

SO, YOU WANT TO BE A LAWYER? THE QUEST FOR PROFESSIONAL STATUS IN A CHANGING LEGAL WORLD

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INTRODUCTION

The quest for professional status remains a constant feature of early careers despite changes in opportunities for new lawyers. The narratives of early-career lawyers after two to three years of practice and again after nine to ten years, expose the realities of large law firm practice both before and during the financial crisis. Few lawyers had high expectations about becoming partners in large law firms. They accepted the reality of long hours of work and lack of control over their schedules and even their private lives, albeit with the hope of some future payoff. Money was important and obtaining “prestige” and “status” was equally so. While partnership at the firm was hardly realistic, lawyers still believed that they would at some time become what they imagined “real lawyers” to be—professionals with autonomy, responsibility, and most importantly control over their work. Many, somewhat belatedly, realized that joining a large law firm was neither a safety net nor a guaranteed path to success. The financial crisis has meant less work, leading more and more lawyers to become “performance casualties” in their firms. The focus on the bottom line means that a lot of the resources associated with professional socialization have been cut; large law firms are no longer a venue to learn how to become a leader, a client developer, or even a good case manager. Faced with diminishing work, the lucky associates have either retooled by obtaining additional degrees or changing substantive areas of practice, or moved to smaller firms where work is easier to obtain. Still, they remain committed to the goals of professional status. Firms that look to recruit and retain the best and the brightest would be wise to consider the quest for professional status as an important motivation for young lawyers.

Debates about the transformation of the large law firm have been a consistent feature of legal scholarship for nearly two decades. Law review symposia¹ and articles from law and the social sciences, books,² and media

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1. See, e.g., Symposium, *Empirical Research on the Legal Profession: Insights from Theory and Practice*, 22 GEO. J. LEGAL ETHICS 1249 (2009); Symposium, *Globalization of*

accounts make up the landscape. Together they chronicle the impact of changes such as increased firm size, increased competition among lawyers and law firms, shifting models of competition and management, increased probationary periods for new lawyers, expansion of the internal labor market of firms to include new statuses, a surprising juxtaposition between significantly higher salaries and greater levels of turnover, as well as changing relationships between lawyers and their clients.

In light of these changes, many predict the demise of the dominance of the large law firm, arguing that the business model of large law firms has run its course. William D. Henderson and Leonard Bierman for example, suggest that when law firm short-term profits replace long-term (professional) firm values, the organizational and social mechanisms that have held firms together will become severely, if not fatally, weakened, creating space for a new paradigm of law practice.³ Robert L. Nelson, by way of contrast, suggests that such claims are speculative at best.⁴ As he notes, large law firms have long “been predicated on business relationships.”⁵ The notion of law as a business is not new. While there is little doubt that the increasing focus on profits per partner has exposed or elevated the metrics associated with the business of law practice as distinguished from its more professional attributes, it is less clear that these new metrics have superseded professional values at firms.⁶

The current financial crisis has accentuated some of the debate. A recent survey on the state of the legal profession conducted by LexisNexis found

the Legal Profession, 14 IND. J. GLOBAL LEGAL STUD. 1 (2007); *Stein Center Conference: Professional Challenges to Large Firm Practices*, 33 FORDHAM URB. L.J. 1 (2005); Symposium, *The Growth of Large Law Firms and Its Effect on the Legal Profession and Legal Education*, 64 IND. L.J. 423 (1989); Conference, Stanford Center on Ethics, John and Terry Levin Center for Public Service and Public Interest Law, and Stanford Law Review, *The American Legal Profession: Current Controversies, Future Challenges* (Mar. 14, 2008).

2. RICHARD L. ABEL, *AMERICAN LAWYERS* (1989); MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991); MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994); JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (rev. ed. 1994); JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993); ROBERT L. NELSON ET AL., *LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* (1992); ROBERT L. NELSON, *PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM* (1988); DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* (2000).

3. See generally William D. Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms*, 22 GEO. J. LEGAL ETHICS 1395 (2009).

4. ROBERT L. NELSON, *Are We There Yet? Empirical Research and the Predicted Demise of Large Law Firms: An Introductory Essay*, 22 GEO. J. LEGAL ETHICS 1249, 1253–54 (2009).

5. *Id.* at 1253.

6. For a discussion of professional values that persist regardless of economic incentives, see Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 376–77 (1985).

that over half of the attorneys surveyed believe that the recession will permanently change the way business is done in the legal industry.⁷ Corporate counsel report that they have shifted more work in house.⁸ Forty-one percent of private practice attorneys report that they have offered alternative fee arrangements to clients; fifty-seven percent believe that ultimately the billable hour will give way to alternative billings.⁹ However, a majority continues to believe that there will always be a place for hourly billing.¹⁰ “Eight in ten private practice attorneys (77%) agree that clients are too focused on reducing costs at the expense of quality/long term results.”¹¹ Rachel Littman, writing for the New York Bar Association Journal, claims that “[t]he structure of how law is practiced, particularly at large Manhattan firms, will likely change. Permanently.”¹² But, paradoxically Littman then goes on to cite a survey of chief legal officers that “showed a relatively low amount of confidence in law firms’ seriousness about changing their model for delivering legal services, in spite of growing pressure from the economy, the clients, and the law schools.”¹³

The tension between the pressures from clients to reduce cost and the values of professionalism, has been exacerbated by the current financial crisis and has further exposed the conflict between two institutional logics—corporate and professional—that have been an undercurrent of large-firm law practice for decades.¹⁴ As described by Roger Friedland and Robert K. Alford, institutions are a combination of “symbolic systems which have nonobservable, absolute, transrational referents and observable social relations which concretize them.”¹⁵ Institutions provide meaning for social life, including vocabularies of motive for social action. Individuals “live across institutions” that have interdependent and contradictory logics.¹⁶ Thus, for example, attorneys confront the competing logics of the market

7. LEXISNEXIS, STATE OF THE LEGAL INDUSTRY SURVEY: COMPLETE SURVEY FINDINGS 10 (2009).

8. *Id.* at 19.

9. *Id.* at 6–7.

10. *Id.* at 13, 15.

11. *Id.* at 22.

12. Rachel J. Littman, *Finding the Silver Lining: The Recession and the Legal Employment Market*, N.Y. ST. B.A. J., Sept. 2009, at 16, 18, 20, available at <http://digitalcommons.pace.edu/lawfaculty/598/>.

13. *Id.*

14. This contradiction was obvious in Carroll Seron’s study of solo and small-firm attorneys. CARROLL SERON, *THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS* (1996). Seron’s book describes how “the tension between commercialism and professionalism itself produces a point of creative reference for articulating alternative professional paths.” *Id.* at 143. Although institutional and economic forces are key determinants of practice, Seron’s work also shows how gender norms, values, and choices matter to the way the business of law unfolds. What is striking is how similar the stories have become, a point that we will elaborate in the text.

15. Roger Friedland & Robert R. Alford, *Bringing Society Back In: Symbols, Practices, and Institutional Contradictions*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* 232, 249 (Walter W. Powell & Paul J. DiMaggio eds., 1991).

16. *Id.* at 255.

and client needs, on the one hand, and that of the ideology of their profession, i.e., professional autonomy, on the other.¹⁷ The logic of legal markets may depend on the nonmarket attributes of the professional at *the* same time that market logic undercuts the meaning of professionalism.¹⁸ Friedland and Alford suggest that these conflicts between institutional logics are the source of political conflicts through which the institutional structure of society, or, in our case, a profession becomes transformed.

Neoinstitutional theory suggests that the uneasy tension between law as professional practice and law as a business has been held at bay through social mechanisms of decoupling. To maintain legitimacy in the face of external uncertainty, organizations often decouple their formal policies that conform to socially sanctioned ideals from actual, ongoing practices that may not support those ideals.¹⁹ Organizations may adopt techniques, policies, and programs that signal their legitimacy irrespective of the underlying realities of practice. The creation of nonequity partnerships may be an example of a decoupling mechanism suggesting a professional authority that belies the routine work that many “partners” in law firms actually do. Websites rarely distinguish nonequity partners from other partners and clients may or may not know which of the partners working on their matters are nonequity. Similarly, the construct and importance of billable hours creates the appearance of rational efficiency and accountability that is inconsistent with the craft of lawyering.

More than most, the cohort of lawyers interviewed as part of the *After the JD*²⁰ (AJD) study is caught within this contradiction. The AJD lawyers

17. Nelson describes the divergence between the ideology of professional autonomy and the practice of client advocacy in Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503, 543–45 (1985). He suggests that the power of large law firms has less to do with their relationships with powerful clients and more to do with their more general role in making the systems for allocating rights and benefits legitimate. *Id.* at 544–45.

18. See Friedland & Alford, *supra* note 15, at 256. Another example of an institutional conflict would be that between legal markets and families. See, e.g., JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000); Joan C. Williams, *Canaries in the Mine: Work/Family Conflict and the Law*, 70 FORDHAM L. REV. 2221 (2002).

19. For a general discussion of decoupling see the classic article by John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC. 340, 357 (1977); James D. Westphal & Edward J. Zajac, *Decoupling Policy from Practice: The Case of Stock Repurchase Programs*, 46 ADMIN. SCI. Q. 202 (2001).

20. *After the JD* (AJD) is the first longitudinal study tracking the careers of a large national sample of lawyers entering legal practice in the year 2000. The project has collected two waves of data as of 2010. The first wave (AJDI) was gathered after two to three years of practice, and the second wave (AJDII) was collected after seven years of practice. Currently plans are under way for a third wave of data collection to be completed in 2012. For further details about the methodology and overall findings of the study, see RONIT DINOVIETZ ET AL., AM. BAR FOUND. & NALP FOUND. FOR LAW CAREER RESEARCH & EDUC., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS (2009) [hereinafter DINOVIETZ ET AL., AFTER THE JD II]; RONIT DINOVIETZ ET AL., AM. BAR FOUND. & NALP FOUND. FOR LAW CAREER RESEARCH & EDUC., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS (2004) [hereinafter DINOVIETZ ET AL., AFTER THE JD I].

would under most models be moving beyond the probationary period of practice to become “real” lawyers. These are the lawyers who at nine and ten years of practice are on the verge of advancing toward partnership, even if that is to become a nonequity partner, just at the time when the business of law has become most clearly coupled with professional practice. “When institutions are in conflict, people may mobilize to defend the symbols and practices of one institution from the implications of changes in others.”²¹ In the face of external pressures to change, then, we might expect lawyers to hold dearly to the trappings of professionalism that distinguished them traditionally.

Our research examines the experiences of these young lawyers who began their careers in large law firms, arguably the elite legal institutions. We ask two broad questions:

- (1) How have these lawyers experienced the first decade of law practice?
- (2) What do they anticipate as the impact of the financial crisis on the trajectory of their careers?

We find that despite significant changes in their prospects for partnership, these lawyers hold on to the aspirations for professional status that drew them to the practice of law in the first place. Few expect to achieve that status from simply having worked at a large law firm. Some have been discarded by their firms. Others are in perpetual holding patterns. A few have turned to small firms or have begun solo practices to become the professional they thought they would be when they first joined large firms.

I. LARGE-FIRM LAWYER THEMES: WHAT DOES THE LITERATURE SAY?

To set the stage for the experiences of those in the AJD cohort and how the financial crisis may affect their paths, we need to consider a number of changes that have occurred within the private practice of law and large law firms in particular over the last several decades. These changes have drastically changed the experience of being an associate in a law firm and are changing how young lawyers approach the profession in general.

1. The large law firm began to grow significantly beginning in the decades of the 1960s and continuing through the 1990s.²² In 1970, a firm of 100 lawyers would be considered a large firm. Today, large firms have

21. Friedland & Alford, *supra* note 15, at 255.

22. GALANTER & PALAY, *supra* note 2; Marc Galanter & William Henderson, *Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008); Marc Galanter & Thomas M. Palay, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747 (1990); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998).

over 500 lawyers with the new megafirms composed of almost 4000 lawyers.²³ The growth in the late 1990s and in the beginning of the twenty-first century often occurred through mergers that combined firms across states, e.g., Washington D.C.-based Wilmer, Cutler & Pickering merged with Boston-based Hale and Dorr, and more recently across nations.²⁴ The recent merger of Hogan & Hartson and Lovells, the British firm, is an example of how firms have grown internationally.²⁵ Managing firms of such size and across jurisdictions has raised important questions about the efficacy of the large law firm model built on a foundation of law firm practice in the twentieth century.²⁶

2. Increased competition among lawyers and among law firms has increased as the number of individuals practicing law and the law firms themselves have grown. Firms compete to hire the most promising law graduates in these emerging megafirms. The consequence has been an ever-escalating starting salary for new associates that has now reached \$160,000/year for associates starting in the largest law firms²⁷ and in the largest legal markets. As beginning salaries have increased for new lawyers, seasoned partners have become reluctant to devote their limited time to socialization and training, feeling that these lawyers can “sink or swim” on their own.

3. Compensation systems in large law firms have undergone major changes as well. Traditionally, law firms employed a “lockstep” system of compensation based on seniority within the firm. The model for seniority compensation began with the Cravath law firm.²⁸ However, very few firms have the clientele and firm culture that would enable them to preserve this “gentlemanly” system of compensation today. Instead, many, if not most, large law firms have moved to productivity-based compensation systems referred to as “eat-what-you kill” systems.²⁹ In these firms, partners appear less willing to share their clients with associates for fear that the associates

23. KRONMAN, *supra* note 2; *The 2009 NLJ 250: Annual Survey of the Nation's Largest Law Firms*, NAT'L L.J., Nov. 9, 2009, at 1; Henderson & Bierman, *supra* note 3.

24. KRONMAN, *supra* note 2. For growth of large firms, see *id.* at 277–78 n.23.

25. See Jeffrey Hogan, *Lovells Set a Date*, NAT'L L.J., Nov. 2, 2009, at 17.

26. Henderson & Bierman, *supra* note 3, at 1396–97; see also *id.* at 1420–24, 1428–29.

27. Karen Sloan, *The Decade Was Fun While It Lasted*, NAT'L L.J., Dec. 21, 2009, at 12.

28. See the description of the origination of the Cravath System in ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS: CRAVATH PARTNERS AND ASSOCIATES 1948–1964*, at 657–58, 774 (Supp. 1964). For a detailed explanation of seniority-based systems such as that found at the Cravath firm, see Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 341–43 (1985).

29. These systems are also referred to as productivity-based systems. For an explanation of these systems, see MILTON C. REGAN, JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* 25–26 (2004); Gilson and Mnookin, *supra* note 28, at 346.

might steal them.³⁰ The changes in compensation have correlated with a deterioration of relationships among lawyers in law firms.

4. The increasing competition in legal markets and growth of the size of large law firms has led to changes in the time it takes to advance to some kind of partnership status, a change that appears to be trying the patience of young lawyers. In the 1970s and most of the 1980s, the path to partnership took five to six years. By the mid-1990s, partnership tracks were extended to seven to nine years. This extension of the path to partnership has encouraged associates to leave these large firms before they ever come up for the partner decision.³¹

5. The internal labor market of large firms has changed drastically to a more stratified system with more statuses and, in particular, more rungs on the ladder to partnership. Today most large firms have adopted at least a two-tier partnership system: nonequity and equity partnerships.³² Nonequity partners are partners in name only and do not share in the profits of the law firms.³³ Some firms have multiplied the number of associate statuses to stall the progression of associates on the path to partnership.³⁴ The addition of nonequity partnerships has also been associated with the increased emphasis on the importance of business generation for lawyers within the firm. Once nonequity positions were created within law firm structures, firms began to establish minimum books of business for promotion to equity partner. These figures are not publicly distributed, and law firms often calculate a book of business based on a three-year average in order to qualify for consideration for equity partnership.³⁵ Equity partnership can no longer be assumed to be a permanent status at some firms. The legal press is full of reports of partners who have been “de-

30. Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U. L. REV. 923 (2002).

31. See Bryant G. Garth & Joyce Sterling, *Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love*, 22 GEO. J. LEGAL ETHICS 1361 (2009).

32. See, e.g., NELSON, *supra* note 2, at 3, 9; William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691 (2006).

33. See, e.g., NELSON, *supra* note 2, at 9; Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27 (2004).

34. See Martha Neil, *Reed Smith Sidesteps Lockstep, Creates 3 Classes of Associates*, A.B.A. J. ONLINE, Oct. 27, 2009, http://www.abajournal.com/weekly/reed_smith_sidesteps_lockstep_creates_3_classes_of_associates. In addition, a number of firms recently have adopted policies requiring associates to pay back compensation to the firm if they do not make their hours requirement. See Posting of Elie Mystal to Above the Law, *Tiered Payscale at Patton Boggs Leads to Associates Giving Back Money*, http://abovethelaw.com/2009/02/tiered_payscale_at_patton_bogg.php (Feb. 23, 2009, 12:10 EST).

35. For a discussion of use of the three-year averages, see CATHLIN DONNELL, JOYCE STERLING & NANCY REICHMAN, *GENDER PENALTIES: THE RESULTS OF THE CAREERS AND COMPENSATION STUDY 20* (1998).

equitized” because they have not produced sufficient business or because they have reached a certain age.³⁶

6. In addition to the growth of large firms and the increased salaries for new associates, there has been an associated increase in the required billable hours for associates. Major legal markets (Los Angeles, New York, and D.C.) now exceed 2000 billable hours as a minimum. Compensation and billable hours are tied together by attaching bonuses to associates who bill more than the required minimums, making required hour minimums mythical ground floors. The literature has emphasized how women are discouraged to join large law firms since they will be forced to make choices between careers and families.³⁷ But the long hours are taking their toll on male associates as well.

7. There has been a shift in the nature of relationships between lawyers and their clients; the balance of power has shifted in favor of the clients.³⁸ Clients shop for lawyers and demand lower rates. Clients are less likely to retain a firm to handle all their legal affairs and instead prefer to interview law firms when they have a large legal matter that needs representation. This shift in the balance of power has renewed discussions of alternative billing. The dramatic rise of the power of in-house counsel, contrary to Erwin Smigel’s classic study of the Wall Street Lawyer,³⁹ has made firm lawyers more dependent on approval from clients and more compliant to the wishes or demands of clients.

II. FINANCIAL CRISIS DISRUPTIONS

Not surprisingly, the financial crisis has had a disparate impact on younger lawyers, many still in the probationary period of practice with large firms or in alternative positions at those firms, including contract lawyers, of-counsel positions, and the like. Business at many, if not most, law firms slowed down sharply during the deepest parts of the current recession, with the exception of litigation in some places. Even when the business has been there, clients are less able to pay, leading some firms to change the way that they bill their clients. The effects have been dramatic on salary, advancement, and even retention of jobs.

36. See John P. Heinz, *When Law Firms Fail*, 43 SUFFOLK U. L. REV. 67, 68–69 (2009); see also David B. Wilkins, *Partner, Shmartner: EEOC v. Sidley Austin Brown & Wood*, 120 HARV. L. REV. 1264 (2007).

37. See Ronit Dinovitzer, Nancy Reichman & Joyce Sterling, *The Differential Valuation of Women’s Work: A New Look at the Gender Gap in Lawyers’ Incomes*, 88 SOC. FORCES 819, 821, 825 (2009); Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291, 390 (1995); Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299, 305 (2008); Reichman & Sterling, *supra* note 30, at 923; Reichman & Sterling, *supra* note 33, at 48; see also A.B.A. COMM’N ON WOMEN IN THE PROFESSION, *THE UNFINISHED AGENDA: A REPORT ON THE STATUS OF WOMEN IN THE LEGAL PROFESSION* (2001).

38. GALANTER & PALAY, *supra* note 2, at 56.

39. ERWIN O. SMIGEL, *THE WALL STREET LAWYER* (1964).

We have been inundated by news accounts of the responses to the financial crisis from law firms across the country. There are accounts of law firms freezing salaries,⁴⁰ reducing salaries,⁴¹ moving from traditional lockstep compensation systems to systems based on either hours billed or the elusive “merit evaluation.”⁴² Newly graduating law students have been welcomed by deferrals from big firms. Sometimes these deferrals are sweetened by the offer of money (\$30,000 to \$80,000) to go and find a pro bono or public interest project for the next year. Firms have cut back on summer associate programs or they have eliminated them altogether for Summer 2009 and possibly into the future. Now there are rumors of re-deferrals for those already sitting on hold in hopes the economy will improve quickly.

Lawyers working in these firms already have had to deal with layoffs (affecting both lawyers⁴³ and staff). Both lawyer reports and recent surveys suggest that law firms have developed myriad forms of layoffs, both direct

40. In November 2009, Covington & Burling announced that they would freeze associate salaries in offices outside of New York City. The indirect benefit for associates at Covington is that the firm had not previously reduced base salaries. Zach Lowe, *Covington Freezes Associate Salaries Outside New York*, LAW.COM, Nov. 11, 2009, <http://www.law.com/jsp/article.jsp?id=1202435339262>. On December 15, 2009, Wilmer Cutler Pickering Hale and Dorr announced they would freeze base salaries for associates at 2009 levels. The freeze is associated with a new merit-based bonus system. This appears to be a first step towards abandoning lockstep compensation for the firm. Zach Lowe, *Wilmer Freezes Salaries, Breaks Lockstep*, AMLAW DAILY, Dec. 15, 2009, <http://amlawdaily.typepad.com/amlawdaily/2009/12/salaries.html> [hereinafter Lowe, *Wilmer*]. The firm announced that it would transition to this system over the next two years.

41. Examples of firms cutting pay for associates include Allen Matkins, which announced the second cut in October 2009. Petra Pasternak, *Allen Matkins Makes Second Cut to Pay, Lays Off Associates*, LAW.COM, Oct. 27, 2009, <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1202434956006>. On November 10, 2009, Reed Smith announced a twenty percent pay cut for first-year associates. Brian Baxter, *Reed Smith Sets First-Year Associate Salaries, Reduces Billing Rates*, AMLAW DAILY, Nov. 10, 2009, <http://amlawdaily.typepad.com/amlawdaily/2009/11/reed-smith-starting-salaries-billing-cuts.html>. On November 23, 2009, Seyfarth Shaw announced that first-year associate salaries would be cut by five to ten percent. Zach Lowe, *Seyfarth Latest To Cut First-Year Associate Pay*, LAW.COM, Nov. 23, 2009, <http://www.law.com/jsp/article.jsp?id=1202435728710>. Finally, on December 11, 2009, Altman Weil reported that reduced associate pay was likely to be a permanent adjustment to the legal market. Julie Triedman, *Associate Pay Cuts Here To Stay, Say Firms, Analysts*, AMLAW DAILY, Dec. 10, 2009, <http://amlawdaily.typepad.com/amlawdaily/2009/12/associate-compensation-cuts-not-temporary-say-firms-analysts.html>. It was announced that nineteen AmLaw200 firms had cut entry-level pay since February 2009. *Id.*

42. JD Journal reported that more and more law firms are ending seniority-based pay for associates and adopting instead “merit-based” systems, similar to industries outside of the legal profession. Firms adopting these new plans include Orrick, Herrington & Sutcliffe, Sherman & Sterling, Wolf Block, Bingham McCutcheon, Reed Smith, and Howrey. JD Journal, *More Firms Adopting Merit-Based Pay for Associates*, <http://www.jdjournal.com/2009/03/16/more-firms-adopting-merit-based-pay-for-associates> (Mar. 16, 2009).

43. See Karen Sloan, *Where Have All the Flowers Gone?*, NAT’L L.J., Dec. 21, 2009, at 12. Sloan reported that the first layoffs came in January 2008 when Cadwalader, Wickersham & Taft laid off thirty-five lawyers. *Id.* By December 2009, the 250 largest law firms had laid off 5259 attorneys. *Id.*

and indirect.⁴⁴ An indirect form of layoff or what Above the Law bloggers refer to as a “stealth layoff” include those lawyers who have been asked to leave law firms for “performance issues.”⁴⁵ Many of these lawyers simply do not have enough work to keep them busy and being idle has become their “performance issue.” Senior lawyers report that they have become “lean and mean,” letting go of the fat that they had allowed to accumulate in more flush times. Of course partners also must worry given the growing numbers of de-equitized partners or partners fired for “performance issues.”⁴⁶ In addition, early-career lawyers have learned that promotion decisions have been delayed, put on hold, or simply suspended for the foreseeable future. The legal press is now reporting new “innovative” compensation measures, which will no doubt diminish compensation for early-career lawyers.⁴⁷ All of these bad news announcements are attributed to the current economic downturn, citing the impact on firm profits.

The present article focuses on the AJD lawyers who began their careers in 1999 or 2000. This cohort of lawyers is bookended between the dot-com crisis that occurred shortly after their graduation and the current crisis that began in 2008.⁴⁸ Although the data are not yet conclusive, lawyers may experience the financial crisis differently depending on the legal market, their substantive area of practice, and their status at the onset of the crisis.⁴⁹ Commentaries speculate that there will be a disproportionate impact on women and lawyers of color in the profession.⁵⁰

III. THE AJD LAWYERS

The AJD Study was designed to provide “systematic empirical data on lawyers’ careers that was national in scope and that tracked changes in the professional life course.”⁵¹ The first wave of the *After the JD* study (AJDI), launched in 2002–2003,⁵² provided a snapshot of the personal lives and careers of a nationally representative sample of lawyers admitted to the bar in the year 2000. The sample included new lawyers from eighteen legal

44. Debra Cassens Weiss, *Law Firm Layoffs Hit 10K Mark: Thursdays Most Often Bring Bad News*, A.B.A. J. ONLINE, Apr. 13, 2009, http://abajournal.com/news/law_firm_layoffs_hit_10k_mark_thursdays_most_often_bring_bad_news/.

45. Interview 6, AJDII, in Wash., D.C. (Mar. 2009) (on file with author).

46. See David Wilkins, *supra* note 36. Also, for a recent update on Sidley Austin as well as other firms that have fired or de-equitized partners, see Jeff Jeffrey, *Goodbye to Real Partners*, NAT’L L.J., Dec. 21, 2009, at 16.

47. See Lowe, *Wilmer, supra* note 40 (reporting that the new compensation system at Wilmer Cutler Pickering Hale and Dorr will encourage different career paths for lawyers and pay them accordingly).

48. See Karen Sloan, *The Decade Was Fun While It Lasted*, NAT’L L.J., Dec. 21, 2009, at 12.

49. See ROBERT DENNEY ASSOCS., WHAT’S HOT AND WHAT’S NOT IN THE LEGAL PROFESSION I (2009).

50. *Id.* at 4.

51. This description has been adopted directly from *After the JD II: Second Results of a National Study of Legal Careers*. DINOVIETZ ET AL., AFTER THE JD II, *supra* note 20, at 12.

52. See DINOVIETZ ET AL., AFTER THE JD I, *supra* note 20.

markets—ranging from the four largest markets (New York City, District of Columbia, Chicago, and Los Angeles) to fourteen other areas consisting of smaller metropolitan areas or entire states. The second wave of the AJD study (AJDII), launched in 2007–2008, examined lawyers’ careers at roughly seven years in practice. The researchers were able to get responses to the AJDII survey from almost three quarters of the AJDI lawyers and a substantial number of respondents who had not responded to AJDI but did so with AJDII. The study was designed to examine the experiences of different subgroups of lawyers at distinctive stages of their professional lives and to compare their career experiences to those of their peers. Are their experiences different from the outset or do career trajectories diverge over time? What career strategies appear most successful for young lawyers? Do these strategies vary by gender, race, and class; by legal market; by the selectivity of the law school from which lawyers graduate; or other dimensions?

The AJD cohort has been analyzed in a number of studies. After seven years of practice, this cohort of lawyers continues to experience high levels of full-time employment as well as job mobility. In the AJDI findings, AJD researchers reported that 97% of the AJD lawyers were employed and 91% were practicing law in their jobs. The results of the second survey, administered in 2007, showed a decrease in the employment rate—87% report they are working full time, while 83.5% were practicing law in their jobs. Over half of the respondents changed practice settings between AJDI and AJDII, moving out of settings such as private law firms and moving to in-house, business, or government positions. These are not just changes within one particular practice setting; there are high rates of movement across settings. Despite the high rates of mobility, most young lawyers remain very satisfied with their decision to become lawyers—in fact, 76% of the sample report that they are “extremely” or “moderately” satisfied with their career choice.⁵³ Contrary to the existing literature suggesting that women and minorities are disproportionately more likely to leave certain sectors of the legal profession than white males, we find there is a great deal of similarity in patterns of job changes across these groups of lawyers. Men, women, and lawyers of color of both genders are equally likely to exit large law firm practices and enter the business sector. The one distinction found is that black lawyers indicate the highest expectation to move from their current employers within the next two years.⁵⁴ This indication of future movement exists regardless of practice setting. While men and women tend to enter and exit practice settings in equal proportions, the researchers continue to find indications of gender inequality in lawyer careers. Women are more likely than men to be unemployed or to work part-time.⁵⁵ Even though relatively few of our respondents have been promoted to equity partner in private law firms, men are outpacing women

53. See DINOVIETZ ET AL., *AFTER THE JD II*, *supra* note 20, at 45.

54. *See id.* at 71.

55. *See id.* at 62.

in these promotions. In addition, similar to the Wave 1 findings, women's incomes as lawyers continue to lag behind those of their male counterparts in many practice settings.⁵⁶

IV. SAMPLE AND METHOD

This article is the first reporting of qualitative data from two waves of in-depth interviews with AJD cohort lawyers now almost a full decade into their practice. The sample includes forty-one lawyers interviewed in depth as part of the second wave of the AJD study.⁵⁷ Of the forty-one lawyers, twenty-five practiced in a large law firm at some point; twenty-three began in large firms. Of the twenty-five, only ten were in large firms by year nine of their careers. Five had gone to government agencies, three lawyers were now in solo practice, two had become part of corporate counsel offices, and three others had joined small firms.

V. THE FIRST DECADE OF PRACTICE

A. *Partnership Is Elusive*

The lawyers we interviewed who went to law firms had few illusions about the grueling pace of work at those firms. They anticipated the need to “invest” long hours early. As one female attorney said, “[I]t's not something I mind right now. Like again kind of the attitude of like you pay your dues and then you move on and sort of fix you know, acquire a better quality of life for yourself.”⁵⁸

Moving on did not necessarily mean partnership, however. Early on in their careers, the AJD lawyers were well aware that partnership had become more elusive. While certainly many hoped that they would be the one to slide through the narrow opening toward partnership, it was an abstract idea and not a concrete prize. As one female associate at a large law firm put it when interviewed at three years,

My plan has always been like, oh well, I'll be an, I'll be an associate for at least four or five years and then I'll figure out what I want to do with my life. . . . I'm thinking, . . . partnership right now is that I don't want to do anything to preclude myself from having the opportunity, but nor do I feel like I'm gunning for it.⁵⁹

Indeed, she left the large firm after four years, took a year and a half off, and landed at a small, specialty firm. The new firm is a spin-off from a large law firm; everyone, including the secretaries, had large-firm

56. This summary of findings is taken from DINOVIETZ ET AL., *AFTER THE JD II*, *supra* note 20, at 15.

57. 105 lawyers were interviewed in depth in the first wave of AJD. Missing from the current analysis of AJD lawyers who work at large law firms are an additional forty-three lawyers who practiced in large firms in AJDI, including some lawyers at large New York firms.

58. Interview 15, AJDI, in L.A., Cal. (May 2003) (on file with author).

59. *Id.*

experience. By the time she is interviewed in 2009 she considers herself a “service partner personality”: “I’m not a partner. I’m an associate, but I definitely have sort of, you know, clients who call me directly, you know, some smaller clients who they’ve been like ‘okay, [INTERVIEWEE] handles that’ even though it’s not officially my client.”⁶⁰ Partnership is not something she says that she focuses on or cares about. She says, “It’s just, it’s kind of like you do what you do.”⁶¹

Even those who were more focused on the possibilities for partnership right from the beginning became increasingly uncertain about the possibility of achieving it and whether or not it was something they wanted. In part, the cause is the demand for billable hours, as a female associate at a large Chicago firm explained:

[Y]ou know I was talking to a friend about this who also works here and it’s not that the hours themselves are that bad it’s just, you’re so conscious of your time all the time and that’s to me what’s very wearing. Even at home, I’m on the phone. . . . I’m always adding up the time. . . . It’s always a struggle to keep a personal life. I think this is probably one of the more livable firms as far as that goes, but I think it’s just that you have to be so conscious of it. The actual number of hours to me isn’t really nearly as bad as I thought it would be. It’s workable. It’s more that it can always spill over into the rest of your life and the limited amount of control that I have over that.⁶²

When the prospect of partnership was discussed, she indicated that she had not decided whether she wanted to go for partner or not:

Well here if I want to stay, I certainly could go for partner. I think that—and I think that I would be able to, . . . you know I work with enough of the partners, I get enough feedback on my work, the clients like me, certain ones have started to ask for me to be put on cases . . . if that’s something I want to do, that will be an option. . . . They also have alternative work arrangements here and that’s something I might consider if I felt like ‘I just don’t want to keep this schedule.’ You can do it before becoming a partner. I think that makes it hard to become a partner. Theoretically you’re supposed to be able to. And there are people who have but they tended to still end up working almost the same amount of hours. It wasn’t really very reduced. There are partners who do alternative arrangements also, so that would be something else. If I left it would be to do something totally different. I couldn’t see leaving to go to another, not even another commercial litigation firm even a smaller one. I have friends at smaller ones and I don’t see it as being very different. They might work a few less hours but if I left it would be either to go back to plaintiff’s work; I have friends who do plaintiff’s work and I might like to switch to that. Or to go off on my own. Start my own

60. Interview 15, AJDII, in L.A., Cal. (July 2009) (on file with author).

61. *Id.*

62. Interview 35, AJDI, in Chi., Ill. (June 2003) (on file with author).

practice which would also I hope ultimately entail working less. I also sometimes think about doing public interest work.⁶³

So if it is not partnership, what were these young lawyers looking for when they went to large law firms? What kinds of professional identity were they seeking?

Some joined their firms without much thought or purpose. It was simply the next thing one does, particularly if one attended an elite law school. As one young lawyer commented, “I went straight to law, through college and law school. Kind of you know half now in hindsight just to like avoid having to get a job. And so [that I like the law has] been like a purely wonderful surprise”⁶⁴ She did not like the large law firm experience and left after only a few years.

For some lawyers, practicing law has become a job that allows them to work around people they like and earn enough to keep up their lifestyle. At his first interview, Jeff,⁶⁵ a lawyer in a large Washington D.C. firm, described himself in transition. He had become an associate after two years as a contract lawyer. He was somewhat ambivalent about partnership as he saw in himself and others “maybe a desire to not push quite that hard because of the level of commitment that’s involved in that.” His wife and small child were on his mind when he commented that he “probably would be lying if I said right now I wasn’t still thinking of trying to make the track, trying to be on track, but the reality is maybe I won’t be in a year.”

By the second interview, Jeff had no expectations of becoming a partner. He described his work in support of partners involved in complex litigation and his desire to move up in the organization of his firm. As he explained it he would be “doing the same work, some different work. Moving up in chairs to the extent I can.” He plans to stay at his firm. The work is rewarding and satisfying and it pays the bills:

It allows me to have a house in a place I like, and it allows my wife to stay home with our child. There are tradeoffs . . . odds are the thing that you didn’t like about here, you’re going to find the same thing somewhere else and maybe worse. And that’s at least been my experience. . . . It’s the business model. I like the people that I work with, and I think that is the most important thing. I like the people around me.⁶⁶

B. *The Quest for Professional Status*

Still, for most lawyers, being a lawyer is more than a job. Most of the lawyers interviewed in this project joined large law firms and invested in the grueling hours, with the hope that there would be some professional return. Young lawyers, particularly those attracted to large law firms, hope

63. Interview 35, AJDI, in Chi., Ill. (June 2003) (on file with author).

64. Interview 15, AJDI, in L.A., Cal. (May 2003) (on file with author).

65. Interview 4, AJDI, in Wash., D.C. (Jan. 2005) (on file with author). Any use of names are pseudonyms adopted to disguise identity of respondents.

66. Interview 4, AJDII, in Wash., D.C. (Mar. 2009) (on file with author).

that they will increase their stock of social, human, and cultural capital to allow them to achieve a particular status in their current form, traditionally partnership, or to invest that accumulated capital into obtaining a similar professional status elsewhere.

Professions are often distinguished from occupations or mere jobs on the basis of the following “ideal” attributes: access to and control over expert knowledge, market control, self-regulation following a distinct code of behavior, and autonomy.⁶⁷

The ideal lawyer acts with autonomy and neutrality as she represents clients and advocates for issues that are generally seen as problematic or unpopular. Despite decades of scholarship that challenges such assumptions⁶⁸ and scandals that have exposed lawyers “in bed” with their clients, many young lawyers still embrace autonomy as a key marker of professional status.⁶⁹ Large law firms traditionally provided both opportunity and venue. After moving from a large firm to government and then to an industry trade group, one Washington D.C. lawyer discussed his career trajectory in terms of hesitations and regrets. In retrospect, he believed that he would have garnered greater prestige for the work he now does had he continued to work under the auspices of a large law firm. As he explained,

I work for the same clients; you have the same questions; you give them the same answers The world is the same But when the outside world looks at a lawyer from a law firm versus looking at a lawyer from a trade association, they have laundered their clients through the name of the law firm And the world doesn't think of them as slimy lobbyists. It's the same work [when you go to a law firm,] it looks like you're a neutral agent.⁷⁰

This respondent nicely captures the ideal vision of the large law firm lawyer providing professional services to clients, expecting that none of their client's taint will rub off on them. Like so many we interviewed, he relates to large law firm practice as the place to achieve that professional ideal.⁷¹

The role that becoming a partner at a large law firm once played in achieving a sense of professional status was described by a female lawyer as she expressed her disappointment at being passed over for partnership.

67. All of these concepts are problematic and contested; nevertheless, they remain ideals that distinguish professions from other kinds of jobs.

68. See, e.g., Nelson, *supra* note 17, at 504–05; see also Rayman L. Solomon, *Five Crises or One: The Concept of Legal Professionalism, 1925–1960*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION*, 144, 144–73 (Robert L. Nelson, David M. Trubek & Rayman L. Solomon eds., 1992).

69. As a professor teaching Professional Responsibility, one of the authors of this paper has found that the myth of neutrality of representation is still very much part of the ideals adopted by law students.

70. Interview 9, AJDII, in Wash., D.C. (Mar. 2009) (on file with author).

71. The assumed neutrality of the lawyer has been a concern for lawyers since the McCarthy era when lawyers needed to create a separation between the anticommunist hysteria of the public and their ability to function as lawyers. Solomon, *supra* note 68, at 162–66.

Being named partner, at least initially, was the sign that she was a “real” lawyer, a member of some special club. But, then, she had an epiphany about being passed over for promotion. She adopted a new perspective—one that maintained her notion of professional status:

At first, I was miffed—especially with how much I’ve sacrificed for this firm; I felt I needed that affirmation. “We appreciate what you do for this firm. Kate, we appreciate your work.” Partner is not just a title to me. It means something. It means that they want me here, that they want me as part of this firm. In my own mind, I felt like I needed it in order to say, “I’m a successful lawyer. I’ve made partner.” I’ve had an epiphany over the weekend. None of that is true, at all whatsoever. My epiphany with regard to partnership was “no matter what, I’m a good lawyer.” I don’t need the title “partner” to be a good lawyer. I don’t need the title. Would I like it? Yes, but I don’t need it. If I don’t make it this year, that’s fine. If I don’t make it ever, that’s fine. It doesn’t change my work quality; it doesn’t change who I am; it doesn’t change anything about me at all. It’s, it’s, you know, I’m realizing you know what? It’s an honor, but it’s not, you know, again, it’s not a necessity.⁷²

To achieve professional status, young lawyers still must accumulate capital. Although all three forms of capital recognized by social scientists (social, human, and cultural) were important in the quest for professional status, many lawyers would focus on one form or another, a strategic mistake when capital flows dried up.

1. Social Capital

Some lawyers sought out large law firms for the “connections” it would bring to them. Working at a large law firm would be proof enough that they had made it and that the time and money invested in law school was paying off. Professional identity equals status. Working for a firm with a recognized name brings a certain cache to those who work there, as one lawyer from a nonelite law school who joined a large firm after several years at small firms explained:

I’ve always wanted to work for a big firm you know that was my . . . that’s what I’ve always wanted to do, because it just sounds so cool, right? And it just sounds really cool, because you go into a room and you’re like hey what firm did you used to work for? Everybody’s announcing and you’d be like this [small] firm. Then you have to kind of give some background information. I just got tired of doing that. I really wanted to work for somewhere where people immediately recognize you. So once I got into [a large firm] I just felt like it was like the Holy Grail. Like I did what I wanted to do. Do you know what I mean?⁷³

Bryant Garth and Joyce Sterling’s recent work suggests that lawyers from nonelite backgrounds who cross the class divide to join large firms

72. Interview 39, AJDII, in Chi., Ill. (Aug. 2009) (on file with author).

73. Interview 23, AJDII, in S.F. Bay Area, Cal. (June 2009) (on file with author).

will be more likely than the elites to stay in these firms once they are there.⁷⁴ The assumption is that these lawyers are “hungrier” or more needy of the status that the large firms offer. Our small sample cannot confirm or even suggest trends. Of the twenty-three lawyers who began in large firms, slightly less than half (ten) attended elite law schools. There was no apparent difference in the number who are still practicing in firms. Still, as the interview above suggests, in economic downturns lawyers with less elite backgrounds may be particularly vulnerable.

A San Francisco male lawyer began his career in a large law firm in the city. He began law school at a lower-tier law school and was able to transfer his second year to a much higher ranked school. When asked why he joined the large firm where he was working he said, “Oh, prestige, the salary, those would pretty much be the two top things.”⁷⁵ While he raved about the amount of responsibility he was given and how much he was learning in this environment about litigation, when he was reinterviewed at Wave 2, he was working in a medium-sized firm in the Bay Area. He said that he had been told he would not be promoted to partner, since he had “time management” issues. He never described his problem in any more depth, despite probing for information.⁷⁶

After ten years of practice, a Washington D.C. male lawyer with an elite law school credential realized choosing a firm based on the prestige of the firm may not have been the best strategy. He said,

I ended up choosing a firm based on things like prestige, which don't count for anything. You don't realize it at the time . . . people are “oh, I'm interviewing with [ABC TOP FIRM]” which, well, even in law school, we knew that it was insane if you were interviewing with [ABC] or serious about [ABC], but the point is that there were a couple of places that I think things would have been very different than the prestige firms but they would have been a little bit better. I chose not to go that route [and went to a prestigious DC firm]. You think it is going to be your oyster I've learned since then⁷⁷

At the Wave 2 interview, he told us that he expected to move within the year. He described himself as “a performance casualty,” since he could not find enough work to keep him busy. Reflecting on the time when he participated in on-campus interviews, he recalled one interview he had in his 2L year:

Exactly. I wasn't listening. One of my two 2L interviews at the small firm that I was interviewing, there was an opportunity for clarity there and I didn't seize it. I asked the good question which is “why did you leave [BIG FIRM]?” because she left as a partner from [BIG FIRM]. She told me the answer. She said “I certainly didn't want to work with them.

. . . .

74. Garth & Sterling, *supra* note 31, at 1394.

75. Interview 26, AJDI, in S.F. Bay Area, Cal. (Aug. 2003) (on file with author).

76. Interview 26, AJDII, in S.F. Bay Area, Cal. (June 2009) (on file with author).

77. Interview 6, AJDII, in Wash., D.C. (Mar. 2009) (on file with author).

At the time, [I heard her say] “Rarr, rarr, rarr, rarr, rarr, rarr, rarr,” and I said “I have no idea what she said and I moved on.”⁷⁸

Today in 2009, he realizes that he should have been more attentive, since the prestige of the law firm he joined did not guarantee him success. He is now working for the federal government.

2. Skills and Expertise (Human Capital)

For others, professional identity was linked to the substantive experiences they gained. In response to the question of what exactly he had been looking for in a law firm, a California male lawyer responded,

[W]ell I was, I do patent law now and I had it fairly clear in my mind that that was what I was interested in pursuing so I focused primarily on firms that had a patent prosecution department and the reputation of the patent law partners [at this firm] is fairly good and I enjoyed working, I enjoyed interviewing with them.⁷⁹

Although he described having gained useful IP experience at the large firm, he recognized that he could do as well on his own by bringing in clients for his own practice, rather than big law firm practice. He explained his decision to leave the large firm and begin a solo practice:

You know I think it was kind of just it was something I had in the back of my mind for a couple years, and as I was starting to bring in clients I just saw that there was an opportunity to develop my own client base. And the partnership track there was . . . at that point I was still four or five years out, and so I figured if I’m having success bringing in clients you know maybe . . . I think it would you know there was an opportunity to do it on my own, so I made a decision to leave. At that time I had a few clients that I had been working with over the past and you know they were firm clients. So I had one potential client that was coming online, so I made the decision okay let’s time this so at least I had one month’s worth of work with the hope that I’d be able to grow that and let people know what I was doing, where I was going, and seeing if any other clients would come with. So it was kind of . . . it was a bit of a gamble but it worked out.⁸⁰

Another associate, in Chicago, was very clear in defining her sense of being a lawyer in terms of the “experiences” and skills she needed to acquire for herself. She had spent years as a paralegal and, more than others, knew what she needed to learn:

Each year I look ahead and see what I would want to do—did I want to get more deposition experience, more contact with clients, more smaller cases that I was running, more sure of myself, obviously I would have to be supervised by a partner to be able to bring in some sort of business. I got my first case referral last December I think, it was very small but it

78. *Id.*

79. Interview 13, AJDI, in L.A., Cal. (May 2003) (on file with author).

80. Interview 13, AJDII, in L.A., Cal. (June 2009) (on file with author).

was exciting. And things that I wanted to learn, I did want to learn a lot about [my specialty].⁸¹

She continued talking about how she was able to work on small cases and where she found them:

I just tell people a lot what I would like to do. To me it seems like, it's probably this way everywhere, but I think it's especially true here, if you do a really good job it seems like things come to you and so, yeah, I'll ask people and then maybe they'll say "Well maybe talk to so and so" but I've also gone with what does come to me and work with that but for instance, when I was working with [PARTNER], he knew I wanted to go to court more so he put me on a lot of cases where we're local counsel so that's the main thing that I'm doing and it's not arguing major motions but I'm in court and you know getting familiar with the system. Other partners on the larger team I'm on, I would just call up and say, "you know I'd really like to help with the jury research" and I'm the only other person helping with it, I'm probably the only one who asked. So he put me on there.⁸²

This female associate was clear that she acquired new marketable skills because she asked for them. She made sure that partners were well aware of what skills she had already acquired and what she still wanted to learn. She reported that this was a successful tactic, and that the partners would give her plenty of opportunities. Even bringing her first client to the firm was a quest for more experience. She reported that her first client

was actually from an attorney I was local counsel for . . . and he called me up and said, actually his associate called me up and just wanted some information, I gave it to him and then he called us and said "we need local counsel" and I said "would you care what partner is on it" and he said "no" so I got to open it in my own name and get the credit for it.⁸³

3. Professional Socialization (Cultural Capital)⁸⁴

Still, for others starting at the large law firms, professional identity was linked to the professional socialization they thought they would get from partners at these firms. Partners provided answers to questions and, in

81. Interview 35, AJDI, in Chi., Ill. (June 2003) (on file with author).

82. *Id.*

83. *Id.*

84. Here we argue that workplace socialization can be an important source of cultural capital that enhances one's professional status. It may not substitute for the manners and tastes that accompany early elite experience. *See generally* Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 *LAW & SOC'Y REV.* 1 (2008). Relying on AJDI data, Ronit Dinovitzer and Bryant Garth examine job satisfaction as a mechanism through which social and professional hierarchies are produced and reproduced. The article finds that lawyers' social background (including law school rank) decreases career satisfaction and increases the odds of aspiring to change jobs. Those lawyers coming from more prestigious social backgrounds are less satisfied with their first jobs and more likely to indicate that they intend to change employment settings. Still, learning how to be a lawyer by watching the habits and manners of more senior lawyers is an important component of professional training.

some cases, opportunities. What was missing was the experience of professionalism.

A woman at a large law firm indicated that one of the reasons she chose her firm was its commitment to training.⁸⁵ She explained that she spent the first year writing research memos. It took her a while to realize that she needed to be more assertive about getting better assignments: “People don’t hand things to you on a silver platter. You kind of have to go out and get them.” She relied on senior associates and her assigned mentor partner to address “a lot of stupid questions” and “they were very patient, and they helped me out.” Nevertheless, she believed that the firm did not provide training in all aspects of being a professional, “I don’t think we get a lot of guidance in how to be a good case manager, how to bring in clients, and you know how to be a good leader. I think we get fantastic training in how to be a good litigator.”

When we reinterviewed her, she had been promoted to income partner in 2006 and had developed a picture of professional identity that combined substantive expertise with political savvy and relationships:

Well, probably at the beginning when I was an associate, I would have thought it was working hard and getting partners and getting clients. Now, that I’ve been here longer, I would say it’s a combination of working hard, showing that you have the legal talent, developing clients and establishing the right political connections within the firm.⁸⁶

Even if these young associates thought that they were joining firms with partnership in mind, events along the way led to them rethinking their conception of becoming a legal professional. A San Francisco lawyer related the story of her first big litigation case with a number of partners, an experience that drove her to move from a first large firm to a second:

It was last spring, and I had been working on a trial, a big trial for a [merger taking place in another state]. It was so much fun, and my mentor had put me on it because he knew it would be great experience. And it was crazy, but it was a lot of fun.⁸⁷

There were five partners in the deal. The most senior securities litigator was the head partner. He had never had a trial before. The associates watched, recounting,

And late at night they’d just start fighting with each other, and right in front of us too. And then some other partner would kind of herd them out. And so then they’d come back and say, you shouldn’t have seen that, sorry. There was all this in-fighting about who got to do what. It was very juvenile, and weird.⁸⁸

85. Interview 11, AJDI, in L.A., Cal. (May 2003) (on file with author).

86. Interview 11, AJDII, in L.A., Cal. (Mar. 2009) (on file with author).

87. Interview 29, AJDI, in S.F. Bay Area, Cal. (Aug. 2003) (on file with author).

88. *Id.*

She realized that if this twenty-five-year veteran of securities litigation had never gone to trial, the chances for her were not very good. She left the firm to seek out a different professional experience.

VI. THE FINANCIAL CRISIS CLOSES SOME DOORS

The financial crisis has made it clear, if there were any doubt before, that practicing in a large firm is no longer a guarantee for success. A number of changes have impacted these AJD graduates since the financial crisis began. Some of these lawyers have been passed over for promotion, and others have been laid off or told that they need to find new jobs since there was not enough work to keep them on at their large law firm. New jobs are hard to find. These stories suggest that those who thought the large law firm was a safety net for their career have discovered now that there is no safety net.

A. “Performance Casualties” and “Stealth Layoffs”

One of the respondents from Washington D.C. working in a large prestigious firm was told both that he would not be promoted and he should find another job.⁸⁹ In March 2009, he reported that he expected to leave his large firm soon. He said that he simply did not have enough work to keep him busy. He explained in an interview during Wave 2, “I do not expect to last the year. I have very little work.”⁹⁰ He acknowledged that he took a risk by choosing to focus on work he describes as “outside the silo.” Working outside the silo should have allowed him to pick up work from a number of different practice areas, a strategy that worked well at other firms in the good economy.

The financial crisis changed all of that. There was less work coming to the firm and that work was being given to attorneys within each “silo.” Partners were also keeping more of the work for themselves and not handing it down to associates, as would have been done in a more certain economy. According to this respondent, “the work is rising up, so there is less and less work for associates.”⁹¹ Without work, he became a “performance casualty” and a subject of what new legal media blogs like *Above the Law* and *Law Schucks* describe as “stealth layoffs,” layoffs disguised as performance problems. He has since left the firm to work in government.⁹²

With less work to go around, lawyers who remain are provided with few opportunities to create new lawyering skills and, as importantly, few experiences that they can market elsewhere. One lawyer who moved often in his first decade of practice has found that, in the wake of the financial crisis, he is moving backward. He explained,

89. Interview 6, AJDII, in Wash., D.C. (Mar. 2009) (on file with author).

90. *Id.*

91. *Id.*

92. *Id.*

People want to grow and learn and to put it into perspective I am a tenth year lawyer and I am the designated guy who drafts board meetings minutes for one of our clients. Board meetings—that's something that first-year associates typically do. It's highly unlikely [that I will be able to come up to the level he feels capable of obtaining] given that we have six partners, six associates and a declining client base. Unless there are departures of other non-revenue-generating . . . nonoriginating partners there will be very few opportunities for me, unless I bring in my own business. Which, as you I'm sure are aware, is very difficult when your title is associate.⁹³

B. *New Uncertainties for the Future of Part-Time Work*

A female lawyer who has worked in the same large D.C. law firm since graduating from law school⁹⁴ was passed over for promotion at her ninth year review and is continuing to practice law as an associate.⁹⁵ She is currently working part-time after coming back from a second maternity leave, expected to bill only 1600 hours, rather than the normal 1900 hours. She continues to bill her full 1900 hours and has adjusted her schedule in reaction to the financial crisis. When she first returned from maternity leave, she worked only four days. Now, fearful that she might lose out on assignments, she comes into the office five days a week, and rearranges when she starts and ends her days as work permits. Her fears about lost assignments seem well grounded. Her department has much less work. The firm laid off both associates⁹⁶ and staff, delayed the incoming class of associates (summer 2009), and offered one year deferrals to new attorneys who wanted to go out and do public interest work for a year.

Another female lawyer at a large Los Angeles firm was promoted to nonequity partner in 2006, but the firm has not promoted her to equity partner and has stretched out the decision for equity to at least an additional four or five years.⁹⁷ This extension of the path to partnership reflects the risk-averse behavior of large firms, which are not willing to extend too many offers for equity partnership in a time of economic uncertainty and the resultant downturn in business. When probed about future promotion opportunities she indicated that she does not expect to make equity partner. When asked if she had thought of leaving the firm, she indicated that she

93. Interview 32, AJDII, in Dallas, Tex. (Aug. 2009) (on file with author).

94. Interview 2, AJDII, in Wash., D.C. (Mar. 2009) (on file with author).

95. Lawyers in her firm typically move to "of counsel" on the road to nonequity and eventually equity partner (a tripartite system of partnership). When promoted to counsel, lawyers are offered a two-year contract, renewable only if the firm still needs your work.

96. This rationale of letting go of new associates is consistent with the December 23, 2009, online story in the *ABA Journal*, indicating that firms are foregoing bonuses to first years and keeping the bonuses (though reduced in amount) for the third-year associates, who were considered to be worth keeping, even in the current fiscal crisis. See Debra Cassens Weiss, *First-Year Associates Bear the Brunt of Lower Bonuses: Some See Cuts of Seventy-One Percent*, A.B.A. J. ONLINE, Dec. 21, 2009, http://www.abajournal.com/news/article/first-year_associates_bear_the_brunt_of_lower_bonuses_some_see_cuts_of_71.

97. Interview 11, AJDII, in L.A., Cal. (Mar. 2009) (on file with author).

would ride the job out as long as she could, and only then would she consider her next move.

It is not simply that work has dried up. The “bottom-line” orientation that drives promotion decisions has led some young lawyers to believe that professionalism no longer matters, if it ever did. The traditional way you might have made partner, according to one young lawyer, was to “have members of the partnership vouch for you and say, ‘I know that this person can bill at a partner rate and make, you know, X amount of dollars at a partner rate for the next three years.’”⁹⁸ The clearest way to get there was to have institutional clients. Then, he suggested, it was “a given that somebody can stand up and say ‘yeah, we can bill this, we can increase this guy, you know, one hundred dollars an hour or whatever it takes.’”⁹⁹ Other assessment criteria such as bringing in your own clients, being a “good guy or girl,” somebody that could hang out with partners, or someone with trial experience that could be marketed have been replaced by a bottom-line calculation: “How much is the firm’s accounting department receiving in exchange for your time and effort?”

C. *And Opens Other Routes to Professional Status*

With partnership in large law firms far less certain, young lawyers describe other avenues for achieving those attributes of professionalism they view as key: control over one’s time,¹⁰⁰ stimulating work grounded in some particular expertise, and decisionmaking authority that includes running one’s own cases.

A San Francisco lawyer had already bolstered his resume by the time of the economic downturn by going back to school for an LL.M. in tax. He represents lawyers who learned lessons from the dot-com crash in 2002. During the first wave interviews, he was working as a contract lawyer after his large firm laid him off during the previous economic crisis.¹⁰¹ At the time, he realized that if he was going to find another transactional job in the business formation area, he needed more tools. After completing the LL.M. degree at an eastern law school, he came back to the Bay Area. It took him at least six months to find a full-time job at a small firm. The firm wanted someone able to handle tax matters for firm clients. Although the financial crisis means that “there are fewer projects that are waiting to be worked on,” the upside for this Bay Area attorney is that he is now able to work deals entirely himself, unlike at the large law firm. He enjoys running deals where both the risks and rewards are his.

98. Interview 3, AJDII, in Wash., D.C. (Mar. 2009) (on file with author).

99. *Id.*

100. In a different project, we describe how the quest for control over time (a professional value) is often conflated with work-life balance. Few lawyers we interviewed expected to have balance. What they were looking for was ways to assert control over how their time was spent.

101. Interview 20, AJDII, in S.F. Bay Area, Cal. (June 2009) (on file with author); Interview 20, AJDI, in S.F. Bay Area, Cal. (Aug. 2003) (on file with author).

Smaller law firms that are not highly differentiated may have an advantage in this market. As it was explained by one of our respondents,

We can adapt to what the market is right now. We have gotten a lot of work from those bigger firms because with the economy downturning, you know, a lot of people don't want to pay \$500 an hour for an attorney . . . but now a lot of clients are coming to us saying You know, we're a nationally recognized firm. You know, we've got a great reputation. We do great legal services. We're, we're more focused on service than some of those bigger firms, and so we are getting a lot more clients now.¹⁰²

A Silicon Valley intellectual property lawyer recently laid off due to the financial crisis has found new success in a new small firm.¹⁰³ After several years working at a variety of small firms, he landed a job at a large, well-known law firm where he was hired to work on a very big litigation case. Twenty to thirty other lawyers worked on that case and everyone got lots of billable hours. Unfortunately, the client decided to pull the plug on the litigation and work dried up quickly for all the associates at the firm. He managed to stretch his employment at this large firm for about six or seven more months before being laid off. Once terminated, he began to question whether he wanted to go into another firm. He realized,

I've been really plugged in, in the community; meaning the [ETHNICITY] entrepreneurial community. And I've always been doing stuff on the side, like setting up nonprofits and stuff. So it wasn't like I was just, you know, I didn't know anybody. So I did know quite a few people. Yeah, I think it's fair to say a big chunk of the community knows me¹⁰⁴

He opened his office in conjunction with the solo practitioner he had worked for briefly at the beginning of his career, and he spoke of his vision of building a firm that would expand and take advantage of his ties within the [ETHNICITY] community. In the face of the economic crisis, this lawyer is turning his misfortune into opportunity. It is too early to know whether he can create his own successful firm that will fill a particular niche, but, for him, the financial downturn may work a benefit.

VII. CONCLUSIONS

The present inquiry began by asking how a small subset of AJD lawyers have experienced their first decade of practice and the financial crisis that has hit as many approached promotion. We talked to lawyers who, as a result of the financial crisis are in holding patterns at their firms, lost their jobs, or even suffered demotions. Some have fled. The popular legal literature has focused on the statistical trends associated with this downturn—reports of the numbers and percentages of reductions in the

102. Interview 39, AJDII, in Chi., Ill. (Aug. 2009) (on file with author).

103. Interview 23, AJDII, in S.F. Bay Area, Cal. (June 2009) (on file with author).

104. *Id.*

workforce of new lawyers, the number of firms adopting deferrals of offers for new associates, the number of firms adopting a reduction in both salary and bonuses, and finally the number of firms abandoning traditional systems of compensation for new systems driven by the need to increase profits. Most of the writing on the crisis has ignored the individual narratives of lawyers as they struggle to define themselves professionally while trying to avoid roadblocks and detours imposed by the economy. The present article focuses on the narratives of lawyers whose ten-year anniversary coincides with the financial crisis.

The narratives reveal that after nine years of practice, partnership remains elusive for most lawyers. The current crisis has made obvious the weaknesses of large law firms as training grounds for young professionals. Law graduates traditionally joined large law firms for the training (human capital) and connections (social capital) that they could accumulate and use in new settings later in their careers. The current financial crisis has pushed firms to emphasize their business decisions and in doing so have exposed the myth that large law firms are providing training and socialization into the profession of law. Yet as Carroll Seron argued in her study of solo and small-firm lawyers, becoming a professional matters to these young lawyers as they seek autonomy, ways to control their time, and responsibility for client matters.

While some argue that this new generation of lawyers is seeking “lifestyle” firms, our interviews suggest instead that many lawyers are seeking out traditional attributes of professional status (autonomy and responsibility) in the face of narrowing opportunities. What does this mean for the large law firm? Many of the elite law school graduates have had to enter firms much smaller and less prestigious than they anticipated while in law school. However, there is the possibility that these lawyers will find new and more rewarding opportunities than those offered at the traditional large law firm.¹⁰⁵

Are there indications about the future direction for law firms? There are already new plans at many large firms to restructure their practices as a whole.¹⁰⁶ Some of these restructuring plans will result in new tiers of firm professionals intended to preserve the “ideal” law firm structure. However, it may be inevitable that these efforts will simply preserve the elitism and privilege of partnership. Will these new efforts to restructure find a way to eliminate the pyramid structure currently employed by most law firms? It is more likely that they will simply recreate the pyramid structure by adding new positions at the bottom—employing more contract lawyers and outsourcing more of the work of firms. We are left to wonder how the

105. See SERON, *supra* note 14.

106. See, for example, the November 20, 2009, announcement that Hogan Lovells will adopt a firm structure that resembles that of the Big Four accounting firms. See Alex Novaree & Sofia Lind, *Lovells To Move Farther Away from Lockstep Under Planned Merger with Hogan Hartson*, LAW.COM, Nov. 20, 2009, <http://www.law.com/jsp/article.jsp?id=1202435684853>.

proliferation of differentiation at the bottom of the pyramid will impact legal education. Will law schools begin to stratify students based on their aspirations, connections, or other qualities that may predict where they will end up in a reinvented pyramid organization to be adopted by the AmLaw 250 firms?