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Bonus Babies Escape Golden Handcuffs: How Money and Politics Has Transformed the Career Paths of Supreme Court Law Clerks

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BONUS BABIES ESCAPE GOLDEN HANDCUFFS: HOW MONEY AND POLITICS HAS TRANSFORMED THE CAREER PATHS OF SUPREME COURT LAW CLERKS

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Job prospects for former Supreme Court law clerks have radically changed in recent years. Beginning in 1986, skyrocketing law firm signing bonuses caused a transformation from the natural sorting system, where clerks chose among private practice, government, academic, and public interest positions, to a Bonus Baby Regime where former clerks almost always choose to work in private firms after they leave the Court. This development is a result of both financial and ideological factors. While the more conservative clerking corps of recent years has been increasingly drawn to private practice, the firms themselves hire along ideological lines. Still, while former clerks have largely eschewed non-law-firm positions at the start, most clerks are not shackled by golden handcuffs and leave their first jobs after two years. Thus, the new breed of bonus babies has unprecedented career options—both lucrative and prestigious—in a way that their predecessors never had.

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I. INTRODUCTION

The term “bonus baby”—once derisively used to describe young, unproven baseball players—has taken on a new meaning in recent years: it now describes the group of Supreme Court law clerks who choose to work for the elite law firms that are willing to pay them exorbitant bonuses and salaries.¹ This relatively recent development—which we argue began in 1986—has transformed the career paths of former High Court clerks who once chose equally between a slightly more lucrative private practice job and a slightly less lucrative government, academic, or public interest position to one where only a dwindling minority of clerks can resist passing up the considerable spoils of a law firm offer.

There has been a growing body of research on Supreme Court law clerks in recent years, with much of it suggesting that during their tenures at the Court clerks exert an ideological or partisan influence on the institution.² Yet there is relatively little research on what happens to

1. See David Lat, *The Supreme Court's Bonus Babies*, N.Y. TIMES, June 18, 2007, <http://www.nytimes.com/2007/06/18/opinion/18lat.html>, archived at <http://perma.cc/R8FL-AT6L>.

2. See, e.g., TODD C. PEPPERS, *COURTIERS OF THE MARBLE PALACE: THE RISE AND INFLUENCE OF THE SUPREME COURT LAW CLERK* (2006); IN CHAMBERS: *STORIES OF SUPREME COURT LAW CLERKS AND THEIR JUSTICES* (Todd C. Peppers & Artemus Ward eds., 2012); ARTEMUS WARD & DAVID L. WEIDEN, *SORCERERS' APPRENTICES: 100 YEARS OF LAW CLERKS AT THE UNITED STATES SUPREME COURT* (2006); Ryan C. Black & Christina L. Boyd, *The Role of Law Clerks in the U.S. Supreme Court's Agenda-Setting Process*, 40 AM. POL. RES. 147 (2012); Corey Ditslear & Lawrence Baum, *Research Note, Selection of Law Clerks and Polarization in the U.S. Supreme Court*, 63 J. POL. 869 (2001); Todd C. Peppers & Christopher Zorn, *Law Clerk Influence on Supreme Court Decision Making: An Empirical Assessment*, 58 DEPAUL L. REV. 51 (2008).

clerks after they leave the Court.³ A recent study examined post-clerkship employment for 90% of Supreme Court clerks from the inception of the clerkship institution to the start of the Roberts Court (1882–2006).⁴ The authors traced how the Supreme Court clerkship changed from a relatively non-partisan institution to one where “the careers of former clerks show striking trends of political polarization in the recent history of the clerkship with regard to the legal academy, government service, and private practice.”⁵ Like these authors, we also explore the question of political polarization but do so in an intra-regime context—one transformed by signing bonuses and unprecedented demand for Supreme Court clerks.⁶ We also update the analysis by, for the first time, examining the behavior of Roberts Court clerks. Specifically, we compare data on the post-clerkship choices of the clerks of the Roberts Court (2005–2011) compared to their predecessors—the clerks of the Rehnquist Court (1986–2004).⁷ Thus, we exclude the relatively non-partisan years—at least in terms of post-clerkship career paths—of prior Courts. We explore the types of positions clerks took: private practice, government, academia, and public interest. We examine whether the choices made by clerks reflect ideological or partisan preferences, as measured by the Justices the clerks worked for.

Ultimately, we find that there has been a marked increase in recent years of clerks choosing to enter private practice.⁸ We suggest this is a result of both financial and ideological developments. Specifically, the

3. See KEVIN T. MCGUIRE, *THE SUPREME COURT BAR: LEGAL ELITES IN THE WASHINGTON COMMUNITY* 161–70 (1993); William E. Nelson, Harvey Rishikof, I. Scott Messinger & Michael Jo, *The Liberal Tradition of the Supreme Court Clerkship: Its Rise, Fall, and Reincarnation?*, 62 VAND. L. REV. 1749, 1780–95 (2009) [hereinafter *The Liberal Tradition*]; William E. Nelson, Harvey Rishikof, I. Scott Messinger & Michael Jo, *The Supreme Court Clerkship and the Polarization of the Court: Can the Polarization Be Fixed?*, 13 GREEN BAG 2D 59, 60–66 (2009).

4. *The Liberal Tradition*, *supra* note 3, at 1753.

5. *Id.*

6. See Dahlia Lithwick, *Bonus Round: What to Make of Those Astronomical Supreme Court Signing Bonuses?*, SLATE (Mar. 10, 2007, 7:48 AM), http://www.slate.com/articles/news_and_politics/jurisprudence/2007/03/bonus_round.html, archived at <http://perma.cc/48MP-RAZ5>.

7. There were 902 Supreme Court clerks, including clerks for retired Justices, who served at the Court from 1986–2011. We were able to find employment information for 817 (91%) using internet sources such as martindale.com, LinkedIn.com, and law school and law firm websites.

8. See *infra* Figure 2.

explosion of signing bonuses for Supreme Court clerks has made private practice even more financially attractive than it already was.⁹ Also, a more conservative clerking corps, the result of a more conservative Court, has been less interested in positions outside of private practice, with government and public interest work on the decline.¹⁰ Still, most clerks leave their first jobs, and those who initially choose private practice are as likely to decide to stay in that sector in another firm as they are to switch to government work or academia.¹¹ And while the attraction of private practice may, at first glance, seem to suggest that recent clerks are behaving in a less ideological—and perhaps more rational—way, the law firms that hire clerks do so along ideological or partisan lines.¹²

II. THE BONUS BABY REGIME: THE RISE OF PRIVATE PRACTICE AND THE DECLINE OF GOVERNMENT, ACADEMIC, AND PUBLIC INTEREST JOBS

From the beginning of the clerkship institution at the end of the nineteenth century through the present day, former Supreme Court law clerks have parlayed their apprenticeships with the Justices into positions in private practice, government, academia, and public interest organizations.¹³ Historically, clerks made these choices based on their individual interests—termed a “natural sorting process” by Carter Phillips, a 1978 clerk for Chief Justice Warren Burger who went on to become a managing partner at the law firm Sidley Austin.¹⁴ Yet in 1986, Phillips unwittingly changed the Natural Sorting Regime. He sought to hire a few Supreme Court clerks whom he was particularly impressed with and offered them \$5,000–\$10,000 bonuses to sign a contract with his firm.¹⁵ As a result, the legal equivalent of the bonus baby was born. He recalled, “I think I’m the person who came up with this cockamamie idea in the first place I’ll take the heat for creating this system. But

9. See Lithwick, *supra* note 6.

10. See *infra* Figures 2, 3, 6 & 7.

11. See *infra* Figures 11, 12 & 13.

12. See *infra* Figures 14 & 15.

13. See Peppers & Zorn, *supra* note 2, at 55.

14. Lithwick, *supra* note 6; Joan Biskupic, *Lawyers Emerge as Supreme Court Specialists*, USA TODAY, May 16, 2003, at 6A.

15. Lithwick, *supra* note 6.

I was never the market leader for driving it up.”¹⁶ In an effort to compete, other firms began matching or exceeding existing bonuses, and the dollar amounts slowly rose through the 1990s as firms competed for clerks who sought private practice jobs.¹⁷ Though the amounts were rising, the bonuses were still not enough to entice at least some clerks from eschewing preferred academic, government, or public interest law work for private practice. Tim Wu, an academic who clerked for Justice Stephen Breyer in 1999, said, “I’m sort of glad we didn’t have [an exorbitant] bonus in my day Money like that leaves you no option. In my case, it would have ruined my career.”¹⁸

Yet by the early 2000s, the demand for former clerks only escalated as law firms ramped up their recruiting of former clerks, specialized appellate and Supreme Court practices began developing, and signing bonuses began to explode.¹⁹ In May 2006, Thomas C. Goldstein said, “The [bonus] explosion . . . happened about four or five years ago because of the prestige factor that comes with a Supreme Court clerk, and the pool is not that big.”²⁰ At the same time, *Washington Post* journalist Charles Lane reported:

The law firms’ scramble for Supreme Court clerks became so intense a couple of years ago that firms began inviting the entire clerk class en masse to expensive dinner receptions. The justices, concerned about appearances, put a stop to it, according to lawyers and former clerks.

Now, each individual justice sets rules for when and how his or her clerks can get in touch with firms, though all agree that clerks may not talk to firms that have matters pending before the court.²¹

16. *Id.* (internal quotation marks omitted).

17. *See id.*

18. *Id.* (internal quotation marks omitted).

19. *See* Tom Goldstein, *The Expansion of the “Supreme Court Bar,”* SCOTUSBLOG (Mar. 2, 2006, 11:32 AM), <http://www.scotusblog.com/2006/03/the-expansion-of-the-supreme-court-bar>, archived at <http://perma.cc/8B5M-D3X3>; Lithwick, *supra* note 6.

20. Charles Lane, *Former Clerks’ Signing Bonuses Rival Salaries on the High Court*, WASH. POST, May 15, 2006, at A15 (internal quotation marks omitted).

21. *Id.*

Figure 1 shows the first post-clerkship jobs held by Supreme Court clerks during the Bonus Baby Regime. Two-thirds (68%) went directly from the Court to positions in private practice. On one level this is not a surprising finding given that the vast majority of law school graduates go into private practice²² and the large salaries and signing bonuses offered to former Supreme Court clerks make this option difficult to resist. For example, in August 2013, clerks heading to New York, Washington D.C., and San Francisco received \$300,000 signing bonuses from such firms as Gibson Dunn, Jones Day, Munger Tolles, Paul Weiss, Skadden Arps, and Sullivan & Cromwell.²³ One year later, signing bonuses increased to \$330,000 at Kellogg Huber and reportedly others.²⁴ Given that the starting salaries for third-year associates—the rank at which former clerks generally enter the firm—are well into the six figures with additional year-end bonuses of six figures, former clerks can earn more than half a million dollars in their first post-clerkship year.²⁵ Not a bad haul, considering that the Justice they clerked for is making less than half that to sit on the highest court in the land.²⁶

22. AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSION TO THE BAR, 2012 LAW GRADUATE EMPLOYMENT DATA, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_employment_data.authcheckdam.pdf, archived at <http://perma.cc/DZ92-97J9>.

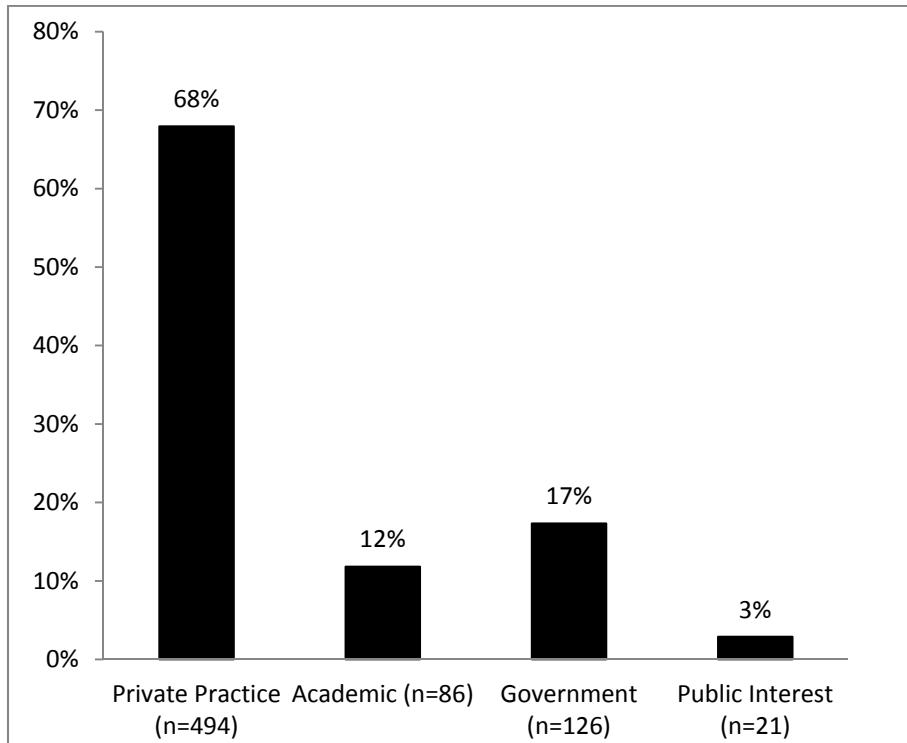
23. David Lat, *It's Official: Supreme Court Clerkship Bonuses Hit A New High*, ABOVE THE LAW (Aug. 15, 2013, 11:05 AM), <http://abovethelaw.com/2013/08/its-official-supreme-court-clerkship-bonuses-hit-a-new-high/>, archived at <http://perma.cc/E7BB-SLYQ>.

24. David Lat, *Supreme Court Clerk Hiring Watch: Into 2016 We Go — Plus SCOTUS Clerk Bonus News*, ABOVE THE LAW (Sept. 9, 2014, 5:52 PM), <http://abovethelaw.com/2014/09/supreme-court-clerk-hiring-watch-into-2016-we-go-plus-scotus-clerk-bonus-news/> (last updated Sept. 10, 2014, 1:30 PM), archived at <http://perma.cc/FX4P-7Q2X>.

25. *Law Firms' Signing Bonuses: Supreme Desire*, ECONOMIST, Aug. 17, 2013, at 56 [hereinafter *Supreme Desire*].

26. In 2013, the Chief Justice's salary was \$224,618, with his colleagues each making \$214,969. *Id.*

Figure 1
U.S. Supreme Court Law Clerks:
First Post-Clerkship Job, 1986–2011



In addition to the firms just mentioned, there are many more that routinely compete for Supreme Court clerks.²⁷ Carter Phillips explained the competition: “Law firms are like lemmings—they all walk off the cliff together One year a firm would be more aggressive, and then the other firms are willing to match the best offer out there.”²⁸ Beth Heifetz, a partner at Jones Day and a 1985 law clerk for Justice Harry Blackmun, explained why clerks are in demand: “We have found it’s a terrific investment for us They are incredibly smart, and they’re up on big issues in the law They have this unique view of how judges think, of how the justices interact.”²⁹ Neal Katyal, a partner at Hogan Lovells and 1996 clerk for Justice Stephen Breyer, said that clients ask for specific former clerks by name, which “is ultimately going to benefit the bottom line of the firm.”³⁰ Though billable hours are important, the main reason clerks are sought after is because having former clerks on staff lends firms the prestige they need to attract high-paying clients.³¹

Still, despite the feeding frenzy promulgated by these firms, one-third of clerks during the Bonus Baby Regime have chosen to forego this payday for positions in government (17%), academia (12%), and “other” (3%) areas—largely public interest.³² Orin Kerr, a former clerk for Justice Anthony Kennedy in 2003, said, “I never really thought about going to a law firm I’m an academic and looked forward to going back.”³³ But it appears to be getting harder to resist becoming a bonus baby. Figures 2 and 3 make plain that the trends are unmistakable: greater numbers of clerks are forgoing government, academic, and public interest jobs in favor of private practice and the bonuses that go along with it.

27. See *infra* Figure 14.

28. Brent Kendall, *High-Court Clerks Attract a Frenzy: Law Firms Offer Signing Bonuses That Exceed Justices’ Pay*, WALL ST. J., Sept. 17, 2012, at B1 (internal quotation marks omitted).

29. *Id.* (internal quotation marks omitted); Beth Heifetz, JONES DAY, <http://www.jonesday.com/bheifetz/> (last visited Nov. 5, 2014), archived at <http://perma.cc/58E-PGSG>.

30. Kendall, *supra* note 28 (internal quotation marks omitted); Peter Lattman, *Law Blog Lawyer of the Day: Neal Katyal*, WALL ST. J.L. BLOG (June 19, 2006, 10:43 AM), <http://blogs.wsj.com/law/2006/06/29/law-blog-lawyer-of-the-day-neal-katyal/>, archived at <http://perma.cc/4JET-Y8H9>.

31. See Kendall, *supra* note 28.

32. See *supra* Figure 1.

33. Lane, *supra* note 20 (internal quotation marks omitted).

Figure 2
Bonus Baby Regime Trends:
Private Practice v. Government Jobs, 1986–2011

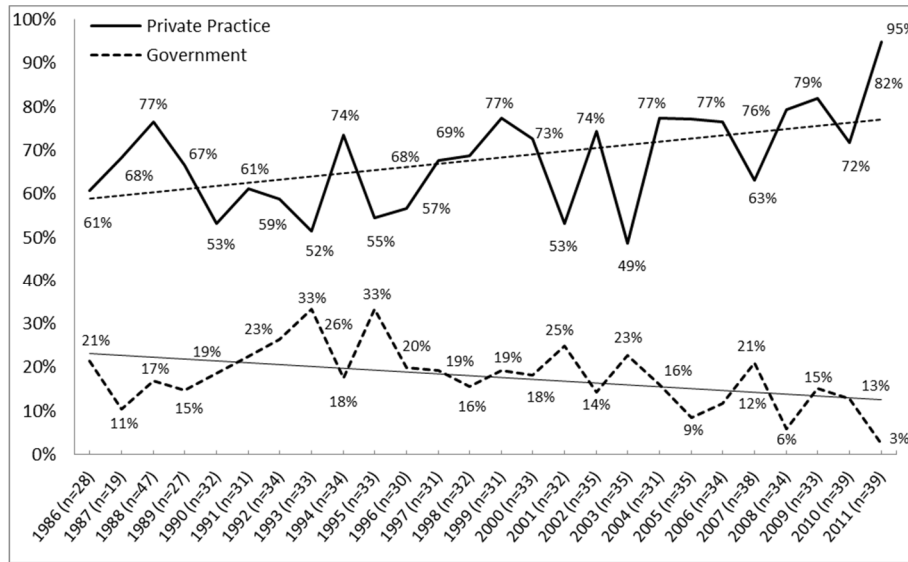


Figure 3
Bonus Baby Regime Trends:
Academic and Public Interest Jobs, 1986–2011

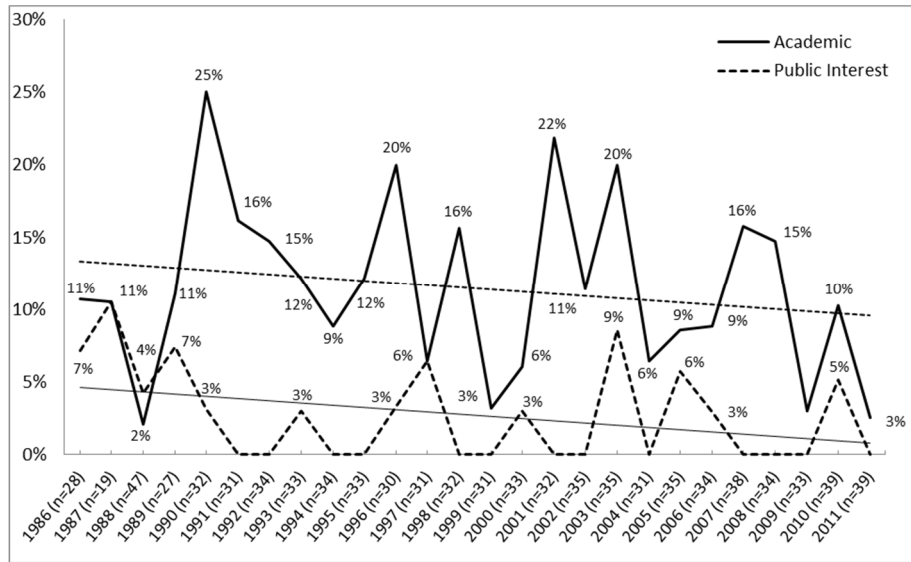


Figure 2 illustrates how private practice has become the rule over time, with 2003 the last year where roughly half the clerks chose something else at the conclusion of their clerkships. As previously mentioned, that was also the time when bonuses exploded and clerks were courted by firms like never before.³⁴ Since then, the percentages have risen steadily to the point where the final year under study, 2011, saw a whopping 95% of the clerks choose private practice—an unprecedented total.³⁵ At the same time, the percentage of clerks choosing government positions following their clerkships has steadily declined. As many as one-third of the clerks were still choosing government work as late as 1995, but in recent years the percentage has dropped to single digits with a record low of 3% choosing this route in 2011. Figure 3 shows similar declines for both academic and public interest law work.³⁶ Specifically, the number of clerks choosing academia following their year at the Court was still one in five as late as 2003. Yet only 3% chose academia in 2011. Public interest law has always been the least desirable post-clerkship employment choice, but the downward trend is also present here, with 11% of clerks making this choice in the mid-1980s compared to none by 2011. These figures make plain that today there are more bonus babies among Supreme Court clerks than ever before.

Another way to capture this trend is to compare clerks who served during the Rehnquist Court (1986–2004) to clerks who served during the Roberts Court (2005–2011). Figure 4 also shows that there has been a decided shift, with more clerks choosing private practice in recent years: 64% of Rehnquist Court clerks compared to 81% for Roberts Court clerks. And while there was a slight decline from Rehnquist to Roberts in the percentage of clerks choosing academia (12% to 10%) and other/public interest work (3% to 1%), the real decrease came in clerks choosing government positions (20% to 8%). There are two possible explanations for this development. One is the explosion of signing bonuses. In 2003, near the end of the Rehnquist Court, clerks were receiving signing bonuses of \$85,000.³⁷ The tripling of signing bonuses over the next decade may not only explain the explosion of clerks entering private practice but also may have fundamentally changed the

34. *See supra* notes 19–24 and accompanying text.

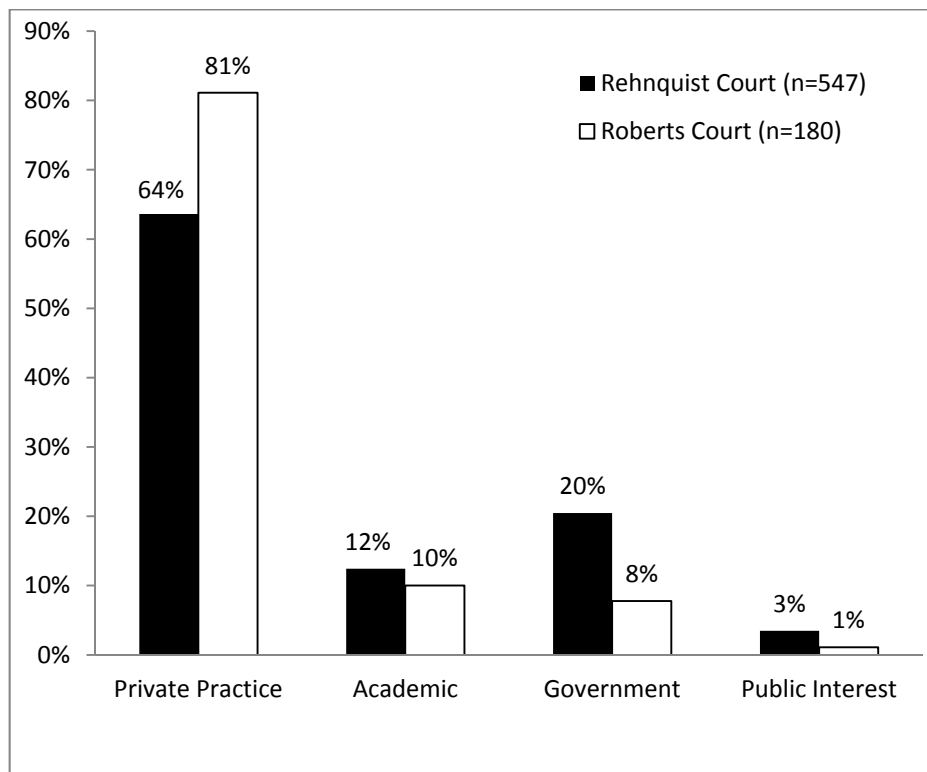
35. *See supra* Figure 2.

36. *See supra* Figure 3.

37. Kendall, *supra* note 28.

post-clerkship career path for the foreseeable future.³⁸ With firms setting up specialized appellate—and even Supreme Court—practices, competition is fierce for former Supreme Court clerks who have specialized knowledge, have experience, and can immediately begin working on major cases, even if they are barred from working on Supreme Court cases for their first two post-clerkship years.³⁹

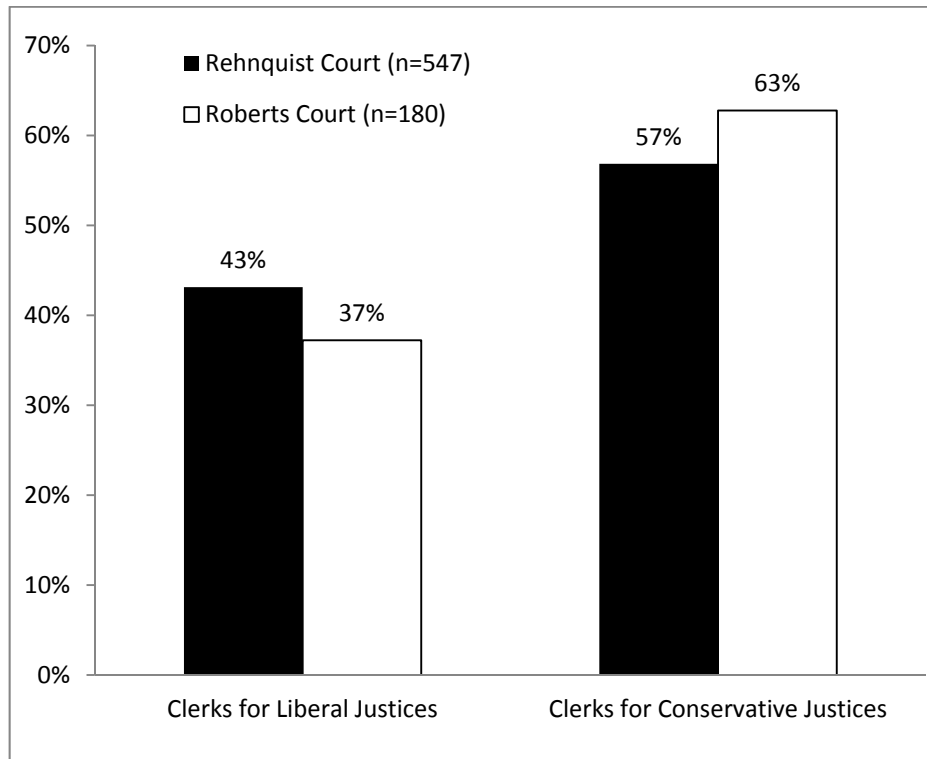
Figure 4
Comparing the Rehnquist and Roberts Court Clerks:
First Post-Clerkship Job, 1986–2011



38. See Lat, *supra* note 23; Lithwick, *supra* note 6; *Supreme Desire*, *supra* note 25.

39. *Supreme Desire*, *supra* note 25; see *supra* notes 19–21 and accompanying text.

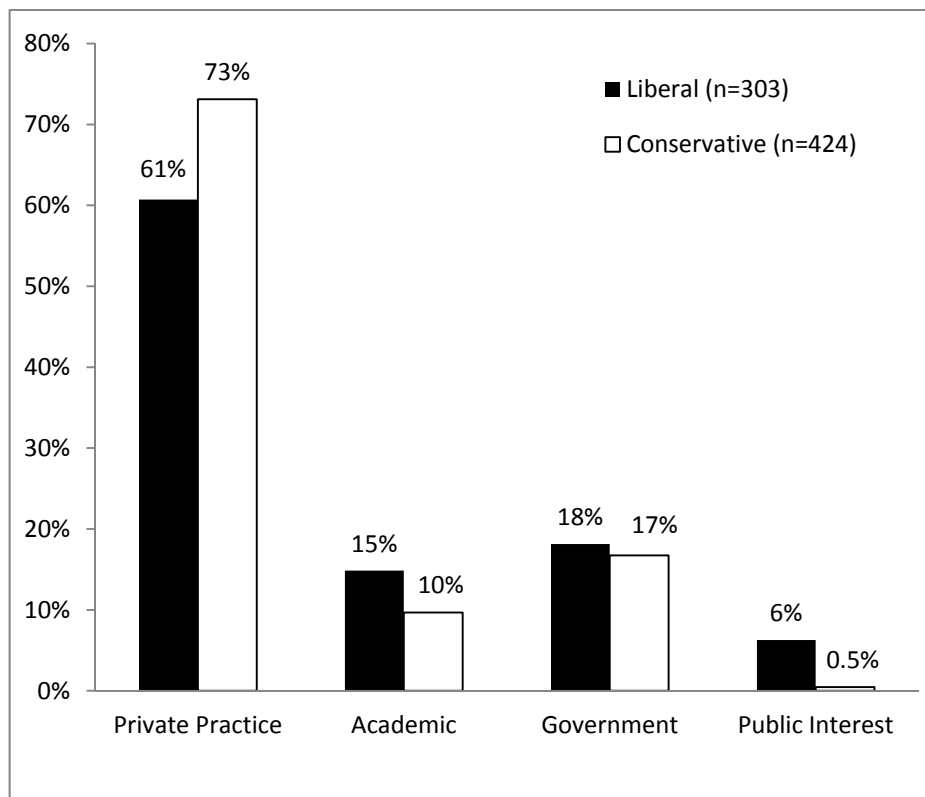
Figure 5
Comparing the Rehnquist and Roberts Court Clerks:
Percentage of Clerks Working for Liberal and Conservative Justices,
1986–2011⁴⁰



40. Justice ideology was determined by Martin-Quinn scores. *Martin-Quinn Scores*, BERKELEY L., <http://mqscores.berkeley.edu> (last visited Nov. 5, 2014), archived at <http://perma.cc/MZA5-KKBJ>.

Another reason for the growing number of clerks choosing private practice is that the Court has become more conservative under Chief Justice Roberts—particularly with the replacement of Justice Sandra Day O'Connor with Justice Samuel Alito—and the Justices are hiring more conservative clerks who in turn may be more likely to seek employment in private practice. Figure 5 shows that there are in fact more clerks working for conservative Justices during the Roberts Court (63%) than there were during the Rehnquist years (57%). While that increase is not enough to explain the burst of private practice hiring in recent years, it may be part of the picture.

Figure 6
First Post-Clerkship Job by Justice Ideology, 1986–2011⁴¹



41. Justice ideology was determined by Martin-Quinn scores. *Martin-Quinn Scores*, *supra* note 40.

In fact, as Figure 6 illustrates, clerks who worked for conservative Justices were more likely to enter private practice (73%) than were clerks who worked for liberal Justices (61%). Interestingly, the percentage going into government work is nearly identical (18% and 17%), while clerks for liberal Justices are more likely to choose academia (15% v. 10%) and other/public interest (6% v. 0.5%) than were clerks for conservative Justices. These results suggest that there is an ideological element to post-clerkship career paths. Figures 7 and 8 break down these overall results by Court. As with the overall trend, Figure 7 shows that during the Rehnquist years, clerks for conservative Justices were more likely to go into private practice (68%) than were clerks for liberal Justices (58%). Clerks for liberal Justices during the Rehnquist years were more likely to work in academia (15% v. 11%) and other/public interest law (7% v. 1%), while government work was essentially evenly divided (20% v. 21%).⁴² Figure 8 illustrates how the Roberts Court reflects the overall trend that clerks for conservative Justices are more apt to go into private practice (88%) than are clerks for liberal justices (70%). Yet the percentages for both are much higher than they were under Chief Justice Rehnquist, indicating that a bonus baby shift has occurred.

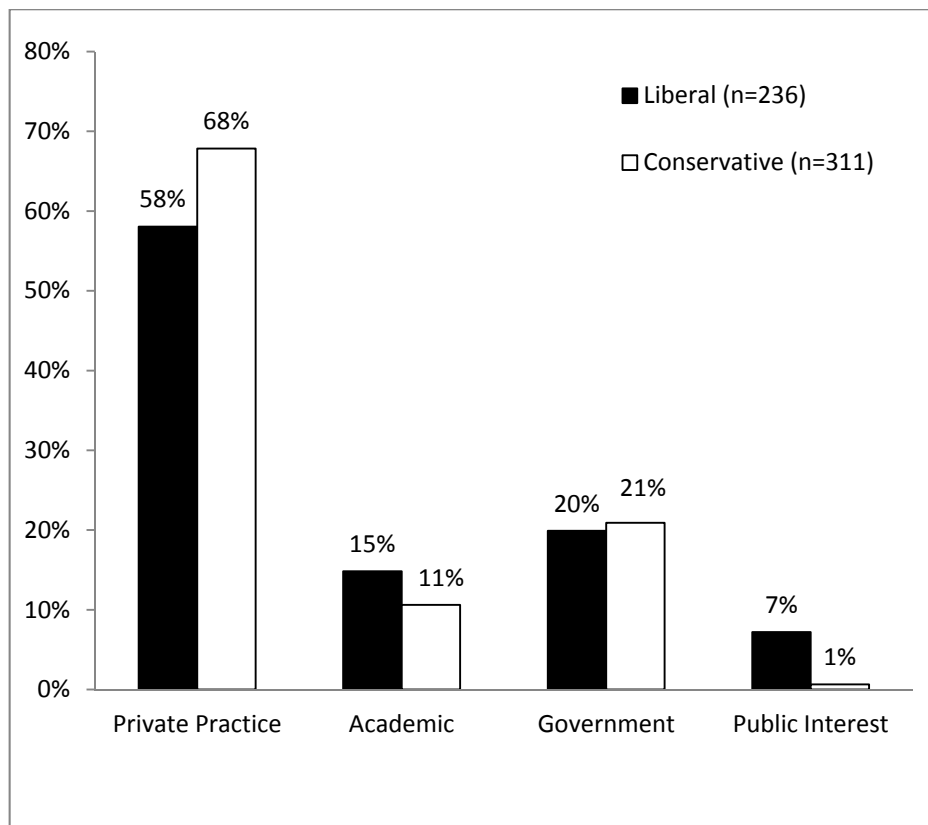
Interestingly, the shift to greater private practice employment that is present for clerks from both liberal and conservative Justices is not consistent across other categories.⁴³ The one constant is that clerks for liberal Justices chose academic work at a consistent rate (15%) across both the Rehnquist and Roberts Courts. But under Chief Justice Roberts, clerks for liberal Justices were much less likely to choose government (20% v. 12%) or other/public interest (7% v. 3%) work than they were under Chief Justice Rehnquist. Conversely, clerks for conservative Justices greatly increased their rate of academic employment under Chief Justice Roberts (24% v. 11%) and greatly decreased their rate of government work (5% v. 21%) as compared to clerks for conservative Justices during the Rehnquist years. These results suggest that in addition to ideology, the massive monetary difference between private practice and government work is having an effect across the board. Indeed, unlike government employees, academics are able to supplement their income through consulting,

42. *See infra* Figure 7.

43. *See infra* Figures 7 & 8.

speaking, and writing,⁴⁴ which may help explain why recent clerks for conservative Justices are twice as likely to enter academia as they were in the past.

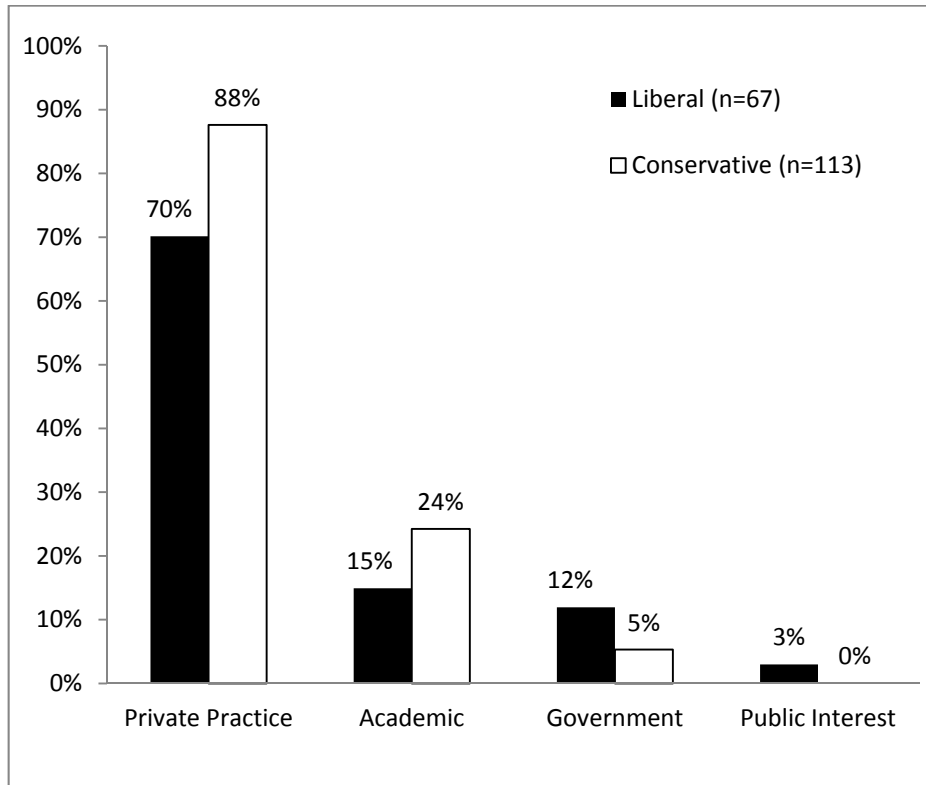
Figure 7
First Post-Clerkship Job by Justice Ideology:
Rehnquist Court, 1986–2004⁴⁵



44. See 5 C.F.R. § 2635.807 (2009).

45. Justice ideology was determined by Martin-Quinn scores. *Martin-Quinn Scores*, *supra* note 40.

Figure 8
First Post-Clerkship Job by Justice Ideology:
Roberts Court, 2005–2011⁴⁶



46. Justice ideology was determined by Martin-Quinn scores. *Martin-Quinn Scores*, *supra* note 40.

Figures 9 and 10 provide further illustration of how private practice has become an increasingly common choice among clerks for both conservative and liberal Justices. Figure 9 shows how three out of four clerks for the most conservative Justices of the Rehnquist Court (Chief Justice Rehnquist and Justices Kennedy, Scalia, and Thomas) chose private practice. But the Court's two newest conservatives—Chief Justice Roberts and Justice Alito—have even higher rates of clerks entering private practice. In fact, with only a single exception, every clerk for Chief Justice Roberts has gone into private practice.⁴⁷ Former Roberts clerk Hagan Scotten explained why he and other clerks accepted offers from law firms: “Most of us had \$100,000 in law-school debt Getting rid of that debt is a good way to start.”⁴⁸

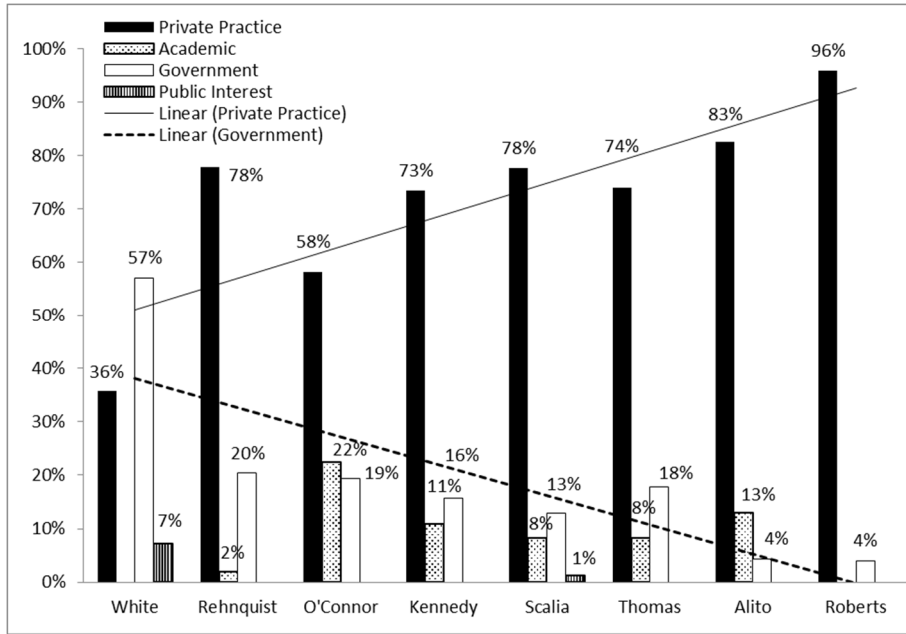
But, the increase in private practice employment is by no means limited to clerks for conservative Justices. Figure 10 shows a similar pattern for clerks who worked for liberal Justices who are also increasingly choosing private practice. Indeed, three out of four clerks for the last three liberal appointees—Justices Breyer, Sotomayor, and Kagan—have accepted offers from law firms. This is a significant change from the clerks for the most liberal Justices of the Rehnquist Court—Justices Marshall, Brennan, and Blackmun—who only chose private practice half of the time. An example is Elizabeth Prelogar, who clerked for Justice Ginsburg in 2009 and Justice Kagan in 2010 and subsequently began working at the law firm Hogan Lovells.⁴⁹

47. *See infra* Figure 9.

48. Kendall, *supra* note 28 (internal quotation marks omitted).

49. *Id.*

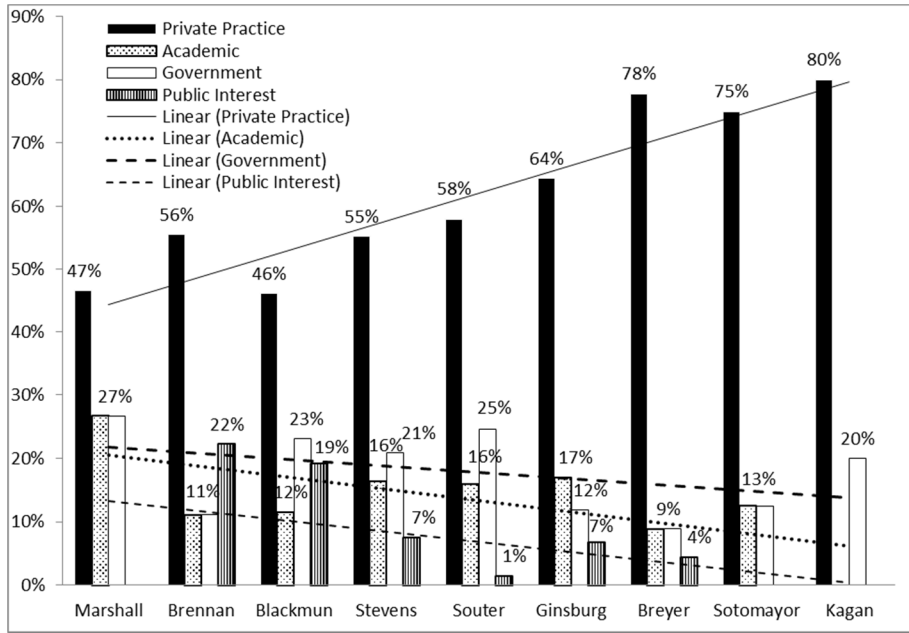
Figure 9
First Post-Clerkship Job by Justice Ideology:
Conservatives, 1986–2011⁵⁰



(n=424)

50. Justice ideology was determined by Martin-Quinn scores. *Martin-Quinn Scores*, *supra* note 40.

Figure 10
First Post-Clerkship Job by Justice Ideology: Liberals, 1986–2011⁵¹



(n=303)

51. Justice ideology was determined by Martin-Quinn scores. *Martin-Quinn Scores*, *supra* note 40.

Figures 9 and 10 also show that while there has been an increase in private practice employment for clerks for both liberal and conservative Justices, there are a number of differences across the other categories that suggest that certain Justices are steering many of their clerks away from or toward government, academic, or public interest careers.⁵² Justice Byron White placed 57% of his clerks in government positions during his years on the Rehnquist Court.⁵³ No other Justice even comes close to these totals, with liberal Rehnquist Court Justices Marshall (27%), Souter (25%), and Blackmun (23%) placing the next highest percentage of their clerks in government posts.⁵⁴ At the other end of the spectrum, Chief Justice Roberts and Justice Alito have placed only 4% of their clerks in government jobs, with Justices Breyer (9%) and Brennan (11%) placing the next fewest. In terms of academic jobs, Justice Marshall had the highest total (27%), followed by Justices O'Connor (22%) and Ginsburg (17%). Several Justices—Chief Justice Roberts and Justices White and Kagan—placed no clerks in academic positions during the period under study, with Chief Justice Rehnquist (2%) and Justices Scalia (8%) and Thomas (8%) having very few clerks joining the academy. Finally, Justices Brennan (22%) and Blackmun (19%) had by far the highest percentage of clerks go into public interest law work while many Justices had none, including, perhaps surprisingly, liberal Justices Marshall, Sotomayor, and Kagan and conservative Chief Justices Rehnquist and Roberts and Justices O'Connor, Kennedy, Thomas, and Alito.

Thus, while these findings suggest that there is an ideological or partisan element to post-clerkship career paths, that tendency has been somewhat tempered in recent years by the pull of large signing bonuses for clerks choosing private practice. Yet, as we will demonstrate later in this Article, law firm hiring also reflects ideological or partisan differences.⁵⁵ But what happens to clerks after they secure their first job? Do they move, and if so, where? What prompts moves from one job to another? Is there an ideological element to moving to and from private practice and government work? We turn to these questions in the next section.

52. *See supra* Figures 9 & 10.

53. *See supra* Figure 9.

54. *See supra* Figure 10.

55. *See infra* Figure 15.

III. ESCAPING THE GOLDEN HANDCUFFS: JOB HOPPING AND THE IDEOLOGICAL COMPONENT OF LAW FIRM HIRING

There is a school of thought that some clerks choose to avoid private practice because they may have a difficult time leaving once they get used to the large salaries and bonuses and the lifestyle that goes with them. For example, James Stern, who clerked for Justice Anthony Kennedy in 2010, said, “[it] is a great deal of money to walk away from I had some concern about the golden handcuffs—getting locked in and finding it hard to walk away from the money once I started down that path.”⁵⁶ Stern chose academia instead, taking a job at the University of Virginia.⁵⁷ Do golden handcuffs keep clerks in private practice? And how likely are clerks in general to leave their first post-clerkship job for another? Figure 11 shows that it is the norm, with two out of three (65%) clerks leaving their first position for another. Clerks for liberal Justices are slightly more likely than clerks for conservative Justices to move (70% v. 62%). Interestingly, nearly half of all clerks (45%) leave their first job for a position in a different sector, such as moving from private practice to academia or from government work to private practice. Again, clerks for liberal Justices are more likely than clerks for conservative Justices to move to a different sector (53% v. 39%). Yet this also means that there are some clerks (20%) who change jobs but stay in the same sector, such as moving from a large firm to a boutique firm or from one academic or government post to another.

56. Kendall, *supra* note 28 (internal quotation marks omitted).

57. *Id.*

Figure 11
Percentage of Clerks Moving from First to Second
Post-Clerkship Job, 1986–2011

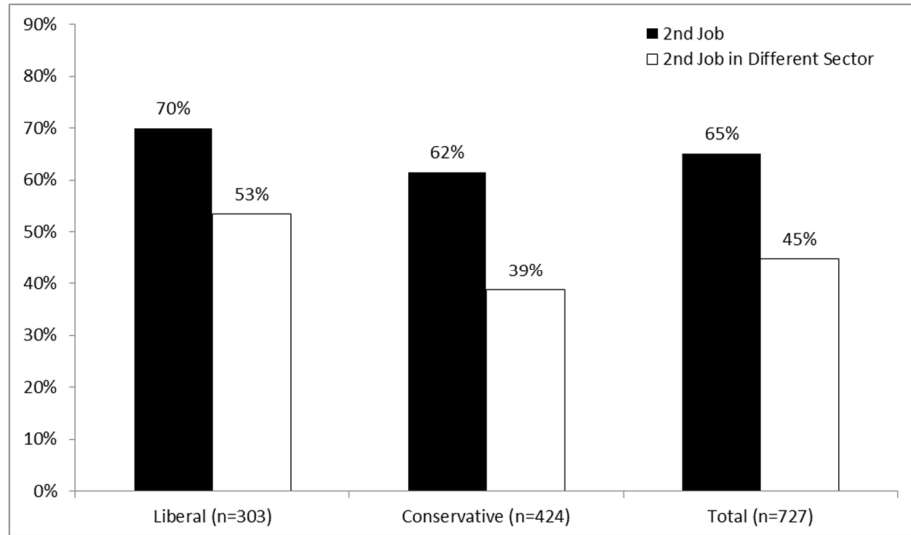
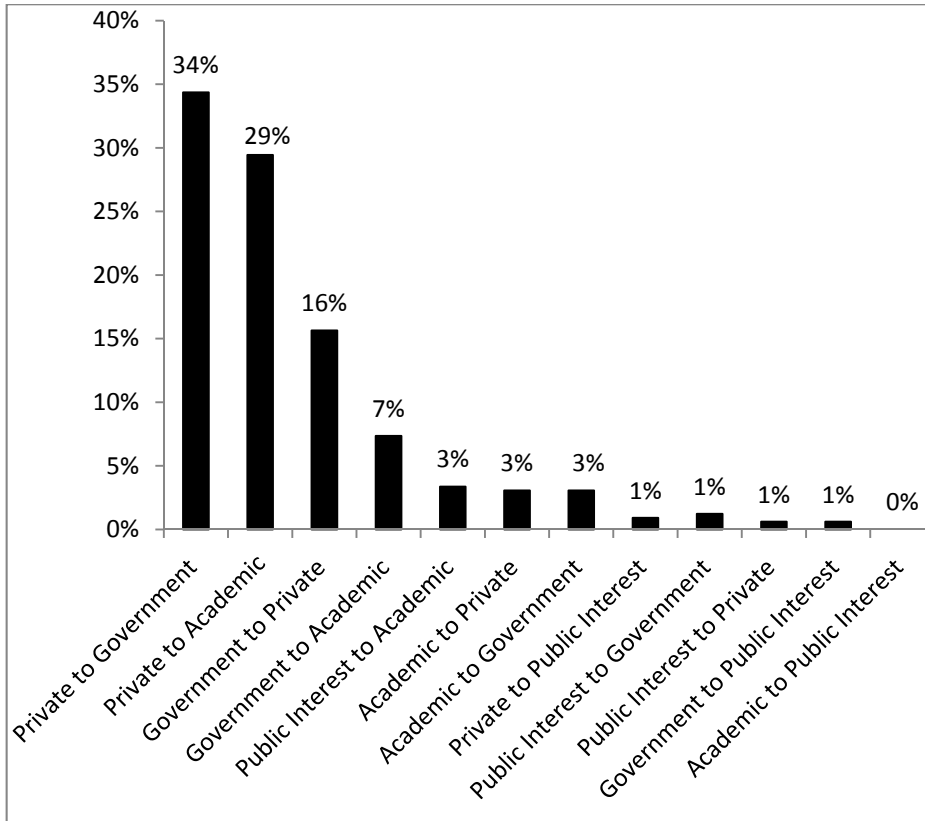
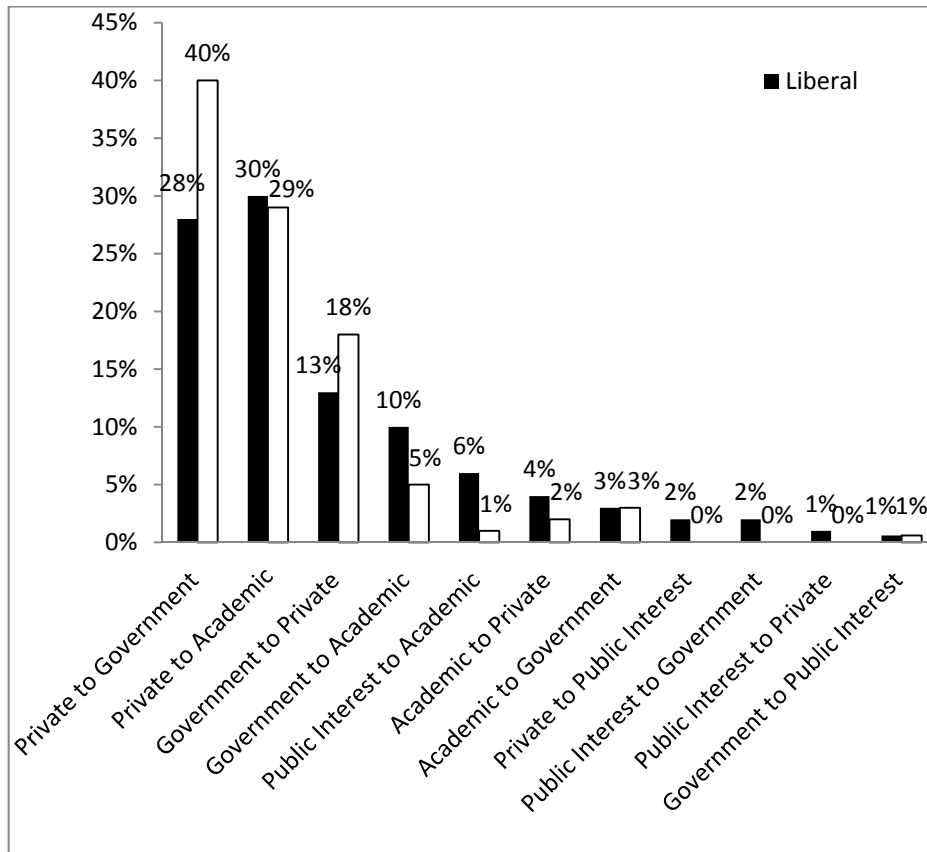


Figure 12
Common Paths from First to Second Post-Clerkship Job:
Different Sector, 1986–2011



(n=326)

Figure 13
Common Paths from First to Second Post-Clerkship
Job by Justice Ideology, 1986–2011⁵⁸



58. Justice ideology was determined by Martin-Quinn scores. *Martin-Quinn Scores*, *supra* note 40.

But when clerks change sectors, where do they move and are there differences between clerks for liberal and conservative Justices? Figure 12 shows the common paths from first to second post-clerkship jobs. Overall, one out of three clerks who leave their first job (34%) move from private practice to government work. Similarly, nearly one out of three clerks (29%) leave private practice for an academic post. Thus, clerks are most likely to choose private practice for their first job and will most likely leave that job for another either in a different firm, in the government, or academia. Thus, while there may be a golden handcuffs effect for some clerks, it is by no means the norm. Figure 13 shows that there are some ideological or partisan differences when it comes to career paths. While clerks for both liberal and conservative Justices move from private practice to academia at a similar rate (30% v. 29%), clerks for conservative Justices are far more likely to move from private practice to government jobs than are clerks for liberal Justices (40% v. 28%). For example, former Roberts clerk Scotten said that he hoped to return to government service after gaining private sector experience.⁵⁹ Conversely, clerks for liberal Justices are more likely than clerks for conservative Justices to move from government to academic jobs (10% v. 5%), public interest to academic (6% v. 1%), and academic to private practice (4% v. 2%).⁶⁰ These findings suggest that ideology operates on job choice, with academia and public interest work generally the province of liberals.

As previously mentioned, the Bonus Baby Regime has given rise to an elite group of law firms that compete for Supreme Court law clerks.⁶¹ Figure 14 lists the firms that have hired the most clerks directly from the Supreme Court in recent years. Sidley Austin and WilmerHale are the industry leaders, with each hiring 50 clerks—roughly 70% directly from the Court—since the start of the Bonus Baby Regime in 1986. The next group—Jones Day, Kirkland & Ellis, and Gibson Dunn—have hired roughly 30 clerks during the same time period, nearly all of whom came directly from the Court. The following group has hired roughly 20 clerks: Mayer Brown; O’Melveny & Myers; Jenner & Block; Kellogg Huber Hansen; Latham & Watkins; Munger, Tolles & Olson; and Williams & Connolly. The numbers continue to decline, with many firms hiring only one or two clerks. In all, over the course of their

59. Kendall, *supra* note 28.

60. *See supra* Figure 13.

61. *See supra* notes 13–24 and accompanying text.

careers, 563 clerks were hired by 90 different firms during the period under study. Thus, the top five firms for employing former Supreme Court clerks account for one-third (34%) of all hires. And the top twelve firms account for well over half (58%) of all clerk hires.

Figure 14
Number of Clerks Hired by Law Firms:
First v. All Post-Clerkship Jobs, 1986–2011

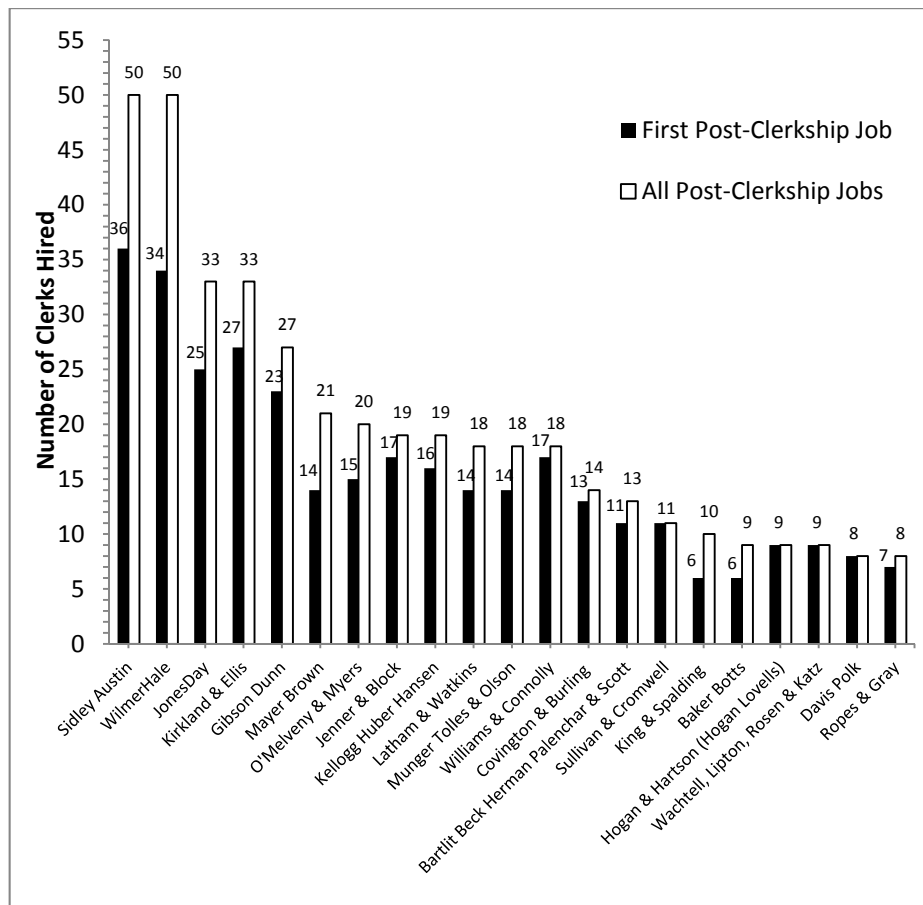
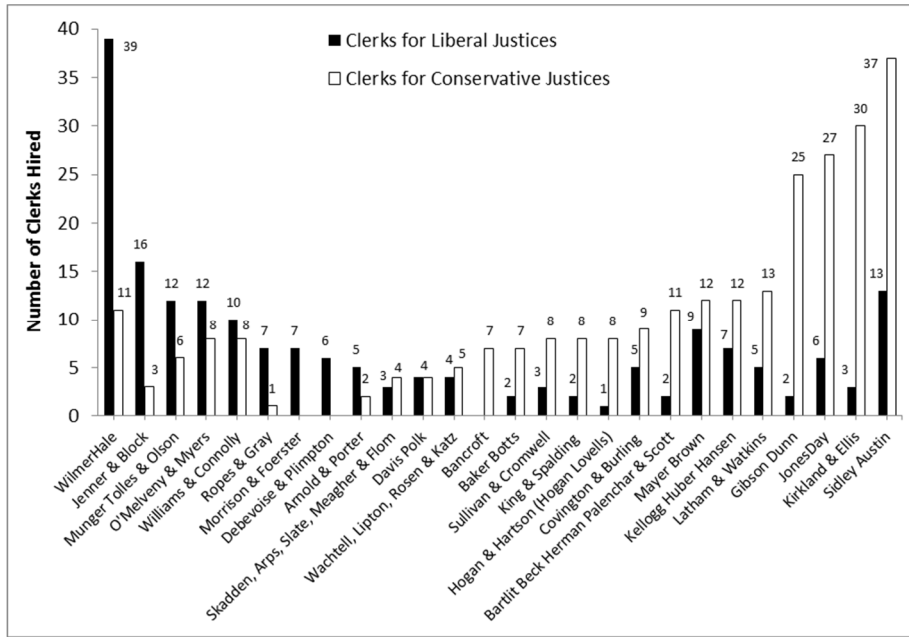


Figure 15
Number of Clerks Hired by Law Firms by Justice Ideology, 1986–2011⁶²



62. Justice ideology was determined by Martin-Quinn scores. *Martin-Quinn Scores*, *supra* note 40.

Does the growth in private practice employment mean that clerks are less ideological in choosing careers than they once were? Figure 15 illustrates law firm employment by Justice ideology. The results are striking. There is indeed a considerable ideological or partisan difference in the law firms that clerks work for. WilmerHale overwhelmingly hires clerks who worked for liberal Justices (39) as opposed to clerks who worked for conservative Justices (11). Similarly, Jenner & Block skews liberal (16 v. 3) as do Munger, Tolles & Olson (12 v. 6) and O'Melveny & Myers (12 v. 8). Some firms essentially only hire clerks who work for liberal Justices: Ropes & Gray (7 v. 1), Morrison & Foerster (7 v. 0), and Debevoise & Plimpton (6 v. 0). Countering the liberal juggernaut of WilmerHale are conservative bastions Sidley Austin (13 clerks from liberal Justices v. 37 clerks from conservative Justices), Kirkland & Ellis (3 v. 30), Jones Day (6 v. 27), and Gibson Dunn (2 v. 25). A number of other firms skew conservative: Latham & Watkins (5 v. 13), Kellogg Huber Hansen (7 v. 12), Mayer Brown (9 v. 12), Covington & Burling (5 v. 9), and Sullivan & Cromwell (3 v. 8). Finally, there are firms that essentially only hire clerks from conservative Justices, with one or two exceptions: Bartlit Beck (2 v. 11), Hogan Lovells (1 v. 8), King & Spalding (2 v. 8), Baker Botts (2 v. 7), and Bancroft (0 v. 7). There are only a few firms that have come close to parity in hiring clerks from both liberal and conservative Justices: Williams & Connolly (10 clerks from liberal Justices v. 8 clerks from conservative Justices), Wachtell Lipton (4 v. 5), Davis Polk (4 v. 4), and Skadden Arps (3 v. 4). Thus, the data make plain that ideology plays a key role in the decision of law firms to hire Supreme Court law clerks.

IV. THE TWO-YEAR RULE:

LENGTH OF TIME IN POST-CLERKSHIP JOBS

Having paid off their loans, after a short time, some clerks leave firms for academia or government work.⁶³ Firms are acutely aware of this possibility and attempt to distinguish between clerks who will be short-timers and those who are likely to remain with the firm for a longer period of time, if not indefinitely.⁶⁴ There is an informal norm that clerks work for their initial firm for at least two years before making a switch.⁶⁵ And while some firms pay the bonuses in

63. *Supreme Desire*, *supra* note 25.

64. Kendall, *supra* note 28.

65. Lane, *supra* note 20.

installments or write contracts to require clerks to return part of their bonuses should they leave early,⁶⁶ it does not appear that they are enforced—particularly if the clerk leaves for a government post as opposed to switching to another firm, as clerks do return to firms after government service. For example, 2010 Ginsburg clerk Keith Bradley left WilmerHale less than one year after he was hired for a government job in the Consumer Financial Protection Bureau.⁶⁷ Similarly, 2010 Thomas clerk Elbert Lin left Wiley Rein—a firm he had worked at as an associate before his clerkship—short of the informal two-year mark to become West Virginia’s solicitor general.⁶⁸

Table 1 provides descriptive statistics for the length of time that clerks stay in their first and second jobs. While there are instances of clerks departing after only a single year or less, the modal length of time for first jobs for both Rehnquist and Roberts Court clerks is two years. Thus, it appears that the two-year rule is in fact the norm. Interestingly, the modal length of time for second jobs for Rehnquist Court clerks was also two years but only one year for Roberts Court clerks. This suggests that Roberts Court clerks may be staying in their first jobs as long as their predecessors did but may be willing to move more quickly from their second positions. Figure 16 helps illuminate these findings by comparing the length of time that Rehnquist and Roberts Court clerks spent in their first jobs after leaving the Court. It is plain that the vast majority of clerks leave their first jobs within a few years—consistent with the descriptive statistics in Table 1. Yet, only 8% (16) of Roberts Court clerks departed their first jobs after one year or less compared to 12% (51) of Rehnquist Court clerks. Though the data reflect only the first eight years of the Roberts Court, they suggest that Roberts Court clerks may be less likely to leave their first jobs early but more likely to leave their second jobs more quickly than did past clerks. This may very well be due to the strengthening of the informal—and now more formal—two-year norm as increasing numbers of clerks choose private practice for their first jobs.⁶⁹ As second jobs are just as likely to be in

66. Will Baude, *The Missing Part of the Washingtonian Signing Bonus Story*, VOLOKH CONSPIRACY (Aug. 3, 2013, 7:40 AM), <http://www.volokh.com/2013/08/03/the-missing-part-of-the-washingtonian-signing-bonus-story/>, archived at <http://perma.cc/7EZ8-YBHL>.

67. Marisa M. Kashino, *Hiring Supreme Court Clerks: The \$500,000 Gamble*, WASHINGTONIAN, Aug. 2013, at 15.

68. *Id.*

69. *See supra* Figure 2.

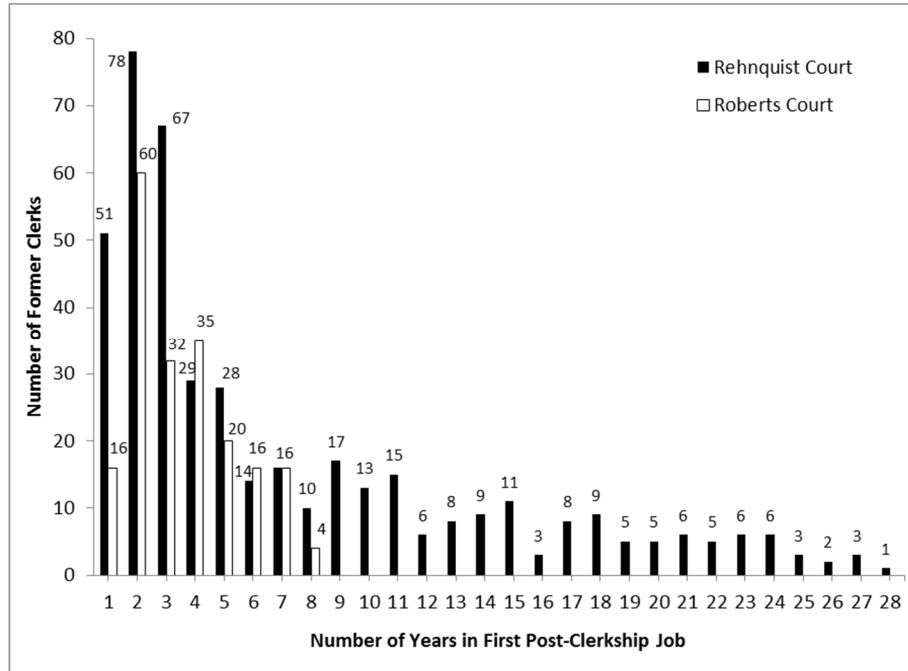
academia or the government as they are to be in another firm,⁷⁰ former clerks on the whole are less constrained by the two-year norm at that stage.

Table 1
Length of Time in First and Second Post-Clerkship Jobs:
Descriptive Statistics, 1986–2011

	Rehnquist Court: 1st Job	Roberts Court: 1st Job	1st Job Total	Rehnquist Court: 2d Job	Roberts Court: 2d Job	2d Job Total
Mean	7.27	3.57	6.12	6.12	3.29	6.26
Median	4	3	4	5	3	5
Mode	2	2	2	2	1	2
Minimum	1	1	1	1	1	1
Maximum	28	8	28	24	7	24
Standard Deviation	6.76	1.85	5.96	5.49	1.84	5.31
N=	434	199	633	386	51	437

70. See *supra* Figure 12.

Figure 16
Comparing the Rehnquist and Roberts Court Clerks:
Length of Time in First Post-Clerkship Job, 1986–2011



V. CONCLUSION

The career paths of former Supreme Court law clerks have been radically transformed in recent years. In 1986, the Natural Sorting Regime—where clerks chose among private and public positions with relatively similar salaries—gave way to the Bonus Baby Regime characterized by escalating signing bonuses, ramped up recruiting by select firms, and the rise of specialized appellate and Supreme Court practices. Clerks have flocked to private practice in unprecedented numbers due to both lucrative signing bonuses and a more conservative clerking corps. Taking a position with one of the elite firms that recruit clerks has become the rule, and working in academia, government, or public interest the rare exception. But the vast majority of clerks leave their first jobs within the first few years after they leave the Court. Those who initially choose private practice leave in equal numbers for another private practice position, a government job, or academia.

At the same time, the job choices of clerks also reflect ideological considerations. Clerks who work for conservative Justices are more likely to enter private practice than are clerks for liberal Justices. Similarly, clerks for liberal Justices are more likely to enter government or public interest jobs. The firms that heavily recruit former clerks do so on partisan lines, with some firms dominated by clerks who worked for conservative Justices and others populated by clerks for liberal Justices. Thus, the new generation of Supreme Court law clerks is composed of liberal and conservative bonus babies eager to don the golden handcuffs of private practice for a couple years before thinking about their next short-term posts either in another firm, government, or the academy. When compared to the humble beginning of the clerkship institution—or even the institution as it existed for most of the past century—the power and status of Supreme Court law clerks has never been higher.