together rather than groups of owners or primary stakeholders (Cioffi 2000). These complex contracts, as well as the need to navigate these contracts through multiple national legal systems while creating global regulatory standards for these relationships (Dezalay and Garth 1996), require an even heavier reliance on large law firms and demand for their services. Though the demand for corporate legal services has been increasing, firms' control over their own work has diminished rather than grown. Within this environment, clients have been pressuring firms to provide services faster and cheaper, altering the firm-client market structure.

The changing relationship between firms and clients has given, generally, more leverage to clients than during previous historical periods. These changes have offset the relational leverage within the marketplace law firms may have gained through the increase in demand for legal services and left law firms vulnerable. The aforementioned abstract nature of clients (Cioffi 2000) is a large contributor to this shift in power. In addition, the use of internal legal departments by clients has increased the external demands placed on large law firms. Generally, because internal legal departments handle routine legal matters, clients look to firms only for large scale or overly complex legal

matters and are also now able bring their own legal knowledge to the bargaining table when dealing with large law firms, increasing their negotiating power (Flood 1991; Hanlon 1997). The internal legal departments clients use illustrate the different roles various lawyers perform. These differing roles also form a hierarchy within the profession.

Intraprofessional Hierarchies within the Legal Profession

While there are hierarchies between professional groups, there are also hierarchies existing within each profession. Professions are not homogeneous groups, and it has been suggested that the study of professions should move away from examining the knowledge and expertise used to the market niches served by different groups of professionals. This way of thinking about professions more accurately describes the heterogeneous nature of professions and the hierarchies which exist between them (Brante 1988). The top of the intraprofessional hierarchies within professions tend to be based on what is considered prestigious by the profession at large. Within the legal profession such prestige is based on abstract legal work and the relative prestige of the client served, both of which are typified by work with large corporations exemplified by the large law firm. The intraprofessional hierarchy of the legal profession privileges professional relations and interactions with clients and is linked to the idea that abstract professional work equates to professional purity (Abbott 1988; Boon and Flood 1999). Intraprofessional hierarchies of power in service industries, such as law, can be influenced by different forces, such as the types of clients the professional serves. Just as client type affects interprofessional status, it also influences relative status within a

profession. Those serving clients with more power within the economic market, such as transnational business corporations, are generally considered more prestigious than those serving clients of lesser relative status, such as individuals seeking divorce (Sandefur 2001). The level of interaction with the client also plays a role in relative prestige within the intraprofessional hierarchy of service industries as it can be linked to the abstract core of professional work. Legal professionals who spend more time interacting with clients as part of their professional work are seen to have less prestige and are lower on the professional hierarchy than those whose work involves debate with other legal professionals (Boon and Flood 1999).

The division of professions into hierarchies assumes that professional work is divided into core and peripheral professional labor which can serve as markers of power and prestige within a professional hierarchy. The core of professional labor consists of the professionally pure and prestigious professional laborers. Those in the periphery tend to perform routinized professional labor which, within the profession, is hardly considered “real” professional work and reflects its low prestige (Van Hoy 1995). The organization of professional hierarchies into core and peripheral work is evidenced by the lack of mobility between workers of the same profession between these two spheres (Smith 1983). Workers in these different spheres are also separated physically as they work in different organizations doing similar professional work (Hanlon 1997). These distinctions between hierarchies of professional work can vary in the level of formality they are given by professional organizations. When these distinctions become more formalized by professional governing bodies the divisions between professionals is

codified and thus becomes more apparent (Freidson 1983).

Intraprofessional Stratification within the Large Law Firm

The large law firm, those dealing with corporate and business law, is based on an organizational model with its own form of stratification between associates and partners within the firm. This organizational structure is known as the associate-to-partner tournament, the Cravath model of firm organization, which has prevailed within large law firms since their creation in the 1930's. Within this structure lawyers are hired directly out of law school as associates and compete with other associates for a position as an equity partner of the firm (Galanter and Palay 1991). These junior associates work under a partner at the law firm where they gain experience and other forms of human capital. The firm benefits from this arrangement by retaining human and cultural capital within the firm and by preventing associates from shirking duties.¹ Due to changes in the market for corporate legal services from globalization the associate-to-partner tournament is threatened as it does not allow firms the flexibility necessary to survive in a globalized economy. This organizational model depends on a stable rate in both the demand for legal services and the supply of qualified law school graduates (Price 2003) which is not conducive to the conditions of a globalized economy. In order to compensate and remain viable in the global economy firms have begun to use temporary lawyers to remain

¹ The associate-to-partner tournament, as an organizational structure, is the basis of a theory of the formation and growth of large law firms and the legal profession called tournament theory. Under tournament theory, exponential growth in the number of associates and partners is essential for the maintenance of large law firms. Without this type of growth, firms would not be able to attract associates and would fail or merge with a more successful firm (Galanter and Palay 1991). Tournament theory as an organizational theory does have its weaknesses, particularly with regards to its justifications of efficiency and of utility in monitoring, motivating, and retaining employees (Kordana 1995; Price 2003; Rutherglen and Kordana 1998). Despite these weaknesses in the reasoning behind tournament theory, the basic associate-to-partner tournament structure has provided an accurate description of the basic employment structure of legal professionals within the large law firm.

competitive.

Changing Intraprofessional Stratification within the Large Law Firm

Both internal and external market forces have pressured large law firms to readjust their organizational structure. The speed and cost at which clients demand services can not be supported by the traditional methods of the internal associate-to-partner tournament of large law firms. This combined with the loss of power law firms face within the firm to client relationship has lead firms to become more corporatized. Corporatization typically refers to the process of private- or state- held organizations become publicly traded. As professional regulations prohibit law firms from being publicly-traded companies, observers use the term “corporatization” more broadly to indicate profit driven focus similar to those present in large corporate businesses. The corporatized view of law as simply a revenue generator competes with professional values of law as a professional calling which values impartiality, judicial prudence, and professional independence.

Through the corporatization process, the consolidation of firms, through globalization and the rise of the large law firm as a dominant organizational structure in legal services serving corporate business clients, has also consolidated power over the profession to a small group of elite professionals (Hanlon 1997; Heinz, Nelson, and Lauman, 2001; Heinz, Nelson, Sandefur, and Laumann 2005; Price 2003). Consequently, more professionals have less control over their own work, which could be indicative of the low of value of legal skills and knowledge, and thus legal professionals, within the marketplace in relation to their clients. This loss of individual control over work is also

the result of internal, structural changes of law firms. As firms have grown and power has been consolidated into the hands of fewer professional elites, the ratio of associates to equity partners has increased leading to a potential proletarianization of the profession (Derber, Schwartz, and Magrass 1990; Larson 1977; Slovak 1979). The increased power of the corporate client may have an affect on law firms' organizational identity as well as individuals' control over their work through changes in professional judgment (Spangler 1986). Rather than aligning with legal professionals' espoused values, organizations working with demanding and highly prestigious clients may adopt some of the clients' values, replacing their own profession's values (Brickson 2005; Slovak 1979; Spangler 1986).

The adaptation of corporate values into large law firms can further undermine the firms' independence as a separate professional entity, as well as their professional role in the practice of law relating to corporate business organizations (Parboteeah and Cullen 2003). For example, the consolidation and bureaucratization of law firms has lead to the emphasis of large law firms as a sellable brand name rather than an emphasis on the legal competence and skill of firm lawyers (Price 2003). The shift in power between law firms and clients reveals increasing external pressure on large law firms for greater and quicker performance at lower costs. The adaptation of hierarchical organizational styles, increasing inter-firm competition, and growing profit motive of large law firms furthers the corporatization of the legal profession. Similar trends have been seen in the organization of universities with implications on the changing nature of an institution's values resulting from such changes (Steck 2003).

To provide quick and cheap legal services large law firms began to hire temporary attorneys in the late 1980's. As this practice became a successful way for the most dominant law firms to deal with external and internal pressures of supply and demand for workers, it became attractive to other firms as well and the use of temporary lawyers spread (Sherer and Lee 2002). These temporary lawyers work on a project-basis, typically doing the more routine tasks performed by associates at a higher cost, freeing associates for more prestigious legal work (Johnson and Coyle 1990). With the availability of a temporary workforce firms are able to deal with the ebb and flow of the market demands for their services without having to commit to hiring expensive, full time associates (Hammond 2009). The practice of using a contingent labor force is, generally, a component of the new global economy where an increasing amount of market risk is being placed on workers with decreasing job stability creating larger, organizational profits (Sennett 1998). While temporary positions may limit worker opportunities and career paths, challenging traditional models of career growth, they can also provide beneficial experiences for success in the new economy, depending on industry and organizational factors (Smith 2001). Nevertheless, the use of temporary employees within the legal realm may have interesting implications for the legal profession at large. At yet another level, the existence of temporary lawyers has implications for professional hierarchies, both internal and external to the legal profession.

Temporary Lawyers in the Large Law Firm

The inclusion of temporary lawyers within large law firms in a field of high professional prestige represents a new level of stratification in the intraprofessional

hierarchy and stratification which exists within large law firms. The temporary lawyers' background and career paths may differ from the permanent lawyers of the firm. As these two groups may encounter differing career ladders, they may represent segmentation within the legal labor market. Labor market segmentation, or dual labor market segmentation theory, refers to a phenomenon within labor markets where jobs become separated into primary and secondary categories. Typically, primary and secondary categories of jobs can be characterized, broadly, as "good" (primary) or "bad" (secondary) jobs with little to no mobility between segments (Berger & Piore 1980; Hudson 2007). Those performing primary jobs tend to perform more abstract labor while those in secondary jobs perform more concrete labor, which in the case of lawyers could be associated with more routinized work (Berger & Piore 1980).

Labor market segmentation can be the result of rigid labor markets, such as the tournament model of large law firms, being forced to respond to severe market fluctuations, as is occurring within the global marketplace. Workers in the primary labor market exist within a rigid organizational structure and secondary workers bear the brunt of market fluctuations and are sacrificed for higher wages, better benefits, and increased job security for the benefits of those in the primary sector (Piore 1980). Within these processes employers may also discriminate and exploit disadvantaged worker, such as minorities and women, relegating them to the secondary sector (Ghiarduci & Lee 2005; Reich, Gordon, & Edwards 1973). Countering the labor market segmentation theory is the human capital theory which denies the existence of primary and sector jobs and states that workers with bad jobs can move into more desirable positions through hard work,

dedication, and education (Dickens & Lang 1985; Schiller, 1977).

As possible members of a secondary labor segment, temporary lawyers are highly supervised, have little control over their work or work environment, and are physically isolated from most permanent lawyers in the workplace (Johnson and Coyle 1990). In addition to an unstable work environment and lower prestige, temporary lawyers also have fewer benefits and lower earnings than permanent lawyers (“The Age of the Flexible Worker” 2002). The disparity between temporary employees and permanent employees within the workplace highlights the intraprofessional hierarchy of the legal profession. Tensions in the workplace between professionals doing disparate work are not necessarily inevitable. Rather routinized work can be assigned as a task, rather than ascribed to a particular class of professional worker, as seen in an engineering organization (Whalley 1984). Yet, it seems that temporary lawyers are relegated to a lower stratum of the intraprofessional hierarchy of the large law firm by exclusively performing these routinized tasks.

There is little scholarly literature directly related to temporary lawyers though there are many issues surrounding temporary lawyers which are discussed in depth within the scholarly literature². The literature regarding these professionals tends to come from the legal community and legal press focusing on the potential legal problems of conflicts of interest liability issues in using these employees, as temporary lawyers come in contact

² As one of the classical professions, lawyers are held in a particular esteem that would seem to preclude them from low-status temporary work (Rogers 2000) though the public and abstract nature of their work separates them from the other classical professions, whose work is individualized and private. Though there are temporary workers in other professions, such as medicine and academia, these differences in the character of legal work create different dynamics in the work environment making cross-professional comparisons of temporary workers inappropriate (Larson 1977).

with sensitive information regarding a multitude of different clients in the course of their fast-paced work (“The Age of the Flexible Worker” 2002; “Call for Reinforcements” 1995; Johnson and Coyle 1990). Formal professional sources from the legal community as along with informal sources will be explored later in this study as they address the issue of temporary lawyers more directly. This study provides preliminary descriptions of temporary lawyers found through a systematic process, which is lacking in the formal, sociological literature. The lack of scholarly literature regarding the specific nature of temporary lawyers and their place within intraprofessional hierarchies necessitates the broad nature of the literature review presented here. Focusing on the changes in inter- and intra-professional hierarchies provides a background for understanding how temporary lawyers came about and the issues related to their workplace experiences.

Other Relevant Changes in the Legal Profession

In addition to the external challenges presented from the emergence of the globalized economy and the subsequent corporatization of law, the legal profession has also faced internal changes and challenges in the past decades. These changes have affected the broad intraprofessional stratification of the legal profession and may be applicable to more specific, workplace stratification, such as that seen within the large law firm. Due to social and legal reasons the sheer number of individuals entering the legal profession has increased dramatically. The inclusion of women and other minorities onto college campuses has increased the number and diversity of professional candidates. Universities, to keep up with demand, have instated new legal programs to accommodate those seeking a legal degree, including part time programs (Heinz, Nelson, Sandefur, and

Laumann 2005). The American Bar Association (ABA), the regulator of the legal profession in the United States, gives law schools and law programs immense freedom in their operations (White 1987), allowing for increases in the number of new law schools and corresponding increased number of graduates. These changes have caused a shift in the demographics of the legal profession at large and the size of the available legal labor pool.

While the number of law students and graduates have increased, admission and graduation rates from elite law schools has remained fairly stable. Thus, the growing number of law school graduates end up coming from less prestigious schools (Heinz et al 2005). The historically tenuous legitimacy of the ABA as a law school accreditation agency has facilitated this exponential growth in the number of law schools and law graduates entering the profession as that agency is viewed as hesitant to deny accreditation lest its power be challenged (Abel 1989). This discrepancy in the numbers may indicate the maintenance of a consolidated legal elite, those from top law schools, with a growing number of subjugated legal professionals. The tiered structure of law schools is not an accident as there are professional controls on the admittance to elite law school. The Law School Admittance Test, administered by the Law School Admissions Council which is overseen by the ABA, has been used as a sorting mechanism for the tiers of law schools (LaPiana 1998). Women and minorities encounter barriers to top law schools which affect their later legal carriers as attendance to an elite law school is required for admission into the elite ranks of the profession (Clydesdale 2004; Ryan 1992). These internal changes to the profession, the increase in the number of law school

graduates and the differing backgrounds of the graduates, alters the legal labor market where there is a maintenance of a group of legal elite with a growing pool of less desirable lawyers.

Implications of Temporary Lawyers

The existence of temporary lawyers within the legal profession signifies a routinization of some part of highly specialized, professional labor. When labor is performed by those whose professional qualifications, such as a Juris Doctorate and a license to practice law, is routinized professional legal work is diluted. The routinized work of proclaimed “legal professionals”, those doing routinized legal work, becomes a caricature of the legal profession, demeaning the profession as a whole through their association with the professional label of “lawyer” (Boon and Flood 1999). As contingent workers, temporary lawyers perform these tasks for firms in an economically efficient way and, as contingent workers, can be the focus of labor cost cutting strategies of corporatization (Lautsch 2002). The diminishing value of legal work as evidenced by routinization, and the associated loss of monopolized knowledge and skill required to perform these professional tasks, as well as the increasing influence of clients on firms which results in such routinization, may compromise the prestige of professions in relations to other professions. Relative professional prestige can have profound consequences on the elites within a given profession whose reputation depends partly on the external perceived prestige of the profession at large. As a result, the legal elites are highly motivated to ignore the routinization process of the legal profession and to retain high professional hiring standards for temporary lawyers, despite the fact that temporary

lawyers occupy a different stratum of the legal hierarchy. Maintaining professional integrity within legal professionals also maintains professional prestige with relation to other professions (Abbott 1988). Thus, while temporary lawyers may perform legal work routinized beyond professional recognition, as it no longer requires specialized knowledge and skill to perform, there may be profession-wide incentive to keep these employees as full-fledged lawyers with rather than as a separate paraprofessional employee category. External perception of this legal work as prestigious and expensive allows firms to continue to charge large premiums for work they undervalue internally. Temporary legal work has implications for individual professionals through its effects the sites of professional work: the law firms and their organization.

Despite the sudden and rapid changes in demographics and numbers of people entering the profession (Heinz et al. 2005), factors which can destabilize professional values and dilute the power of centralized professional control by a small group of elites, structures of power and prestige within the legal profession have been slow to change. Within a profession, prestige can be determined by embodying the explicit and implicit values of the professional community at large. Recent changes in demographics of lawyers and the changing organization of legal work could be indicative of a substantial change in the professional community and, thus, of changing professional values. The influx of a large number of new members from different backgrounds into a profession can destabilize its values, as these new groups bring in new social values based on their diverse experiences. This can also lead to a loss of control over how work is performed and who performs the work by professional gatekeepers as the workplace dynamics and

organization of a profession change with their worker population, particularly with respect to intraprofessional competition (Abel 1986). This loss of control can increase the amount of intraprofessional stratification through the formation of new specialties and the potential deprofessionalization of work through routinization (Freidson 1983; Leicht and Fennell 1997). The increase in the number of members entering the workforce can also affect the homogeneity of professional membership. As many new entrants into the professions come from more diverse backgrounds than in the past, the composition of professional members on such classifications as race, gender, and socioeconomic status can change dramatically. For example, the entrance of women as well as those of low and middle class into the professions may have some effect on traditional professional values such as entrepreneurship (Hoff 1998) though these changes could be the result of historical factors affecting the development of profession such as the bureaucratization (Larson 1977) and proletarianization (Derber et al 1990) of professions, in general. While these changes in professional composition could change the intraprofessional hierarchy, provided these groups move into more prestigious positions, absent such mobility, intraprofessional hierarchy is reinforced and strengthened, as seems to be the case with the legal profession. The past decades have seen the increase in reliance on and prestige of large firms in the legal profession (Galanter and Palay 1991). The concentration of power in a smaller proportion of the legal profession has increased as well as the homogeneity of these elites (Hagan, Zatz, Arnold, and Kay 1991; Leicht and Fennell 1997). The concentration of professional power and control reflects the maintenance the professional hierarchy despite a growing and increasingly heterogeneous

pool of professional workers.

For the legal profession, the maintenance of prestige in relation to other professions may be dependent on the recent introduction of temporary lawyers into large law firms. Temporary lawyers simultaneously embody the deprofessionalization of legal work as well as the continued maintenance of prestige for the profession as a whole. The routinization of legal tasks performed by temporary lawyers allows large law firms to maintain their professional status in relation to their clients. As the work of temporary lawyers differs from that of permanent lawyers within the same work environment, so do their working conditions and their intraprofessional prestige. The potential disconnect between the professional qualifications of both temporary and permanent lawyers within large law firms and their differing working conditions should be examined to determine if these professionals occupy differing segments of the legal labor market. If so, this employment arrangement may represent an exploitive one which serves to artificially maintain a tournament-style law firm structure. This structure, in turn, may maintain a class of intraprofessional elites who differ with regards to key sociodemographic criteria, such as race, gender, politics, and wealth, as well as maintaining the interprofessional prestige of the legal profession in relation to clients.

Temporary lawyers are but one part of the legal profession and fit within a professional and historical context. Professions are fluid and constantly changing within relational hierarchies. Historical factors such as globalization can cause changes to the interprofessional relationships, such as those between corporate business clients and the large law firms who serve them. The changes within the firm-client relationship has

increased the demand for legal services while at the same time decreasing the power law firms hold within this relationship. Law firms have compensated for this vulnerability by corporatizing their organizational structure. In the process, they have consolidated professional power into a smaller group of professional elites and have incorporated temporary lawyers into their labor strategies. There is little formal study of temporary lawyers so this study sets to explore their characteristics and working environment.

Methodology

This study uses both quantitative and qualitative data to describe temporary lawyers working in large law firms and explore their working conditions. It also compares these workers and their work environment with their permanent counterparts, partner-track associates in large law firms. While there is little direct information regarding temporary lawyers and their working lives within the formal scholarly literature, there are formal professional sources, law review journals, which more directly address these workers in a qualitative manner. In supplementing the literature review, these sources provide further background information on the historical, organizational, and professional issues surrounding temporary lawyers, allowing this study to examine temporary lawyers in their historical and professional context. These sources are presented here as a professional perspective on the changes within the profession which resulted in temporary lawyers. In addition to the law review articles, ethical rulings by professional regulating bodies are examined. These ethical guidelines serve as the profession's attempt at maintaining the integrity of the profession by integrating the use of temporary lawyers formally into professional practice. As formal sources, two court

cases are explored in which temporary lawyers challenge their employers on their status in the legal profession.

After placing temporary lawyers within the context of the legal profession and the organizational structure of the large law firm, these workers were examined as a group and compared to permanent lawyers. To examine the characteristics of temporary lawyers, statistical analyses were performed on quantitative data from the American Bar Association's *After the JD (AJD)* study, a longitudinal study of careers of young lawyers who passed a bar in 2000.³ The views and conclusions stated presented here are those of the author and do not necessarily reflect the views of individuals or organizations associated with the *AJD* study. These analyses provide some basic characteristics and differences between temporary attorneys and permanent associates within large law firms. This longitudinal study contains information from a nationally representative sample of new lawyers who passed the bar in 2000. The *AJD* study sampled 9,192 new lawyers, including an over sample of 1,465 minority group lawyers (black, Hispanic, and Asian American), were contacted and a response rate of 71% was achieved of which 4,538 were valid responses. All respondents graduated from law school and a majority came from privileged socioeconomic backgrounds with 63% of the respondents' fathers and 51% of mothers graduating from college. The first wave of the *AJD* study was conducted between 2002 and 2003 and the second wave in 2007 and 2008 (Dinovitzer, Garth, Sander, Sterling, and Wilder 2004; Dinovitzer, Nelson, Plickert, Sandefur, Sterling 2009). Data from the second wave of the *AJD* is used in this study as it allows some time

³For more information regarding the *After the JD* study please visit the American Bar Foundation's website at <http://www.americanbarfoundation.org/publications/afterthejd.html>.

for careers to progress and so differences between groups may be easier to identify should they exist.

The broad nature of this data set allows the possibility of capturing of data regarding the target population of temporary lawyers. While lawyers and law firms are highly surveyed, most surveys explicitly exclude any attorneys who may not fit the associate to partner model, such as temporary attorneys, reinforcing the low level of regard such employees may experience from their peers within the legal profession. Though surveys emphasize the partner-track attorneys at a given firm, more recent surveys do recognize the growing number of “non-traditional” attorneys within large law firms by including such prestigious, though not equity-partner eligible, positions such as co-counsel and special counsel, while still excluding other less prestigious non-partner track positions.

To compliment this quantitative analysis a qualitative study of legal media and blogs is used to understand temporary attorneys’ working experiences on a more individual basis. For this study informal media sources were used to gain a greater understanding of temporary lawyers’ working lives. Legal media publications, found using relevant search terms through the Factiva database, and prominent legal blogs were used for this purpose as well as to find identifying characteristics of the temporary lawyer population.

The research of informal sources of legal media and blogs was conducted in a loosely structured manner, where these informal sources were used in lieu of scholarly research, since there is little to be found. Using these sources does limit the study in that

these non-scholarly sources can hold tremendous bias, particularly “The Posse List” blog which promotes non-traditional legal career paths. These sources are not necessarily held up to the rigorous verification and testing of formal peer-reviewed sources. Despite these limitations, these sources do provide a glimpse into the temporary attorney market and experiences which can be applied to the quantitative data used in this study as an informed framework for describing the populations’ experiences without extensive field work. Exploratory, qualitative field work would be the ideal in describing this population, but has its challenges. To understand temporary lawyers and their working conditions, one would need to interact directly with temporary lawyers themselves, law firms and their staff, and staffing agents at job placement agencies. Each of these populations has access issues. Temporary attorneys, as well as contingent workers in general, are difficult to place and contact as their workplaces are constantly changing (Rogers 2000; Sennett 1998). Law firms, who employ these workers, are traditionally wary of social researchers in their places of business (Susskind 2008; Galanter and Palay 1994; Heinz et al. 2005). They tend to be dismissive of temporary lawyers as significant contributors to the legal field (Johnson and Coyle 1990) and, as such, may find research into these workers a waste. They may also take offense at any publicity turned toward the routinization of aspects of their highly regarded field (Susskind 2008). Temporary staffing agents may be the most accessible of these listed but would still provide only second-hand accounts of temporary workers’ working conditions and experiences within the legal profession. These limitations put many qualitative research methods beyond the scope of this study.

The majority of the qualitative research on temporary attorney was done through two legal blogs: “The Posse List”⁴ and “Above the Law”⁵. Both of these blogs have, relatively, extensive archives and a close proximity to the legal profession at large. “The Posse List” self reports being in operation since 2002, beginning as a listserve, and, as of May 2010 has a browseable archive of articles going back to 2007. “Above the Law” does not self report an inception date, but has archives going back to 2006. Both blogs have had direct interaction with the traditional legal profession showing recognition from, and influence on, the industry adding credibility to these sources. “The Posse List” has organized workshops and seminars attended by industry leaders and staffing agencies use them as a source for labor by soliciting job listings to them as well. Prominent law firms have issued official press releases confirming, denying, or clarifying information posted by “Above the Law” as further evidence of credibility.

Both blogs have slightly different focuses, providing a broader range of information to crosscheck against each other. As “The Posse List” began as a listserve of job postings for temporary attorneys looking for projects, its focus is on the temporary lawyering industry, particularly document review, and changes within this industry. As they have grown, they have broadened their focus to e-discovery, using information technology to better manage and integrate relevant information for legal purposes. As temporary attorneys that have expanded their personal brands as co-counsel within web 2.0, the authors of “The Posse List” emphasize the viability of going solo or doing freelance consulting work using these mediums as well.

⁴ <<http://www.theposselist.com>>

⁵ <<http://www.abovethelaw.com>>

The blog “Above the Law” describes itself as “A Legal Tabloid: News, Gossip, and Colorful Commentary on Law Firms and the Legal Profession” and thus comments and criticizes on a broad range of topics within the legal profession. Some of the articles may not be as in-depth, serious, or substantive as traditional media sources. They cover the trivial, such as how attractive or unattractive a new Supreme Court Justice candidate may be, to industry trends, such as firm layoffs or law school reputations, both formal and informal. This broader range of coverage than traditional media source can include information regarding temporary lawyers that may be overlooked by more traditional sources as inconsequential to “real law”.

Temporary lawyers as a new group of professionals working in the large law firm environment were studied by first examining the larger professional context in which they exist, then their characteristics as a group, and then finally their experiences. The broad examination of historical, organizational, and professional issues surrounding temporary lawyers using law review journals, bar associations’ ethical opinions, and court cases provide context for studying temporary lawyers. An analysis of this group enhances this understanding of temporary lawyers, their backgrounds, and their work in relation to permanent lawyers. Qualitative sources round out this understanding of temporary lawyers as a group through narrative descriptions of the experiences temporary lawyers face on the job and within the labor market.

Hypothesized Findings

While the main purpose of this study is exploratory, I expect to find differences between temporary and permanent lawyers working within the large law firm with

regards to their sociodemographic backgrounds and work experiences. Based on the literature regarding general intraprofessional stratification within the legal profession at large, I expect differences in sociodemographic variables and the tier of law school attended. Due to the possible isolation of temporary lawyers from permanent lawyers in the firm, some informal qualifications, such as relationship with permanent lawyers or partners, may influence temporary lawyering status. The likely isolation from other lawyers within the firm, combined with their possible separation from the associate-to-partner tournament career ladder, indicates that generally, the career outcomes of temporary lawyers may be stunted relative to permanent lawyers (Kanter 1977). Based on the literature regarding temporary employees, generally, I would expect differences between temporary and permanent lawyers in their working conditions, such as the workplace environment, type of work performed, and career outcomes.

I hypothesize that temporary lawyers perform more routinized legal labor, as part of the corporatization process of law firms and represent a segmentation of the legal labor market of the large law firm. Should the routinization of legal work and workers, as is expected to be represented by temporary lawyers, exist then temporary lawyers may find little job mobility within the large law firm environment. The changes represented by the experiences of temporary lawyers coincide with changes in the organization of the large law firm and may represent a new form of workplace stratification and segmentation among legal professionals. As contingent workers, generally, experience a higher economic risk within a given labor market, temporary lawyers are expected to have more negative experiences than permanent lawyers including lower compensation, less

pleasant work spaces, and negative stigma with regards to their temporary status within the legal labor market (Rogers 2000).

Temporary lawyers, as a new class of legal professional, may indicate a breakdown of the large law firm organizational model. This may be the case whether or not they are found to be deprofessionalized workers. The creation of temporary lawyering tracks within the large law firm illustrates a break from the associate-to-partner model which has sustained these firms' growth and dominance. Temporary lawyers may represent the deprofessionalization of profession work and the workers who perform them. This is a change from a lifetime organizational model to one with a smaller core base of workers who rely on contingent peripheral laborers.

CHAPTER 2: Professional Perspectives on Temporary Lawyers and the Environment which Created Them

While there is little direct, scholarly literature regarding temporary lawyers, literature published within the legal profession does provide some insight into this type of worker. These sources supplement and compliment the literature review, providing a further basis for this exploratory study by setting temporary lawyers in a historical, organizational, and professional context. The legal profession provides outlets for internal commentary and regulation. Law reviews, typically published through a law school, can include, among other things, analysis and critiques ongoing issues and changes in the profession. In addition, various bar associations, both national and local, provide continual advice for professional practitioners through their own publications. These two sources provide insight into the historical climate, which fostered broad stratification within the profession, a growing surplus of legal labor, and changes in organizational structures all of which fostered the development of temporary lawyers. These sources, while scholarly relative to other sources used in this study, represent formal sources of commentary from the particular perspective of the profession on the state of the profession.

From these specific sources, I examine two general themes: the corporatization of the large law firm and the loss of individual recognition of professional work of individual workers. The corporatization of professions, generally, has been touched on

previously in the literature review, but combining this literature with professional commentary provides further context and focus on specific organizations, such as the large law firm. The law reviews highlight and track this growing historical trend and discuss the real and possible implications, including a radical change in professional values and motivations, for the profession. The second theme, individual recognition for professional work, refers to the attribution of work to an individual's ability to perform a professional task. When a task is routinized, individuals no longer receive recognition for their independent work, specialized skills, and professional expertise, making such workers interchangeable and anonymous. Opinions issued by state and national professional regulating bodies, the various bar associations, address the routinization of legal labor, comment on the ethical use of temporary lawyers and their relation to the firm-client relationship, and explore the role of staffing agencies in providing this type of legal labor.

In addition to these two themes, the professional sources presented here show concern within the profession over growing stratification and inequality. The historical analysis provided by the law reviews documents not only the rise of the large law firm and the changing size and demographic of the profession at large, but also expresses apprehension about the resulting stratification these changes have wrought. This apprehension is accompanied, through both the ethical opinions and the law reviews, by advice as to how to mediate the effects of these historical changes while maintaining the integrity of the profession. Two contemporary court cases also illustrate the conflict within the profession between law firms and temporary lawyers.

A Historical Perspective from Law Reviews

The law review articles discussed here acknowledge and address changes in the organizational structure of large law firms such as the historical rise of the of the large law firm as a dominant institution in the legal profession, the accompanying associate-to-partner tournament organizational structure of these firms, and recent changes to this organizational structure. Of these changes, the law reviews focus on elements related to the corporatization of the profession, particularly the increased use of cost cutting and saving strategies by these firms. As Baker and Parkin (2006) in the *North Carolina Law Review* note, the decline in relationship lawyering is a reason for organizational change within law firms, which can lead to corporatization. Relationship lawyering refers to the relationship between firms and clients that are based on individual relationships between members of both organizations. These relationships create and maintain ongoing working relationship between firms and clients through either a substantial period of time or differing stages of a company's development creating a holistic understanding of a client's goals and problems. As firms lose leverage in their working relationships with clients they must be more competitive in the market where law is viewed as an interchangeable commodity rather than a skilled service.

As evidence of the corporatization of law firms, Baker and Parkin (2006) lament the shift in focus of law firms from the quality of legal service provided by individual lawyer to the amount of business one can generate. To illustrate this shift, Baker and Parkin explain that firms have increasingly focused on strategies to reduce their operating expenses and in retaining and rewarding individual lawyers who bring in more business,

known as “rainmaking”. “Rainmakers,” those who bring in a large number of clients and therefore revenue, are more likely to be made partner over similar candidates who hold expert legal skill rather than “rainmaking” abilities. Equity partners, those with ownership shares of a given firm, view those who bring in less business, regardless of their legal expertise, as a liability to their own profits in the partnership and are less likely to consider such associates for partnership. As a result “firms [are] finding that associates are more valuable as associates, but less valuable as partners” (Baker and Parkin 2006). The increasing value of rainmaking, potentially over other values such as professional skill at practicing law, is one marker of corporatization where profit-making potential is rewarded over specialized legal skill.

Though rainmaking is highly valued in potential partners, skilled legal professionals are still needed to provide firm services. An increasing number of associates and other non-partner track legal workers are needed to perform legal services to free up the increasing time, energy, and skill required for “rainmaking” for the firm. As legal tasks move from a cultivated skill to a technical task, the emphasis on “rainmaking” skills and the creation of new organizational statuses for various legal workers narrows the numbers and characteristics of the profession’s elites. The creation of non-partner tracks and positions within firms highlight the changing focus from performing legal work to bringing in more business, indicating a growing disparity between lawyers who practice law and those who create business is noted in several law review articles (Baker and Parkin 2006; Johnson and Coyle 1990; Sterling and Reichman 2010).

The creation of the temporary attorney labor market and legal outsourcing to places such as India illustrates firm efforts to cut costs while maintaining or increasing the firm's legal output because the firm does not have to pay large associate salaries for routinized legal tasks. In the *William & Mary Law Review* Krishnan (2007) highlights the practice of outsourcing legal work to places such as India as large law firms with a decreasing interest in investing in their own, domestic human capital seek to increase profit margins. Krishnan's analysis argues that there is a moral dilemma in exploiting developing countries and their labor with particular implications for the legal profession given the corrupt and inefficient nature of the Indian legal system and advocate greater corporate responsibility from firms who do outsource (Krishnan 2007).

In the *Suffolk University Law Review* Heinz (2009) criticizes the use and manipulation of prestige metrics by law firms through the creation of multi-tiered partner tracks. As further indication of the corporatization of law firms, the measure of "profits per partner" determines rankings of law firm prestige from the *American Lawyer*, a professional publication, which publishes a list of top law firms, and which attorneys consider similar to stock prices of publicly traded companies. Though the indicator itself does not provide evidence of increasing corporatization of the legal profession, its effects within large law firms may do so. Multi-tiered partnership tracks offer differing levels of partnership within the firm: equity partnerships, where compensation is directly tied to the firm's profits and non-equity partnership positions, with a fixed salary. Non-equity partners typically carry the same prestige within the profession, despite having salaries which are typically less than equity partners. To measure "profits per partner", the

American Lawyer only considers equity partners as partners for the calculation. In multi-tiered systems of partnership, rainmaking is a greater determinant of equity partnership status rather than the quality of professional work. Heinz (2009) notes the amount of relatively cheap labor, relative to partner salary and the amount firms charge for services, the firms are utilizing to further increase their profits leading to evermore increasing inequality within firms. The concerns over profit and law firm status through the *American Lawyer* rankings highlights the increasing competition and profit drive among firms and individual lawyers which are characteristics of corporatization.

Henderson (2005) also criticizes the use of the profits per partner metric in the *North Carolina Law Review*. In his analysis comparing firms with single tiered and multi-tiered partner tracks, he finds that more and more firms are switching to a multi-tiered structure with more focus on rainmaking in equity partners while non-equity partners perform more substantial legal work. He argues that this practice artificially inflates the calculations of profits per partner by concentrating the number of equity partners at the expense of non-equity partners. Within the same publication, Dolinko (2005) comments on Henderson's article, acknowledging both the collegial and economic motivations of large law firms. He concedes that Henderson's article "demonstrates how much the profession of law has morphed into the business of law" but is hopeful that "not all law firm business decisions are based solely or primarily on economics. Firm culture and collegiality remain important considerations for me and many other attorneys" (pp. 1754). This professional introspection from Dolinko may show the conflict professional elites have towards the policies which routinize professional labor and the

intraprofessional stratification faced by those who perform the routinized tasks. Generally, these articles display concern within the profession over the changing atmosphere of law firms and what it may mean for the profession at large through a loss of focus on professional practice and skill.

A change in markers of prestige can also manifest itself in a more positive fashion. Sterling and Reichman (2010) postulate in *The Fordham Law Review* that the decreasing possibility of partnership and narrowing opportunities in the profession, generally, may be causing a shift in markers of individual professional status from partnership to the ability to control one's own time and work load. As temporary lawyering can be highly entrepreneurial in nature, as shown through informal sources describing these workers and the quantitative analysis of this study, they have the potential to achieve professional status in this way (Sterling and Reichman 2010). These changes in professional status also reinforce the idea that the elites of the profession, those who hold prestige and power, are becoming more and more concentrated and less attainable by most of the profession.

The issues raised by the law reviews also provide a formal professional perspective on recent changes in the legal profession which can indirectly apply to the study of temporary lawyers. The law reviews address the changes in the demographic makeup of law school graduates as well as their disparate career outcomes, similar to discussions found in the sociological literature regarding broad intraprofessional stratification of the legal profession. These articles note the increase in number of lawyers entering the profession, as a result of an increase in urban law school programs.

In the *Southwestern University Law Review*, Wilkins, Dinovitzer, and Batra (2007) examine the effects of urban and non-elite schools on the career paths and progression of individual graduates relative to those in elite law schools. They argue that the differences found contribute to the continued stratification of the law graduates in the legal labor market with a growing proportion of the legal profession coming from these non-elite and urban schools. Urban law schools tend to be newer, have greater numbers of graduates from more diverse socioeconomic backgrounds, and have higher numbers of graduates than elite institutions. They conclude that there is a difference in the types of capital emphasized, different requirements for employment, and different rubrics for measuring success depending on the tier of law school a lawyer graduates from (Wilkins, Dinovitzer, and Batra 2007).

In the *Buffalo Law Review*, Jewel (2008) similarly laments the reproduction of social divisions within the law school environment while applying the theories of Pierre Bourdieu to the law school atmosphere. Here she cites the reproductions of earlier formal barriers to professional entry encountered by minorities are continued through this law school system which focuses differing skills and capital for urban and elite graduates and “differential [career] outcomes [which], combined with market-forces, have recently led to the creation of what can only be described as an underclass of American attorneys - with no autonomy, no contact with clients, and no job security” (Jewel 2008: p. 1174), such as some of the temporary attorneys described in this study. The differing and possibly disparate career outlooks facing minority graduates and those from non-elite schools strongly indicates a stratification of the profession based on admission to elite

schools.

The analysis of historical changes within the legal profession through these law reviews emphasizes the increasing corporatization of the profession and its' subsequent effects as perceived by the legal profession through the law reviews. These sources highlight concerns within the profession of its changing composition and values and point to an atmosphere in which there is a separate market for temporary lawyers and where they may experience ill-effects of the increasing stratification of the legal profession.

Advisory Ethics Opinions

With the creation of a labor market for temporary lawyers through the changing organization of firms and composition of the profession, federal and state bar associations felt the need to set ethical guidelines for their use. Ethics committees within the bar associations have convened and ruled on several ethical issues related to the use of temporary lawyers. These opinions address the need to manage a new type of worker formed through changes in law firm management and organization and attempt to integrate them into the profession. These ethics opinions provide guidance on the use of temporary lawyers on an advisory basis only and do not represent concrete professional laws. Violations of these prescribed professional precautions are not necessarily subject to disciplinary action. The ethical issues addressed by many of these opinions revolve around professional conflicts of interest and the resulting screening of lawyers, fee splitting with lawyers and non-lawyers, client disclosure, and the potential for attorney disqualification. Of these issues, conflicts of interest, screening, and fee splitting address the issue of intraprofessional stratification of this study as they relate to the individual

recognition of professional work. Many of the local ethics opinions align with the opinion issued by the American Bar Association (ABA), the national bar association of the United States, so I focus primarily on the ABA opinion here (Formal Op. 88-356).

It is interesting to note that the historical timeline of temporary lawyering puts their systematic use within the profession beginning in the late 1980s with considerable expansion and growth into the present time. The opinions discussed here are from 1988. Despite the considerable changes in the use of temporary lawyers within the legal profession, it does not seem that the ABA has reconsidered their 1988 opinion. The ABA has issued a more recent opinion in 2008 (Formal Op. 08-451) regarding the outsourcing of legal workers which could be argued is similar to issues regarding temporary lawyers, but, since the 1988 opinion directly addresses the use temporary lawyers and was not overridden by the more recent opinion, it is used here.

Conflicts of Interest

Regardless of temporary or permanent status of the lawyers involved, conflicts of interests arise when a lawyers' previous work with prior clients, or their own personal interests, have a direct or indirect influence on another, potential clients' case which may influence their professional representation of the potential client. Conflicts of interest arise when privileged information inherent in a past client representation may adversely affect the representation of a new client. Essentially, it is a breach of client trust and confidences if a lawyer were to act as opposing counsel to a previous client due to the privileged nature of information shared during the previous representation. This issue is especially salient to temporary lawyers as they have the potential to work for many

different law firms, and thus have access to many different clients' privileged information, in a short amount of time. Thus the ABA (Formal Op. 88-356) states in this opinion that professional prudence "prohibits a lawyer from representing a client if the representation of that client will be directly adverse to another client or may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interests". The ABA advises individual lawyers and firms to proactively ensure no conflicts of interest between clients served by a given attorney or firm arise within the temporary working relationship. While the role of staffing agencies in finding and placing lawyers is addressed by the ABA, their lay status and ignorance of professional prudence places relatively little responsibility on this party with regards to managing any potential conflicts of interests, reserving it for law firms and individual lawyers.

A common practice in preventing conflicts of interests and maintaining client confidentiality, with temporary lawyers or otherwise, is the process of screening lawyers with potential conflicts of interests with the firm's clients. Screening procedures apply to any potential conflicts of interest and involve the isolation of a lawyer with potential conflicts of interest from all information regarding a specific client or case with which said lawyer may have conflicts of interests. Though conflicts of interest may apply to all lawyers, they are particularly salient to temporary lawyers since they work on a large variety of cases in many different firms which may have conflicts in subsequent employment. As such, screening of temporary lawyers typically involves the restriction of access to information outside of a single case rather than restricting the individual from

one specific case, as would be more common for a permanent associate within the firm.

According to the ABA opinion (Formal Op. 88-356), the issue of broad access to a firm's client is determined by the level of association a given lawyer has or exhibits with a firm. Ethically, temporary lawyers should not present themselves as a member of a firm, either explicitly or implicitly. As an extension their work should not be presented as the work of the firm. Though ultimately the ABA decides that "the distinction drawn between when a temporary lawyer is or is not associated with a firm is only a guideline to the ultimate determination and not a set rule" (Formal Op. 88-356) so a temporary lawyer's work can be used by the firm without attribution to the unassociated lawyer if that lawyer was heavily supervised by a firm attorney. Firms likely adopt this practice. The level of association referenced in the ABA opinion (Formal Op. 88-356) relates to the attribution of professional work to an individual. Here, the attribution of work to an individual is determined by the contribution he or she makes to the firm. If such work has a negligible effect or is standardized, as may be the case in heavily supervised work, no individual attribution is needed. Work with a substantive impact on a case done by a temporary lawyer would need individual attribution with full client disclosure and permission to use.

The dissociation of a professional from his or her work indicates the deprofessionalization of legal labor and the effects on those performing such labor, as individual recognition for work is a highlight of a professional as defined by the sociological literature (Abbott 1988; Larson 1979). Throughout the history of large law firms as associations of lawyers, junior members of the firm are still recognized as part of

the firm and their work recognized, though perhaps indirectly, as a collective product of the firm (Galanter and Palay 1994; Abel 1989) even when performing less substantive work. Temporary lawyers do not receive professional recognition either individually or through the collective firm structure without client disclosure and permission.

Fee Splitting

Payment for services rendered by temporary lawyers also has professional ethical implications. It has been a longstanding policy within the profession that, in order to maintain professional independence, lawyers within a firm do not share legal fees with outside lawyers or with non-lawyers, at least without the client's permission. This ethical violation is known as fee splitting. To avoid fee splitting, the ABA (Formal Op. 88-356) recommends that firms base the compensation of temporary lawyers on a specific duration of time, such as using an hourly fee, rather than as a percentage of the fees received from the client, because "the payments to the temporary lawyer are like compensation paid to non-lawyer employees for services". This practice divorces the fees paid to the temporary lawyer and the legal outcome of the client's case while also contributing to the separation of the professional from his or her work. As the temporary lawyer's contribution to a case is deemed inconsequential to the overall outcome of the case, through this recommended action by the ABA, this type of labor may be considered deprofessionalized within the profession. Rather the work temporary lawyers perform seems to be supportive, rather than professionally substantive, and thus routinized, based on the billing structure described here.

The ABA ethics opinion states that the payment of fees to staffing agencies is

distinct from fee splitting with non-lawyers because the fees are not paid for legal services rendered. Instead, the fees paid to staffing agencies by firms are administrative fees paid for the recruitment and placement of legal workers (Formal Op. 88-356). The categorization of staffing agencies by the ABA is similar to those used in staffing agencies that place other, permanent employees. As there is little difference in the treatment of staffing agencies, this aspect of the ABA opinion does not address the topic of intraprofessional stratification or routinization of professional work. Overall the ABA opinion finds the use of temporary lawyers within the profession to be within the bounds of professional ethics since they do not violate rules regarding fee splitting and so long as certain precautions are taken to preserve client confidentiality (Formal Op. 88-356).

Supplementing the ABA

While most ethics opinions follow the ABA guidelines, two ethics opinions express some misgivings regarding the ethicality of temporary lawyers and their relations to temporary placement agencies. In a 1988 opinion (KBA E-328), which predates the ABA opinion by several months, the Kentucky Bar Association states that “temporary services, through contract or otherwise, attempt to insulate the provider (the service as opposed to the attorney provided by such a “service”) from legal and disciplinary accountability” and are therefore not recommended. The use of temporary lawyers is expressly discouraged by the Kentucky Bar association with a concern that it would lead to severe cost cutting of legal labor and thus a cheapening of the profession itself, expressing larger concern towards increased corporatization of the profession and the potential routinization of professional tasks. The ABA opinion (ABA Formal Op. 88-

356) does not directly comment on the possibility that firms will use temporary lawyers as part of their corporate labor strategy.

The Kentucky opinion also expresses misgivings regarding procedures to avoid conflict of interest. This opinion questions the success of screening procedures in maintaining client confidentiality stating that “while it is conceivable that such a service might develop a system to avoid conflicts of interest and guarantee client confidentiality, [there is] considerable concern as to the likelihood of success in this regard” (KBA E-328) while the ABA opinion (ABA Formal Op. 88-356) assumes that client interests can be isolated and managed through such processes. The maintenance of client confidences is essential in both ethical rulings but the Kentucky ethics ruling does not have the same confidence in the effectiveness of screening procedures when used systematically and on a large scale as the ABA allows with temporary lawyers.

The Kentucky opinion was the most critical of the use of temporary lawyers though some, like the Florida Bar (Fla. Bar Op. 88-12), temper their misgivings with stronger recommendations for full disclosure of the temporary lawyering relationship to the client. Where the ABA opinion (ABA Formal Op. 88-356) details instances where client disclosure of temporary lawyers is not needed, the Florida Bar (Fla. Bar Op. 88-12) emphasizes the need for client disclosure regardless of the conditions under which the temporary lawyers are used by the firm.

Ethical opinions presented by bar associations on professional behavior are methods of maintaining the integrity of the profession. The opinions discussed here address the existence of temporary lawyers within the profession and provide guidelines

to incorporate their use into professional practices. Within these guidelines of professional practice, it is possible for the attribution of professional work and skill to become dissociated from the individuals who perform them. When professional tasks become anonymous, as is allowed for temporary lawyers, these tasks become routinized and those who perform them may be stigmatized as well.

Ethical Perspective from Law Reviews

Regarding temporary lawyers, law reviews also focus on the potential ethical problems of conflicts of interests brought forth by the ABA opinion as well as other concerns over the use of these workers in professional practice. These publications also express their own concerns regarding the use of temporary lawyers within the profession. As prestigious professional publications, law reviews comment on the state of the profession, sometimes exploring the practical implementation of opinions discussed by ethics committees while also exploring other, related issues. Since they do not come from professional regulating bodies, law reviews offer an avenue for freer discussions of issues raised by bar associations and offer a forum of debate over the merits and applications of these ethical opinions in practice.

In the *Notre Dame Law Review*, Johnson and Coyle (1990), when addressing the professional ethicality of the use of temporary lawyers, provides the most insight into the early use and perception of temporary lawyers. Their discussion of temporary lawyers describes a situation in which temporary lawyers experience isolation within the workplace often associated with those working in a segmented labor market. They offer helpful instruction for law firms themselves in incorporating temporary lawyers into the

firm while minimizing liability of conflict of interest issues. To ensure no conflicts of interest while utilizing temporary lawyers, they advise physical isolation from and limited contact with permanent employees, both legal and non-legal staff, as well as little to no access to firm records and strict supervision and little control over their own work through aggressive screening processes (Johnson and Coyle 1990). Classic sociological studies of work organization has shown such isolation from other employees, as well as the limited career ladder offered to temporary lawyers such as those recommended by Johnson and Coyle, can create an atmosphere of systemic, perpetuating inequality (Kanter 1977). To which Johnson and Coyle respond, “whatever magnitude of these concerns in other employment contexts, there is less reason to think that they are so great in the field of law to bar the use of temporary attorneys” (p. 404-405). Despite the high employment standards of the legal profession emphasized in this article, the previously discussed variation in career outlooks for various law school graduates seems to suggest otherwise in that inequality and discrimination can exist within the legal profession.

Dunnigen (1998) in *The Georgetown Journal of Legal Ethics* denounces the practice of screening lawyers as a solution to conflicts of interest issues implicit in the use of temporary lawyers. The restricted access to client information as a result of screening within the firm can impact clients’ and the public’s impression of the profession particularly when lawyers are hired “as needed for specific projects or times where the firm is particularly busy, and then let go. This new breed of temporary lawyer will, as a matter of course, work for many different firms over a period of time, thus exposing them to unprecedented possibilities for successive conflicts.” (p. 294). This description of

temporary lawyering illustrates the compromises to professional integrity which large law firms are willing to make in order to utilize a contingent workforce of lawyers to maintain its increasing corporatized structure. To prevent conflicts of interest with past, present, and, occasionally, future client interests, temporary lawyers are screened from any information but that which is required for their specific case. Screening can negatively impact a client's right to counsel where employment relationships between lawyers and firms are fluid, particularly for temporary attorneys, as "in today's legal market, lawyers do not necessarily work for one firm for their entire lives" (p. 297) increasing the potential for conflicts of interests. These restrictions both limit the talent available to clients when dealing with a firm with active screens in place and restricts the freedom of firms through control exhibited, albeit indirectly, by persons who were never clients of the firm, the previous clients of a screened lawyer. Both limits on professionals, as well as potential lawyer disqualification from improper screening procedures, may be detrimental to the ideals of professional integrity, as perceived by the public. The threat of lawyer disqualification due to conflicts of interest, "to the public, it appears that an attempt was made to violate the rule of fidelity that is supposed to bind the legal profession" (p. 298) where outside imposition is needed to regulate individual lawyers who would otherwise use their privileged professional position for their own personal gain at the expense of the client, public, and ideals of justice. These issues regarding screening relate to intraprofessional stratification in that the increased use of screens are necessitated by the mobility inherent in the working relationships of temporary lawyers, especially considering the large role screening and conflicts play in

the professional lives of temporary lawyers (Dunnigen, 1998).

As John Heinz states in the *Suffolk University Law Review* (2009) “it may be time for the U.S. to recognize, formally, that all lawyers are not in fact pursuing the same line of work. That reality has been apparent to many lawyers for some time” (pp. 78). As the ethical opinions address the recognition individuals receive for their work, the law reviews examine the ethical implications of the dissociation of such work from individual professionals. They describe the separation of work into core and peripheral tasks alluding to the routinized aspect of new classes of legal professionals, both temporary lawyers and outsourced legal services. These issues are represented in the ethical opinions’ discussion of fee splitting. Models for managing such labor are also discussed, with particular emphasis on the importance of supervision for quality control and the possibility of malpractice. Though routinized labor is discussed, it is mostly within the context of law firm management or in relation to outsourcing legal services overseas. Some of the law reviews question whether these issues indicate that the practice of law is viewed as a commodity rather than a skilled, professional service by clients, other lawyers, and the public (Pollack 2006; Johnson and Coyle 1990; Baker and Parkin 2006). Temporary lawyers in the United States are only discussed indirectly in the law review articles, as a result of the routinized tasks they perform. The historical rise of the large law firm structure and the continuing corporatization of such firms have created an increasingly corporatized profession in which there is an increasing inequality between lawyers. Of these lawyers, temporary lawyers may be a new class of lawyers pursuing routinized work in a segmented labor market.

Historical and Ethical Considerations Converge

The issues raised by the law reviews come to a head in two recent court cases involving temporary lawyers found through informal research in the blogs and legal media.⁶ These cases are illustrations of the conflict between temporary lawyers and the large law firms for whom they work, conflicts that may be indicative of intraprofessional stratification. These cases address conflicts in the changing organizational structure of large firms and the treatment of their employees. One case focuses on the differing career outcomes for temporary lawyers and how it relates to race and law school rankings and class standing. Another case questions the professional nature of temporary lawyers' work while at the same time highlights the cost-saving personnel strategies of large law firms. These cases provide more formal documentation of the general working conditions of a new class of attorney, though allegations can not be directly verified. These cases challenge the stratified model of organizing legal labor in which routinized legal work is relegated to temporary lawyers to support an increasingly corporatized law firm organizational structure.

Disparate Impact in a Segmented Workplace

The case of *Young v. Covington & Burling, LLP* asserts disparate impact experienced by lawyers in non-partner career tracks of a large law firm. In the initial complaint, filed in 2009 (First Amended Complaint, Young) a staff attorney—a type of

⁶ These informal sources will be attributed throughout the study in footnotes, with the URL for the internet citations omitted, and listed completely in appendix A. 2010a. "Contract Lawyer Sues NYC Law Firm for not Paying Overtime." The Posse List, July 9, 2010. Lat, David, 2008b. "Covington and Its 'Staff Attorney Ghetto'?" Above the Law, March 18, 2008. Mystal, Elie, 2009. "Yolanda Young Amends Complaint, Intends To Seek Class Certification Against Covington." Above the Law, Aug. 24, 2010.

temporary lawyer in that they perform routinized labor, are non-partner tracked with relatively low status within the large law firm-accuses her employer of two actionable discriminatory policies, both based on race. She claims that the hiring policies of the firm disparately impacted minorities as evidenced by discrepancy in racial composition of partner track, associate positions, and staff attorney jobs. She also alleges a hostile work environment with racially charged behaviors she had seen and experienced within the workplace. The alleged discrepancy in racial composition of staff attorneys and associates cited by the plaintiff could be attributed to the differing career outcomes and demographic composition of different tiered and urban schools. These discrepancies, in general, as well as those alleged in this case, indicate that the intraprofessional stratification facing routinized and temporary lawyers, which may adversely effect minority groups (First Amended Complaint, Young).

In this case, the plaintiff alleges that firm hiring and other personnel policies are biased on the basis of race where the

historical under representation of blacks at the partner, counsel, and associates levels, its historical overrepresentation of blacks at the staff-attorney level, its nonpromotion policy, and the exclusively white staff attorneys who have been promoted all have fostered a belief among Defendant's black staff attorneys that it is futile to seek promotion from staff attorney (First Amended Complaint, Young at 26).

The plaintiff cites the proportion of white and minority lawyers in associate positions compared to those in staff attorney positions as evidence of disparate impact. At the same time she also compares the law school and class rankings of attorneys in both categories stating the firm

relies on job-assignment criteria that are not related to or predictive of job

performance. For example, [the firm] uses a combination of law school grades, journal membership, and clerkship experience to determine the assignment of its attorneys. Yet, based on information collected from covington.com, Defendant's partners—who decide how an attorney should be assigned—do not all have such credentials (First Amended Complaint, Young at 15).

The defending law firm in this case cited the professionally recognized influence of their minority associates and partners such as current Attorney General Eric Holder who was, at the time, a partner at the firm. They also highlight their celebrated work-life balance programs for parents, another supposedly marginalized group, in response to the disparate impact allegations (Answer & Exs. A&B, Young).

In a September 2010 ruling the U.S. District Court of the District of Columbia issued a partial summary judgment on the case of *Young v. Covington & Burling, LLP* (U.S. Dist. LEXIS 98835) stating that the plaintiff did not have a valid case for her disparate impact claim. As the “facts show that the plaintiff's application for employment at Covington was limited to the position of staff attorney” and so “the plaintiff could not have been injured, and indeed was not injured, by the purportedly discriminatory job-assignment policy” (U.S. Dist. LEXIS 98835 at *13). As such, the grievances discussed here regarding racial discrimination through the segregation of minorities into staff attorney positions with no job mobility and little prestige were not decided by the court since the plaintiff never explicitly pursued an associate position at the defending firm.

The lack of job mobility alleged in this case illustrates one effect of intraprofessional stratification as it is experienced by routinized attorneys who work outside the partnership track. Within this case a staff attorney's job is described as “licensed, experienced attorneys who . . . primarily perform online document review, but

. . . [who also perform] in a variety of ways as practicing attorneys” (First Amended Complaint, Young at 18), similar to temporary lawyering positions the defendant had held previously (First Amended Complaint, Young at 32; U.S. Dist. LEXIS 98835 at *5). A promotion from this position would be to “associate, counsel, and partner [which] enjoy significantly higher salaries that increase with seniority, and also benefit from the prospect of promotion from associate to counsel, and then, eventually, to partner” (U.S. Dist. LEXIS 98835 at *21). The staff attorney program, formed in 2005, initially allowed promotions from staff attorney to partner track associate positions or to counsel positions which, while not partner track positions, do provide prestige and more substantive legal work. From this staff attorney program only two staff attorneys, both of whom were white, were promoted to these more prestigious positions, one to an associate position, on an equity partner track, and one to an Of Counsel, a non partner but still prestigious, position. This practice of staff attorney promotions ended in 2006, during the plaintiff’s employment, further delineating between classes of attorneys through the lack of mobility potential between the two employment strata (First Amended Complaint, Young). The lack of career mobility and the practice of routinized labor exclusively allocated to one class of attorney represents a departure from traditional mentor relationships between firms and their attorneys and a growing distance between a large, routinized attorney labor pool and high status, substantial legal laborers.

In addition to the disparate effect alleged, the plaintiff also asserts a hostile work environment which she describes as a “ghettoization of black attorneys” and where she felt intimidated by “her white coworkers’ use of racial slurs in the workplace” (First

Amended Complaint, Young at 2). She complains that “the law firm responded to her report of this illegal behavior with dismissive comments, false accusations, and intense scrutiny of her work” (First Amended Complaint, Young at 2) ultimately ending with the loss of employment. While the firm denies such behavior (Answer, Young), the feeling of subjugation from the routinized attorney may imply more general feelings of subjugation by the profession at large for this class of employees, though this is mostly speculative. Her complaints of a hostile work environment with the firm are still pending in the court. This case illustrates the issue of race, formal and informal credentials, labor routinization, career mobility, and alternative career tracks in the large law firm organizational structure all of which have been highlighted as issues relevant to the profession directly through the law review journals. These issues create an atmosphere where the increasing intraprofessional stratification exists with limited mobility and a more concentrated elite within large law firms.

Questioning the Professional Status of Work: Exempt and Non-exempt Employees

In *Koplowitz v. Labaton Sucharow, LLP*, a former temporary lawyer performing document review for Labaton Sucharow, LLP, sued his employer for back wages (Amended Complaint, Koplowitz). While working as a temporary lawyer he routinely worked over forty hours per week but was not granted overtime pay. The reason he was not granted overtime pay was that he was categorized by the firm as an employee exempt from overtime regulations tax purposes. According to the Fair Labor Standards Act (29 U.S.C. § 201, et seq.) employees working over forty hours per work are eligible for overtime wages, with a few exceptions, including “any employee employed in a bona

vide executive, administrative, or professional capacity” (§ 213). In this case Koplowitz argues that he and his fellow temporary attorneys are entitled to overtime wages as they were not working in a professional capacity as they were “required to review documents under very specific guidelines set forth by Defendant and sort the documents based on those guidelines” (Amended Complaint, Koplowitz at 23, 24). He also notes that this problem is systemic and that he has encountered similar issues in other, similar positions. As such other, similar workers likely have experienced the same pay discrepancy and his case should have class action status, allowing other previous employees to reap the benefits of the court’s decision in this case. The court agreed and granted this case class action status.

Labaton Sucharow, LLP argued that the defending temporary attorneys were working as professionals and are thus not eligible for overtime benefits. The firm “admits that it at times employs attorneys for various projects involving litigation on a temporary or short term basis” with the intent “to review and analyze documents for litigation” (Defendant’s Answer to Amended Complaint and Def., Koplowitz at 22). They claim their “failure to pay overtime wages to Plaintiff and the potential class/collective action members was in good faith conformity with” (Defendant’s Answer to Amended Complaint and Def., Koplowitz at 5) applicable labor laws. By categorizing the labor as professional, the firm saves on labor costs for employees in which they have little vested interest. By categorizing document review as professional they are overvaluing the labor with a professional labor that is not realized in monetary terms, as they would for associates. At the same time the temps are undervaluing their own work by abandoning

the professional label in favor of higher wages.

Unfortunately, the status of the work performed by Koplowitz and other temporary attorneys performing document review in this capacity was not to be determined impartially by the judicial system through this case. This case was settled out of court (Order, Koplowitz). Informal sources cite an amount of \$700,000 paid to Koplowitz and other temporary attorneys by Labaton Sucharow, LLP in September of 2010.⁷

This case highlights the potential routinization of legal labor as exempt and non-exempt statuses are legal categorizations which correspond to the state's recognition of professional spheres of expertise. Koplowitz's, the temporary attorney's, challenge to Labaton Sucharow, LLP is evidence of the corporatization of large firm and the routinized nature of this work. This legal challenge also evidences the stark difference temporary lawyers feel compared to their permanent counterparts. While associates are nurtured and well paid temporary lawyers are given nominal titles of professionals while performing routinized labor at relatively low wages.

Both of these cases illustrate conflict between law firms and temporary lawyers. The explicit issues of these cases, workplace treatment and compensation of temporary lawyers, relate to broader stratification issues within the profession and are evidence of the different career outcomes and working environments temporary lawyers experience.

Conclusion

Formally, the profession offers little recognition of temporary lawyers though it

⁷ 2010a. "Contract Lawyer Sues NYC Law Firm for not Paying Overtime." The Posse List, July 9, 2010.

does express concern with the stratification of the profession through the changing demographics, increasing number of law graduates, and the potential changes in professional values due to corporatization. These issues relate indirectly to the intraprofessional stratification illustrated by temporary lawyers and provide further understanding of the historical, organizational, and professional context in which these workers find themselves. Professional ethical opinions place guidelines on the use of temporary lawyers which indicate the deprofessionalization of legal work and workers by disassociating professional work from individual workers. Many factors influence the creation and growth of intraprofessional stratification and challenges to the treatment of deprofessionalized workers have been raised in court leading to a non-partner track, routinized attorney to sue her employer. The corporatization of the profession creates a climate in which certain professional work is routinized, blurring the line of the professional status of the workers who perform them. The professionals performing this deprofessionalized work are temporary lawyers and represent a growing stratum of laborers in the legal profession.

CHAPTER 3: A Quantitative Analysis of Temporary Lawyers

Now that the background of large firm organization and the profession's perspective on temporary lawyers has been explored, this study will analyze temporary lawyers quantitatively, exploring the characteristics of temporary lawyers as a group, comparing these workers with permanent lawyers. This analysis provides further understanding of their background and their work. Differences between the two groups would indicate that there is a new form of stratification within the large law firm working environment that may parallel broader stratification within the profession as a whole. This analysis is used to address the research questions raised in this study: is there a significant difference between temporary and permanent lawyers in sociodemographics, formal and informal qualifications, and working environment? Through the survey data, potential differences between temporary and permanent lawyers may be found through a comparison of these variables: sociodemographic background, the type of work performed, professional activities, and career satisfaction.

If temporary lawyers are a new and growing stratum of intraprofessional stratification between lawyers working in large law firms, demographic and experiential differences would be expected between the two groups of lawyers. For this study, I ask if there are differences in sociodemographics characteristics or qualifications between temporary and permanent lawyers and will examine these by looking at sociodemographic and law school data. I expect to find differences between the two

groups, aligning with broader intraprofessional stratification within the legal profession on the basis of sex, race, and law school attendance. Differences in these areas would indicate different career paths with differing prospects for professionals in similar working environments. From the literature, differences may be expected in the demographics of temporary lawyers as they may have different career paths than their permanent counterparts from having attended different law schools (Abel 1989; Heinz et al. 2005).

Within this study I also ask if temporary workers experience different working conditions than permanent lawyers with the expectation that temporary lawyers perform more routine tasks and have stunted career outcomes. Workplace experience and satisfaction found in the quantitative data are used to evaluate this hypothesis. As intraprofessional stratification entails the possible routinization of professional labor, temporary lawyers may perform different and, likely, less substantial aspects of legal labor. The lack of substantial and prestigious work performed by temporary lawyers relative to permanent lawyers would be evidence that one class of lawyers, temporary ones, are relegated to performing these deskilled tasks. Should intraprofessional stratification exist as a result of the routinization of professional labor, one would also expect to see a difference in the professional and social activities performed by each type of lawyer. Differences in levels of interaction with other, more senior lawyers, particularly the lack of interaction, between temporary and permanent lawyers would indicate intraprofessional stratification. A difference in satisfaction with various aspects of work could be indicative of disparate working environment between temporary and

permanent lawyers. Differences in working environments, in turn, would indicate intraprofessional stratification within the large law firm.

Based on the quantitative analysis of data from the American Bar Foundation's *After the JD (AJD)*⁸ used in this study, intraprofessional stratification was found between temporary and permanent lawyers though temporary lawyers are not necessarily deprofessionalized laborers as they, as a group, do not exclusively perform routinized labor. These findings were mixed concerning differences in sociodemographic findings, work experiences, work type, and satisfaction between temporary and permanent lawyers. Though there were significant differences found in this study between these lawyers, the effect of a lawyer's permanent or temporary status had little statistical impact on this difference, for the most part. The sociodemographic differences found in this study were consistent with the expectation that intraprofessional stratification exists within the large law firm environment between temporary and permanent lawyers along the lines of sex and law school tier. This study did not find such differences along racial lines as was expected.

The analysis regarding workplace experiences detected evidence of professional and social isolation experienced by temporary lawyers as a group distinct from permanent lawyers working in the large law firm. This isolation can have negative effects on temporary lawyers' career outcomes. The differences in work type did not indicate that temporary lawyers perform routinized labor exclusively. Rather this analysis, combined with information from the qualitative sources, found that the type of work varies among

⁸ For more information regarding the *After the JD* study please visit the American Bar Foundation's website at <http://www.americanbarfoundation.org/publications/afterthejd.html>.

those who work as temporary lawyers. Temporary lawyers, as a type of legal professional, can perform both routinized labor as well as specialized legal work. The dissatisfaction of temporary lawyers with the substantive nature of their work, combined with the findings that many do not do much substantive work, indicates that many temporary lawyers, though not all, perform routinized labor.

The qualitative data corroborates both this dissatisfaction and the large amount of routinized labor performed by temporary lawyers. This finding is not necessarily inconsistent with the findings that temporary lawyers perform specialized work but rather shows that many temporary lawyers do not perform such work. These quantitative results provide some descriptive information regarding temporary lawyers. The mixed results regarding temporary work type can be supplemented with qualitative data in this study.

Data and Methods

The American Bar Foundation's *AJD* study is a longitudinal survey study providing information on legal professionals who passed the bar in 2000. Many surveys regarding legal professionals limit themselves to those lawyers who are on the associate-to-partner track, which would exclude the population explored in this study. As such, quantitative measures of these workers' characteristics can be difficult to find. However, the *AJD* study follows law school graduates through their career progression, capturing temporary legal professionals as well as those on a more traditional career path. The first wave of the *AJD* study was conducted between 2002 and 2003, and the second wave in 2007 and 2008. The analyses performed in this study are based on the unweighted

measures from the second wave of the *AJD* data. The more recent data allows us to look at a longer amount of job history and eases some of the historical effects of the initial creation of the temporary lawyer phenomena in the legal labor market and the tenuous nature of careers out of law school. The first wave of the study looked at lawyers who had passed the bar within the past year, a duration which does not allow for much movement between jobs regardless of temporary or permanent employment status (Dinovitzer, Garth, Sander, Sterling, and Wilder 2004; Dinovitzer, Nelson, Plickert, Sandefur, Sterling 2009).

This study utilized several statistical techniques: chi-square analysis, factor analysis, and analysis of variance. The chi-square analysis compared the distribution of responses across the two groups of lawyers. Differences in the distribution of responses as determined by the chi-square test indicate a difference in the various levels of a given variable between the two groups. This test was used for comparing sociodemographic, work experience, and work type comparisons. A factor analysis test shows correlations between several variables, should they exist. A correlation between variables can be used to create a scale, measuring an underlying concept that each of the variables represent. This test was used to determine scales for the satisfaction variables present in the *AJD* study: substantive, work setting, and power track satisfaction. An analysis of variance can be used on the scales created through the factor analysis to determine if there are differences between the responses between the two groups of lawyers. The analysis of variance test is a more statistically rigorous test than the chi-square but, in this study, can only be used on the satisfaction variables as they are the only interval variables in this

study, a requirement for the test.

Identifying Temporary and Permanent Lawyers

The *AJD* study was chosen for analysis in this study because it captures the target population of temporary lawyers. The broad nature of this survey allowed the possibility for temporary lawyer inclusion as well as many other unintended subjects. Initially, the reasons subjects gave for leaving the previous one to five positions, assuming job movement, were to be used as an indicator of temporary lawyer status. Unfortunately, few respondents indicated that they had left their previous employment practicing law in a large private firm due to the end of a contract. Due to the low number of temporary lawyers found using these requirements, subjects' reported position titles were used for the analysis instead. The use of self-reported titles can be problematic as there are no industry-set standards for titles for temporary lawyers and there is a negative stigma associated with temporary lawyering as discussed during the qualitative analysis. These issues may prevent lawyers from reporting their titles correctly, or may force them to fall back and choose the position title of "other" as their current title is not captured in the list provided by the questionnaire. In the *AJD* respondents chose from a list of job titles for their current employment position. Of these the job titles, those used in this study are outlined with the number of respondents in table 1.

| |
|---|
| Table 1 - Position Titles used in Analysis |
|---|

| | |
|-------------------------------|-------------|
| Associate | 1152 |
| Non-Equity Partner | 178 |
| Equity partner/shareholder | 166 |
| Contract Attorney | 18 |
| Of Counsel | 39 |
| Supervising/managing Attorney | 9 |
| Staff Attorney | 18 |
| Total | 1580 |

Of the reported titles for lawyers currently practicing law in private law firms during the time wave two of the *AJD* was administered, eighteen individuals reported having the title of “Contract Attorney”, a title which most closely matches the description of temporary lawyers’ work. Of the other given position titles, “Staff Attorney” may also apply to temporary lawyering as these lawyers are not on the partner track, receive little prestige, and tend to work with firms for set time periods rather than through a project-based contract as discussed in the qualitative analysis. Combining the “Contract Attorney” and “Staff Attorney” titles yields thirty-six subjects for analysis which, while less than ideal, provides statistically adequate numbers of temporary lawyers to compare with permanent lawyers.

With temporary attorneys defined, those with the given titles “Associates”, “Non-Equity Partners”, “Equity Partner/Shareholder”, “Of Counsel”, and “Supervising/Managing Attorney” were used to designate permanent counterparts to temporary attorneys. “Associates” and “Equity Partners/Shareholders” represent the traditional associate-to-partner organizational model of law firm organization. While

those with the title “Of Counsel” represent a small departure from this model, these titles maintain the prestige, as well as the accompanying compensation and recognition, associated with partnership. The position titles of “Solo Practitioner”, “Entry Level Manager/Consultant”, “Business Owner Operator”, and “other” are not relevant to this study as they are either associated with solo practice or ambiguous to the large law firm organizational structure, and were removed from consideration in this analysis. A summary of all position titles for all practicing attorneys in private law firms found in the *AJD* can be found in appendix B.

Hypotheses

Sociodemographics

The *AJD* provided sociodemographic information available for analysis, including sex, race, law school attended, political party preference, marital status, and the employment status of spouse or domestic partner, and whether the respondent was living with children or young adults. Some literature regarding temporary lawyers indicated that women may more likely work as temporary lawyers for two very different reasons with different implications: their preference for flexible scheduling due to familial obligations (Rogers 2000; Aaron & Guyul 2003; Epstein et al. 1998) and the result of systemic discrimination leading to decreased access to substantive and prestigious professional work (Heinz et al. 2005; Hull 1999). If the need for professional flexibility to raise children is a determining factor for temporary lawyer status, then a respondent who is living with children or young adults would be more likely to be a temporary

lawyer. Alternatively, women may be more likely than men to be temporary lawyers due to lingering systemic barriers to entry into prestigious schools and positions within the profession. Similarly, African Americans and other minority groups may be more likely to be temporary lawyers based on such history of discrimination. It can be expected based on the differing career outlook of those from lower-tier law schools, regardless of race (Heinz et al. 2005), that temporary lawyers are more likely to come from lower-tiered law schools. Differences in demographic variables between temporary and permanent lawyers may indicate workplace stratification within the large law firm, which reflects larger, systemic discrimination and stratification of the legal profession. A summary of these expected sociodemographic findings are summarized in figure 1 with each variable having an independent effect on a respondent's temporary lawyering status.

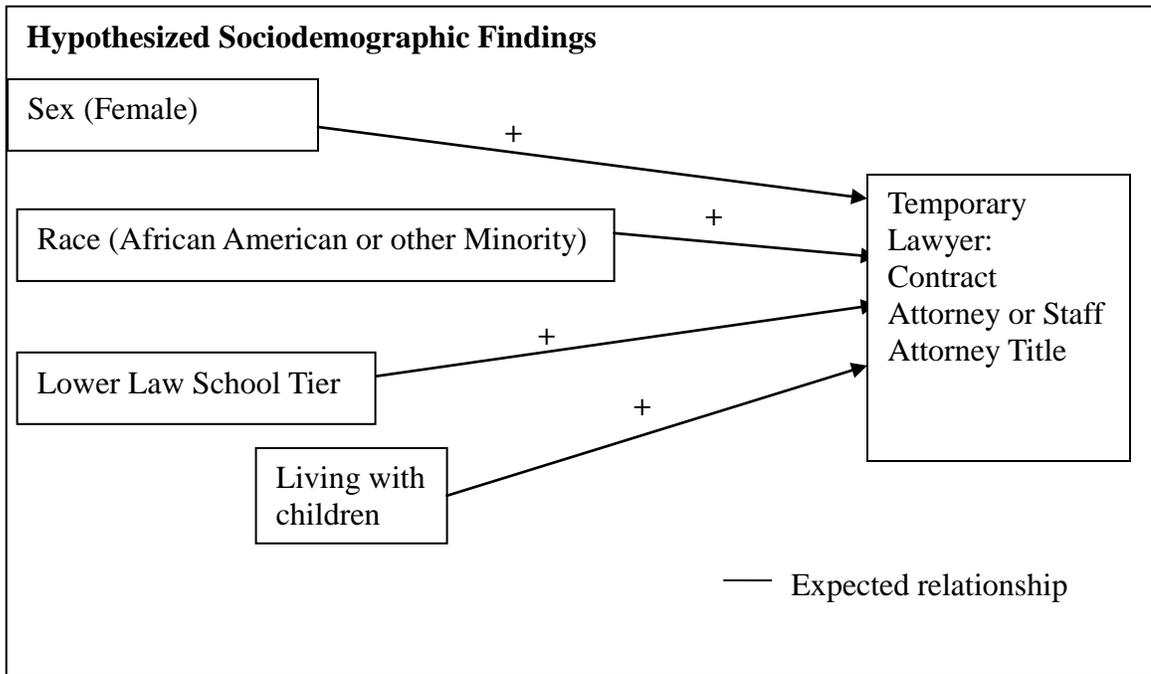


Figure 1 – Hypothesized Sociodemographic Findings

An ambiguous relationship exists between temporary lawyer status and marital status, as well as spousal employment. The proposed flexible nature of temporary lawyers' work with regards to family obligations, as referenced in the literature, may make temporary lawyers more likely to be married and for their spouse or domestic partner to be employed. As the income earned from temporary lawyering can be sporadic, stable income from an employed spouse may be present in order to subsist on such work. On the other hand those who prefer sporadic employment opportunities to follow other professional or recreational pursuits may be drawn to temporary lawyering

and may be less likely to be married.

Based on a review of the literature, it is not known if there is any difference between temporary and permanent lawyers' political party affiliation. However, political party affiliation is relevant to the study of lawyers since they can play a large role in governance and politics. A summary of these variables with an unknown, ambiguous, or conflicting relationship with temporary lawyering status, with each variable being independent, is outlined in figure 2.

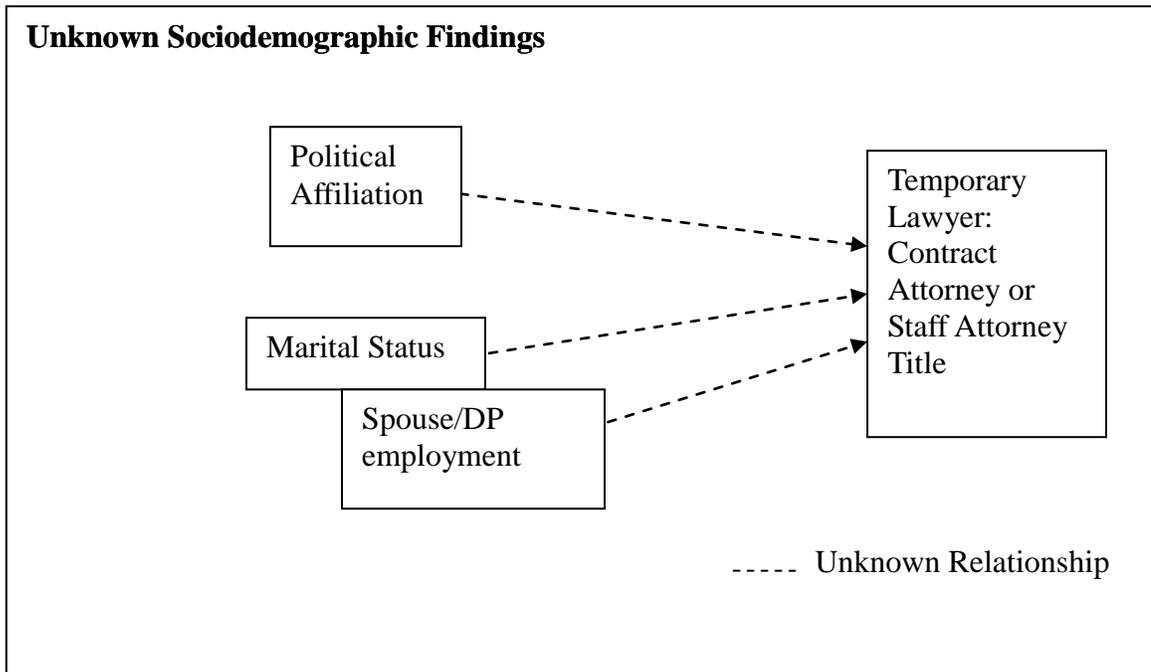


Figure 2 – Unknown Sociodemographic Findings

Workplace Experiences

To determine if there is routinization of professional labor and intraprofessional stratification, the *AJD* study was also used to see if there were significant differences in the type of work lawyers did, in the level of professional involvement lawyers participated in, and in the experience of discrimination in the workplace. If temporary lawyers represent a class of professionals who perform a growing amount of routinized labor, then one would expect they would be more likely to perform routinized tasks than their permanent counterparts. Alternatively, one would expect permanent attorneys to be more likely to perform substantive and prestigious work than temporary lawyers. As the routinization of tasks and professional workers may be the result of the corporatization of large law firms with respect to cost cutting, the earnings of temporary lawyers would likely be lower than those of permanent lawyers. If temporary lawyers experience marginalization in the profession or within the workplace, one would expect they are less likely to be involved in professional activities and organizations and be more likely to experience discrimination in the workplace. The expected results of work type, salary, professional involvement, and discrimination experience can be found in figure 3.

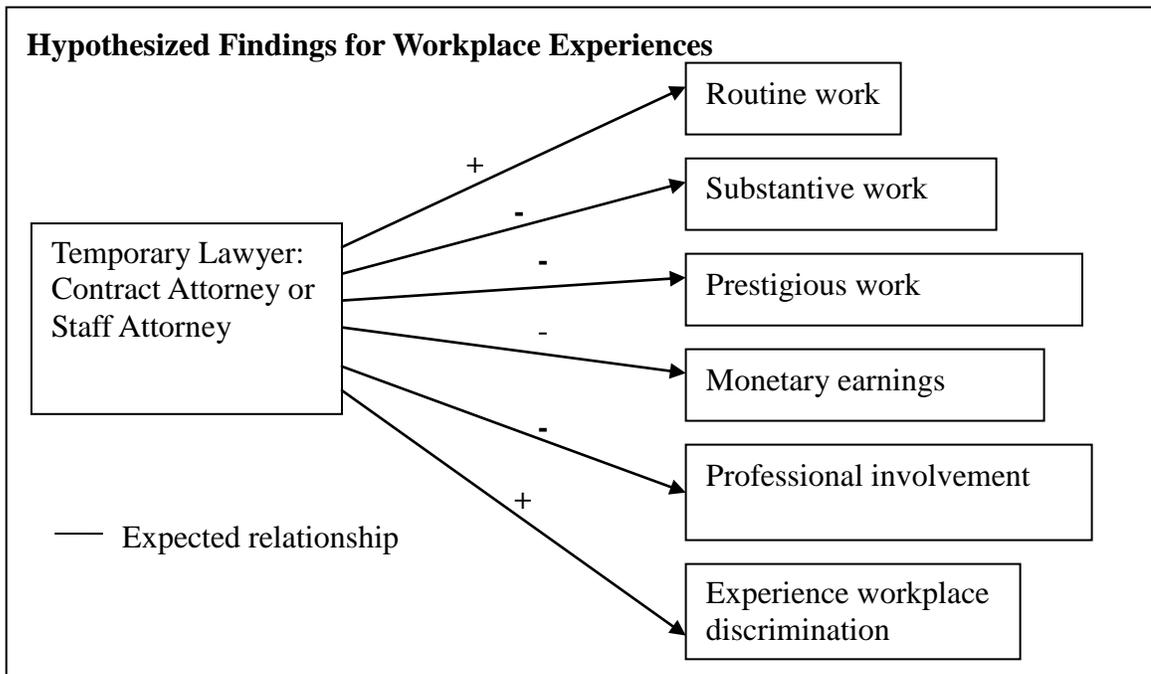


Figure 3 -Hypothesized Findings for Workplace Experiences

Satisfaction

The *AJD* study also asked respondents questions regarding their satisfaction with different aspects of their work and work environment. According to the *AJD* report, these aspects of work fall into four dimensions: job setting, power track, social contribution of work, and substantive satisfaction. However, by running a factor analysis, as seen in table 2, this study was unable to reproduce these dimensions from the data. Rather, the variables which made up the power track and social contribution dimensions correlated highly with one another as one factor, referenced within this study as “perceived value”,

instead of two.⁹ When variables correlate highly with one another they are measuring a similar construct, in this case satisfaction with workplace setting, substantive aspects of work, and their own perceived value. The inter-item correlations for these dimensions are indicated by the alpha coefficient below. The job setting satisfaction scale consisted of the control over the amount of work performed, control over the work process, relationships with colleagues, job security, and the balance between work and personal life with an alpha coefficient of .78 between these items. The perceived value scale consists of recognition received for work, opportunities for advancement, the methods by which compensation is determined, opportunities for pro bono work, diversity in the workplace, and the performance evaluation process with an alpha coefficient of .83. The substantive satisfaction scale consisted of the level of responsibility held at work, the substantive area in which the work is performed, the intellectual challenge of work, the task performed, the number of skill building opportunities, and the value of work performed to society with an alpha coefficient of .89. The variables measuring satisfaction with one's access to information technology and with the amount of travel on the job were excluded from the satisfaction index as neither of these variables loaded with any dimension with a value over 0.43.

⁹ For this analysis, the power track and social contribution dimensions were combined into one dimension based on the results of the factor analysis. This dimension is composed of items related to one's satisfaction with the power track offered at their law firm, the career ladder and compensation packages offered, and the social contribution one feels their work makes. Combined, these can be referred to as a "perceived value" satisfaction variable, as it encompasses the value one perceives his or work has, and the value he or she feel the law firm places on them.

Table 2 - Rotated Factor Loadings of Satisfaction Variables

| <u>Satisfaction Variable</u> | <u>Dimensions of Satisfaction</u> | | |
|---|-----------------------------------|-------------------|-------------------|
| | Substantive | Perceived Value | Job Setting |
| Level of responsibility held | 0.6723 | 0.2955 | 0.2522 |
| Recognition received | 0.4607 | 0.6045 | 0.2412 |
| Substantive area | 0.8572 | 0.1415 | 0.1697 |
| Tasks Performed | 0.8136 | 0.2207 | 0.2546 |
| Opportunities for advancement | 0.4556 | 0.6805 | 0.0595 |
| Methods by which compensation is determined | 0.2242 | 0.7847 | 0.1115 |
| Control over amount of work performed | 0.2847 | 0.2827 | 0.6755 |
| Control over work process | 0.4303 | 0.2478 | 0.6088 |
| Relationships with colleagues | 0.369 | 0.3704 | 0.4382 |
| Opportunities for pro bono work | 0.2014 | 0.5852 | 0.0744 |
| Intellectual challenge | 0.8509 | 0.2146 | 0.067 |
| Number of skill building opportunities | 0.805 | 0.3056 | 0.1316 |
| Amount of travel | 0.3528 | 0.3425 | 0.3012 |
| Diversity in the workplace | 0.1513 | 0.453 | 0.4026 |
| Performance evaluation process | 0.2308 | 0.7273 | 0.3009 |
| Value of work to society | 0.5003 | 0.0956 | 0.4568 |
| Job Security | 0.4021 | 0.2351 | 0.4855 |
| Access to IT | 0.346 | 0.4297 | 0.2409 |
| Balance between work and personal life | 0.0708 | 0.0613 | 0.8376 |
| | $\alpha = 0.8897$ | $\alpha = 0.8343$ | $\alpha = 0.7791$ |

$p < 0.05$

For each variable the respondent was asked to rank on a Likert scale from one to seven how satisfied they were with a given aspect of their work, with one being “Highly dissatisfied”, four being “Neither satisfied nor dissatisfied”, and seven being “Highly satisfied”. Should temporary lawyers experience intraprofessional stratification, one would expect their satisfaction on the job settings factor and the power track and social

contribution factor to be lower than for permanent lawyers. Should temporary lawyers perform deprofessionalized labor, one would expect them to be less satisfied with the substantive area of their work. Though these results are expected as seen in figure 4, the literature cautions using satisfaction as a proxy for differing experiences in the workplace as these may not be directly related to satisfaction levels. A study by Ronit Dinovitzer and Bryant Garth using the *AJD* data indicated that those with lower expectations for law school and job outcomes, such as marginalized groups, tend to be more satisfied in the different aspects of work than those with greater initial prospects (Dinovitzer and Garth 2007).

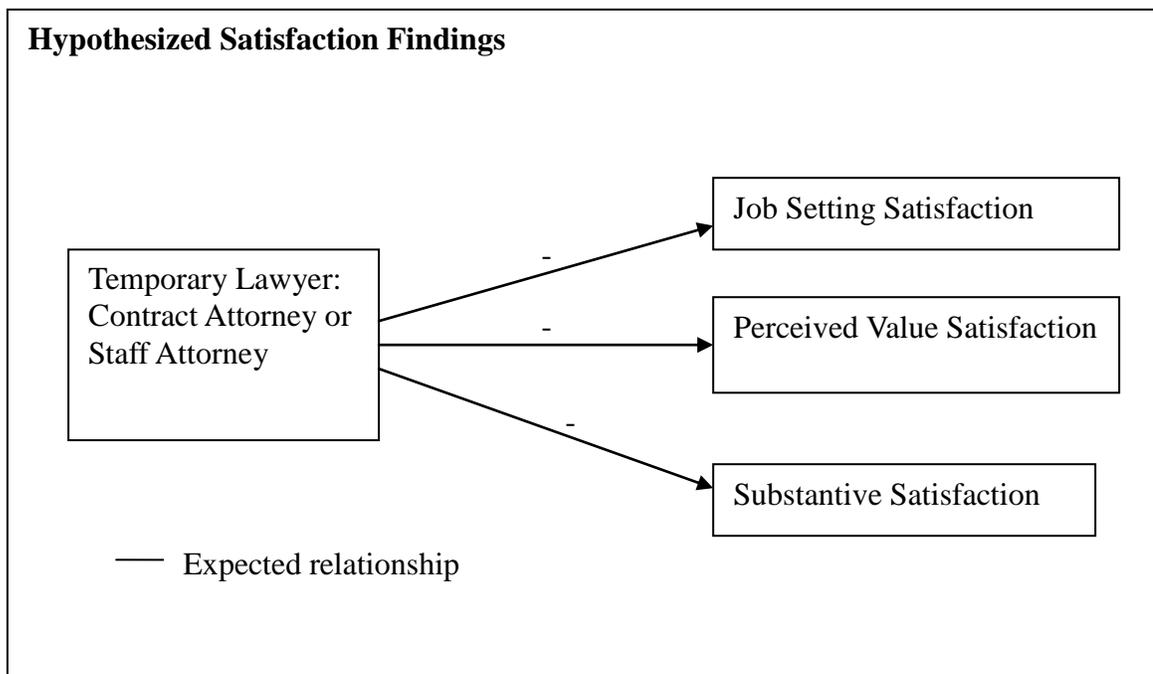


Figure 4 – Hypothesized Satisfaction Findings

Descriptive Findings

Earnings

A difference between temporary and permanent lawyers in monetary earnings would be expected if temporary attorneys perform deprofessionalized tasks within large law firms. This would also be an indication of corporatization on professional labor driving the routinization process. While the numbers of temporary lawyers in the *AJD* study was unexpectedly low, the non-response rate regarding salary information pushed the number of temporary attorneys below the number needed to fulfill the requirements of the chi-square statistical analysis. As such, this study can not determine if there are statistically significant differences between the salaries of temporary lawyers and their permanent counterparts. Even without a statistical analysis of earnings between temporary and permanent lawyers, the data from the *AJD* does not show any temporary lawyer reporting earnings above \$200,000, about 7% of permanent lawyers reported earning over this amount. A descriptive table of the salary information provided by the *AJD* study can be found in appendix C.

Law School Rankings

The literature regarding stratification in the legal profession cites the different career paths of lawyers as heavily influenced by the rank of the law school attended

(Abel 1989; Heinz et al. 2005). As such, one could expect a significant difference in the rank of law school attended between temporary and permanent lawyers.

The *AJD* asked lawyers whether they graduated from a school ranked by *US World News* in the top 10, top 11-20, top 21-100, tier 3, and tier 4 schools. They also included degrees received from other countries and unaccredited schools in their inquiry. With the limited number of temporary lawyers in this data set and the large number of response categories possible, these categories were condensed to meet the assumptions of the chi-square analysis to compare temporary lawyers to their permanent counterparts statistically. The categories of tier 3 and tier 4 were combined. As degrees from other countries and unaccredited schools were not discussed much in the literature as having significant effects on the legal labor market and since there were few participants who fit into these categories, they were dropped from this study's analysis. No temporary lawyers and 14 permanent lawyers were dropped from the analysis by the exclusion of these two categories. The uncondensed data regarding law school tiers can be found in appendix D.

The results of the chi-square analysis showed a significant difference between the rank of the law schools temporary and permanent lawyers attended as detailed in table 3 ($\chi^2(3, N = 1235) = 8.7990, p < .05, V = 0.0843$). Though there was a significant difference between law schools attended by temporary and permanent lawyers, only a weak relationship was found. A larger percentage of temporary lawyers attended schools in the top 11-20, (29.63%), and tier 3 and 4 (33.33%) than permanent lawyers (13.16% and 25.25%, respectively). Permanent lawyers were more likely to attend the top 10

schools (10.26%) and the top 21-100 (51.32%) than temporary lawyers. These results are consistent with the past literature on broad stratification within the profession with different career paths for those from lower tiered law school relative to those from elite schools though there is not a clear pattern in the data.

Table 3 - Condensed Law School Ranking by Title

| Condensed Law School Ranking | <u>Title</u> | | | |
|------------------------------|------------------|----------------|------------------|----------------|
| | Temporary | | Permanent | |
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Top 10 | 1 | 3.7% | 124 | 10.3% |
| Top 11-20 | 8 | 29.6% | 159 | 13.2% |
| Top 21-100 | 9 | 33.3% | 620 | 51.3% |
| Tier 3 or below | 9 | 33.3% | 305 | 25.2% |
| Total | 27 | 100% | 1208 | 100% |

$\chi^2(3, N = 1,235) = 8.7769$ $p < 0.05$
 $V = 0.0843$

Sociodemographic Variables

Gender and Race

Similar to law school rankings, sex and race can influence career outcomes for lawyers (Abel 1989; Heinz et al. 2005). A significant difference in sex was found between temporary and permanent lawyers with 74.3% of temporary lawyers being

women compared to 41.2% of permanent lawyers as shown in table 4 though the relationship between the variables was weak ($\chi^2(1, N = 1,571) = 15.3727, p < .01, V = -0.0989$). The difference in sex between temporary and permanent lawyers could indicate a preference of women for temporary work or systematic discrimination and hostility toward women within the large law firm environment. The qualitative sources in this study provide little direct explanation for this difference as a function of overt discrimination against women in the large law firm setting. However, the qualitative sources discussed later indicate that temporary lawyering is not particularly suited for those looking for employment which is flexible for familial obligations. The difference found here is likely linked to the law school tier attended, though this study does not address this interaction effect directly.

Table 4 - Gender by Title

| <u>Gender</u> | <u>Temporary</u> | | <u>Title</u> <u>Permanent</u> | |
|---------------|------------------|----------------|----------------------------------|----------------|
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Male | 9 | 25.7% | 903 | 58.8% |
| Female | 26 | 74.3% | 633 | 41.2% |
| Totals | 35 | 100.0% | 1536 | 100.0% |

$\chi^2(1, N = 1,571) = 6.0581 \quad p < 0.01$
 $V = -0.0989$

When running the analysis, the racial categories were condensed to “African American”, “white”, and “Other Minority” from “African American”, “Latino”, “Native American”, “Asian/Pacific Islander”, “White, and “Other” based on the historical saliency of these groupings on career outcomes in the legal profession and to meet the assumptions of the chi-square analysis. No significant difference was found between temporary and permanent lawyers on the basis of race ($\chi^2(5, N = 1,570) = 6.0518, p = 0.301$). A summary of the original data and the condensed results can be found in appendix E. Concurrent with these findings, the issue of race is not discussed at length within the qualitative sources of this study, with the exception of the court case of *Young v. Covington & Burling, LLP*. Rather than an issue exclusive to temporary lawyering, differences along the lines of race may be more salient to professional stratification outside the large law firm context, with minorities generally less likely to be working in large prestigious law firms, as suggested by the literature (Heinz et al. 2005).

Political Party

Political party preference is generally salient to the study of lawyers as the legislative system is part of the governance system and a vehicle of political power. Political parties had a similar problem as the race variable: too many categories and not enough temporary lawyer respondents to fulfill the assumptions of the chi-squared test. As such, the political party categories were collapsed with the ‘Unaffiliated’ and “Other political party” collapsed into one variable. The resulting political parties variable had “Democratic”, “Republican”, “Independent”, and “Other political party or unaffiliated”

as possible responses. There was no significant difference between temporary and permanent lawyers based on political party ($\chi^2(3, N = 1,192) = 0.7226, p = 0.868$). A summary of the original data and the condensed results can be found in appendix F.

Marital Status, Spousal Employment, and Children

Temporary lawyering has been presented as a flexible option for those wishing to fulfill family obligations and their call to the profession (Aaron & Guyul 2003). As such significant difference may be seen in the marital status and spousal employment of temporary and permanent lawyers as well as if these lawyers have children living at home.

Due to the small number of temporary lawyer respondents and the large number of categories for this variable the assumptions of the chi-square analysis are particularly strained in this test. Collapsing categories, as done with other variables in this study, would have lost the nuance of the differences in these categories and so these analyses are presented despite the limitations of the data.

There was a significant difference in the marital status of temporary lawyers compared to permanent lawyers using the chi-squared test ($\chi^2(5, N = 1,558) = 12.5482, p < .05, V = 0.0897$) though the effect size was small and so the relationship weak. Most of the respondents reported their marital status as being in their first marriage (63.89% for temporary and 70.89% for permanent lawyers). Permanent lawyers were more likely to never have been married (16.2% compared to 8.3%), while temporary lawyers were more likely to be divorced (16.7% compared to 4.6%). The results of this analysis can be seen

in table 5. Of those married there was no significant difference in the rate of spousal employment with most spouses employed (89.3% of temporaries and 74.5% of permanents).

Table 5 - Marital Status by Title

| Marital Status | <u>Title</u> | | | |
|-------------------------|------------------|----------------|------------------|----------------|
| | Temporary | | Permanent | |
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Never Married | 3 | 8.3% | 246 | 16.2% |
| Married, First Marriage | 23 | 63.9% | 1079 | 70.9% |
| Remarried | 3 | 8.3% | 88 | 5.8% |
| Domestic Partnership | 1 | 2.8% | 37 | 2.4% |
| Divorce/Separated | 6 | 16.7% | 70 | 4.6% |
| Widowed | 0 | 0.0% | 2 | 0.1% |
| Totals | 36 | 100% | 1522 | 100% |

$\chi^2(5, N = 1,558) = 12.5482$ $p < 0.05$
 $V = 0.0897$

There was no significant difference in respondents reporting a child or young adult living with them at home. Both types of lawyers were slightly more likely to have a child or young adult living with them than not (60% for temp and 56.8% for perm). The results for the spousal employment and living with children or young adults analysis can be found in appendix G and H. The lack of significant differences between the presence of children in the home between temporary and permanent lawyers contradicts theories

which postulate that lawyers with family obligations would prefer temporary work to accommodate them. Temporary lawyering as a strategy to balance work and family is also discussed within the qualitative sources, which state that this is not an effective strategy or motivation for temporary lawyers.

Professional and Workplace Experiences

The working environment of temporary and permanent lawyers can be compared using several series of questions found in the *AJD* study regarding respondents' professional and workplace experiences. These series of questions can be placed into two categories: social aspects and professional matters. Under the category of social aspects of work were questions regarding workplace discrimination and general social activities associated with professional life. Professional matters included those tasks performed on the job and ranged from substantive to prestigious to routine professional tasks.

Social Aspects

Experiencing Discrimination in the Workplace - With the negative stigma associated with temporary lawyers in the qualitative analysis, and the racial component of law school stratification also associated with temporary lawyering (Epstein et al. 1998; Heinz et al. 2005; Rogers 2000), as well as the *Young v Covington & Burling, LLP* case discussed earlier, one would expect a higher rate of disparaging treatment of temporary lawyers. This is not supported by the data as shown in table 6. Temporary lawyers were not more likely to report disparate treatment in the workplace based on race, religion, ethnicity,

gender, disability or sexual orientation. There were no significant differences in the rate of reporting demeaning comments, missing assignments, clients requesting new attorneys, colleagues requesting new attorneys, receiving a coveted assignment, or other instances of discrimination. These results contradict the qualitative findings which report temporary lawyers' negative experiences with firm staff and stigma within the legal labor market as well as the disparate impact alleged in the case of *Young v. Covington & Burling LLP*. However, the discrimination reported through the qualitative sources is slightly different from that examined here, with the exception of demeaning comments. Those discussed here are more blatant and occur within the specific context of the workplace environment, while those discussed in the qualitative sources tend to be experienced within the broader labor market, relating to the availability of employment positions rather than specific work tasks.

Table 6 - Discrimination Experienced in Workplace by Title

| <u>Discrimination Experienced</u> | <u>Temporary</u> | | <u>Title Permanent</u> | |
|-----------------------------------|------------------|----------------|------------------------|----------------|
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Demeaning Comments | | | | |
| Yes | 3 | 8.6% | 195 | 12.9% |
| No | 32 | 91.4% | 1322 | 87.1% |
| Totals | 35 | 100% | 1517 | 100% |
| $\chi^2(1, N = 1,552) = 0.5638$ | $p = 0.453$ | | | |
| Missed Assignment | | | | |

| | | | | | |
|--|---------------------------------------|----|-------------|------|--------|
| | Yes | 3 | 8.3% | 136 | 9.1% |
| | No | 33 | 91.7% | 1364 | 90.9% |
| | Totals | 36 | 100% | 1500 | 100% |
| | $\chi^2(1, N = 1,536) = 0.0230$ | | $p = 0.880$ | | |
| | Client Request New Attorney | | | | |
| | Yes | 0 | 0% | 138 | 9.3% |
| | No | 35 | 100% | 1353 | 90.7% |
| | Totals | 35 | 100% | 1491 | 100% |
| | $\chi^2(1, N = 1,526) = 3.5615$ | | $p = 0.059$ | | |
| | Colleague Request New Attorney | | | | |
| | Yes | 0 | 0% | 98 | 6.57% |
| | No | 35 | 100% | 1394 | 93.43% |
| | Totals | 35 | 100% | 1492 | 100% |
| | $\chi^2(1, N = 1,527) = 2.4566$ | | $p = 0.117$ | | |
| | Other | | | | |
| | Yes | 1 | 2.78% | 95 | 6.52% |
| | No | 35 | 97.22% | 1363 | 93.48% |
| | Totals | 36 | 100% | 1458 | 100% |
| | $\chi^2(1, N = 1,494) = 0.8164$ | | $p = 0.366$ | | |
| | Received Desired Assignment | | | | |
| | Yes | 7 | 21.21% | 326 | 22.85% |
| | No | 26 | 78.79% | 1101 | 77.15% |
| | Totals | 33 | 100% | 1427 | 100% |
| | $\chi^2(1, N = 1,460) = 0.0489$ | | $p = 0.825$ | | |

Social Activities - Temporary lawyers may inhabit different professional and social spheres than their permanent counterparts as a result of the physical isolation from other legal professionals they encounter in the workplace. Due to such isolation one would expect a difference in the social activities between temporary and permanent lawyers. Social capital, necessary within the profession for advancement, is gained and maintained through such activities. If temporary lawyers have limited access to such social resources then their future career growth may be stunted (Epstein et al. 1998; Rogers 2000).

There were significant differences in the social activities temporary and permanent lawyers participated in. Temporary lawyers were found to be far less likely to participate socially with peers and senior attorneys. These results indicate a social and physical isolation of temporary lawyers from permanent ones which may affect their respective career outcomes. The qualitative sources examined in this study corroborate these findings. Temporary lawyers are less likely to spend recreational time with their peers ($\chi^2(1, N = 1,576) = 4.0136, p < .05, V = -0.0505$) and to interact socially with senior attorneys through recreational activities ($\chi^2(1, N = 1,576) = 7.1275, p < .01, V = -0.0672$) or by having breakfast or lunch with them ($\chi^2(1, N = 1,576) = 6.8261, p < .01, V = -0.0658$) than their permanent counterparts. Temporary attorneys are also less likely to be included on firm recruitment committees ($\chi^2(1, N = 1,576) = 8.4425, p < .01, V = -0.0732$). Outside of the workplace, temporary attorney are less likely to write for a professional publication ($\chi^2(1, N = 1,576) = 9.1139, p < .01, V = -0.0760$) or to

participate in bar or civic activities ($\chi^2(1, N = 1,576) = 6.5062, p < .05, V = -0.0643$).

Where there were significant differences in social activities between temporary and permanent lawyers, the relationship between these particular variables was weak,

indicating that only a small amount in the variation between the two groups can be

attributed to title alone. There was no significant difference between temporary and

permanent attorneys in their participation in business organizational boards ($\chi^2(1, N =$

1,576) = 3.3534, $p = .067$) or charitable boards ($\chi^2(1, N = 1,576) = 1.4085, p = .235$). A

summary of these results can be seen in table 7.

| <u>Activity</u> | <u>Title</u> | | | |
|---|--|----------------|------------------|----------------|
| | <u>Temporary</u> | | <u>Permanent</u> | |
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Recruitment Committee** | | | | |
| Yes | 4 | 11.4% | 540 | 35.0% |
| No | 31 | 88.6% | 1001 | 65.0% |
| Totals | 35 | 100% | 1541 | 100% |
| | $\chi^2(1, N = 1,576) = 8.4425 \quad p < 0.01$ | | | |
| | $V = -0.0732$ | | | |
| Breakfast or Lunch with Senior Attorneys** | | | | |
| Yes | 12 | 34.3% | 870 | 56.5% |
| No | 23 | 65.7% | 671 | 43.5% |

| | | | | | |
|---|---------------------------------|-------------|-------|------|-------|
| | Totals | 35 | 100% | 1541 | 100% |
| | $\chi^2(1, N = 1,576) = 6.8261$ | $p < 0.01$ | | | |
| | $V = -0.0658$ | | | | |
| Recreation with Senior Attorneys** | | | | | |
| | Yes | 5 | 14.3% | 557 | 36.1% |
| | No | 30 | 85.7% | 984 | 63.9% |
| | Totals | 35 | 100% | 1541 | 100% |
| | $\chi^2(1, N = 1,576) = 7.1275$ | $p < 0.01$ | | | |
| | $V = -0.0672$ | | | | |
| Recreation with Peers* | | | | | |
| | Yes | 11 | 31.4% | 748 | 48.5% |
| | No | 24 | 68.6% | 793 | 51.5% |
| | Totals | 35 | 100% | 1541 | 100% |
| | $\chi^2(1, N = 1,576) = 4.0136$ | $p < 0.05$ | | | |
| | $V = -0.0505$ | | | | |
| Writing for Publication** | | | | | |
| | Yes | 2 | 5.7% | 447 | 29.0% |
| | No | 33 | 94.3% | 1094 | 71.0% |
| | Totals | 35 | 100% | 1541 | 100% |
| | $\chi^2(1, N = 1,576) = 9.1139$ | $p < 0.01$ | | | |
| | $V = -0.0760$ | | | | |
| Bar or Civic Activities* | | | | | |
| | Yes | 6 | 17.1% | 590 | 38.3% |
| | No | 29 | 82.9% | 951 | 61.7% |
| | Totals | 35 | 100% | 1541 | 100% |
| | $\chi^2(1, N = 1,576) = 6.5062$ | $p < 0.05$ | | | |
| | $V = -0.0643$ | | | | |
| Business Organization Boards | | | | | |
| | Yes | 0 | 0.0% | 135 | 8.8% |
| | No | 35 | 100% | 1406 | 91.2% |
| | Totals | 35 | 100% | 1541 | 100% |
| | $\chi^2(1, N = 1,576) = 3.3534$ | $p = 0.067$ | | | |
| Charitable Boards | | | | | |
| | Yes | 6 | 17.1% | 401 | 26.0% |

| | | | | |
|---|----|-------|------|-------|
| No | 29 | 82.9% | 1140 | 74.0% |
| Totals | 35 | 100% | 1541 | 100% |
| $\chi^2(1, N = 1,576) = 1.4085 \quad p = 0.235$ | | | | |
| * $p < .05$, ** $p < .01$ | | | | |

Professional Matters

As a component of intraprofessional stratification, one would expect differences in the kinds of work temporary lawyers would perform as more routine while permanent employees perform more professionally substantial work. These assumptions align with the perception of more abstract work as more highly regarded than routine matters. The corporatization of the legal profession and the law firm would indicate a shifting of routine tasks away from permanent lawyers and onto a new class of temporary lawyers. Within the *AJD* study, respondents were asked “over the total life of these matters, on how many of them were you responsible for” a given professional matter. These matters fall into three categories: substantive matters, prestigious matters, and routine matters.

Substantive Matters - Four substantive matters were addressed in this survey: negotiating, alternative dispute resolution, handling legal matters in their entirety, and formulating legal strategy as well as writing motions or taking depositions. These tasks represent more abstract legal work. Significant differences were found between temporary and permanent lawyers in the amount of time spent on these types of legal matters as seen in table 8.

As expected, permanent lawyers were more likely to perform substantive legal tasks than temporary lawyers. Even so, temporary lawyers did perform more substantive work than expected, indicating that these workers may not be as routinized as hypothesized in this study. The qualitative sources used in this study provide further insight into this unexpected finding, where some temporary lawyers are able to perform prestigious or substantive tasks as sought-after legal specialists. Permanent lawyers were more likely to spend their time negotiating most or all of the time during the over the total life of the matter with a moderate relationship found between the ascribed title and the amount of time spent on negotiations ($\chi^2(4, N = 1,356) = 74.3116, p < .01, V = 0.2341$). Permanent lawyers were more likely to participate in alternative dispute resolution half or all of the time ($\chi^2(4, N = 1,230) = 12.4772, p < .05, V = 0.1007$) and, surprisingly, 6.9% of temporary lawyers reported doing this most of the time. Permanent lawyers were more likely to handle matters in their entirety half of the time ($\chi^2(4, N = 1,373) = 12.1503, p < .05, V = 0.0941$). Again a surprising number, 22.6%, of temporary attorneys reported handling matters in their entirety most of the time as many temporary lawyers, 32.3%, did not do this at all. Temporary lawyers were more likely to formulate legal strategy none or some of the time ($\chi^2(4, N = 1,379) = 30.9661, p < .01, V = 0.1499$). Permanent lawyers were more likely to write motions or take depositions most or all of the time ($\chi^2(4, N = 1,253) = 10.2673, p < .05, V = 0.0905$). For alternative dispute resolution, handling matters entirely, formulating legal strategy, and writing motions or taking depositions only a weak relationship was found between these factors and ascribed titles.

Table 8 - Time Spent on Substantive Professional Matters by Title

| <u>Substantive Matter</u> | <u>Title</u> | | | |
|--|---|----------------|------------------|----------------|
| | <u>Temporary</u> | | <u>Permanent</u> | |
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Alternative Dispute Resolution* | | | | |
| None | 22 | 75.9% | 533 | 44.4% |
| Some | 5 | 17.2% | 454 | 37.8% |
| Half | 0 | 0.0% | 91 | 7.6% |
| Most | 2 | 6.9% | 88 | 7.3% |
| All | 0 | 0.0% | 35 | 2.9% |
| Totals | 29 | 100% | 1201 | 100% |
| | $\chi^2(4, N = 1,230) = 12.4772 \quad p < 0.05$ | | | |
| | $V = 0.1007$ | | | |
| Writing Motion or Taking Depositions* | | | | |
| None | 11 | 39.3% | 264 | 21.6% |
| Some | 8 | 28.6% | 293 | 23.9% |
| Half | 6 | 21.4% | 210 | 17.1% |
| Most | 3 | 10.7% | 290 | 23.7% |
| All | 0 | 0.0% | 168 | 13.7% |
| Totals | 28 | 100% | 1225 | 100% |
| | $\chi^2(4, N = 1,253) = 10.2673 \quad p < 0.05$ | | | |
| | $V = 0.0905$ | | | |
| Formulating Strategy** | | | | |
| None | 7 | 21.9% | 55 | 4.1% |
| Some | 12 | 37.5% | 289 | 21.5% |
| Half | 2 | 6.3% | 162 | 12.0% |
| Most | 7 | 21.9% | 426 | 31.6% |
| All | 4 | 12.5% | 415 | 30.8% |
| Totals | 32 | 100% | 1347 | 100% |
| | $\chi^2(4, N = 1,379) = 30.9661 \quad p < 0.01$ | | | |
| | $V = 0.1499$ | | | |
| Handling Entirely* | | | | |

| | | | | |
|---|-----------|-------------|-------------|-------------|
| None | 10 | 32.3% | 182 | 13.6% |
| Some | 12 | 38.7% | 481 | 35.8% |
| Half | 1 | 3.2% | 247 | 18.4% |
| Most | 7 | 22.6% | 343 | 25.6% |
| All | 1 | 3.2% | 89 | 6.6% |
| Totals | 31 | 100% | 1342 | 100% |
| $\chi^2(4, N = 1,373) = 12.1503 \quad p < 0.05$ | | | | |
| V = 0.0941 | | | | |
| Negotiating** | | | | |
| None | 14 | 48.3% | 91 | 6.9% |
| Some | 9 | 31.0% | 416 | 31.3% |
| Half | 5 | 17.2% | 211 | 15.9% |
| Most | 1 | 3.4% | 402 | 30.3% |
| All | 0 | 0.0% | 207 | 15.6% |
| Totals | 29 | 100% | 1327 | 100% |
| $\chi^2(4, N = 1,356) = 74.3116 \quad p < 0.01$ | | | | |
| V = 0.2341 | | | | |
| * $p < .05$, ** $p < .01$ | | | | |

Prestigious Matters - While substantive matters, as pure forms of professional work, are prestigious within the profession, the non-substantial tasks analyzed here carry prestige within the context of the large law firm. Most of the tasks here are public relations tasks, where the lawyer is representing the firm to the client or the public. This association as a public face of the firm would provide a form of non-substantive prestige. Interactions with clients can also bring prestige as they are related to “rainmaking”, or business generating, endeavors which can be profitable for the firm and can result in promotional opportunities for an individual lawyer. Five prestigious matters were addressed in this survey: assigning work, traveling, face-to-face interaction with clients,

keeping clients updated, and appearing in court as first or second chair.

There were significant differences in the amount of time temporary lawyers and permanent lawyers spent on these prestigious matters. Similar to the substantive findings the results of the analysis on prestigious matters were as expected with permanent lawyers more likely to perform such tasks than temporary lawyers; however there were an unexpected number of temporary lawyers performing such tasks. Though similar to the substantive analysis, temporary lawyers performed fewer prestigious tasks than they did substantive ones. This is consistent with some temporary lawyers working as legal specialists as well as performing routinized labor. Permanent lawyers were more likely to assign work ($\chi^2(4, N = 1,382) = 25.440, p < .01, V = 0.1357$) and travel ($\chi^2(4, N = 1,354) = 12.2789, p < .05, V = 0.0952$) for their work and were more likely to report appearing in court as first or second chair half, most or all of the time ($\chi^2(4, N = 1,223) = 12.5611, p < .05, V = 0.1013$). Permanent lawyers were also more likely to have face-to-face interactions with clients most of the time ($\chi^2(4, N = 1,379) = 31.8248, p < .01, V = 0.1519$) though many temporary lawyers (53.3%) reported doing this some of the time. The relationship between these prestigious matters and an attorney's temporary or permanent status was weak. Permanent lawyers were more likely to keep clients updated most to all of the time, with a moderate relationship existing between keeping a client updated and title ($\chi^2(4, N = 1,398) = 77.7858, p < .01, V = 0.2359$) though many temporary lawyers, 53.3%, also did this some of the time and a surprising number, 3.3%, reported doing this all of the time. A summary of these analyses can be found in table 9.

Table 9 - Time Spent on Prestigious Professional Matters by Title

| <u>Prestigious Matter</u> | <u>Title</u> | | | |
|---|------------------|------------------|------------------|----------------|
| | <u>Temporary</u> | <u>Permanent</u> | <u>Frequency</u> | <u>Percent</u> |
| Face to Face with Client** | | | | |
| None | 8 | 26.7% | 80 | 5.9% |
| Some | 16 | 53.3% | 463 | 34.3% |
| Half | 3 | 10.0% | 163 | 12.1% |
| Most | 2 | 6.7% | 408 | 30.2% |
| All | 1 | 3.3% | 235 | 17.4% |
| Totals | 30 | 100% | 1349 | 100% |
| $\chi^2(4, N = 1,379) = 31.8248$ | $p < 0.01$ | | | |
| $V = 0.1519$ | | | | |
| Keeping Client Updated** | | | | |
| None | 6 | 19.4% | 19 | 1.4% |
| Some | 12 | 38.7% | 177 | 12.9% |
| Half | 3 | 9.7% | 148 | 10.8% |
| Most | 3 | 9.7% | 515 | 37.7% |
| All | 7 | 22.6% | 508 | 37.2% |
| Totals | 31 | 100% | 1367 | 100% |
| $\chi^2(4, N = 1,398) = 77.7858$ | $p < 0.01$ | | | |
| $V = 0.2359$ | | | | |
| Appearing in Court as First or Second Chair* | | | | |
| None | 17 | 63.0% | 376 | 31.4% |
| Some | 5 | 18.5% | 311 | 26.0% |
| Half | 2 | 7.4% | 139 | 11.6% |
| Most | 2 | 7.4% | 227 | 19.0% |
| All | 1 | 3.7% | 143 | 12.0% |
| Totals | 27 | 100% | 1196 | 100% |
| $\chi^2(4, N = 1,223) = 12.5611$ | $p < 0.05$ | | | |

| | | | | |
|---|-----------|-------------|-------------|-------------|
| V = 0.1013 | | | | |
| Traveling* | | | | |
| None | 11 | 33.3% | 180 | 13.6% |
| Some | 11 | 33.3% | 477 | 36.1% |
| Half | 4 | 12.1% | 155 | 11.7% |
| Most | 6 | 18.2% | 325 | 24.6% |
| All | 1 | 3.0% | 184 | 13.9% |
| Totals | 33 | 100% | 1321 | 100% |
| $\chi^2(4, N = 1,354) = 12.2789$ $p < 0.05$ | | | | |
| V = 0.0952 | | | | |
| Assigning Work** | | | | |
| None | 11 | 34.4% | 143 | 10.6% |
| Some | 15 | 46.9% | 501 | 37.1% |
| Half | 4 | 12.5% | 192 | 14.2% |
| Most | 2 | 6.3% | 304 | 22.5% |
| All | 0 | 0.0% | 210 | 15.6% |
| Totals | 32 | 100% | 1350 | 100% |
| $\chi^2(4, N = 1,382) = 25.4440$ $p < 0.01$ | | | | |
| V = 0.1357 | | | | |
| * $p < .05$, ** $p < .01$ | | | | |

Routine Matters - Three routine matters were addressed in this survey: routine research memos, document review, and drafting transactional documents. There were significant differences in the amount of time temporary lawyers and permanent lawyers spent doing routine research memos and document review, though there was no difference in the amount of time spent drafting transactional documents as seen in table 10 ($\chi^2(4, N = 1,196) = 9.3733, p = .052$). The analyses of routine matters indicate that

both temporary and permanent lawyers perform routine legal tasks, though temporary lawyers perform them slightly more often. These results conflict with the qualitative sources, which indicate that temporary lawyers perform document review exclusively. Temporary lawyers were more likely to work on routine research memos most to all of the time though this has a weak relationship with title ($\chi^2(4, N = 1,350) = 16.9890, p < .01, V = 0.1122$) though many permanent lawyers, 41.9%, reported doing this some of the time. Many temporary lawyers, 29%, reported doing this none of the time. Temporary lawyers were more likely to do document review most or all of the time ($\chi^2(4, N = 1,287) = 11.4074, p < .05, V = 0.0941$) but a surprising number, 53.3%, reported doing this none of the time. Again, there was a weak relationship with this difference between permanent and temporary attorneys. Combined with the above analysis on substantive and prestigious tasks, as well as information from qualitative sources, these results indicate that there are groups of temporary lawyers working as substantive legal specialists while other temporary lawyers perform routinized labor.

| <u>Routine Matter</u> | <u>Title</u> | | | |
|---------------------------------|------------------|----------------|------------------|----------------|
| | Temporary | | Permanent | |
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Routine Research Memos** | | | | |
| None | 9 | 29.0% | 131 | 9.9% |
| Some | 6 | 19.4% | 553 | 41.9% |

| | | | | | |
|--|---|----|-------|------|-------|
| | Half | 2 | 6.5% | 149 | 11.3% |
| | Most | 10 | 32.3% | 277 | 21.0% |
| | All | 4 | 12.9% | 209 | 15.8% |
| | Totals | 31 | 100% | 1319 | 100% |
| | $\chi^2(4, N = 1,350) = 16.9890 \quad p < 0.01$ | | | | |
| | $V = 0.1122$ | | | | |
| | Document Review* | | | | |
| | None | 16 | 53.3% | 594 | 47.3% |
| | Some | 6 | 20.0% | 429 | 34.1% |
| | Half | 1 | 3.3% | 110 | 8.8% |
| | Most | 3 | 10.0% | 81 | 6.4% |
| | All | 4 | 13.3% | 43 | 3.4% |
| | Totals | 30 | 100% | 1257 | 100% |
| | $\chi^2(4, N = 1,287) = 11.4074 \quad p < 0.05$ | | | | |
| | $V = 0.0941$ | | | | |
| | Drafting Transactional Documents | | | | |
| | None | 13 | 48.1% | 376 | 32.2% |
| | Some | 10 | 37.0% | 364 | 31.1% |
| | Half | 3 | 11.1% | 80 | 6.8% |
| | Most | 0 | 0.0% | 186 | 15.9% |
| | All | 1 | 3.7% | 163 | 13.9% |
| | Totals | 27 | 100% | 1169 | 100% |
| | $\chi^2(4, N = 1,296) = 9.3733 \quad p = 0.052$ | | | | |
| | * $p < .05$, ** $p < .01$ | | | | |

Satisfaction

Using the dimensions found through a factor analysis of the satisfaction variables of the *AJD* study, a one-way analysis of variance (ANOVA) was performed on each dimension of the satisfaction index, work substance, power track and social value, and

job setting satisfactions, compared across title. The ANOVA test is more statistically rigorous than the chi-square analysis previously used in this study. The satisfaction measures met the assumptions of the ANOVA while the other variables examined in this study did not fit these criteria. A factor analysis was used to find the dimensions of satisfaction with all variables measured on a Likert scale from one to seven on how satisfied they were with a given aspect of their work, with one being “Highly dissatisfied”, four being “Neither satisfied nor dissatisfied”, and seven being “Highly satisfied”. The dimension of work substance satisfaction contained the variables of reported satisfaction with the level of responsibility one has at work, the substantive area of one’s work, tasks performed, the intellectual challenge of work, skill-building opportunities at work, and the value of one’s work to society, all of which correlated highly with an alpha coefficient of .89. The job setting satisfaction scale consisted of variables measuring satisfaction over the control over the amount of work performed, control over the work process, relationships with colleagues, job security, and the balance between work and personal life with an alpha coefficient of .78 between these items. The perceived value scale consists of items measuring satisfaction related to recognition received for work, opportunities for advancement, the methods by which compensation is determined, opportunities for pro bono work, diversity in the workplace, and the performance evaluation process with an alpha coefficient of .83.

Of these dimensions, only the substantive dimension of work satisfaction showed a significant difference between temporary and permanent lawyers. Temporary lawyers were more likely to have lower reported satisfaction scores on the index of substantive

satisfaction variables than permanent attorneys. The effect of temporary lawyering on satisfaction was small, explaining very little of the variation between temporary and permanent lawyers satisfaction responses ($F(1,879) = 4.82, p < 0.05, \eta^2 = 0.0054$). There were no significant differences between temporary and permanent lawyers' satisfactions along the dimensions of workplace setting ($F(1,879) = 0.43, p = 0.5118$) and of workplace power tracks and the social value of their work ($F(1,879) = 1.46, p = 0.2266$). The results of the analysis on the dimensions of work satisfaction can be found in table 11.

| Dimension of Satisfaction | Title | | | | F | df | η^2 |
|---------------------------|------------|-----------|------------|-----------|-------|-----|----------|
| | Temporary | | Permanent | | | | |
| | M | SD | M | SD | | | |
| Work Substance | -0.4530017 | 1.3451949 | 0.0232173 | 0.9720819 | 4.82* | 880 | 0.005453 |
| Perceived Value | -0.079016 | 1.1721586 | 0.178805 | 0.9593191 | 1.46 | 880 | - |
| Job Setting | -0.1310463 | 0.8967015 | -0.2708408 | 0.965925 | 0.43 | 880 | - |

* $p < .05$

Results

The analysis of the *AJD* study found differences between temporary lawyers in their sociodemographic variables, work type, and work satisfaction. Though differences

were found among these variables, not all of them met expectations and some produced ambiguous results. No differences were found in their experiences of discrimination within the workplace.

Sociodemographics

Of the sociodemographic variables examined three significant differences were found between temporary and permanent lawyers in sex, law school attended and marital status, all as depicted in figure 5. Temporary lawyers were more likely to be female and were more likely to be divorced. Despite the statistically significant differences between these two groups there was only a weak relationship found between these variables and an attorney's temporary or permanent status. Additionally a significant difference, although weak, was found between the tier of law school attended and temporary or permanent status. Those from top-tiered schools were more likely to be in permanent positions, as predicted from the past literature.

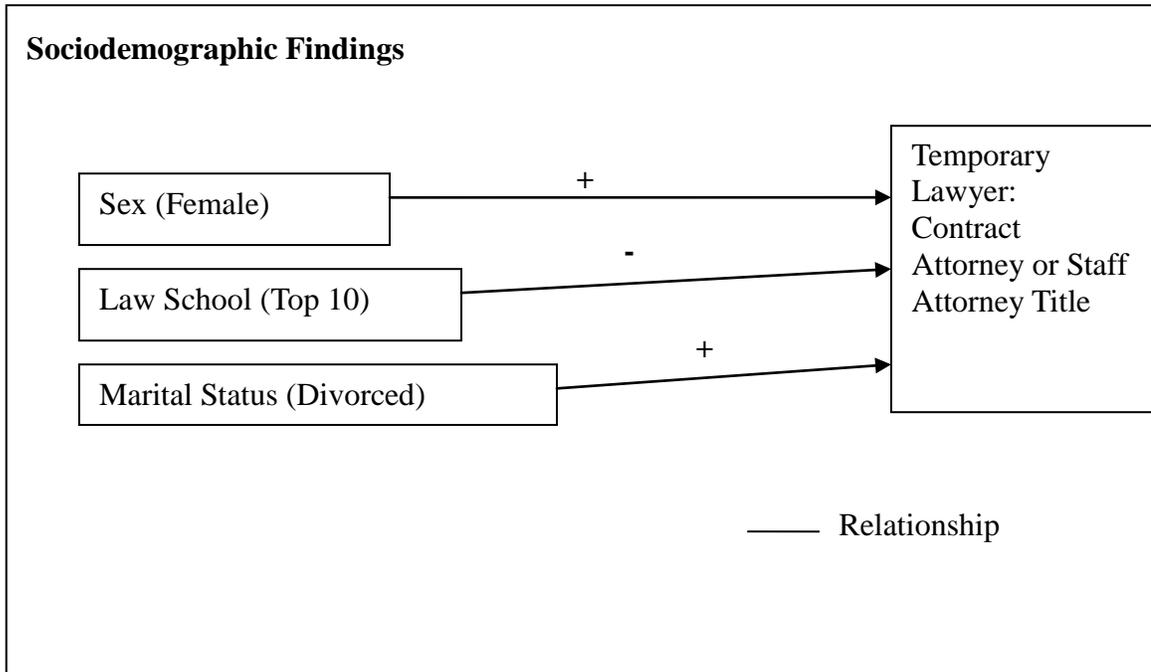


Figure 5 – Sociodemographic Findings

To explain these results, the past literature indicates that these differences may be a continuation of past discrimination within the workplace against women, where the perception that women will be more likely to leave the workplace due to family obligations makes employers less likely to hire women. It may also indicate a preference of women to temporary work for the flexibility, it may allow for familial obligations (Rogers 2000; Aaron & Guyul 2003). There were no differences in whether temporary or permanent lawyers had children found in this study to corroborate this. While the significant difference in marital status, where temporary lawyers are slightly more likely

to be divorced and permanent lawyers slightly more likely to never have been married, is interesting, there is little in the previous literature to provide an explanation as to why this would be the case. For this study, marital status was examined as temporary lawyers may take on such work with the stability of income which comes from an employed spouse or prefer the sporadic nature of the employment relationship to participate in other activities. As marital status was examined for any possible effects on familial duties, these results do not directly address this issue, and there is little from the previous literature to explain these findings. While this data provides the quantitative differences between these groups, it does not provide an explanation for the results, thus a qualitative analysis of the situation, as used later in this study, is also required to grasp the meaning of these and the following quantitative results.

Workplace Experiences

Professional Involvement – These analyses showed a significant difference in the professional involvement through social activities of temporary attorneys, such as interactions with senior attorneys and peers, with other members of the profession relative to permanent lawyers as shown in figure 6. Though there were significant differences between temporary and permanent lawyers, temporary lawyering only had a small effect on these differences meaning that a respondent's temporary or permanent status, as defined by this study, had only a small influence on the outcome of a given variable. The lack of interaction between temporary lawyers could indicate two separate labor markets within the same work environment. Within this environment professionals work alongside on another but perform different tasks, have little meaningful interaction

with each other, and have extremely different career outcomes. Since temporary lawyers are not interacting with more senior attorneys they may not be amassing the social capital needed for permanent positions and success within large law firms. As such there may be limited job mobility between these two parts of the legal labor market for large law firms especially when combining these findings with those of the qualitative analysis.

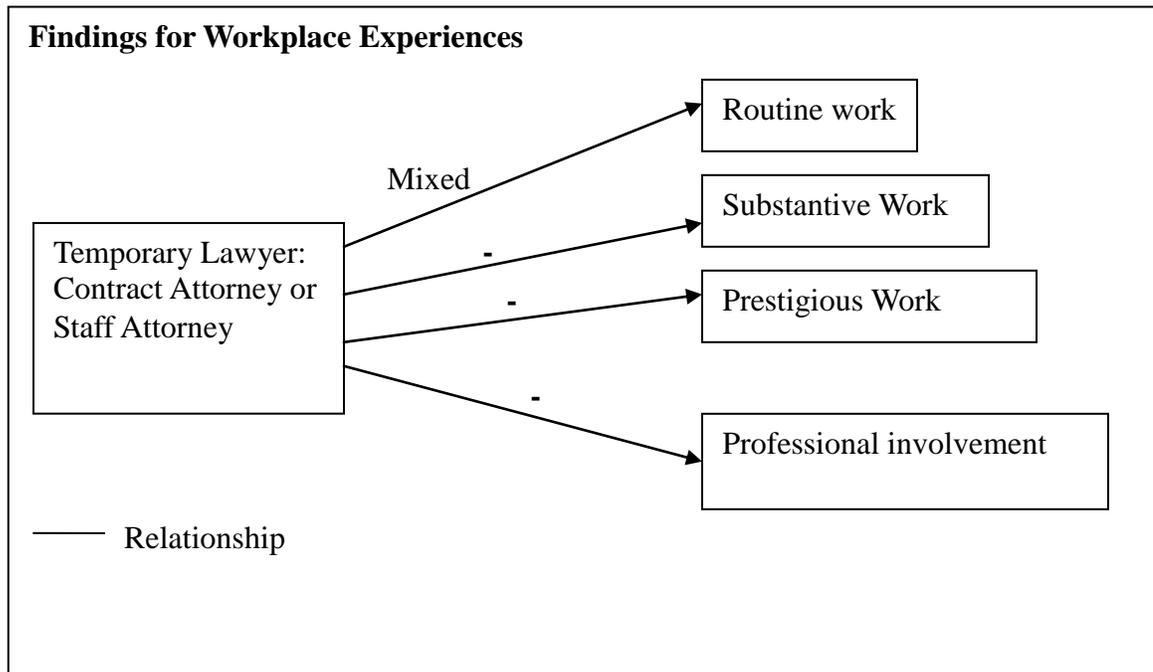


Figure 6 –Findings for Workplace Experiences

Work-Type - This analysis showed that, generally, permanent lawyers were more

likely to perform substantive and prestigious tasks than temporary lawyers as shown in figure 6. There was a moderate relationship between permanent lawyering and keeping the client updated ($V = 0.2359$) and negotiating ($V = 0.2341$) but the other significant relationships between temporary lawyering and various tasks was small ($V < 0.16$ as shown in tables 7, 8, and 9). While temporary lawyers are less likely to do substantive or prestigious tasks, they are more likely to do routine tasks. The analysis shows temporary lawyers doing more routine tasks based on this data, though many permanent lawyers performed document review at least some of the time. Contrary to the qualitative sources used in this study, many temporary lawyers did not perform any document review while many permanent lawyers performed this routine task. The results of this analysis are mixed with regard to temporary lawyers as a deprofessionalized category of lawyer since these results do not show temporary lawyers performing routine tasks exclusively, contrary to expectations. While the data does not show temporary lawyers as entirely routinized workers, it does show that they are less likely to perform substantive or prestigious professional tasks providing evidence that there are some discrepancies between the types of work performed by temporary and permanent lawyers.

Satisfaction

Through this analysis a significant difference was found in the satisfaction with the substantive area of work performed by temporary and permanent lawyers where temporary lawyers reported lower satisfaction with this aspect of their work as shown in figure 7. These results seem to coincide with the work-type findings, where temporary lawyers were less likely to perform substantive tasks. Previous research cautions on the

interpretation of reported satisfaction as it can also be a function of disparate expectations between groups (Dinovitzer and Garth 2007) but, with the work-type findings of this study, it seems that temporary lawyers do perform less substantial work than permanent lawyers in large law firms. The fewer substantive tasks temporary lawyers perform are evidence of their deprofessionalized status.

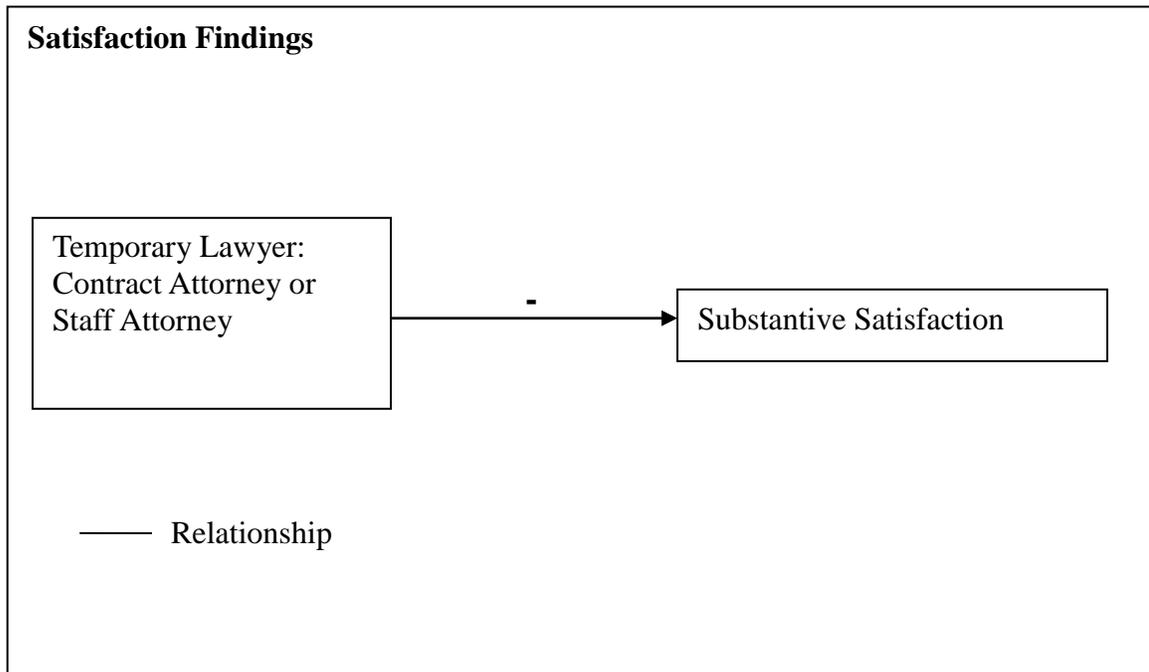


Figure 7 –Satisfaction Findings

Conclusion

Using quantitative data from the *AJD* study some statistically significant differences were found between temporary and permanent lawyers indicating a new form of intraprofessional stratification within large law firms. However, this stratification is more fluid than originally expected as temporary attorneys were not relegated to routine tasks. Rather than strict segmentation, there seems to be different types of temporary lawyers, where some perform substantive or prestigious work, while many others do not. These conclusions are supported by differences in sociodemographic variables, work experiences, work type, and satisfaction between temporary and permanent lawyers.

There were a few sociodemographic differences-sex, law school attended, and marital status-between these groups which may indicate a continuation of past systemic discrimination. Significant differences were found between temporary and permanent lawyers with regards to sex and law school attended aligning stratification within the large law firm legal labor market with broader intraprofessional stratification as predicted. The growing intraprofessional stratification of large law firm creates a new class of lawyers similarly situated at the bottom echelons of the legal profession but within a prestigious field of the profession. They work alongside elites and have little opportunity to join their ranks.

The differences in the professional activities performed by these two groups also indicates a segmented legal labor market as temporary lawyers have fewer opportunities to network with other, more powerful lawyers to advance their careers. Without networking opportunities temporary lawyers lack the social capital building opportunities of permanent lawyers. Continued isolation from other lawyers in the firm can set

temporary lawyers up as a different class of lawyer, further perpetuating the rift between temporary and permanent lawyers in the large law firm. The stigma of isolation within the profession alluded to through these findings is confirmed within the qualitative findings of this study.

The analysis of tasks performed by these two groups yielded mixed results though temporary lawyers were less likely to perform substantive or prestigious tasks, further demonstrating their deprofessionalized status. At the same time, some temporary lawyers did perform substantive and prestigious tasks. These findings run contrary to initial expectations. While those temporary lawyers who perform routine tasks represent a deprofessionalized segment of the legal labor force, those temporary lawyers performing substantial and prestigious tasks may represent yet another change in the legal labor market where entrepreneurialism becomes a gateway to prestige, as indicated by some of the qualitative sources.

Overall, these results suggest the existence of an underclass of legal professionals of women and those from lower tiered schools who are isolated from other professionals within the workplace. While some of these temporary lawyers perform more routine tasks a number of them also performed prestigious and substantive tasks hinting at a pool of temporary lawyers with more diverse work experiences than originally anticipated. As these analyses only provide broad descriptions of temporary lawyers as a group and can not provide explanation of why or how these results came about, qualitative source were used to supplement, and in some cases corroborate with, these findings, providing further meaning to the results found here.

CHAPTER 4: Informal Comments on the Experiences and Impact of Temporary Lawyers

To further our understanding of temporary lawyers experiential data from various blogs and legal media sources, as informal qualitative sources, were used. These sources build upon the findings of the quantitative analysis by pairing lawyer experience to the sociodemographic, work type, and satisfaction findings of this study so far. The narrative descriptions of the temporary lawyers' experiences on the job and within the labor market found in these qualitative sources bring the study's focus down to the individual level. This study now explores the temporary lawyer as an individual with an understanding of the larger context in which he or she works.

When exploring the states of professional labor markets and corresponding workplaces, examining the experiences of individual workers provides useful insight into potential problems within the professional structure. Discontent within a profession can be indicative of intraprofessional conflict, a precursor to professional change with various consequences for the profession and its various workers (Abbott, 1988). Using the quantitative data from wave two of the *After the JD (AJD)* study (Dinovitzer, Nelson, Plickert, Sandefur, Sterling 2009), this study has established some basic characteristics and differences between temporary attorneys and permanent associates within large law firms. To compliment this quantitative analysis, a qualitative study of legal media can be used to understand temporary attorneys' working experiences. The statistical differences found through the quantitative analysis regarding the type of work different lawyers

perform, the law schools attended and professional activities performed as well as differences in sex and compensation are clarified and expanded using these qualitative sources. Legal media publications and prominent legal blogs were used for as informal sources of information regarding the working experiences of temporary lawyers.

The research performed through the legal media and blogs was not done in a structured manner, such as through a rigorous content analysis of articles, but rather used in lieu of more formal scholarly research, since there is little to be found on these workers from more formal sources, even from the formal professional sources analyzed. The informal sources provide information on identifying characteristics of the temporary lawyer population, their working conditions, their role in the legal labor market, and their views on the legal profession. Articles and news items regarding temporary lawyers were found on the blogs “Above the Law” and “The Posse List” by exploring the blogs’ relevant “tags” such as “Contract Attorneys”, “Document Review”, and “Changing Legal Landscape”. Legal media articles were found using relevant search terms in the Factiva database. Using these informal sources limits the study in that these non-scholarly sources can hold tremendous bias, particularly “The Posse List” blog which promotes non-traditional legal career paths, and whose reporting is not necessarily held up to rigorous verification and testing of peer-reviewed sources. Despite these limitations, the informal sources provide insight into the temporary attorney market and experiences which can be applied to the quantitative data used in this study by providing an informed framework for describing the populations’ experiences.

These qualitative sources also provide further descriptions of temporary lawyers’

experiences in the workplace and within the profession in order to place these workers in the larger context of the legal labor market, further explaining the quantitative results and expanding on them. These sources indicate drastic differences between temporary and permanent lawyers' backgrounds and professional experiences, differences which indicate that these two types of lawyers occupy different labor pools or segments within the same labor market. The descriptions found in these qualitative sources indicate that the work performed by temporary lawyers is highly routinized, partially contributing to the low status of these workers in the professional realm. As previously discussed, the differences in career outcomes between temporary lawyers' and their permanent counterparts are the result of an exploitation of the surplus of legal labor which is, in part, driven by the power, status, and wealth surrounding the legal profession. As alluded to in the formal professional literature, the integrity of the legal profession as a whole suffers through the creation and exploitation of this surplus of labor and the legal underclass of temporary lawyers it creates.

Temporary Lawyers' Work Experience

As a crude stereotype, lawyers are typically considered to occupy prestigious, well paying positions, and the culturally accepted image of a professional lawyer is reinforced through popular culture where they are represented in two moral extremes: as saintly advocates of justice as seen in John Grisham's novels and on television shows such as *Law and Order*, or as sleazy ambulance chasers preying on accident victims or collecting egregious sums in frivolous lawsuits. When stripped of the some of the more extreme aspects, particularly moral, the lawyer caricature involves men wearing sharp

suits, working in large, windowed offices in a downtown high rise, having secretaries cater to their every whim while they put in long hours of intensely intellectual work and, of course, making tons of money

This notoriety, for good or ill, stems from the prestige associated with the law. Law school is seen as tough and expensive and those who run the gauntlet should be compensated as such. The historical significance of law as one of the classical professions also contributes to such convictions. One would never expect lawyers to describe their work experiences as being “talked to like a third grader” and “put in timeout” by supervising lawyers within the workplace¹⁰ with a “distinct sense that I have been sent to my room. ‘Go to your room!’” I imagine [the supervisor] screaming at a petulant child, “and don’t come out until you’ve reviewed 68,000 documents!”¹¹ or as “just a warm body to crank out documents”¹² or where Julie Triedman from the “American Lawyer”, a law magazine, reports that “aside from lunch and bathroom breaks, [they] can’t leave the floor. If [they do], [they’ll] lose [their] job”¹³ but temporary lawyers experience this within the workplace; workplaces owned and operated, for the most part, by fellow lawyers. These legal workers illustrate a schism in the profession, where two groups of professionals, working alongside one another have dramatically different experiences. Temporary lawyers and their experiences, though only a recent

¹⁰ These informal sources will be attributed throughout the study in footnotes, with the URL for the internet citations omitted, and listed completely in appendix A.

Acevedo, Gabe, 2010. “Biglaw’s Status Issue.” Above the Law, March 4, 2010.

¹¹ St. Thomas, Roxana, 2009b. “Notes from the Breadline: Comes a Time (Part III).” Above the Law, May 21, 2009.

¹² Jones, Leigh. 2005. “More Firms using Temp Attorneys; Rising Discovery Costs Drive Trend. Firms Add Contract Lawyers; The Integration Issue.” *The National Law Journal* 28(56), October 10.

¹³ Triedman, Julie. 2006. “Upstairs, Downstairs; BarTalk; Law Firm Temps are Furiously Blogging About their Work Conditions. Slaves of New York.” *American Lawyer* 28(3), March 1.

addition to the legal workforce, illustrate recent changes within the legal profession resulting in growing intraprofessional stratification within large law firms.

Recruitment

The employment relationship between temporary lawyers and large firm begins with a staffing agency rather than recruitment out of law school as experienced by many partner-track lawyers. Temporary attorneys are typically hired for large projects through staffing agencies¹⁴ and the development of and increase in demand for these temporary lawyers many staffing agencies have been created specifically for this purpose.¹⁵ A portion of the fee charged to law firms by staffing agencies goes to pay temporary attorneys while a large markup is added to and charged to the firm. Part of this excess covers temporary lawyers' employment benefits, when provided by the agency, and to cover agency operating expenses. The rest is profit for the agency, which makes high profit margins from placing temporary lawyers into firms, making this a very lucrative and growing market.¹⁶ Some law firms, after paying agency fees for temporary lawyer work charge larger fees to the client who can make the utilization of temporary lawyers directly profitable for the firm,¹⁷ irrespective of the indirect benefits they receive from the contingent labor pool.

Clients have grown wise to this system and have begun demanding more

¹⁴ Jones, Leigh. 2005. "More Firms using Temp Attorneys; Rising Discovery Costs Drive Trend. Firms Add Contract Lawyers; The Integration Issue." *The National Law Journal* 28(56), October 10.

¹⁵ 2006b. "Short-term Staffing, Big-time Profits." *American Lawyer* 28(9), Sept. 1, pp. 100.

¹⁶ 2008b. "A Primer on Agency Pricing and the Bid Process." *The Posse List*, June 21, 2008.

¹⁷ 2009i. "The Marking Up of Contract Lawyer Costs." *The Posse List*, July 25, 2009.

Jones, Leigh. 2005. "More Firms using Temp Attorneys; Rising Discovery Costs Drive Trend. Firms Add Contract Lawyers; The Integration Issue." *The National Law Journal* 28(56), October 10.

transparent billing processes from agencies and firms when using temporary attorneys.¹⁸

To get around this some firms hire temporary attorneys directly, doing their own soliciting and keeping their own labor pool list of attorneys willing to do project based work, a practice which can also obscure the billing of work and payment of temporary employees. This direct hire model by firms also removes the middleman, the agency. This increases the economic benefit of these workers but also places administrative duties associated with recruitment and other human resource issues on the firm at an indirect cost.¹⁹ Ethical concerns regarding such billing practices were addressed in the professional literature, particularly the bar associations' ethics opinions.

Some law firms retain directly hired temporary lawyers, keeping them on their staff and payroll to complete projects as they come up rather than dismissing them at the end of each project. These temporary lawyers are known as "staff attorneys" and may enjoy more esteem than project based temporary lawyers and slightly better workplace treatment with the "stable jobs, good benefits, and reasonable hours" most temporary lawyers lack²⁰ as they are considered more permanent law firm staff, considered as "permanent contract attorneys" by law firm administrators²¹. The more permanent nature of their employment exists outside the large law firm's associate-to-partner model as these positions are specifically created as a non-prestigious second tier of law firm

¹⁸ 2008c. "In Xerox Class Action, Fees for Temp Lawyers Take Center Stage." The Posse List, Nov. 25, 2008.

¹⁹ 2008a. "A Primer on Agency Pricing and the Bid Process." The Posse List, June 21, 2008.

2008b. "Primer: How 'Direct Hire' Works." The Posse List, Dec. 16, 2008.

²⁰ Lat, David, 2008c. "Staff Attorney / Discovery Attorney Salaries: Open Thread." Above the Law, July 21, 2008.

²¹ Merck, Billy, 2007. "McDermott to Create 'Second Tier' of Associates." Above the Law, November 2, 2007.

employee,²² indicating the tiered nature of the legal labor market as illustrated earlier, in the formal professional literature, through a court case regarding the disparate impact of staff attorney programs in large law firms.

Motivations

The surplus of attorneys supplied by an over abundance of law school graduates, discussed in both the formal sociological and professional literature, creates a buyers' market where those who do not make it into the associate-to-partner find little employment options if they wish to stay within their chosen field; for working with legal matters related to large corporate law projects, temporary lawyering offers a way to do this.²³ While professional interest motivates some who do not find associate positions to stay within the legal profession and become temporary lawyers despite the drawbacks, others work as temporary lawyers for economic reasons. The compensation received for such work remains high relative to other industries, though meager compared to associates' compensation, though this study could not confirm a statistical difference in compensation levels in the quantitative analysis, and relative to the responsibility and "mindlessness" of the work.²⁴ These compensation levels coupled with the debt incurred

²² 2009k. "Staff Attorney Lay-offs Continue, Impacting Contract Attorneys." *The Posse List*, October 6, 2009.

Lat, David, 2008a. "Career Potential for Staff Attorneys: Open Thread." *Above the Law*, February 19, 2008.

Merck, Billy, 2007. "McDermott to Create 'Second Tier' of Associates." *Above the Law*, November 2, 2007.

²³ Laufer, Linda. 2005. "Crossroads: Contemplating Contract Work." *New York Law Journal* 234, August 26, p. 16.

Triedman, Julie. 2006b. "Upstairs, Downstairs; BarTalk; Law Firm Temps are Furiously Blogging About their Work Conditions. Slaves of New York." *American Lawyer* 28(3), March 1.

²⁴ 2009b. "Cadwalader's New Manpower Model: Contract Attorneys." *The Posse List*, August 2, 2009.

Triedman, Julie. 2006b. "Upstairs, Downstairs; BarTalk; Law Firm Temps are Furiously Blogging About their Work Conditions. Slaves of New York." *American Lawyer* 28(3), March 1.

during law school provide motivation for others to become and remain temporary attorneys.²⁵ Some workers combine both the professional and economic sources of motivations, using time off between projects to pursue personal or other non-professional interest while retaining a connection to the legal profession.²⁶ Those who work this way must be able to manage the risk and uncertainty of intermittent employment throughout the year. These temporary lawyers are also more likely to have an in-demand, specialized skill, and so may be able to choose projects with more discretion than other temporary lawyers.²⁷ It should also be noted that temporary lawyering is not part-time work. While on projects, temporary lawyers work 60-80 hour per week. Thus working as a temporary lawyer is not necessarily an option for those wishing to spend more time with their families²⁸.

Work Type

The type of work temporary lawyers perform also contributes to the stigma surrounding temporary lawyers. As with other temporary work, the type of work done

²⁵ Bufithis, Gregory, 2010. "Contract Attorneys, 'Status' and a Paradigm Shift in their Favor ... with some Observations by Gabe Acevedo." *The Posse List*, March 7, 2010.

Lat, David, 2009. "Is Success as a Solo Practitioner a Pipe Dream?" *Above the Law*, December 31, 2009.
Laufer, Linda. 2005. "Crossroads: Contemplating Contract Work." *New York Law Journal* 234, August 26, p. 16.

²⁶ Laufer, Linda. 2005. "Crossroads: Contemplating Contract Work." *New York Law Journal* 234, August 26, p. 16.

²⁷ 2009j. "The Rise of the Litigation Support Professional." *The Posse List*, July 17, 2009.

2009g. "Learning Bankruptcy Law for Freelance and Solo Work." *The Posse List*, April 20, 2009.

Acevedo, Gabe, 2010. "Biglaw's Status Issue." *Above the Law*, March 4, 2010.

Bufithis, Gregory, 2009a. "Trends in the Contract Attorney Market – Part 1, An Overview." *The Posse List*, May 26, 2009.

Bufithis, Gregory, 2009b. "Trends in the Contract Attorney Market – Part 2: Going Solo/Freelancing, and Building a Website/Blog." *The Posse List*, June 8, 2009.

Lat, David, 2008a. "Career Potential for Staff Attorneys: Open Thread." *Above the Law*, February 19, 2008.

²⁸ Laufer, Linda. 2005. "Crossroads: Contemplating Contract Work." *New York Law Journal* 234, August 26, p. 16.

by most temporary attorneys requires little skill. According to the informal legal media sources, temporary lawyers are most often used for document review, though this contradicts some of the findings in the quantitative analysis. This non-substantive legal work involves looking over corporate documents to see if there is any material related to a given case within those documents and is considered part of a firm's due diligence when preparing a case.²⁹ This work is tedious and requires relatively minimal legal knowledge or skill to complete³⁰ despite the education and certification requirements required by firms, clients, and the state. As noted earlier, the amount of document review required in large corporate cases has increased dramatically within the past few decades and “to avoid being buried alive by the ever-rising piles of discovery documents that define today's litigation, many law firms are relying more than ever on temporary attorneys to help them make sense of the mess,”³¹ creating an environment where law firms must rely on low status legal laborers to handle their workload and relative status with clients so that “in an age when law firms spend huge amounts of money on marketing efforts to build their brands, they also increasingly rely on off-label, generic lawyers, most of whose resumes would never get a second glance for an associate-track job”³² With regards to the type of work temporary lawyers perform, “It's true we spend probably 80 percent of the day bullshitting and wandering around,” [a] temp confides. “But when

²⁹ Bufithis, Gregory, 2009a. “Trends in the Contract Attorney Market – Part 1, An Overview.” The Posse List, May 26, 2009.

³⁰ Bufithis, Gregory, 2010. “Contract Attorneys, 'Status' and a Paradigm Shift in their Favor ... with some Observations by Gabe Acevedo.” The Posse List, March 7, 2010.

³¹ Jones, Leigh. 2005. “More Firms using Temp Attorneys; Rising Discovery Costs Drive Trend. Firms Add Contract Lawyers; The Integration Issue.” *The National Law Journal* 28(56), October 10.

³² Triedman, Julie. 2006a. “Temporary Solution: Law Firms Say They Don't Like Using Contract Attorneys. Yet, More and More, They're Hiring Hundreds of Temps at a Time.” *American Lawyer* 28(9), September 1, p. 96.

you're paying an attorney \$20 an hour, what do you expect” and managing partners at law firms claim “they’re not doing legal work” to rationalize the pay, status, and working conditions of temporary lawyers.³³ As discussed earlier, temporary lawyers have attested to the lack of professional skill needed for such work in the courts.³⁴ While routinized, and possibly deprofessionalized, document review composes the majority of temporary lawyering work according to these informal sources. Temporary lawyers with highly specialized legal skills or experience may be brought on to projects when such specialization is required and their treatment, working conditions, and compensation tend to reflect the market demand for their specialized skill and the substantive legal work they do.³⁵ Thus, the general work experience and outlook for temporary workers can vary widely though those looking into temporary lawyering work are often advised that permanent legal employment is always preferable.³⁶ Reports of variability within temporary lawyering work corroborate some of the quantitative findings of this study. Those with specialty knowledge and experience, such as work in a particular practice field or particular language fluencies, seem to manage better than those lawyers with what is considered low-skilled legal work.³⁷

³³ Triedman, Julie. 2006b. “Upstairs, Downstairs; BarTalk; Law Firm Temps are Furiously Blogging About their Work Conditions. Slaves of New York.” *American Lawyer* 28(3), March 1.

³⁴ 2010a. “Contract Lawyer Sues NYC Law Firm for not Paying Overtime.” *The Posse List*, July 9, 2010.

³⁵ 2010c. “In-house Law Departments (and Law Firms) Rely More on Project Attorneys/Contract Attorneys.” *The Posse List*, July 6, 2010.

Heller, Emily. 2009. “Law Firms Seek Contract Attorneys in Downturn; Demand for Temporary Help Creates Innovation, Improvements.” *The National Law Journal* 31(35), May 4.

Seemuth, Mike. 2004. “A Helping Hand: Do You Need a Temp?” *New Jersey Law Journal*, August 16.

³⁶ Laufer, Linda. 2005. “Crossroads: Contemplating Contract Work.” *New York Law Journal* 234, August 26, p. 16.

³⁷ 2009fc “The Contract Attorney Market: Status, Trends and Outlook-Part 1.” *The Posse List*, April 2, 2009.

Jones, Leigh. 2005. “More Firms using Temp Attorneys; Rising Discovery Costs Drive Trend. Firms Add

Workplace Experiences

Within the workplace there are spatial elements of office organization that separate and define temporary lawyers from other legal staff. This separation of temporary lawyers from other lawyers within the same firm corroborates the study's quantitative findings of temporary lawyers' professional activities. Temporary lawyers are often crammed into large, poorly lit, and shabby rooms with small cubicles³⁸ or where "the carpet is worn and dirty, the walls are scuffed, and there isn't a massive floral arrangement [such as those in the "cushy area" of the law firm where guest and permanent staff reside] in sight, or even a place to put one"³⁹ Standard maintenance on these office centers is sometimes lacking as illustrated by restrooms described by temporary lawyers as having "an aesthetic inspired, it seems, by a recent spread in *Filling Station Digest*" which are protected from temporary lawyers with combination locks.⁴⁰ Though some office conditions are low, reported as "'meat factories' that put several workers in one room" there are also "some practices will allocate separate offices and support staff for temporary workers"⁴¹ pointing to the variability in the experiences of temporary lawyers' experiences and the unstable place temporary lawyers reside in the legal labor marketplace. Despite close quarters, temporary lawyers may set up camp at their cubicles or in conference rooms which "become war rooms"; in order to put in the

Contract Lawyers; The Integration Issue." *The National Law Journal* 28(56), October 10.

Laufer, Linda. 2005. "Crossroads: Contemplating Contract Work." *New York Law Journal* 234, August 26, p. 16.

³⁸ Ibid.

³⁹ St. Thomas, Roxana, 2009b. "Notes from the Breadline: Comes a Time (Part III)." *Above the Law*, May 21, 2009.

⁴⁰ Ibid.

⁴¹ Jones, Leigh. 2005. "More Firms using Temp Attorneys; Rising Discovery Costs Drive Trend. Firms Add Contract Lawyers; The Integration Issue." *The National Law Journal* 28(56), October 10.

hours required to stay on their project “with little or no time for family or anything else”.⁴² Both temporary lawyers and permanent lawyering staff describe these workplaces as having “a circuslike atmosphere”, like “a legal sweatshop”⁴³, or as a “meat factory”.⁴⁴ A temporary lawyer describes his or her office environment as “god-awful — literally. We have 10 people in a room of less than 200 square feet of space. It’s in the middle of the floor where “real people” actually walk by and stare”.⁴⁵ Discontents regarding physical working conditions are chronicled by temporary lawyers anonymously on the internet, through personal blogs and forums, where such spaces are described as “a windowless basement room littered with dead cockroaches, and [where] six of seven exits were blocked.”⁴⁶

Stigma

The working experiences faced by temporary lawyers can be traced to their stigma, which is, in turn, based on preconceptions of the innate inferiority in character, intelligence, and professional values of these workers. While there is some evidence of stigma in legal media publications others are contrary, indicating the prevalence of such

⁴² Laufer, Linda. 2005. “Crossroads: Contemplating Contract Work.” *New York Law Journal* 234, August 26, p. 16.

Triedman, Julie. 2006b. “Upstairs, Downstairs; BarTalk; Law Firm Temps are Furiously Blogging About their Work Conditions. Slaves of New York.” *American Lawyer* 28(3), March 1.

⁴³ Triedman, Julie. 2006a. “Temporary Solution: Law Firms Say They Don’t Like Using Contract Attorneys. Yet, More and More, They’re Hiring Hundreds of Temps at a Time.” *American Lawyer* 28(9), September 1, p. 96.

⁴⁴ Jones, Leigh. 2005. “More Firms using Temp Attorneys; Rising Discovery Costs Drive Trend. Firms Add Contract Lawyers; The Integration Issue.” *The National Law Journal* 28(56), October 10.

⁴⁵ Lat, David, 2010. “Skaddenfreude: A Look Inside the Life of a Kirkland & Ellis Contract Attorney.” *Above the Law*, Aug. 17, 2010.

⁴⁶ Kay, Julie. 2009. “Cheaper by the Hour: Use of Contract Attorneys Grows, as do the Complaints.” *The National Law Journal* 31(19), January 12.

Triedman, Julie. 2006b. “Upstairs, Downstairs; BarTalk; Law Firm Temps are Furiously Blogging About their Work Conditions. Slaves of New York.” *American Lawyer* 28(3), March 1.

ideas in the legal community at large which they attempt to dispel.⁴⁷ One article describes a rejection letter a previous temporary lawyer received from a legal recruitment firm illustrating the reluctance of firms to consider temporary lawyers for permanent associate positions and the restricted career mobility temporary lawyers face. The letter as cited in the article states

I note that your recent experience has been on an hourly/contract basis. In our experience as the top legal recruiter in the U.S., I've found that law firms typically look to hire attorneys who've come from full-time, permanent positions in other law firms. They accept nothing less from us. This is in no way meant to downplay your abilities as an attorney; it's just a fact I've encountered year after year. Law firms simply are not eager to hire attorneys whose background consists of contract work.⁴⁸

This disdain for temporary lawyers permeates the law firm atmosphere and can even be seen from the non-legal support staff of the firm where, upon realizing the lawyer in front of her was a new temporary attorney of the firm the “receptionist turns her back, as though she is afraid she will catch something unpalatable just from looking at me”⁴⁹ as well as staffing agents who find work for temporary lawyers.⁵⁰ As temporary lawyers tend to come from lower-tiered schools or, if they come from top-tier schools, lower in their classes than their peers, they are seen as lawyers who couldn't cut it in law school or even private practice.⁵¹ Within the legal realm law school status and standing are

⁴⁷ Katz, Karen. 2002. “Shattering Contract Attorney Myths.” *The Rhode Island Law Tribune*, January 23.
Tamber, Caryn. 2003a. “Temporary Lawyers Finding Homes at Law Firms.” *Palm Beach Daily Business Review*, April 10.

Tamber, Caryn. 2003b. “Temporary Workers Reap Benefits of Tight Job Market.” *The Legal Intelligencer*, April 1.

⁴⁸ Mystal, Elie, 2010. “Are Contract Attorneys Getting Blacklisted?” *Above the Law*, June 23, 2010.

⁴⁹ St. Thomas, Roxana. 2009a. “Notes from the Breadline: Comes a Time (Part II).” *Above the Law*, May 12, 2009.

⁵⁰ *Ibid.*

⁵¹ Bufithis, Gregory, 2010. “Contract Attorneys, 'Status' and a Paradigm Shift in their Favor ... with some

considered critical variables of worth. Those who are not in the top percentile of their class or law school tier are not even worth considering as professionals according to such blog discussions as “Where do Non-Top Tier Grads Go? Post-Bar Contract Attorney Work”.⁵² Temporary lawyers are also seen as those who lack dedication to the legal profession. There is some truth to this notion in that temporary lawyers often use their time between projects for more personal projects and who prefer the lack of substantive work and responsibility that comes with temporary positions over permanent ones. Those who prefer temporary lawyering may value these benefits over the risks that sporadic employment entails, such as uncertain incomes.⁵³

Working Offsite

As the cost of temporary attorneys and the work they do is a big concern for firms, particularly in minimizing costs, firms have relocated this work to where costs are lower. Document review centers have been set up off site in places where the cost of office space is low such as Charlotte, North Carolina and Atlanta, Georgia rather than house temporary attorneys in firms’ upscale offices in New York City, the District of Columbia, or Chicago. This practice is known as onshoring or farmshoring and is not

Observations by Gabe Acevedo.” The Posse List, March 7, 2010.

Lat, David. 2007b. “Where Do Non-Top-Tier Grads Go? Post-Bar Contract Attorney Work.” *Above the Law*, Sept. 26, 2007.

⁵² Friedman, Julie. 2006a. “Temporary Solution: Law Firms Say They Don’t Like Using Contract Attorneys. Yet, More and More, They’re Hiring Hundreds of Temps at a Time.” *American Lawyer* 28(9), September 1, p. 96.

⁵³ Adcock, Thomas. 2002. “Temporary Lawyering Is Not What It Once Was.” *New York Law Journal*, September 20.

Katz, Karen. 2002. “Shattering Contract Attorney Myths.” *The Rhode Island Law Tribune*, January 23.

Laufer, Linda. 2005. “Crossroads: Contemplating Contract Work.” *New York Law Journal* 234, August 26, p. 16.

limited to the legal industry.⁵⁴ Onshoring is related to the more well known practice of offshoring services to developing countries where operating costs are much lower. Contrary to popular belief, this practice is not limited to manufacturing and technical support; legal work, such as the work temporary lawyers perform, can also be offshored to places such as India. Though, in principle, offshoring and onshoring are similar, law firms and clients are leery to fully embrace offshoring most legal work because of concerns over the quality of work and issues of privacy and confidentiality.⁵⁵ The existence of offshore temporary legal markets also implies the deprofessionalization of legal work with implications for its workers, in the form of a secondary labor market, and the organization of law firms in general.

Compensation

As a subgroup of the legal profession, temporary attorneys have many shared experiences. As implied by their name, their employment tends to be time-based; time spent on a specific project or time delegated through contracts based on six month or yearly periods.⁵⁶ Their compensation is determined on an hourly basis, anywhere from

⁵⁴ 2009d. "Contract Attorney Work Grows ... but in Onshore Centers, not India." *The Posse List*, Feb. 20, 2009.

2009h. "Legal market in North Carolina Continues to Grow." *The Posse List*, Jan 7, 2009.

2010e. "Law Firms Look To 'In-Sourcing' To Slash Costs." *The Posse List*, April 29, 2010.

⁵⁵ 2009d. "Contract Attorney Work Grows ... but in Onshore Centers, not India." *The Posse List*, Feb. 20, 2009.

2010d. "Law Firms Express 'Growing Enthusiasm' for Contract Lawyers." *The Posse List*, June 22, 2010. Coster, Helen. 2004. "Briefed in Bangalore: The Inside scoop on Legal Outsourcers." *American Lawyer* 26(11), November 1.

⁵⁶ Bufithis, Gregory, 2009a. "Trends in the Contract Attorney Market – Part 1, An Overview." *The Posse List*, May 26, 2009.

Lat, David, 2008c. "Staff Attorney / Discovery Attorney Salaries: Open Thread." *Above the Law*, July 21, 2008.

\$35 to \$65 an hour⁵⁷ depending on the type of project and on the project's location.

The amount firms pay for temporary attorneys and the amount they charge clients for temporary attorney work is a source of conflict between staffing agencies, law firms, clients, and temporary attorneys. As noted, through staffing agencies firms find temporary attorneys for projects and then pay the staffing agencies a certain percentage, as high as 100%, for their services.⁵⁸ Firms then charge clients for services. These billing rates can vary, some even equaling the billing rates of associates causing clients to begin scrutinizing these transactions and the use of temporary attorneys more closely.⁵⁹

To circumvent the staffing agencies, and the associated fees, some firms have begun to hire temporary attorneys directly, on a project basis. In addition to bypassing agency fees this practice of directly hiring temporary attorneys clouds the client billing process.⁶⁰ Such practices can also cause problems for firms as temporary attorneys may feel they should be treated as permanent employees, as illustrated through a discussion from the informal sources on the staff attorney case referenced earlier with the formal professional sources.⁶¹ As the least powerful entity in this relationship, temporary attorneys tend to have little influence in employment debates between law firms, clients,

⁵⁷ 2008b. "A Primer on Agency Pricing and the Bid Process." *The Posse List*, June 21, 2008.

⁵⁸ *Ibid.*

⁵⁹ 2008c. "In Xerox Class Action, Fees for Temp Lawyers Take Center Stage." *The Posse List*, Nov. 25, 2008.

⁶⁰ 2008a. "Primer: How 'Direct Hire' Works." *The Posse List*, Dec. 16, 2008.

2009i. "The Marking Up of Contract Lawyer Costs." *The Posse List*, July 25, 2009.

Jones, Leigh. 2005. "More Firms using Temp Attorneys; Rising Discovery Costs Drive Trend. Firms Add Contract Lawyers; The Integration Issue." *The National Law Journal* 28(56), October 10.

⁶¹ Lat, David, 2008b. "Covington and Its 'Staff Attorney Ghetto'?" *Above the Law*, March 18, 2008.

Mystal, Elie, 2009. "Yolanda Young Amends Complaint, Intends To Seek Class Certification Against Covington." *Above the Law*, Aug. 24, 2010.

Schuchman, Lisa. 2008. "Breach of contract - BarTalk; Are Contract Positions the New Dumping Ground for Minority Lawyers?" *American Lawyer* 30(50), May 1.

and staffing agencies such as in the aforementioned legal dispute.⁶²

Information regarding any fringe benefits temporary lawyers receive is spotty. Temporary attorneys generally do not enjoy the same fringe benefits of their full time counterparts such as retirement plans, parental leave, or sick days nor do they get overtime pay despite being hourly workers⁶³ as also seen in the case of *Koplowitz v. Labaton Sucharow, LLP* discussed earlier. Due to their relatively short tenure they may not qualify for other government-mandated programs such as the Family Medical Leave Act. However, the lack of fringe benefits for temporary attorneys is common among most categories of temporary workers, professional or not (Rogers, 2000).

Changes in the Temporary Lawyer Labor Market

Since emerging in 1990s and with accelerated growth since early 2000's, the temporary lawyering labor market has experienced rapid changes as no set model for temporary attorneys on a mass scale existed previously. The temporary lawyering market is still evolving as lawyers and firms come to terms with its existence. Some reports suggest that more organized and stable business models are being formed, spearheaded by such companies as Howrey and Dewey which specifically specializes in document review services.⁶⁴

The recent recession of the late 2000s has also changed the temporary lawyer

⁶² 2008b. "A Primer on Agency Pricing and the Bid Process." The Posse List, June 21, 2008.

⁶³ Lat, David, 2007a. "Contract Attorney Work and Overtime Pay: What's the Deal With That?" Above the Law, Sept, 27, 2007.

⁶⁴ 2006a. "The Howrey Way." *American Lawyer* 28(9). Sept. 1, p. 101.

2009f. "E-discovery Vendor Revamps Pricing, Contract Attorney Work in Europe, Webinars, and More." The Posse List, Jan. 22, 2009.

Triedman, Julie. 2006a. "Temporary Solution: Law Firms Say They Don't Like Using Contract Attorneys. Yet, More and More, They're Hiring Hundreds of Temps at a Time." *American Lawyer* 28(9), September 1, p. 96.

labor market. As firms face tough economic times, reducing costs becomes an even higher priority. Consequently, firms have been laying off permanent associates, effectively increasing the temporary lawyer labor pool while at the same time decreasing the stigma of such temporary work and increasing the competition for these positions.⁶⁵ The mass of litigation resulting from the financial and housing crises during this time, as well as disasters such as the BP oil spill in 2010 have greatly increased the demand for document reviewers.⁶⁶ At some firms, the remaining associates keep their billable hours high by doing document review formerly done by temporary lawyers,⁶⁷ in a way attempting to reprofessionalize that labor. As firms become more hesitant to hire permanent associates, some have been screening from temporary lawyers for possible candidates for associate positions⁶⁸ which could indicate the decrease in the stark segmentation between temporary and permanent lawyers within large law firms. All of these factors can impact the unstable temporary attorney as well as the general legal labor market. As the labor market adjusts to the increased need for deprofessionalized labor as well as the increased corporatization of law firms, law firms must reconcile these changes into their organizational structure.

⁶⁵ 2009b. "Cadwalader's New Manpower Model: Contract Attorneys." *The Posse List*, August 2, 2009.

2009e. "Contract Attorneys and the Changing Legal Landscape." *The Posse List*, Feb. 13, 2009.

Heller, Emily. 2009. "Law Firms Seek Contract Attorneys in Downturn; Demand for Temporary Help Creates Innovation, Improvements." *The National Law Journal* 31(35), May 4.

Myers, Jennifer. 2001. "Legal Market Feeling Pain In All Corners." *Legal Times*, October 22.

⁶⁶ 2010b. "Do We Smell Doc Review Projects A-comin' ... or Perhaps it's Just the Stench of Petroleum?" *The Posse List*, June 8, 2010.

⁶⁷ 2009a. "The Billable Hour and Contract Attorneys." *The Posse List*, Jan. 30, 2009.

2009e. "Contract Attorneys and the Changing Legal Landscape." *The Posse List*, Feb. 13, 2009.

⁶⁸ Tamber, Caryn. 2003a. "Temporary Lawyers Finding Homes at Law Firms." *Palm Beach Daily Business Review*, April 10.

Tamber, Caryn. 2003b. "Temporary Workers Reap Benefits of Tight Job Market." *The Legal Intelligencer*, April 1.

Conclusions

The qualitative data provided by the informal legal media sources compliments the quantitative analysis of this study by providing more detailed and individualized information regarding the work experiences of temporary lawyers and trends within the legal labor market. They also more fully describe the effects of temporary lawyers on law firms, firm organization, and the legal labor market areas which were not addressed directly through the quantitative data. These sources describe temporary lawyering work as mostly routine document review with working conditions far worse than those of permanent associates. Even so, they do offer the possibility for entrepreneurial specialists to use a consultant-type model of temporary lawyering in order to do substantive and prestigious legal work. With different work and working environments, for the most part, these informal sources support the deprofessionalization of legal labor in large law firms, and emergence of the temporary lawyer segment of the legal labor market. Due to the stigma faced by these lawyers and their formal qualifications they have little chance of finding career mobility outside of this temporary legal labor market.

CHAPTER 5: Contemplating Workers, the Work they perform, and the Labor Markets they Inhabit

This study examined the working conditions of temporary lawyers relative to their permanent counterparts. As an exploratory study, it has provided basic sociodemographic data regarding these employees, a description of how this type of worker came about, and a look into their working lives. As there is little scholarly literature regarding temporary lawyers, information was drawn from the formal literature of the legal profession for background information regarding the history and corporatization of large law firms, echoing much of the sociological literature, as well as professional perspective on temporary lawyers and their inclusion within the profession. These formal sources show a growing concern within the profession regarding the corporatization of the profession and routinization of professional tasks (Baker and Parkin 2006; Johnson and Coyle 1990; Sterling and Reichman 2010). As formal professional sources, law reviews, bar ethics opinions, and court cases provide the profession's perspective of the historical events which lead to an atmosphere in which intraprofessional stratification is expanding and has permeated the large law firm. Law reviews also serve as an avenue for professionals to voice their concerns over these historical changes and the emergence of temporary lawyers within the profession (Baker and Parkin 2006; Dunnigan 1998; Heinz 2009; Johnson and Coyle 1990; Pollack 2006; Price 2003). Ethics opinions from professional regulating bodies provided context for the profession's reaction to the increased use of

temporary lawyers while incorporating their use into professional practice to maintain the integrity of the profession (ABA Formal Op. 08-451; ABA Formal Op. 88-356; Fla. Bar Op. 88-12; KBA E-328). Two court cases alleged the conflict between temporary lawyers and law firms where issues of career mobility and the professional nature of temporary lawyers' work were challenged (Koplowitz; Young). These sources provide the historical context for the quantitative and qualitative analysis of this study.

To explore the characteristics and working environments of temporary lawyers a combination of quantitative and qualitative sources were examined. As a quantitative source, wave two of the American Bar Foundation's *After the JD (AJD)* study was used to compare temporary and permanent lawyers on a number of different variables (Dinovitzer, Nelson, Plickert, Sandefur, Sterling 2009). A few differences were found in the sociodemographic background of these lawyers. There were also differences found in the type of work performed, professional activities, and satisfaction with the substantive nature of work between temporary and permanent lawyers. Many of these more abstract variables had mixed results and were difficult to interpret without further information about the working experiences of temporary lawyers. Overall, the classification of temporary or permanent lawyer had only a small effect on these variables. To address the abstract, mixed results, and small effect of temporary lawyering found through the quantitative analysis, qualitative sources were used to enhance the understanding of these results as well as to bolster the quantitative findings due to some issues regarding the *AJD* data source. Qualitative sources for this study, in the form of legal media articles and online blogs provided information on the working experiences, recruitment,

motivations, and compensation of temporary lawyers. More broadly, these sources discussed trends in the legal labor market, both temporary and otherwise, examining issues such as onshoring and offshoring of legal labor and the stigma temporary lawyers face. These sources indicated that temporary lawyers encountered poor working conditions and discriminatory stigma within the legal labor market, confirming some of the data found in the quantitative analysis. The mixed results of the quantitative analysis on work type were addressed through these sources, at least partially.

Based on the findings of this study, there is intraprofessional stratification between temporary and permanent lawyers within large law firms. As a group, temporary lawyers do not share the same experiences, as some perform routinized legal labor almost exclusively while others perform more substantive and prestigious work through specialization and entrepreneurialism. The initial expected findings of this study assumed a homogeneous group of temporary lawyers. While this assumption was shown incorrect through the analysis, the findings regarding routinized temporary lawyers met most of initial expectations of the study.

This study also set out to describe the characteristics and working lives of temporary lawyers, particularly in relation to permanent lawyers, within the large law firm environment. Guiding this exploration were a few research questions. First, I asked how temporary lawyers' sociodemographic characteristic and their qualifications, formal and informal, related to permanent lawyers in large law firms. Considerable differences between the two were expected based on literature regarding broader stratification within the legal profession (Hagan et al. 1991; Heinz et al. 2005; Sandefur 2001). This study

found mixed results with regard to sociodemographic variables, with temporary lawyers more likely to be female and to be divorced. Confirming expectations, this study found that there were differences in formal and informal qualifications of temporary and permanent lawyers. Formally, permanent lawyers were more likely to attend elite schools. Informally, permanent lawyers were more likely to interact socially with peers, senior attorneys, and partners allowing them access to the social capital needed to succeed within the large law firm (Hagan et. al 1991). As temporary lawyers are isolated from such interactions, they are seen as outsiders within the profession, a stigma that restricts their career opportunities.

Second, I asked how the working conditions, such as their workplace environment, the type of work they perform, and career outcomes, of permanent and temporary lawyers compare. As an effect of intraprofessional stratification, I expected the working conditions for temporary lawyers to be more hostile and negative toward temporary lawyers relative to permanent lawyers. I expected temporary lawyers to perform highly routinized work and for them to have shorter career ladders, or fewer opportunities for growth within the profession, than permanent lawyers based on the sociological literature regarding the use of contingent labor forces within the global marketplace (Rogers 2000; Sennett 1998). This study found through the qualitative analysis that the working environment was poorer than for permanent lawyers and that there was considerable hostility towards temporary lawyers within the legal labor market. Regarding the type of work temporary lawyers performed, this study had mixed findings. Quantitative sources showed some routinized as well as substantive and prestigious tasks

being performed by temporary lawyers, though permanent lawyers performed more substantive and prestigious tasks overall. Qualitative sources evidenced temporary lawyers performing routinized work, in the form of document review, almost exclusively, though the possibility of a temporary lawyer as an entrepreneurial legal specialist was presented.

The career outcomes of temporary lawyers can be extrapolated from the qualitative sources of this study, with temporary lawyers expecting stunted career growth relative to permanent lawyers. As temporary lawyers work outside of partnership tracks of large law firms while experiencing stigma for their work as temporary lawyers, and with little opportunity to gain social capital. For the most part, they have little opportunities for advancement into prestigious partnership or permanent counsel positions. This gets to the third point, where I asked if there was limited mobility between temporary and permanent lawyers, with the expectation that this would be the case. This study showed a working environment where there is little mobility between temporary and permanent lawyers, where stigma and the lack of opportunities to build social capital would prevent temporary lawyers from acquiring permanent lawyering positions. However, there is a possibility for permanent lawyers to become temporary lawyers, just not the other way around. This lack of mobility as well as physical and social isolation within the workplace can serve as an indicator of decreased the decreased mobility of temporary lawyers within a segmented legal labor market within the large law firm labor pool (Lautsch 2002; Smith 1983).

Fourth, I broadly asked what implications temporary lawyers, as a relatively new

type of worker in large law firms, hold for the organization of legal work and for the legal profession. I expected the presence of temporary lawyers in the legal labor market of large law firms to be disruptive to the associate-to-tournament organizational model from which large firms have grown and by which they are sustained (Galanter & Palay 1991). These workers could either be incorporated into the firm structure, by expanding tracks of peripheral work and shrinking the tracks of core legal work. This alternative structure is itself unstable with too little partnership positions to motivate permanent lawyers needed to sustain the tournament model (Kordana 1995; Price 2003; Rutherglen and Kordana 1998) and so temporary lawyers could represent a different model of success within the profession leading to an abandonment of the associate-to-partner tournament by younger lawyers. The findings of this study are inconclusive in this respect. There were some findings showing that markers of prestige may be changing within the profession to control over one's time rather than a partnership title. There was also evidence that partnership positions are growing fewer and fewer while non-partner positions, both those that are substantive and prestigious as well as routinized ones, are growing. Even so the large law firm continues to hold considerable prestige within the profession and partnership positions are still sought after, which fulfills the basic assumption of the tournament model.

Results

The results of this study illustrated the intraprofessional stratification that exists between temporary and permanent lawyers within large law firms. Despite the disparities between these groups, the lines between routinized professionals and those who perform

substantive or prestigious work are not clear cut. Contrary to expectations, a number of temporary attorneys found in this study through both the quantitative and qualitative sources, do perform substantive professional tasks though many also perform routinized tasks per expectations. This discrepancy is illustrated within the qualitative data where legal media sources and blogs offer accounts of legal drudge work as well as entrepreneurial success as specialized legal consultants. “The Posse List” in particular promotes this idea of a temporary attorney as a specialized legal consultant working with large law firms and in house counsel as, according to their website, many of the contributors to their blogs have done so.

While the entrepreneurial path discussed by “The Posse List” is a possibility based on the quantitative data, the other accounts of drudge work and stigma associated with temporary lawyering work makes the possibility of this prestigious work slim. The bulk of temporary attorneys seem to fit into a class of marginalized professional workers within the large law firm environment. The lack of professional and social involvement of these workers as well as the mixed findings in prestigious work performed, found in the quantitative analysis of the *AJD* data, contributes to this conclusion. As these lawyers have little interaction with those influential in the firm, they have fewer opportunities to affect or participate in influential power positions of the firm. Large law firms occupy a prestigious position within the legal profession: those who hold power and influence in these firms are considered part of the professional elite. The mixed result in the quantitative analysis of the amount of substantive and prestigious work performed by temporary lawyers also corroborates this view. While a few temporary lawyers

performed prestigious or substantive work, there were also those who performed routine work much of the time. Rather than encompassing one, comprehensive class of lawyer, temporary lawyers seem to have varied experiences within the legal labor force.

In order to integrate the quantitative and qualitative results in this study, the issues brought forth by the quantitative analysis will be discussed while using the qualitative sources to put the results into context.

Demographics

Compensation and Law School— Both quantitative and qualitative sources agree that compensation for temporary attorneys is substantial, especially relative to economic indicators such as the poverty line or the average household income, though the qualitative sources bemoan the differences in temporary lawyers' wages relative to law school investment and to the wages of associates in large law firms. Despite high wages, relative to rest of United States, temporary attorneys inherently have less security of cash flow and income, more so than their permanent counterparts. They may also have less access to employer-sponsored fringe benefits, though little information regarding these types of benefits is present within the study from either quantitative or qualitative sources. More research on this aspect of temporary lawyers' working conditions and environment would be needed to fully explore any differences in temporary and permanent lawyers' professional working experiences.

Though this study couldn't statistically compare the salaries of temporary and permanent lawyers, the quantitative data showed no temporary attorney reported earning over \$200,000 while a large number of permanent attorneys reported making over this

amount. Reports from the qualitative sources lamenting the low wages for temporary lawyering work, especially relative to the large amount of law school debt incurred by lawyers and the wages of associates, indicate that these wages are considered low for those working in large law firms as legal professionals. The exclusion of temporary attorneys from partner, equity or non-equity, track positions found through the qualitative analysis is also indicative of a relative loss of earnings potential over the career of a temporary attorney.

Both the quantitative and qualitative sources indicate that law school ranking has an affect on likelihood of becoming a temporary lawyer. Specifically, graduating from a law school which is not in the top tier increases one's chances of becoming a temporary lawyer. This finding corroborates with other historical accounts of larger intraprofessional stratification (Clydesdale 2004; Heinz et al. 2005; Sandefur 2001). With the increasing pool of lawyers from lower tiered schools the competition between lawyers increases, placing more bargaining power with law firms and forcing some lawyers into the temporary labor pool. This excess legal labor continues to bolster the historical segmentation of the profession and the maintenance of systematic elite structures and mechanisms. While the profession expands at the bottom levels, the routinized lawyers, elites become more concentrated. The increased consolidation of large firms and increasing number of non-equity partnership tracks, discussed with the professional literature, would indicate that these elite positions are also decreasing. While the profession expands, the group of professional elite narrows and those lowest in the legal labor market become routinized.

Race and Gender - Historical markers of discrimination based on race are not present in the quantitative analysis performed here as there were no statistically significant differences in race found. Issues of race are touched on in the qualitative sources, but mostly indirectly. The issue of race discrepancy between temporary and permanent lawyers is salient in the allegations presented in the case of *Young v. Covington & Burling LLP*. Here the defendant accused a law firm of discriminating against African Americans by relegating them to staff attorney positions, where there is no possibility for partnership and where routinized legal work is relegated. More research on this aspect of temporary lawyering is needed as race, historically as seen from the professional and sociological literature, is a large factor in general stratification within the profession though closely tied to placement based on law school attended.

Another historical aspect of discrimination within the legal profession is that of sex. The quantitative analysis does show that women are significantly more likely to be temporary attorneys than men. The qualitative data, as well as theories from the literature, accounts for this in two competing ways. On the one hand, it is postulated that women are more likely to choose to be temporary lawyers as it offers flexibility to attend to family obligations. This theory may be discounted by reports of the long hours temporary attorneys face while working on projects with little control over their hours while on said projects. Also, the uncertainty of income between projects may make it difficult to maintain a stable home life. The quantitative analysis found no statistical difference in the presence of children in permanent and temporary lawyers' homes though they did find that temporary lawyers' spouses were more likely to be employed. Spousal

employment may provide the stability in income needed in this case.

An alternative explanation is that this gender discrepancy is the result of historical discrimination in law school placement as well as general hostility towards women within the legal profession and law firms. Any gender differences within the legal profession are not discussed in depth within the qualitative sources. More research as to why women or more likely to be temporary lawyers would be needed as it is not adequately addressed by the sources used in this study.

This study corroborated the stratification of the legal profession based on sex described in the sociological literatures (Hagan et al. 1991; Heinz et al. 2005; Glazer 1991) as seen within the large law firm environment. The intraprofessional stratification found here indicates that patterns within the broader stratification of the profession at large have permeated the large law firm labor market, as it too becomes segmented.

Experiences

Despite qualitative evidence to the contrary, temporary attorneys were not more likely to report experiencing discrimination in the workplace on the basis of race, religion, ethnicity, gender, disability, or sexual orientation. Both the cases of *Young v. Covington & Burling LLP* and the informal legal media sources report stigma and discrimination against temporary attorneys within the legal labor market and within large law firms. This broader stigma addresses issues which were not included in the quantitative analysis which affect mobility between labor segments. This broader issue of stigma within the labor market has implications for the career paths of temporary attorneys and the power structure of firms and the profession. The qualitative

descriptions of stigma faced by temporary lawyers indicate that there is little career mobility between temporary and permanent positions within the law firm environment. Some sources report that this stigma and exclusionary practice is changing, particularly with changes regarding the recession of the late 2000s but it has yet to be determined. The excess of legal labor, described earlier, may contribute to this continued stifling of mobility between permanent and temporary job sectors.

The negative experiences of temporary lawyers and the stigma they face found in the qualitative sources in this study corroborate with the literature regarding other temporary workers. These workers have differing working environment, conditions, and prospects through covert systematic processes resulting in the segmented labor market (Rogers 2000). These are general descriptions of contingent workers' experiences though some contingent professional workers, such as some engineers who share routinized tasks rather than assigning tasks exclusively to segments of the labor market, do not have these experiences (Whalley 1984). The results of this study find that legal professionals do encounter segmentation in the large law firm labor market.

Activities

The quantitative analysis showed that temporary lawyers are less likely to be active in firm or professional social circles such as spending recreational time with senior lawyers, partners, or peers, or participating in local bar or civic activities. The qualitative analysis corroborates this, citing physical isolation of temporary lawyers from the rest of the firm's lawyers, and the intense stigma they face within the profession where their professional identity and dedication is constantly questioned. The lack of opportunities

to increase their social capital and networking opportunities within the firm can also hinder the career prospects of temporary lawyers. The limited ability to interact with other lawyers of higher status within the firm may affect their ability to get permanent jobs, when and if they pursue them. This isolation perpetuates and feeds the stereotypes and resulting stigma as the isolation sets temporary lawyers up as an outsider group within the firm with whom permanent lawyers may not relate well.

Professional Matters

The quantitative analysis regarding the types of professional tasks, either substantive, prestigious, or routine matters, is interesting in that it contradicts, to some extent, the findings of the qualitative data.

Substantive and Routine Matters - Much of the qualitative data indicates that temporary lawyers primarily perform highly routinized labor, particularly document review, most of the time if not exclusively. These reports indicate the deprofessionalization of professional tasks which are relegated to a specific segment of the legal labor market. Workers performing work in this capacity are outcasts of the profession. Despite this, the quantitative data showed that about half of temporary lawyers did not perform document review at all, though more temporary lawyers than permanent lawyers reported doing document review most or all of the time. Conversely, the quantitative analysis showed a surprising number of temporary attorneys performing substantive legal tasks such as alternative dispute resolution and legal strategy formation.

This split in how temporary lawyers spend their time contributes to the idea that temporary lawyers' work can vary broadly depending on entrepreneurial drive and

specialized skill of individual lawyers. The quantitative data may have picked up both populations, those relegated to routinized tasks as well as entrepreneurial specialists, explaining the discrepancy both within the quantitative analysis and between the quantitative and qualitative sources with regard to the substantive and prestigious matters both lawyers perform.

Prestigious Matters - To a lesser extent, the quantitative analysis showed a split in the amount of prestigious professional tasks temporary lawyers performed. While many did not perform such tasks, a few did. Such tasks were not attributed to a temporary lawyers' work within the informal sources, outside of "The Posse List". From professional sources, this type of work for temporary lawyers is discussed within the ethics opinions, such as the one issued by the ABA (1988). While the guidelines discussed here do not particularly exclude temporary lawyers from performing some of these prestigious tasks client disclosure and consent is strongly recommended for some of these matters. Particularly, such matters as keeping clients informed, negotiating, and appearing in court where temporary attorneys may be construed as having a strong association with the firm, and thus viewed as a member of the firm by the public, are met with apprehension by the ABA ethic's committee. Thus it was surprising to find that a few temporary lawyers did interact directly with clients or the public in court. While client disclosure, based on the ABA recommendations, may explain these results, there is little information regarding these tasks within from the qualitative sources examined. Future research into the use of temporary lawyers for interaction with clients and the public would be needed to interpret these quantitative findings.

Overall, permanent lawyers were more often performed prestigious tasks across the board. The substantive and routine tasks given to temporary lawyers can vary widely, but the prestigious tasks involving client and court interactions and the management of legal tasks seem reserved for permanent lawyers within large law firms. Temporary lawyers may not be exclusively routinized professionals, but higher rates of prestigious work are still performed by permanent lawyers. The differences between the professional matters performed by temporary and permanent lawyers are indicative of the routinization of professional tasks and of the lawyers who perform them as discussed in the sociological literature (Smith 1983; Susskind, 2008; Van Hoy 1995) and confirmed by these analysis.

Satisfaction

The quantitative analysis found a significant difference in the level of satisfaction between temporary and permanent lawyers regarding the substance of work performed, measured through variables such as the level of responsibility at work, the substantive area of work, tasks performed, intellectual challenge of work, skill building opportunities, and the value of their work to society. These data are reinforced by findings within the qualitative data as well and are indicative of some intraprofessional stratification. As the case of *Koplowitz v. Labaton Sucharow, LLP* illustrates the dissatisfaction of temporary lawyers with the substantive area of their work. In that case, temporary lawyers argued that the work that they do for large firms is not professional in nature, thus they are entitled to overtime compensation.

No significant difference was found between temporary and permanent lawyers in

their satisfaction with their respective work settings, or the power track experienced at their work. Despite this, the qualitative data indicated that many temporary lawyers are displeased with both these aspects of their working environment. The informal sources used in this study describe awful working conditions experienced by temporary lawyers and their dissatisfaction with such conditions.

The professional literature expresses concern over the narrowing of opportunities for advancement within firms, and by extension the profession, through the creation of multi-tiered partner tracks and non-partner tracked positions. Multi-tiered partner tracks create non-equity partner positions within the firm, filtering a larger number of lawyers into salaried rather than shareholder positions. Non-partner track positions have a similar effect within firms but create positions with more varied levels of prestige within the firm and the profession (Dolinko 2005; Heinz 2009; Henderson 2005). These differing career tracks, the different career outcomes, and the lack of mobility between them indicate a growing segmentation of the large law firm legal market. The informal sources in this study also indicate that temporary lawyers are dissatisfied with their opportunities for advancement, particularly their ability to procure a permanent, associate position. This concern of the profession was not illustrated by the statistical comparison of satisfaction with the career tracks experienced in large law firms between temporary and permanent lawyers.

Conclusion

Overall the results from these qualitative and quantitative sources are consistent with the initial hypothesis that there are differences between temporary and permanent

lawyers and that these differences are the result of intraprofessional stratification within the large law firm environment. These findings do, however, show that the experiences of temporary lawyers vary and consist of at least two broad groups: routinized professionals and entrepreneurial specialists.

This study provides information on a new type of worker in the legal profession, the temporary lawyer in the large law firm, a group that has captured little scholarly attention. Studying these workers provides insight as to how professions react internally, through changing the organizational structure of firms, to external forces, from globalization and the loss of professional power in the marketplace. While there is much literature on stratification within the legal profession there is little regarding stratification within the workplace environment in which there are large discrepancies between legal professionals who work alongside one another in the same organization in a segmented labor market. By providing some background information on their inception, place in the profession, background, and working conditions, this study has brought attention to these workers so that there may be further investigation into the growing intraprofessional stratification and segmentation within large law firms.

There are two main weaknesses of this study. The first weakness is the inclusion of “staff attorney” as temporary attorneys within the quantitative analysis. The mixed result of the analysis, showing that temporary lawyers are not a completely homogenized group, may be a result of this inclusion, as “staff attorneys” may differ radically from other temporary lawyers. There is evidence within the informal sources to indicate that at least some staff attorneys can be considered temporary lawyers for this study. Identifying

“staff attorney” within the analysis as a temporary attorney essentially broadened the definition of temporary attorney, as used in this study to those beyond contract attorneys to those who exist outside the tournament model and who, hypothetically perform routinized professional labor and represent routinized workers in a segmented legal labor market. The staff attorney programs at some large firms use a direct hire model, rather than staffing agencies and the associated contracts, to have a standing pool of attorneys who perform routinized legal labor. These staff attorneys, while considered

“permanent employees” of the firm can cycle through a firm within a week though some could stay longer, either on a yearly or permanent basis dependent upon the work flow of the firm and the performance of the individual staff attorneys. The designation of staff attorney does include those that experience such high turnover as well as those who have more stable employment within staff attorney programs at firms. While not explicit, this behavior among firms and staff attorneys can be extrapolated from the informal data where the staff attorney designation can be informally be considered as permanent-temporaries where permanent employees perform the work of temporary workers as “permanent contract attorneys”⁶⁹. Despite this, the murky conclusions found through the quantitative analysis may indicate that these conclusions may be incorrect. The lack of explicit temporary attorneys was an unforeseen limitation to the data and with only 18 temporary attorneys no statistical analysis would have been possible. The second weakness of the study is the nature of the blogs used as qualitative

⁶⁹ Billy Merck, “McDermott to Create "Second Tier" of Associates - Above the Law - A Legal Tabloid - News, Gossip, and Colorful Commentary on Law Firms and the Legal Profession,” *Above the Law*, November 2, 2007, http://abovethelaw.com/2007/11/mcdermott_to_create_second_tie.php.

sources used. These sources could be said to hold extreme bias and to be purveyors of suspect information. While these sources do hold some bias it is not as extreme as other sources which could have been used. Admittedly, the authors and editors of the two blogs could be said to be at least critical if not antagonistic to the existing tournament organizational styles in large firms and the current law school system. However, the articles on these blogs are not simply the anonymous rantings of disgruntled workers as the authors of these blogs are trained lawyers either working as journalists, as is the case of the “Above the Law” blog, or as activists for alternative job ladders and opportunities for lawyers, such as “The Posse List” blog. There are plenty of sources with more powerful, slanderous narrative materials that could have been used but would have also held greater bias and a narrower focus.⁷⁰ These sources used, though they carry a slight bias, are still appropriate for exploring the experiences of temporary lawyers in the legal labor market, such as used in this study.

Further Discussion

The results of the study were mixed which reflected the variability of temporary lawyers’ work experiences. While some of the data indicates a deprofessionalization of professional tasks and workers there are still a number of temporary lawyers who do not fit this description and perform substantive professional labor. Some of the qualitative data indicates that temporary lawyers make up a segmented labor market with little mobility between routinized, temporary legal positions and substantive, permanent

⁷⁰ For example, the blog “Temporary Attorney: Sweatshop Edition” (<http://temporaryattorney.blogspot.com/>) whose front page has a sidebar, featured prominently next to the most recent article, soliciting disgruntled workers to email their “horror stories”. This blog provides a self description as follows: “With over 5,000 daily visitors, help expose the nasty sweatshops, swindling law schools, and opportunistic staffing agencies”.

positions. Another explanation for the disconnect present between the quantitative and qualitative data may be a function of the criteria used to identify temporary and permanent lawyers within the quantitative analysis. Within this analysis employment titles were used to determine temporary and permanent attorneys. As these are a new class of employees, there is no singular, industry-wide title. Therefore, some of the non-partner track titles may have been included as temporary lawyers, accounting for some of the discrepancies between the quantitative and qualitative source in the type of work performed by temporary lawyers. As this class of lawyers solidifies within the legal market an industry standard title may develop.

Further research on temporary lawyers could focus on interviewing specific pools of temporary lawyers, such as those performing document reviews, to investigate possible segmentation of the profession and to confirm some of the reports found in this study's qualitative analysis. Such research in to individual's experiences within the legal labor market would compliment the broad findings, crucial to understanding individuals' experiences, regarding the state of the profession. law firm organization, and legal labor market found in this study. These populations could be found using temporary lawyering staffing agencies or through email listservs such as the one maintained by "The Posse List". Participant observation of these work environments, while providing more accurate information on temporary lawyers' working conditions, would be difficult to execute based on the professional qualifications needed to participate in such work and the reluctance of law firms to participate in such studies. The limitations of finding these workers and the possible bias of those willing to be studied, discussed earlier, would

likely affect any such study of temporary lawyers.

Temporary lawyers are one part of a changing model for the organization of law firms. These changes are the result of corporatization strategies of large law firms and have led to changes in career paths and opportunities for lawyers within large firms, including temporary lawyers. There are both positive and negative effects arising from these changes. Through these changes new avenues of success, beyond partnership, are formed such as control over one's own time and work substance. With the narrowing of traditional avenues of success, many peripheral workers can miss out on these new opportunities as they are relegated to routinized work and lack the opportunities to expand their skills due to the stigma they face in the marketplace.

APPENDIX

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Appendix B - Position Titles for Practicing Attorneys in Private Law Firms

| | |
|--------------------------------|-------------|
| Solo Practitioner | 5 |
| Associate | 1152 |
| Non-Equity Partner | 178 |
| Equity partner/shareholder | 166 |
| Contract Attorney | 18 |
| Of Counsel | 39 |
| Supervising/managing Attorney | 9 |
| Staff Attorney | 18 |
| Entry Level Manager/consultant | 1 |
| Business Owner/Operator | 5 |
| Other | 59 |
| Total | 1650 |

Appendix C - Salary for Previous Year by Title

| Salary | <u>Title</u> | |
|---------------|--------------|------------|
| | Temporary | Permanent |
| 0-49,999 | 1 | 97 |
| 50000-59999 | 1 | 69 |
| 60000-74999 | 3 | 124 |
| 75000-99999 | 7 | 184 |
| 100000-124999 | 2 | 185 |
| 125000-149999 | 1 | 80 |
| 150000-174999 | 2 | 64 |
| 175000-199999 | 2 | 30 |
| 200000-224999 | 0 | 30 |
| 225000-249999 | 0 | 15 |
| 250 and over | 0 | 19 |
| Total | 19 | 897 |

Appendix D - Uncondensed Law School Ranking by Title

| Uncondensed Law School Ranking | <u>Title</u> | | | |
|--------------------------------|------------------|----------------|------------------|----------------|
| | Temporary | | Permanent | |
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |

| | | | | |
|---------------------------|-----------|-------------|-------------|-------------|
| Top 10 | 1 | 3.7% | 124 | 10.1% |
| Top 11-20 | 8 | 29.6% | 159 | 13.0% |
| Top 21-100 | 9 | 33.3% | 620 | 50.7% |
| Tier 3 | 7 | 25.9% | 188 | 15.4% |
| Tier 4 | 2 | 7.4% | 117 | 9.6% |
| Degree from other country | 0 | 0.0% | 3 | 0.2% |
| Unaccredited | 0 | 0.0% | 11 | 0.9% |
| Total | 27 | 100% | 1222 | 100% |

Appendix E - Race by Title

| Race | Temporary | | <u>Title</u> Permanent | |
|------------------------|------------------|----------------|---------------------------|----------------|
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| African American | 2 | 5.7% | 112 | 7.3% |
| Latino | 6 | 17.1% | 137 | 8.9% |
| Native American | 1 | 2.9% | 17 | 1.1% |
| Asian/Pacific Islander | 2 | 5.7% | 143 | 9.3% |
| White | 23 | 65.7% | 1114 | 72.6% |
| Other | 1 | 2.9% | 12 | 0.8% |
| Totals | 35 | 100.0% | 1535 | 100.0% |
| Condensed Race | | | | |
| African American | 2 | 5.7% | 112 | 7.3% |
| White | 23 | 65.7% | 1114 | 72.6% |
| Other Minority | 10 | 28.6% | 309 | 20.1% |
| Totals | 35 | 100.0% | 1535 | 100.0% |

$$\chi^2(5, N = 1,570) = 6.0581 \quad p = 0.301$$

Appendix F - Political Party Affiliation by Title

| Political Party | Temporary | | <u>Title</u> Permanent | |
|-----------------|------------------|----------------|---------------------------|----------------|
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Democrat | 17 | 58.6% | 592 | 50.9% |
| Republican | 6 | 20.7% | 304 | 26.1% |
| Independent | 3 | 10.3% | 129 | 11.1% |
| Unaffiliated | 2 | 6.9% | 116 | 10.0% |
| Other | 1 | 3.4% | 22 | 1.9% |

| | | | | |
|----------------------------------|------------------|----------------|------------------|----------------|
| Totals | 29 | 100.0% | 1163 | 100.0% |
| Condensed Political Party | | | | |
| | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Democrat | 17 | 58.6% | 592 | 50.9% |
| Republican | 3 | 10.3% | 129 | 11.1% |
| Independent | 6 | 20.7% | 304 | 26.1% |
| Unaffiliated/other | 3 | 10.3% | 138 | 11.9% |
| Totals | 29 | 100.0% | 1163 | 100.0% |

$\chi^2(3, N = 1,192) = 0.7226 \quad p = 0.868$

Appendix G - Spousal Employment by Title

| | | | | |
|------------------------|----|------------------|------------------|------------------|
| | | <u>Title</u> | | |
| Spouse Employed | | Temporary | Permanent | |
| | | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> |
| Yes | 25 | 89.3% | 914 | 74.5% |
| No | 3 | 10.7% | 313 | 25.5% |
| Totals | 28 | 100.0% | 1227 | 100.0% |

$\chi^2(1, N = 1,255) = 3.1807 \quad p = 0.075$

Appendix H - Living with Children by Title

| | | | | | |
|--|----|------------------|----------------|------------------|----------------|
| | | Temporary | | Permanent | |
| Living with children or young adults? | | <u>Frequency</u> | <u>Percent</u> | <u>Frequency</u> | <u>Percent</u> |
| Yes | 21 | 60.0% | 864 | 56.8% | |
| No | 14 | 40.0% | 658 | 43.2% | |
| Totals | 35 | 100.0% | 1522 | 100.0% | |

$\chi^2(1, N = 1,557) = 0.1457 \quad p = 0.703$

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CURRICULUM VITAE

Angela M. Edwards received her Bachelor's degree in Psychology and Religion from the University of Mary Washington in 2006. After a break from academia, while working in human resources for two years, she earned her Master's of Arts in Sociology from George Mason University in the spring of 2011.