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What's New About the New Normal: The Evolving Market for New Lawyers in the 21st Century

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WHAT'S NEW ABOUT THE NEW NORMAL: THE EVOLVING MARKET FOR NEW LAWYERS IN THE 21ST CENTURY

BERNARD A. BURK*

ABSTRACT

Everyone agrees that job prospects for many new law graduates have been poor for the last several years; there is rather less consensus on whether, when, how, or why that may change as the economy recovers from the Great Recession. This Article analyzes historical and current trends in the job market for new lawyers in an effort to predict how that market may evolve.

The Article derives quantitative measurements of the proportion of law graduates over the last thirty years who have obtained initial employment for which law school serves as rational substantive preparation (“Law Jobs”). In comparing entry-level hiring patterns since 2008 with those in earlier periods, a significant development emerges: While other sectors of the market for new lawyers have changed only modestly during the Great Recession, one sector—the larger private law firms colloquially known as “BigLaw”—has contracted proportionally six times as much as all the others. Entering BigLaw classes overall are now roughly one-third smaller than they were seven years ago. And though BigLaw hiring has historically accounted for only 10% to 20% of each graduating class, it is responsible for over half the entry-level Law Jobs lost since 2008.

While some observers predict a return to business as usual as the economy recovers, this Article is skeptical of that account. The Article identifies significant structural changes in the way that the services BigLaw has traditionally provided are being produced, staffed, and priced that diminish BigLaw’s need for junior lawyers, both immediately and in the longer term. These observations suggest that entry-level BigLaw hiring, and thus the market for new lawyers overall, will remain depressed below pre-recession levels well after demand improves to or beyond pre-recession levels. At the same time, even though entry-level demand may remain static, new lawyers’ job prospects may nevertheless improve as the contraction in the legal academy now underway reduces the number of new graduates competing for work.

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I. INTRODUCTION

The 2013 *Report on the State of the Legal Market* by the Georgetown Law Center for the Study of the Legal Profession observed that

it is becoming increasingly apparent that the market for legal services in the United States and throughout the world has changed in fundamental ways and that, even as we work our way out of the economic doldrums, the practice of law going forward is likely to be starkly different than in the pre-2008 period.¹

1. CTR. FOR THE STUDY OF THE LEGAL PROFESSION AT THE GEORGETOWN UNIV. LAW CTR. & THOMSON REUTERS PEER MONITOR, 2013 REPORT ON THE STATE OF THE LEGAL

While scattered commentators still cling to the hope that this is somehow just a transient bad dream,² many in the legal profession and the legal academy have begun to accustom themselves to a dark and depressing “New Normal.”³

The author was one of the earlier predictors of this New Normal,⁴ and while this Article will not indulge any grim satisfaction on that score, neither will it suggest any reason to foresee a return to the familiar. Rather, it will attempt to identify the most salient features of the current market for entry-level (that is, more or less immediately post-graduate) legal employment, and then inquire how new the New Normal actually is, just what is new about it, and how normal we may expect it to be. Insights into those questions should help all of us—students, educators, and practitioners—make better guesses about what the future holds and develop more effective coping strategies for the longer haul.

Part II presents the Article’s data and methods. It begins by exploring the potential value and limitations of examining the entry-level legal employment market. It then proposes a *qualitative* definition of entry-level placements for which law school serves as rational

MARKET 1 (2013), available at <https://www.law.georgetown.edu/continuing-legal-education/executive-education/upload/2013-report.pdf> [hereinafter 2013 REPORT ON THE STATE OF THE LEGAL MARKET].

2. For example, one law school dean unapologetically insisted in a late 2012 *New York Times* op-ed, in the face of widespread unemployment and underemployment among recent law graduates, that “Law School Is Worth the Money.” Lawrence E. Mitchell, Op-Ed., *Law School Is Worth the Money*, N.Y. TIMES (Nov. 28, 2012), <http://www.nytimes.com/2012/11/29/opinion/law-school-is-worth-the-money.html?smid=pl-share>. Despite his arguments’ well-deserved criticism in the media, some law school administrators persist in advancing similar ones. See Elie Mystal, *Law Professor Defends Law Schools; Blames Media, Students, Advisors, Everybody But Himself*, ABOVE THE L. (July 26, 2013, 5:33 PM), <http://abovethelaw.com/2013/07/law-professor-defends-law-schools-blames-media-students-advisors-everybody-but-himself/#more-260381> (associate dean asserting, for example, that his law school currently has a “96% employment rate” without mentioning that close to a third of that 96% was short-term, part-time, clerical, menial, or otherwise not legal practice or law-related work). Other academics argue that the current downturn in legal hiring is predominantly cyclical, less serious than is widely believed, and already ending. See, e.g., D. Benjamin Barros, *Reconsidering the Conventional Wisdom on the Legal Job Market* (Widener Univ. Sch. of Law Legal Studies Research Paper Series, Paper No. 13-60, 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2258806; Stephen F. Diamond, *Recent Law School Grad Job Rate Ticks Up Sharply*, STEPHEN F. DIAMOND (May 6, 2013), <http://stephen-diamond.com/?p=4784>.

3. William D. Henderson & Rachel M. Zahorksy, *Paradigm Shift*, 97 A.B.A. J. 40, 40 (2011) (“The legal profession is undergoing a massive structural shift . . .”); Peter Lattman, *Mass Layoffs at a Top-Flight Law Firm*, DEALBOOK – N.Y. TIMES (June 24, 2013, 9:39 AM), <http://nyti.ms/1f1VHd3> (The executive partner of Weil Gotshal called June 2013 associate and staff layoffs and partner pay cuts “essential . . . to enable our firm to continue to excel and retain its historic profitability in the new normal.”); see 2013 REPORT ON THE STATE OF THE LEGAL MARKET, *supra* note 1, at 2.

4. Bernard A. Burk & David McGowan, *Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 93-102.

substantive preparation: employment that someone would, *ex ante*, rationally plan to attend law school to obtain. This means as a practical matter that either the postgraduate position must require the degree as a condition of employment, or that the course of study provides dramatic and substantial advantages (as opposed to being merely relevant or useful) in obtaining or performing the job that are not more easily obtainable or substitutable (whether in nature or extent) another way. Such placements are referred to as “Law Jobs.” Next, Part II describes the dataset that will be used to measure the proportion of new graduates who have obtained Law Jobs over time—the placement data accumulated by the National Association for Law Placement (“NALP”) and the American Bar Association Section of Legal Education and Admission to the Bar (“ABA”)—and explores the data’s strengths and weaknesses for these purposes. The Article then uses this data to derive a *quantitative* measurement of the proportion of those graduates over the last thirty years who have obtained Law Jobs within roughly nine months of graduation.

After considering the effects of an initially high level of nonreporting that gradually decreased by the mid- to late 1990s, Part III uses that measure to describe the development of the entry-level Law-Job market from the 1980s to the present, and considers whether there is anything significantly different about that market in recent years. It concludes that there are in fact new differences, and that these differences have most pointedly emerged in the last six years, contemporaneously with the Great Recession, though their origins appear to be somewhat older. Specifically, the mid-2000s saw a period in which the entry-level Law-Job market was able to absorb a greater portion of new graduates than at any other time since detailed data has been gathered, followed by a precipitous contraction in that market beginning in 2008 and resulting in historically low proportions of Law-Job placement. Neither of these conclusions should be particularly controversial, though not all observers currently agree.

Part IV then explores just what is new and different. There is surprisingly little commentary on whether or how current circumstances have affected different sectors of the market for new lawyers differently. Comparison reveals that while most sectors of the entry-level legal employment market have changed only modestly during the Great Recession, one sector—the larger private law firms colloquially known as “BigLaw”—has contracted proportionally six times as much as all the others. Though this sector has historically hired only 10% to 20% of each graduating class, it is responsible for over half the entry-level Law Jobs lost since 2008. And because BigLaw historically has hired a disproportionate number of the candidates most attractive to most employers, this contraction has sent a new cohort of highly accomplished and credentialed law graduates previously ab-

sorbed by BigLaw into the competition for non-BigLaw jobs, disrupting common understandings regarding where new graduates with particular ranges of credentials could expect to find work. These findings suggest that the changes in and to BigLaw are driving the changes in the entry-level Law Jobs market more generally.

Part V then addresses the question how normal we can expect this New Normal to be—in other words, how much of what is new is driven by the transient and cyclical features of the Great Recession and its effect on the demand for legal services, and how much is driven by structural changes in the manner in which legal services are produced, staffed, and priced. It identifies several technological, competitive, and economic developments that have generated structural changes in the way that the services traditionally provided predominantly by BigLaw are being produced. All of these developments seem likely to diminish BigLaw's need for junior lawyers, both immediately and in the longer term. These developments were gathering force during the 2000s, but emerged in high relief as a result of the stresses imposed on BigLaw firms and their clients as the economy descended into the Great Recession during 2008. The arguments that the current contraction in the entry-level Law-Job market is predominantly caused by cyclical economic phenomena do not address any of the structural factors the Article identifies, whether to argue that they don't exist or that they don't matter. This doesn't necessarily mean that the structural argument is right, but it does mean that if it is wrong, no one has suggested how or why. After surveying BigLaw's own assessment of these structural factors, Part V offers the prediction that entry-level BigLaw hiring, and thus the market for new lawyers overall, will remain depressed below pre-recession levels well after demand recovers, and will lag substantially behind the pace and extent of any increase in demand for BigLaw's services.

Finally, Part VI points out that, given that America's law schools produce the graduates seeking to enter the legal labor market, the prediction that the market for new lawyers will be constricted well beyond any recovery from the current recession has important implications for the future of the legal academy. The reduced demand for entry-level Law Jobs has already precipitated a rapid fall in the number of students considering law degrees and the beginnings of price competition among some law schools for potential matriculants. At the same time, a meaningful contraction in the legal academy could ironically improve future graduates' job prospects even in a weak job market by reducing the number of new lawyers chasing even a persistently limited number of Law Jobs. Noting that the factors promoting a correction in the market for legal education are not affecting all institutions uniformly, the Article concludes by raising a

number of questions for further study regarding which factors will most strongly affect which kinds of institutions, and how the affected institutions may react.

II. DATA AND METHODS: QUALITATIVE AND QUANTITATIVE MEASURES OF ENTRY-LEVEL PLACEMENT OUTCOMES

A. *The Value and Limitations of Examining the Entry-Level Legal Employment Market*

One of the most widely observed features of the New Normal is its shortage of suitable employment outcomes for many new law graduates.⁵ This naturally raises questions about how the current entry-level job market compares with prior years', and what about it may have changed. These questions in turn suggest that an analysis of entry-level employment outcomes over time may tell us something useful about past and current employment prospects, and possibly future ones as well. As a result, such an analysis should be of interest to law students, law graduates, and legal employers contemplating their needs and opportunities, as well as those considering attending law school and the law schools vying for prospective students' attention. Such an inquiry appears not only interesting, but possible: There is a fairly substantial body of potentially suitable information, specifically the data on entry-level law placement that NALP has gathered and published since the 1970s.

It is also important to note at the outset the limitations of this approach. To begin with, the study's limited scope creates a limited field of view: Focusing on *entry-level* employment truncates the inquiry more or less at the first job a graduate obtains out of law school. Such a focus may tell us little about the course lawyers' career paths may follow as they advance from there, and thus will not be as informative as we might like about the state or evolution of the legal employment market overall.

In addition, even this limited inquiry is difficult on its own terms for at least three reasons: First, it is deceptively difficult to formulate a meaningful qualitative definition of the postgraduate employment results whose consistent tracking will result in usefully descriptive or

5. See, e.g., Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES (July 15, 2012), <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html?smid=pl-share>; Mark Hansen, *Job Market for Would-Be Lawyers Is Even Bleaker than It Looks, Analysis Says*, A.B.A. J. (Apr. 1, 2013, 2:14 PM CDT), http://www.abajournal.com/news/article/job_market_for_would-be_lawyers_is_bleaker_than_it_looks_analysis_says/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email; Elie Mystal, *NALP13: Entry Level Associates Need Not Apply*, ABOVE THE L. (Apr. 26, 2013, 10:13 AM), <http://abovethelaw.com/2013/04/nalp13-entry-level-associates-need-not-apply/>.

predictive information. Second, it is even more difficult to map any collected or easily collectable quantitative data onto any sensible qualitative definition. And third, the data that are currently available, while superficially plentiful, lack a number of important and consistently applied distinctions essential to the best-informed analysis, especially the analysis over time that is of special concern here.

All of these concerns necessitate a discussion at the outset on how to define and measure the entry-level employment outcomes we are looking for and the data we have to do it.

B. A Qualitative Sketch of the “Law Jobs” This Article Tracks

This Article focuses on the utility of law school as *substantive preparation for employment*. This criterion can be elaborated loosely as selecting those placements that someone would, *ex ante*, rationally plan to attend law school to obtain. This should include only placements for which a law degree is typically a necessary or extremely valuable substantive preparation (as opposed to being merely useful or relevant); or put slightly differently, the law degree must provide dramatic and substantial advantages in obtaining or performing the job not more easily obtainable or substitutable (whether in nature or extent) another way.⁶ Such placements are referred to as “Law Jobs.”

The alert reader will have noticed at least three features of this definition worthy of note, two distinguished by their absence:

1. The Objective Basis of the Qualitative Standard

First, this definition focuses on the typical—the ordinary rational person—rather than the unique individual. Anyone can have idiosyncratic reasons for wanting to pursue a law degree and, for that particular person, those reasons (so long as they are not predicated on any factual misimpression) are of course valid. But unless those reasons would translate to an ordinary rational person stripped of any of those uniquely individual features, we should not generalize them to define a Law Job, whose purpose is to help us describe an employment market in which we assume that predominantly ordinary rational people participate.

6. While the qualitative standard articulated in the text is novel and for the reasons explained below hopefully useful, the author is hardly alone in focusing on the degree of law-relatedness of a graduate’s first job as a measure of law school’s utility. See, e.g., William Henderson, *The Competition Is for Full-Time, Professional Law-Related Jobs, Part II*, LEGAL WHITEBOARD (June 30, 2013), <http://lawprofessors.typepad.com/legalwhiteboard/2013/06/the-competition-is-for-full-time-law-related-professional-jobs-part-ii.html> (“The new gold standard employment outcome is full-time, long-term professional law-related jobs.”).

2. *The Absence of Any Hedonic Component*

Second, by concentrating on employment for which law school is *substantively* a necessary or exceptionally valuable preparation, any hedonic component is eliminated. In other words, this study is not about “good” jobs versus “bad” ones, or satisfying, exciting, or fulfilling jobs versus work that might lack those characteristics for some or many of us.

There are several reasons for this omission. Hedonic elements are often dependent on circumstances extraneous to the work itself, such as the temperament of an immediate supervisor. And while a study of law graduates’ job satisfaction early in their careers and how it may have changed over time would be fascinating, the available data is unfortunately very limited.⁷ And in all events, it is only peripherally relevant to the task this Article has in mind: Some conventionally successful law graduates find that they dislike the most lucrative or otherwise sought-after law jobs they have managed to obtain. Depending on the place in their hierarchy of priorities the money or prestige that originally attracted them holds, some who don’t love the work leave; some stay on anyway. More generally, many lawyers in all walks of legal life find they don’t love their jobs, but that doesn’t mean that they’re not Law Jobs of the kind that law school prepares them for and makes accessible to them. After all, most people who need to work for a living don’t love their jobs.⁸ As the old saw goes, that’s why they call it work.⁹

7. William Henderson and David Zaring conducted an intriguing study about what tends to make large-firm associates like or dislike their jobs, but it concentrates on only a portion of the entry-level or near entry-level employment market, and portrays only one moment in time. William D. Henderson & David Zaring, *Young Associates in Trouble*, 105 MICH. L. REV. 1087 (2007) (book review). Other commentators dating somewhat further back have argued—not without real anecdotal and other support—that many large-firm associates do or should dislike their jobs. These too are limited in time and scope. *See, e.g.*, Chief Justice William H. Rehnquist, Dedicatory Address, *The Legal Profession Today*, 62 IND. L.J. 151, 151-54 (1987) (calling the work “drudgery”); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 725-26 (1998) (calling the work “numbingly dull”).

8. *See* GALLUP, STATE OF THE AMERICAN WORKPLACE: EMPLOYEE ENGAGEMENT INSIGHTS FOR U.S. BUSINESS LEADERS 4, 12 (2013), available at <http://www.gallup.com/strategicconsulting/163007/state-american-workplace.aspx> (stating “that 70% of American workers are ‘not engaged’ or ‘actively disengaged’” at work); Susan Adams, *New Survey: Majority of Employees Dissatisfied*, FORBES (May 18, 2012, 12:28 PM), <http://www.forbes.com/sites/susanadams/2012/05/18/new-survey-majority-of-employees-dissatisfied/> (reporting that 65% of American workers are “somewhat unsatisfied” or “unsatisfied” with their jobs); Oliver Burkeman, Op-Ed., *Who Goes to Work to Have Fun?*, N.Y. TIMES (Dec. 11, 2013), http://www.nytimes.com/2013/12/12/opinion/burkeman-are-we-having-fun-yet.html?_r=0; Patricia Reaney, *Dream Job? Most U.S. Workers Want to Change Careers - Poll*, REUTERS (July 1, 2013, 4:21 PM), <http://www.reuters.com/article/2013/07/01/us-usa-work-idUSBRE96015Z20130701>.

9. This is not to suggest that those who imagine they would dislike doing any of the many things that lawyers do should go to law school anyway. But the failure presented

3. *The Absence of Any Explicit Economic Component*

Third, the definition of Law Jobs lacks any explicitly economic component. This omission is likely controversial. Much attention has appropriately been paid recently to the rapid run-up in the cost of a law degree over the last decade and the lasting and intractable constraints and hardships on graduates that these costs can impose.¹⁰ And it has been widely remarked how the nondischargeable student loan debt many law students incur may in and of itself make certain less remunerative Law Jobs these students might otherwise welcome seem pragmatically inaccessible.¹¹ Nor is it unreasonable to argue that producers and consumers of legal education ought to be focusing on placement outcomes that allow graduates to pay their bills.¹²

when a law graduate finds nonlegal work preferable to *any* work a law degree makes available is not a *placement* failure. It is instead a failure of the student to have anticipated, and perhaps of the law school to have helped the student anticipate, that result.

10. See, e.g., Paul Campos, *The Tuition Puzzle*, LAWYERS, GUNS & MONEY (June 17, 2014), <http://www.lawyersgunsmoneyblog.com/2014/06/tuition-puzzle/comment-page-1#comment-1170783>; Jerome M. Organ, *Reflections on the Decreasing Affordability of Legal Education*, 41 WASH. U. J.L. & POL'Y 33, 33-36 (2013); Michael L. Coyne, *ABA and Legal Education: Change Won't Come from Within*, NAT'L L.J. (May 8, 2013), <http://www.nationallawjournal.com/id=1202599229647>; William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?*, A.B.A. J. (Jan. 1, 2012, 5:20 AM CST), http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/; Milan Markovic, *Are Law Schools to Blame for the Lack of Access to Legal Services?*, LEGAL ETHICS F. (Apr. 1, 2013, 5:37 PM), <http://www.legalethicsforum.com/blog/2013/04/are-law-schools-to-blame-for-the-lack-of-access-to-legal-services-.html>; Joseph E. Stiglitz, *Student Debt and the Crushing of the American Dream*, OPINIONATOR – N.Y. TIMES (May 12, 2013, 9:09 PM), http://opinionator.blogs.nytimes.com/2013/05/12/student-debt-and-the-crushing-of-the-american-dream/?nl=todaysheadlines&emc=edit_th_20130513; Brian Tamanaha, *The Quickly Exploding Law Graduate Debt Disaster*, BALKINIZATION (Mar. 24, 2012, 1:00 PM), <http://balkin.blogspot.com/2012/03/quickly-exploding-law-graduate-debt.html>; see also Coalition of Concerned Colleagues, *The Economics of Legal Education: A Concern of Colleagues*, A.B.A. (Mar. 2013), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/032013_coalition_revcomment.authcheckdam.pdf (open letter to the ABA Task Force on Legal Education signed by nearly 70 law professors).

11. See sources cited *supra* note 10.

12. There are a number of different ways the economics of entry-level placement can be evaluated. One is a purely financial analysis, taking into account not only actual income and expenditures, but such factors as the three years' income and enhanced earning power forgone while attending law school, and the likely effect of the law degree on a graduate's earning power long-term. An analysis of this kind is provided in Herwig Schlunk, *Mamas Don't Let Your Babies Grow Up To Be . . . Lawyers* (Vanderbilt Law Sch., Law & Econ., Working Paper No. 09-29, 2009), available at <http://ssrn.com/abstract=1497044>; see also Herwig Schlunk, *Mamas 2011: Is a Law Degree a Good Investment Today?*, 36 J. LEGAL PROF. 301 (2011) (updating data and concluding that a substantial majority of law graduates will have made bad investments in their JDs as of graduation day). A detailed econometric labor-market analysis of the financial value of a law degree relative to higher education terminating in a bachelor's degree may be found in Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree* (Harvard Law Sch. Program on the Legal Profession, Research Paper No. 2013-6, 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250585 (arguing an "average" net positive value of \$1 million over

There are several reasons why this Article nevertheless elects to omit an explicitly economic element from the definition of Law Jobs. To begin with, each law student's economic needs and preferences are rooted in that student's particular objective circumstances and subjective preferences, making the economic feasibility of any particular position based solely on its pecuniary returns difficult to generalize. In addition, the cost of a JD is independent of whether or to what extent a graduate needs the degree to get a particular job. Many jobs viewed as desirable by many law students pay modestly but nevertheless require a law degree. Tuitions may fall and salaries may rise, but the degree of substantive connection between the law degree and the job will not be affected by either. And finally, the data available to assess the economics of a position are limited and do not appear to be particularly reliable. NALP has been surveying salary information for many years, but the results are substantially underreported and likely skewed high by selection bias.¹³

This is not, of course, to say that those considering a law degree should ignore their own economic circumstances or how the cost of law school may limit their employment or life options down the road. It is only to say that what they can expect to do with a law degree can be determined independently from whether they can afford to do it. If the degree has become too expensive to support what comes afterwards, that is a very serious and very real, but different, problem that is beyond the scope of this particular Article.

C. A Tour of NALP's Entry-Level Employment Data

NALP has since the 1970s annually solicited from all ABA-accredited law schools a range of graduate employment data. For nearly forty consecutive years, this data has been published, with

a lifetime). This Article raises some questions of interest to the instant study and will be discussed *infra* Part V.C.1. A somewhat different approach considers new law graduates' likely monetary needs (such as servicing student loan debt) and aspirations (such as supporting a family or owning a home), and posits a minimum salary necessary to make ends meet. See, e.g., Jim Chen, *A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*, 38 WM. MITCHELL L. REV. 1185 (2012) (suggesting a starting salary of at least three times the graduate's annual law school tuition); Organ, *supra* note 10, at 44-49 (using Professor Chen's methodology "to reasonably estimate the percentage of [Class of 2011] law graduates who manifest marginal or better financial viability" and finding this number to be 46.5% of graduates after accounting for scholarships); David Lat, *Changes in Legal Education: Some Thoughts from Dean David Van Zandt*, ABOVE THE L. (Feb. 3, 2010, 8:23 PM), <http://abovethelaw.com/2010/02/changes-in-legal-education-some-thoughts-from-dean-david-van-zandt/> (suggesting a "break-even starting salary" of \$65,000). All of these approaches are subject to the concerns discussed in the paragraph following in the text.

13. See, e.g., Gary Rosin, *N and Salary Reporting*, FAC. LOUNGE (Nov. 22, 2011, 10:03 AM), <http://www.thefacultyounge.org/2011/11/n-and-salary-reporting.html>; *So You Want to Be a Rock 'n' Roll Star?*, LAW BY THE NUMBERS (Mar. 3, 2011, 6:24 PM), <http://uberlaw.net/LawNumbers/2011/03/03/so-you-want-to-be-a-rock-n-roll-star/>.

editorial commentary, in NALP's annual reports, for many years entitled *Employment Report and Salary Survey*, and since the late 1990s entitled *Jobs & JD's*.¹⁴ The nature and extent of the data gathered and published has changed over time and has gradually become more detailed. It has come to include increasing amounts of information regarding the graduates, the characteristics of their employers and their work, and geographic and salary details. Because it is the principal dataset used in this Article to portray the developments in the entry-level legal job market over time, it is worth taking a moment to describe it.

1. *An Overview of the NALP and ABA Datasets*

Since 1975, NALP has sought employment information as of roughly nine months after the last third-year class's graduation from all ABA-accredited law schools. This information is reported in the aggregate, without isolating the results at any particular law school.¹⁵

Employment status. Graduates for whom employment status is known are initially categorized as either "Employed" or "Not Working." "Not Working" is divided (where known) between "Seeking Employment" and "Not Seeking Employment." Beginning with the Class of 1983, the number of graduates "Continuing Studies Full-Time" is broken out where known.

Employer type. "Employed" graduates are initially divided (where known) among "Sectors" or "Employer Types": "Academic," "Business,"

14. *E.g.*, NAT'L ASS'N FOR LAW PLACEMENT, JOBS & JD'S: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2011 (2012) [hereinafter NALP CLASS OF 2011 REPORT]. There are many instances throughout this Article in which the annual NALP Jobs & JD's Reports are discussed; background information regarding these reports may be found online. See *Jobs & JD's: Employment and Salaries of New Law Graduates*, NALP, <http://www.nalp.org/jobsjdsemploymentandsalariesofnewlawgraduates> (last visited June 22, 2014) (published annually roughly one year after each graduating class). For clarity's sake, when the discussion is about a particular year's report, that report will be cited as "NALP CLASS OF ___ REPORT, *supra* note 14." When the discussion is about statistics derived from data found within the NALP Jobs & JD's Reports aggregately, the footnote will not cite each individual report; the year range of the reports cited can be discerned from the particular textual discussion.

15. Beginning in 2011 (with respect to the graduating Class of 2010), the ABA Section of Legal Education and Admission to the Bar began publishing a school-by-school breakdown of these placement outcomes using the same raw data, focusing principally on job and employer types. See *Employment Summary Report*, A.B.A., <http://employmentsummary.abaquestionnaire.org/> (last visited June 22, 2014). At the ABA's insistence, the granularity of this information with respect to short-term, part-time, and school-funded positions increased significantly in 2012 (for the Class of 2011). See *Updated Statement of the ABA's Section of Legal Education and Admissions to the Bar Regarding Collection of New Job Placement Data*, A.B.A. (Mar. 15, 2012), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2012_3_15_updated_statement_regarding_employment_data.authcheckdam.pdf.

“Government,” “Judicial Clerkships,” “Public Interest,” and “Law Firms.”¹⁶ Law Firm employment is broken down by firm size;¹⁷ Government employment is broken down by type.¹⁸ School-funded positions are not broken out until the Class of 2010 (and in 2010 are divided only between long-term and short-term, but not full-time and part-time).

Job type. Before 1982, no job types are specified. Beginning with the Class of 1982, “Employed” graduates are divided among “Legal Positions,” “Nonlegal,” or “Other Positions” (the term changes during the 1990s), and “Employed, Job Type Unknown.”¹⁹ Beginning with the Class of 2001, Job Types are divided (where known) among “Bar Passage Required,” “JD Preferred,” “Other Professional,” “Other Nonprofessional,” and “Unknown.”²⁰

Extent of Employment. Before 1991, NALP provided no information on the number of graduates employed in part-time or short-term positions. From 1991–2000, NALP reported a percentage of placements by Employer Type, and a number of placements by Job Type, that were “Part-Time.” This category was suspended in 2001, and it was not until the Class of 2009 that the “Employed” category broke out the jobs reported as “Part-Time” (defined as less than thirty hours per week) and the jobs reported as “Temporary” (defined as

16. From the Class of 1975 through the Class of 1988, these divisions by Sector are expressed as percentages; beginning with the Class of 1989, they are reported as raw numbers.

17. For the Class of 1979 through the Class of 1981, numbers of those employed in law firms are provided (where known) for solos and for firms of 2-10, 11-25, 26-50, and more than 50 lawyers. For the classes of 1982 through 1989, the numbers of those employed in law firms are broken out (where known) into solo practitioners, and firms of 2-10, 11-25, 26-50, 51-100 and “Very Large (101+).” Beginning with the Class of 1990, “Very Large (101+)” is replaced by 101-250, 251-500, and 501+. For the Classes of 1982 through 1985, 1987 through 1988, and 1991 through 2008, the breakdown among law firm sizes is reported by percentage; all other Classes are reported in raw numbers.

18. Beginning with the Class of 1989, “Government” positions are broken out (where known) into “Defender,” “Military,” “Prosecution,” “Administrative Agency,” and “Other Government Area.” “Government” positions are also broken out (where known) into “Federal,” “State,” “Local,” and “Other Level” beginning with the Class of 1989.

19. The definitions of these categories are explored *infra* notes 29-30 and accompanying text.

20. The definitions of “Bar Passage Required” and “JD Preferred” are explored *infra* notes 29-30 and accompanying text. Beginning with the Class of 1995, the data include percentages of those in various employment categories who are seeking other work. From the Class of 1995 through the Class of 2000, the percentages of those Seeking Other Employment are broken out (where known) by “Employer Type” (“Academic,” “Business,” “Government,” “Judicial Clerkships,” “Public Interest,” and “Law Firms”) and “Job Type” (“Legal” and “Non-Legal”). Beginning with the Class of 1996, percentages of those Seeking Other Employment are further broken down by size of law firm and type of Government or Public Interest employment. Beginning with the Class of 2001, the “Job Type” changes to “Bar Passage Required,” “JD Preferred,” “Other Professional,” and “Other Non-Professional.”

short-term positions expected to last less than one year), but did not break out the portion of each that was both Part-Time and Temporary until the ABA released that information in 2011. Beginning with the Class of 2009, Part-Time and Temporary positions were reported both as a percentage of the overall number of jobs (of any kind) obtained by the class, as a percentage of the total jobs in each of the Employer Types listed above, and (as to Part-Time but not Temporary) as a percentage of the total jobs in each of the Job Types listed above.

2. Weaknesses in the NALP Data

While it would be convenient to use the NALP data in their native form, that would foster numerous serious inaccuracies. To begin with, the NALP data have a number of weaknesses when viewed on their own terms:

- As described above, NALP's data categories have changed over time in ways that do not always lend themselves to easy reconciliation, complicating comparison over time.
- Reporting in the 1970s and 1980s was decidedly spotty, with the portion of the graduating class accounted for at responding schools, and the number of accredited schools responding at all, gradually increasing in the 1990s.²¹ What we know about entry-level legal employment during the 1970s and 1980s is correspondingly less reliable.²²
- The data are self-reported by the graduates' schools, which in turn gather the information from their graduates without meaningful outside oversight, creating possibilities for opportunistic or (perhaps more charitably) motivated applications of the standards defining the categories of outcomes.²³

21. See *infra* Part III.A.

22. The implications of this deficit are explored *infra* Part III.A.

23. In light of recent incidents in which law schools have misrepresented statistics relevant to their *U.S. News* rankings, in 2011 the ABA added more detailed placement-outcome disclosure requirements, and stiffer penalties for their violation, to its accreditation rules. ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2011–2012, at 40–42 (2011) (referring to Standard 509); see also Mark Hansen, *Former Law School Employee Says in Sworn Statement She Was Pressured to Inflate Graduates' Job Stats*, A.B.A. J. (Oct. 24, 2012, 2:59 PM CDT), http://www.abajournal.com/news/article/thomas_jefferson_school_of_law_lawsuit_inflate_employment_data_2006/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email; Martha Neil, *ABA Raps Villanova re Inaccurate Admission Data, Says Law School Must Post Censure Online*, A.B.A. J. (Aug. 15, 2011, 3:23 PM CDT), http://www.abajournal.com/news/article/abas_legal_ed_section_sanctions_villanova/; Karen Sloan, *Illinois Law Fined \$250,000 for Falsifying Applicants' Test Scores*, NAT'L L.J. (July 24, 2012), <http://www.nationallawjournal.com/id=1202564243650/Illinois-Law-fined-%24250%2C000-for-falsifying-applicants%27-test-scores>. The breadth of compliance with the new rules remains in question. See Karen Sloan, *Problems Persist with Law School*

- The reliability and consistency risks of self-reporting are increased by the fact that some of the data categories are easily subject to manipulation by reporting schools, for example “JD Preferred” and “Unemployed—Not Seeking.”²⁴

At least as importantly, NALP has chosen categories and modes of reporting that are not consistent with the circumstances it is here argued are of greatest descriptive and predictive interest. For example, NALP has traditionally reported, and inexplicably still reports, as “employed” any law graduate with any job of any kind, irrespective of whether that position is short-term, part-time, or completely unrelated to the law. Thus for the Class of 2012, NALP publicly reported an “overall employment rate for new law school graduates” of 84.7% when according to the ABA’s school-by-school report of the same law school-supplied numbers, only 56% of those graduates had full-time, long-term positions requiring a law license, and another 9% had full-time, long-term jobs reported as “JD Preferred.”²⁵

Moreover, as will be discussed further below, NALP’s reporting categories do not neatly conform to this Article’s preferred qualitative definitions of the circumstances of interest; indeed, since the reporting categories both evolve over time and are in a number of instances easily malleable, they do not strictly conform to any one qualitative definition of anything. As a result, effort is required to conform the data more closely to the preferred qualitative definition of a Law Job and to reconcile the evolving categories over time.

Jobs Data, Watchdog Says, NAT’L L.J. (Mar. 4, 2013), <http://www.nationallawjournal.com/id=1202590850252/Problems-persist-with-law-school-jobs-data%2C-watchdog-says-;> *infra* note 46 (discussing recent apparent incidents of motivated placement data reporting). At this writing, the ABA is developing an auditing program for self-reported data, which if nothing else highlights the possibilities for opportunism the current system presents. See Karen Sloan, *Group Offers to Certify Law Schools’ Honesty*, NAT’L L.J. (Aug. 2, 2013), <http://www.nationallawjournal.com/id=1202613421780/Group-Offers-to-Certify-Law-Schools’-Honesty>.

24. See *infra* Part II.D.1, .3, respectively.

25. NALP, EMPLOYMENT FOR THE CLASS OF 2012 — SELECTED FINDINGS 1-2 (2013), available at <http://www.nalp.org/uploads/Classof2012SelectedFindings.pdf> [hereinafter NALP 2012 SELECTED FINDINGS]. By failing to exclude part-time and short-term positions, NALP also reported that 64.4% of the Class of 2012 were in positions requiring a law license. *Id.* Even more oddly, the same report asserts that 58.3% of the Class of 2012 were in full-time, long-term jobs requiring a law license nine months after graduation, *id.*, while the ABA’s report, offering the very same data in more granular form, yields the calculation that only 56% of the class are in such jobs. See *Employment Summary Report*, *supra* note 15 (offering school-by-school data in multiple subcategories for the Classes of 2010–2013). Similarly, NALP reported that 13.3% of the Class of 2012 were in JD Preferred positions, NALP 2012 SELECTED FINDINGS, *supra*, at 1-2, while the ABA data yield the calculation that only 9% of the class are in such jobs long-term and full-time, *Employment Summary Report*, *supra* note 15 (Class of 2012 Employment Data). And as discussed *infra* notes 29-30 and accompanying text, only some relatively modest portion of the “JD Preferred” jobs law schools report to NALP and the ABA likely qualify as Law Jobs under the more functional definition suggested in this Article.

The following section attempts to address some of these concerns in extracting a quantitative measure from the NALP and ABA data that corresponds to the proposed qualitative definition of Law Jobs.²⁶

D. An Effort to Extract the Proposed Qualitative Measure Quantitatively from the Available Data

1. The Degree of Relation Between the JD and the Job

One question that immediately presents itself is how law-related a position has to be before it will be considered a Law Job. To dispose of the easy cases, most typical Law Jobs require a law license, and almost everyone who wants a law license needs a law degree to get it.²⁷ Thus, placements categorized as “Bar Passage Required” in the NALP data are easy to count as Law Jobs.

Beyond positions requiring a law license, however, the question becomes much more difficult. Clearly there are jobs that don’t require a law license or comprise law practice by any conventional definition, but for which a law degree provides very substantial advantages in obtaining or performing the job that someone might rationally seek a law degree to pursue. But a good deal more than a merely perceptible or incremental advantage should be required before we count these positions as Law Jobs. In order to qualify as a Law Job, the law degree must provide dramatic and substantial advantages in obtaining or performing the job not more easily obtainable or substitutable (whether in nature or extent) another way. For example, a law degree would likely make someone a better high school civics teacher or paralegal, but that does not mean that law school is a rational path to such a career.²⁸ Unfortunately, describing and measuring the point

26. For a thoughtful and fairly rigorous alternative (though not altogether dissimilar) quantitative definition, see Kyle P. McEntee & Derek M. Tokaz, *Take This Job and Count It*, 1 J. LEGAL METRICS 309 (2012). Readers who may wish to experiment with their own quantitative approaches to the current entry-level employment market may enjoy the “Law Jobs: By the Numbers” calculator created by Educating Tomorrow’s Lawyers, an initiative of the Institute for the Advancement of the American Legal System at the University of Denver. *Law Jobs: By the Numbers*, EDUCATING TOMORROW’S LAWYERS, <http://educatingtomorrowlawyers.du.edu/law-jobs> (last visited June 22, 2014).

27. There are a few states in which an aspirant to the bar can still “read the law” under a judge’s or lawyer’s supervision rather than attend law school as a qualification to sit for the state’s bar examination. See, e.g., RULES OF THE STATE BAR OF CAL. R. 4.29 (2014); N.Y. COMP. CODES R. & REGS. tit. 22, § 520.4 (2013) (requiring at least one year of formal law school before studying law under a lawyer’s supervision). But this approach is rarely used. See Rene Ciria-Cruz, *The Path Rarely Taken*, CAL. LAW. (June 2011), <http://www.callawyer.com/Clstory.cfm?eid=916106> (noting that only 39 of the roughly 40,000 bar takers in California from 2006–2011 (that is, one-tenth of one percent) qualified for the exam in this fashion).

28. It is no objection that this may actually happen from time to time, and it undoubtedly does, most often as a substitute for the “real” Law Job that a graduate is unable to obtain. And of course it implies no disrespect for careers in primary or secondary education,

at which a JD and a job are sufficiently related to conclude that it makes sense to have gone to law school to get the job is both subtle and subject to opportunism in self-reporting. This creates the quantitative challenge of how to treat the placement outcomes NALP now calls “JD Preferred” and the ABA calls “JD Advantage[d].”²⁹

The JD Advantaged category was introduced in the NALP Reports beginning with the Class of 2001. From the Class of 1982 through the Class of 2000, NALP divided all known job types between “Legal Positions” and “Nonlegal Positions.” “Legal Positions” were substantially limited to what would now be called Bar Passage Required jobs, and the other category appears to have comprised not only what are now reported as JD Preferred positions, but also work having little or no relation to the graduate’s legal studies.³⁰

or as a paralegal, to say that law school is not a rational way to pursue them, or that they are not *Law Jobs*. It simply means there are quicker and easier ways to get there than law school. Because a plan to attend law school with the specific goal of teaching high school civics or becoming a paralegal would not be rational for the ordinary person, they should be excluded from the category of Law Jobs here under discussion. See *supra* Part II.B.

29. This Article uses the NALP term “JD Preferred” and the ABA term “J.D. Advantage[d]” interchangeably. The ABA defines “J.D. Advantage” positions as follows:

A position in this category is one for which the employer sought an individual with a J.D., and perhaps even required a J.D., or for which the J.D. provided a demonstrable advantage in obtaining or performing the job, but which does not itself require bar passage or an active law license or involve practicing law. Examples of positions for which a J.D. is an advantage include a corporate contracts administrator, alternative dispute resolution specialist, government regulatory analyst, FBI agent, and accountant. Also included might be jobs in personnel or human resources, jobs with investment banks, jobs with consulting firms, jobs doing compliance work in business and industry, jobs in law firm professional development, and jobs in law school career services offices, admissions offices, or other law school administrative offices. Doctors or nurses who plan to work in a litigation, insurance, or risk management setting, or as expert witnesses, would fall into this category, as would journalists and teachers (in a higher education setting) of law and law related topics. It is an indicator that a position does not fall into this category if a J.D. is uncommon among persons holding such a position.

ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2013 EMPLOYMENT QUESTIONNAIRE (FOR 2012 GRADUATES): INFORMATION & DEFINITIONS 4 (2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2013_employment_questionnaire_definitions_and_instructions.authcheckdam.pdf [hereinafter ABA 2012 DEFINITIONS].

30. In the 1980s, NALP defined a “Legal” position tautologically and without elaboration as a “legal position.” NALP CLASS OF 1982 REPORT, *supra* note 14. It defined “Nonlegal” positions as “positions in management, consulting, policy analysis, speech writing, legislative drafting or similar areas in business and government; all who reported employment that is not specifically legal are reported here.” *Id.* Thus the 1980s definitions suggest that a “Legal Position” resembles a Bar Passage Required position, with most (and possibly nearly all) JD Advantaged jobs as well as work minimally or completely unrelated to the graduate’s legal studies categorized as “Nonlegal.”

In the early 1990s, NALP adjusted the definition of a “Legal Position” to “[a] position directly involved in the practice of law,” while defining “Non-Legal Position[s]” as

Recent events illustrate the difficulty of isolating which placements are truly dependent enough on the placement value of a law degree to count as Law Jobs. Nearly thirty accredited law schools now offer pre-JD one-year master's degrees in law, many having begun lately. One dean explained his program succinctly:

Many lawyers work in human resources, but you don't have to have a J.D. . . . It's the same thing with compliance officers in banks and hospitals. There are all these jobs in law—criminal justice jobs, law firm management jobs, consultants—where a J.D. makes no sense but some legal training is useful.³¹

However, “the very positions offered to justify a one-year master's [degree] ‘where a J.D. makes no sense’—‘human resources,’ ‘compliance officers,’ ‘criminal justice jobs,’ ‘consultants’—are specifically enumerated examples of ‘JD Advantaged’ positions in the ABA definition.”³²

Equally troubling are data suggesting that at least some jobs that schools may want to report as JD Advantaged are ones for which a law degree has only limited utility and to which graduates resort principally when “real” Law Jobs are not available to them. Using *U.S. News* rankings as a loose proxy for a law school's prestige, and thus the relative extent of employment choices generally available to

“[p]ositions that do not involve the practice of law. Examples are jobs in management, consulting, policy analysis, teaching, and retail.” NALP CLASS OF 1991 REPORT, *supra* note 14, at 77. The new language appears to draw a line similar to the 1980s definition, categorizing most or all of what are now called JD Preferred positions, as well as work substantially unrelated to the law, as “Nonlegal.”

This point of distinction became clearer in the mid-1990s, when a “Legal Position” was again redefined as “[a] position that requires a J.D. and requires substantial use of one's legal skills and training.” NALP CLASS OF 1995 REPORT, *supra* note 14, at 85. At this point, NALP defined “Non-Legal Positions” as:

Positions that do not require a J.D. degree and may or may not make specific use of legal skills and background. Includes jobs in which a J.D. or some legal background is helpful or preferred, but not required, e.g. FBI special agents, insurance agents, claims representatives, policy analysts, and jobs with legal publishers. Includes positions in which a J.D. is neither required nor particularly applicable, such as jobs in management, teaching, and retail. Non-legal positions are further defined as being **professional**, that is requiring professional skills or training, or **other**, that is not requiring any special professional skills or training or a job taken on a temporary basis.

Id. Here it seems even clearer that what are now categorized as JD Preferred positions as well as everything else not requiring a law license would fall in the “Non-Legal” category.

31. Karen Sloan, *Law for Laymen; Law Schools Hope to Fill Seats by Offering Master's Degrees*, NAT'L L.J. (May 20, 2013), <http://www.nationallawjournal.com/id=1202600625077/Law-for-Laymen> (quotation marks omitted).

32. Bernie Burk, *Proliferation of Pre-JD Master's Programs Casts Doubt on the Value of “JD Advantaged” Employment*, FAC. LOUNGE (May 22, 2013, 12:35 PM), <http://www.thefacultyounge.org/2013/05/proliferation-of-pre-jd-masters-programs-casts-doubt-on-the-value-of-jd-advantaged-employment.html>; see ABA 2012 DEFINITIONS, *supra* note 29.

its graduates,³³ the extent of graduates' likely employment options is negatively correlated with their selection of a job their schools categorize as JD Advantaged.³⁴ In other words, graduates with more employment options, and particularly with Bar Passage Required job options, tend *not* to choose JD Advantaged jobs. As entry-level legal employment suffered after the onset of the Great Recession in 2008,³⁵ the JD Advantaged jobs reported increased, both in absolute numbers (from about 3100 JD Preferred placements, including part-time and short-term, for the Class of 2007 to over 6300 for the Class of 2013, an increase of over 100%), and as a proportion of the jobs graduates found (from 8.4% of all entry-level placements being reported as JD Preferred jobs for the Class of 2007 to 16.5% for the Class of 2013).³⁶ Similarly, NALP's placement data on the Class of 2012 show that nearly three times as many holders of JD Advantaged jobs—43% of them—were already seeking a different job nine months after graduation than were holders of Bar Passage Required Jobs (15%).³⁷

33. This is not an endorsement of the accuracy or the utility for any particular purpose of the *U.S. News* rankings. It is merely a concession that the rankings both foster and reflect a set of public perceptions that have real practical consequences. By far the most influential factors in employers' hiring decisions are the prestige of the candidates' law schools and their class standing or grades. See *infra* notes 73-74 and authorities cited. Thus it should be no surprise that the *U.S. News* ranking of a graduate's law school is very strongly correlated with that graduate's likelihood of getting a Law Job as defined herein (2013: $r = -.73$, $p < .0001$; 2012: $r = -.71$, $p < .0001$; 2011: $r = -.66$, $p < .0001$). The author used *U.S. News* rankings and ABA placement data for the Classes of 2011–2013 for the calculations; the correlation coefficient is negative because the lower the school's ordinal rank—that is, the closer to No. 1—the greater the proportion of its graduates who obtain Law Jobs within nine months. The increasing correlation coefficient over the last three years seems to indicate that the tie between school prestige and placement in full-time, long-term Bar Passage Required positions is growing stronger as employers react to the overall contraction in the Law Job market.

34. For all JD Advantaged positions (including short-term and part-time), 2013: $r = .29$, $p < .0001$; 2012: $r = .27$, $p < .0001$; 2011: $r = .19$, $p < .008$. (Source: *U.S. News* rankings and ABA school-by-school placement data for the Classes of 2011–2013.) The correlation coefficient is positive because the higher the rank number (and thus the lower the prestige), the higher the number of JD Advantaged jobs. Again, the increase in the correlation coefficient over the last several years suggests a strengthening tie between lower-prestige schools and recourse to JD Advantaged positions.

35. See Mystal, *supra* note 5; *infra* Part III.B & Figures 1–2.

36. NALP CLASS OF 2007 REPORT, *supra* note 14, at 8. The 2013 percentage was calculated from ABA Class of 2013 Placement Data by dividing total number of all JD Advantaged positions by total number reported as "Employed" in any category (including part-time and short-term positions).

37. NALP 2012 SELECTED FINDINGS, *supra* note 25, at 4. Although the number of JD Advantaged jobs reported has grown rapidly in the last five years, the outsized proportions of recent law graduates dissatisfied enough with a JD Advantaged job to be seeking other employment within months after starting is not new. Nearly 38% of the Class of 2007 with JD Preferred positions were seeking a different job nine months after graduation, compared with less than 9% of those with jobs requiring a law license. NALP CLASS OF 2007 REPORT, *supra* note 14, at 108. To be clear, the point of this observation is not that JD Advantaged jobs are "worse" than Bar Passage Required jobs in some hedonic sense, but that the large number of graduates who want a different position at or immediately after the

In sum, while no quantitative precision is possible, all of this makes it likely that at least some of the jobs being reported as JD Advantaged or JD Preferred would comprise a goal for which someone might rationally seek a law degree, and thus should be counted as Law Jobs. But it appears equally likely that quite a few of those placements, and probably more of those reported in recent years, should not.

How to count Law Jobs, then? As will be seen in the following sections, this Article will count as Law Jobs those placements reported as “Legal Positions” for the classes of 1982 through 2000, and for the classes of 2001 forward it will report Bar Passage Required and JD Preferred jobs separately for comparison purposes. This allows the reader to consider the range of potentially countable outcomes that may be among the JD Preferred jobs once that category is introduced.

2. Job Characteristics

Most matriculants do not come to law school expecting marginal or temporary employment upon graduation. Thus, part-time and short-term employment, including short- or fixed-term engagements funded by the graduate’s law school, generally should not be viewed as Law Jobs.³⁸ Unfortunately, other than an attempt to count part-

time they take a JD Advantaged job indicates that a great many never wanted the JD Advantaged job at all and took it only as an alternative to something completely non-law-related or to unemployment.

38. Counting is complicated by the fact that a few kinds of fixed-term postgraduate employment—principally judicial clerkships and a few high-prestige fixed-term public interest fellowships—are extremely competitive, viewed as highly prestigious, and typically provide gateways to a wide range of coveted long-term positions. Because these fixed-term positions generally last only a year or two, they are characterized in most datasets as “long-term” jobs (that is, jobs lasting a year or more), and this Article’s measure of “Law Jobs” includes them. A fair proportion of school-funded positions also appear to last a year—quite probably to meet the ABA and NALP definitions of “long term” jobs, which are treated more favorably for *U.S. News* rankings purposes—but are characteristically last resorts providing only some transition to “real” legal employment. To the extent they can be counted (and detailed data are available only for the classes of 2010–2012), they are excluded from this Article’s measure of “Law Jobs.”

This is not to say that all school-funded positions are worthless: they can provide valuable experience and references a graduate may be able to leverage into a long-term Law Job. But ordinary people would not rationally plan to attend law school in order to serve temporarily in a school-operated postgraduate “law firm.” See Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES (Mar. 8, 2013), <http://www.nytimes.com/2013/03/08/education/law-schools-look-to-medical-education-model.html?smid=pl-share>; Karen Sloan, *Think of It as a Residency for Lawyers*, NAT’L L.J. (June 4, 2012), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202556661573&slreturn=20130624112959>. Nor would ordinary people rationally attend law school to work at a government agency or nonprofit organization without compensation other than a small fixed-term “stipend” funded by their former law school. See NALP 2012 SELECTED FINDINGS, *supra* note 25, at 3. There probably are a few exceptions that prove the rule: In 2009, for example, Yale Law School expanded a school-funded program placing graduates in one-year internships with well-regarded government and nonprofit law offices that was at least

time jobs between 1991 and 2000, part-time and short-term positions were not broken out in the data reported to NALP until the Class of 2009, and school-funded positions were not broken out until the Class of 2010. They are excluded from consideration as Law Jobs here as soon as they can be reliably counted.³⁹

Law graduates who immediately hang out their shingles as solo practitioners are excluded for similar reasons. This of course implies no disrespect of solos; over one-third of the lawyers in America practice on their own.⁴⁰ But the overwhelming majority of those solos are more experienced lawyers.⁴¹ Despite a few schools' efforts to prepare students specifically for solo practice upon graduation,⁴² very few law

anecdotally reported to be highly competitive and much sought after by third-years who had good offers from private law firms, but preferred to seek public interest work. See *Yale Law School Doubles Public Interest Fellowships*, YALE L. SCH. (Oct. 28, 2008), <http://www.law.yale.edu/news/8195.htm>; YLS 2010 grad, Comment to *Employment Outcomes II: What We Know About School-Funded Temporary "Bridge" Positions at First-Tier Law Schools*, FAC. LOUNGE (Mar. 29, 2012, 9:09 AM, 2:19 PM), <http://www.thefacultyounge.org/2012/03/employment-outcomes-ii-what-we-know-about-school-funded-temporary-bridge-positions-at-first-tier-law.html>.

While there is little information regarding how widespread school-funded positions were prior to the recent unpleasantness, we do know that by 2010 they were offered predominantly by the higher-prestige, higher-ranked, financially better-endowed law schools. See Bernie Burk, *Employment Outcomes IV: What the ABA Employment Outcomes Data Tell Us About the Prevalence and Distribution of School-Funded "Bridge" Positions*, FAC. LOUNGE (Apr. 18, 2012, 9:48 PM), <http://www.thefacultyounge.org/2012/04/employment-outcomes-iv-what-the-aba-employment-outcomes-data-tell-us-about-the-prevalence-and-distribri.html> (collecting data). Now that *U.S. News* and other commentators are discounting school-funded positions' value as a measure of desirable employment outcomes, their prevalence appears to be declining. See Karen Sloan, *NALP: Law Grads' Jobs Rate Falls for Fifth Straight Year*, NAT'L L.J. (June 20, 2013), <http://www.nationallawjournal.com/id=1202607406858/NALP%3A-Law-Grads%27-Jobs-Rate-Falls-for-Fifth-Straight-Year>.

39. The uncounted portion of part-time and short-time jobs before 2009 creates a consistency (normalization) problem in portraying trends in the data over time. This Article assumes that the number of such positions prior to the Law Jobs market's sudden contraction in 2008–2009 was modest relative to the overall number of entry-level jobs, as reflected in contemporaneous anecdotal reporting of the sudden growth in those kinds of positions as layoffs occurred and hiring contracted. By way of comparison, from 1991 to 2000 NALP reported how many "Legal" positions were part-time. The percentage of total graduates in this category ranged from roughly 2.5% to 4.5% during that period. Because of this category's likely overlap with Solo Practitioners during this period, it is not separately subtracted from total "Legal" employment for these years.

40. CLARA N. CARSON & JEEYOON PARK, AM. BAR FOUND., *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005*, at 6 (2012).

41. The percentage of law graduates directly entering solo practice per year has fluctuated between roughly 1% and 3% since 1982, bottoming out around 1% in 1989 and 2002, and jumping from about 1.4% to about 2% of the graduating class (2.6% of all entry-level jobs) during the recent recession. That amounts to perhaps 1000 or fewer new school-to-solo practitioners most years. The author compiled this data from the NALP Reports for the Classes of 1982–2011. In total, there are over 300,000 solos nationwide. CARSON & PARK, *supra* note 40, at 6.

42. See Bronner, *supra* note 38; Karen Sloan, *Cleveland Solo Incubator Reflects Students' Choice of Careers*, NAT'L L.J. (Dec. 4, 2012), <http://www.nationallawjournal.com/>

students are realistically prepared to practice without more experienced supervision on the day they pass the bar exam (let alone have clients to practice on). Moreover, solo practice straight out of school is strongly negatively correlated with school prestige, suggesting that this placement is chosen disproportionately by those with fewer alternatives.⁴³ The category is also subject to reporting abuse, because a school may be tempted to report its unemployed more favorably as self-employed.⁴⁴

3. *Graduates Not Seeking Work or Pursuing Full-Time Studies*

NALP has long requested schools to report which of their unemployed graduates are, and are not, actively seeking work. While some have opted to count “Not Seeking” as neither employed nor unemployed (by excluding those not seeking employment from the denominator of any fraction measuring the proportion of graduates who are “employed,” thus giving that fraction a higher value), this Article will treat “Unemployed—Not Seeking” as unemployed.

The reasons are straightforward. Most simply, unemployed is unemployed, which is not a state of affairs that an ordinary person would rationally plan to attend law school to achieve. It seems odd not to count it as such just because the graduate has purportedly decided not to try to work at a particular point in time.⁴⁵ Finally, the “Not Seeking” category creates the temptation for motivated or dishonest reporting if it receives any advantage over ordinary unem-

id=1202580245761/Cleveland-solo-incubator-reflects-students%27-choice-of-careers-.

43. 2013: $r = .51$, $p < .0001$; 2012: $r = .47$, $p < .0001$; 2011: $r = .53$, $p < .0001$. (Source: *US News* Rankings and ABA School-by-School Placement Data for the Classes of 2011–2013.) Again, the correlation coefficient is positive because higher numerical law school ranking indicates lower prestige.

44. Two or three graduates also may join together after graduation in small firms with the same characteristics as the solos just described. While this likely occurs, and would be excluded from the Law Jobs count for the same reasons as just discussed if it could be identified, there are no data on how many small firms of this kind are formed each year. Given the prevalence of smaller firms among more experienced lawyers (nearly 150,000 lawyers practice in such firms nationwide, see CARSON & PARK, *supra* note 40, at 6), placement with a firm of 2-10 is generally counted as a Law Job.

45. There is no detailed empirical evidence of nonseekers’ reasons for not seeking employment, but the availability of fewer meaningful employment opportunities is at least a plausible explanation for many, whether because of an unsuccessful first try on a bar exam or a constricted Law-Job market. This inference is buttressed by the fact that the number of nonseeking graduates from a particular school is inversely correlated with the school’s prestige (2013: $r = .24$, $p < .001$; 2012: $r = .22$, $p < .002$; 2011: $r = .23$, $p < .002$; source: *U.S. News* rankings and ABA School-by-School Placement Data for the Classes of 2011–2013), and that conventional entry-level Law Jobs are correlated with school prestige, see *supra* note 33 and accompanying text.

ployment. In fact, there is quantitative evidence suggesting that this has already occurred.⁴⁶

Pursuing full-time studies rather than working is also not counted as a Law Job for similar reasons. To begin with, in the simplest sense, seeking another degree is not working at a law-centered job. Moreover, it appears that many graduates pursuing further education are not the star students of elite institutions seeking PhDs in the social sciences or history in preparation for academic careers, but rather discouraged job-seekers pursuing LLMs in the probably misguided hope that it will improve their lot in the job market.⁴⁷ Thus, while some portion of these students probably are doing something an ordinary person might rationally plan to go to law school to do, it appears to be a minority, and in all events the one thing we know they are *not* doing is working.

46. For many years *U.S. News* excluded nonseekers from the denominator of the fraction of a school's graduating class considered "employed" for purposes of calculating its rankings. This created a rankings advantage for schools that reported greater numbers of their unemployed graduates as not seeking work. *U.S. News* suspended this practice in 2008 but resumed it in 2009, warning schools not to fudge their numbers. See Robert Morse, *Another Law Ranking Methodology Change*, U.S. NEWS & WORLD REP. (July 9, 2008), <http://www.usnews.com/education/blogs/college-rankings-blog/2008/07/09/another-law-ranking-methodology-change>. Paul Campos has reported that by February 2010, thirty-five law schools "reported having *more than twice as many* unemployed not-seeking graduates as unemployed-seeking graduates." *A Note on the Reliability of the Employment Data Reported by Law Schools*, INSIDE THE L. SCH. SCAM (Feb. 23, 2013, 10:12 AM), <http://insidethelawschoolscam.blogspot.com/2013/02/a-note-on-reliability-of-employment.html> (emphasis in original). When *U.S. News* announced in 2011 that it was again suspending the advantaged treatment of those reported as Not Seeking, "the number of schools that reported having more than twice as many unemployed not-seeking graduates as unemployed-seeking fell from 35 to 4." *Id.*

47. Some states allow the holder of a foreign law degree otherwise unqualified to do so to sit for their bar examinations with an LLM from an accredited American law school. See, e.g., N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6 (2013). And a very small number of specialized and selective LLM programs, such as NYU's, the University of Florida's, and Georgetown's LLM programs in taxation, likely do open doors in the practice world. Unfortunately, the great majority of post-JD law degrees do not appear to be nearly as effective in this regard. See, e.g., Elie Mystal, *What Is the Value of an LLM Degree?*, ABOVE THE L. (Sept. 22, 2010, 10:07 AM), <http://abovethelaw.com/2010/09/what-is-the-value-of-an-llm-degree/>; Karen Sloan, *Big Law Firms Don't Care About Your LLM*, *Recruiter Warns*, NAT'L L.J. (Jan. 10, 2012), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202537948154&BigLawFirmsDontCareAboutYourLLMRecruiterWarns>. While the correlation between lack of school prestige and proportion of students seeking a further degree is statistically significant for the Class of 2011 ($r = .17$, $p = .02$), the relationship for the two most recent graduating Classes is only barely or not significant (2013: $r = .13$, $p < .08$; 2012: $r = .10$, $p < .15$). (Source: *US News* Rankings and ABA School-by-School Placement Data for the Classes of 2011–2013.) This development may suggest that, earlier in the recession, greater numbers of marginal job seekers from less prestigious schools sought LLMs to improve their chances in the job market, but that press reports on the ineffectuality of this strategy discouraged greater numbers from pursuing the same course over the last couple of years.

4. *Unknown Outcomes*

It is inevitable that there will be graduates whose employment status is unknown despite the good-faith efforts of their law schools. Some of them will have legitimate Law Jobs. Nevertheless, this Article does not count them as so employed unless their schools report them as such. The reasons are similar to those described in the preceding section. While there are (by definition) no empirical data available on what the unknown outcomes actually are, it stands to reason that they are disproportionately bad: as a practical matter, people with jobs they are proud of seem more likely to respond to their schools' inquiries, and schools seem more likely to seek out and report good results. Unknown outcomes in a particular school's graduating class are strongly inversely correlated with the school's prestige, suggesting that more outcomes are likely to be reported as unknown by schools having worse employment results overall.⁴⁸ And finally, treating unknowns as anything other than not holding a Law Job is an incentive for reporting schools to avoid learning (or disclosing) bad news.

Put slightly differently, it seems unlikely that graduates whose employment status is unknown are disproportionately *more* successful than their reporting classmates. Thus it likely minimizes the inaccuracy inherent in not knowing the status of some portion of the population to count the unknowns as not holding Law Jobs.

5. *Summary: Law Jobs and the Law Jobs Ratio*

Translating all of this onto the NALP data available, the Law Jobs obtained by each graduating class beginning with 1982 can be described as follows:

- 1982–1990: Legal Positions – Solo Practitioners
- 2001–2008: Bar Passage Required [+ JD Preferred]⁴⁹ – Solo Practitioners
- 2009: Full-Time (“FT”) Bar Passage Required [+ FT JD Preferred] – Full-Time, Long-Term (“FTLT”) Solo Practitioners⁵⁰

48. 2013: $r = .35$, $p < .0001$; 2012: $r = .35$, $p < .0001$; 2011: $r = .39$, $p < .0001$. (Source: *US News* Rankings and ABA School-by-School Placement Data for the Classes of 2011–2013.) *But see* Gary Rosin, *Unknowns: Selection Bias?*, FAC. LOUNGE (Dec. 19, 2011, 2:38 PM), <http://www.thefacultylounge.org/2011/12/unknowns-selection-bias.html>. Rosin found at most a “weak” inverse relationship between rates of graduates reported as unknown and rates of graduates reported as “employed.” However, this study did not test the proposition asserted in the text—that people with jobs they are *proud of* are more likely to report them—because it apparently used an “employed” rate based on *any* job, whether or not long-term, full-time, or in any way law-related.

49. The JD Preferred positions are in brackets to signify that measurements will be offered both with and without them.

50. Counting of part-time and short-term positions in 2009 and 2010 is complicated by the fact that NALP and the ABA collected data that indicated only whether *job* types (such

- 2010: FT Bar Passage Required [+ FT JD Preferred] – School-Funded – FTLT Solo Practitioners
- 2011–2013: FTLT Bar Passage Required [+ FTLT JD Preferred] – FTLT School-Funded – FTLT Solo Practitioners

For purposes of describing the entry-level legal employment market, this Article also employs what it calls the “Law Jobs Ratio.” This is simply the ratio for any given graduating class of Law Jobs to the total number of graduates that year, and it represents the portion of the graduating class in any given year that has obtained Law Jobs as defined here within nine months of graduation.

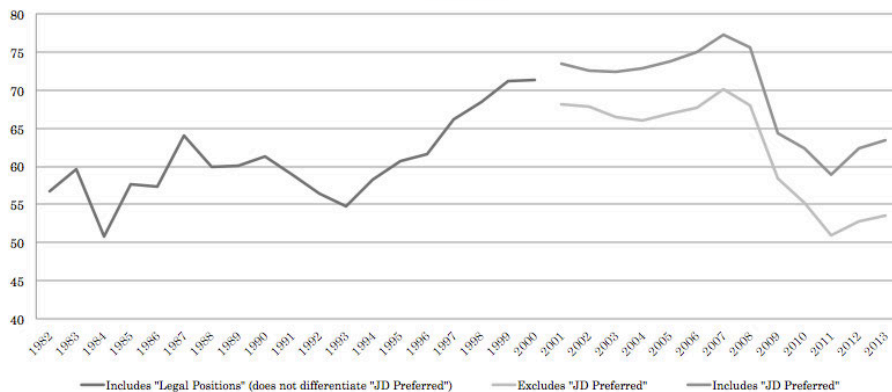
With the discussion of data and metrics complete, let’s see what these measures can tell us about where we have been and where we may be going.

III. HOW THE ENTRY-LEVEL LAW JOB MARKET HAS DEVELOPED OVER THE LAST THIRTY YEARS

A picture of the changes in the entry-level legal employment market is presented in Figure 1, which depicts the Law Jobs Ratio (based on available data) for the Classes of 1982 through 2013. Figure 1 maps the Ratio both with and without JD Advantaged placements after 2000. Figure 2 compares the number of Law Jobs with the total number of graduates over the same period.

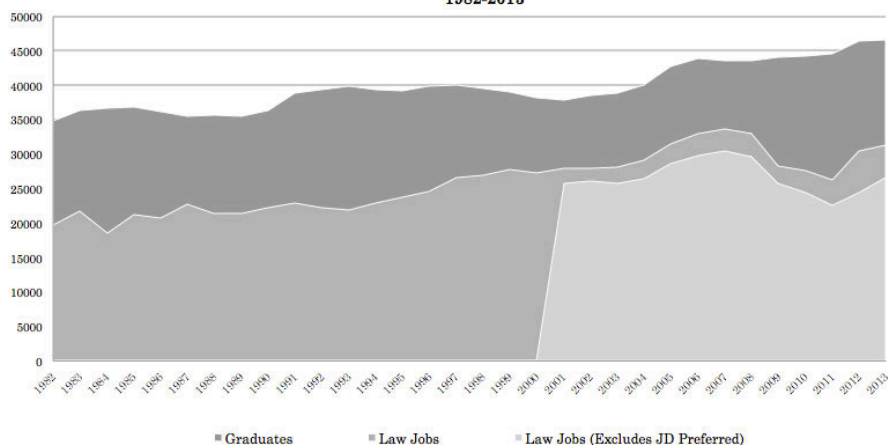
as Bar Passage Required) were part-time or full-time; as for *employer* types (such as Solo Practitioner), the data indicate whether positions were reported as part-time or short-term, but not which ones were both. Thus the part-time and short-term numbers, where available, each redundantly include positions that are both. These figures were normalized by determining the average proportion of PTST jobs in 2011, 2012, and 2013 when those data are available, and adjusting the 2009 and 2010 numbers accordingly.

**Figure 1:
Law Jobs Ratio
1982-2013**



Sources: NALP Reports, Classes of 1982-2013; ABA Placement Outcomes Data, 2010-2013

**Figure 2:
Law Jobs & Graduates
1982-2013**



Sources: NALP Reports, Classes of 1982-2013; ABA Placement Outcomes Data, 2010-2013

Figure 1 shows an anemic Law Jobs Ratio in the 1980s that improves substantially during the 1990s and 2000s. While the Ratio dips or slows its rise in tandem with or slightly after the recessions of the early 1980s, early 1990s, and early 2000s, it otherwise tends to rise throughout the thirty-year period portrayed, indicating the generally increasing ability of new law graduates to obtain Law Jobs, even as the absolute number of law graduates steadily increases as illustrated in Figure 2. This fairly consistent rise in the Law Jobs Ratio ends in a rapid and substantial fall, indicating a corresponding decrease in the proportion of law graduates able to obtain a Law Job within nine months after graduation, contemporaneously with

the onset of the Great Recession. If the increase after 2007 of JD Advantaged positions is considered (as discussed above) to be disproportionately not Law Jobs, the decrease depicted after 2007 is even greater.⁵¹

These observations raise a number of questions: Why is the Ratio so low in the 1980s relative to other periods, with steady increases across the 1990s after the recession early in that decade? Why is the best Law Jobs Ratio in recent history (in 2007) something less than 80%, indicating that at the peak of the market one in five graduates still failed to obtain a Law Job within nine months? Has there ever been something we could loosely characterize as close to full employment in the entry-level legal job market, and how would we know?

A. *What Do We Know About the 1980s and 1990s?*

The first possibility to consider is that these measurements are more or less accurate, or at least consistent over time. That would suggest that the market for new lawyers was much worse throughout the 1980s than in subsequent decades, and improved appreciably but somewhat gradually over the 1990s, accelerating during the 2000s until 2007. While this is possible, significant parts of it seem unlikely. By all indications, the 1980s (after the Reagan Recession) and 1990s (other than during the recession in the early part of the decade) seem to have been periods of fairly consistent high demand for new lawyers. This demand is reflected in the opening of twenty-eight new ABA-accredited law schools between 1980 and 2007, with a corresponding 24% increase in the total number of JDs granted per year while the Law Jobs Ratio (that is, the proportion of graduates each year who got Law Jobs soon after graduation) continued to rise,⁵² and the paucity of any significant contemporaneous observations that a very substantial complement of law graduates corresponding to the difference between the Ratio in the early 1980s and in the late 1990s were unable to find suitable uses for their degrees.⁵³

51. See *supra* Part II.C.1. As noted above, these observations describe the *entry-level* job market. What has happened over time to demand for more experienced lawyers of various kinds, while undoubtedly important, is beyond the scope of this Article, and may differ.

52. *Enrollment and Degrees Awarded: 1963–2012*, A.B.A., http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf (last visited June 22, 2014); see *supra* Figures 1–2.

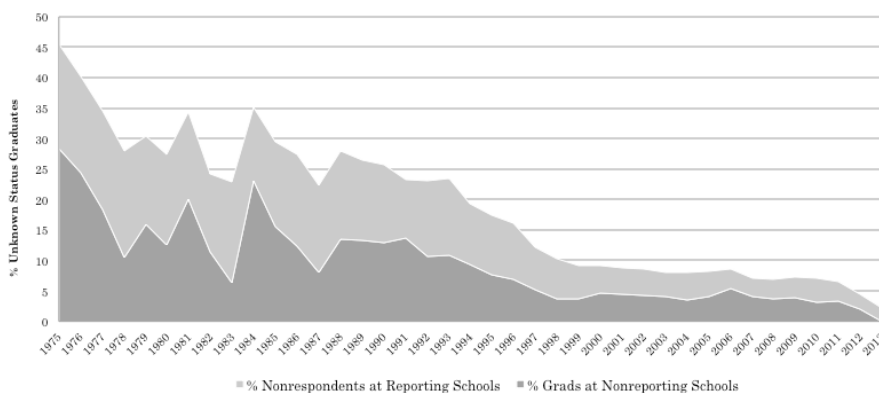
53. The contemporaneous legal press generally confirms these impressions (though it should be noted that the legal press focuses disproportionately on larger firms). During and shortly after the severe Reagan Recession of the early 1980s, graduates struggled to find law jobs. See Jay G. Foonberg, *A Law Degree Opens Many Doors: Graduates Don't Have to Take Traditional Jobs*, NAT'L L.J., Aug. 1, 1983, at 28. As the Reagan Recession resolved, entry-level legal employment became increasingly vigorous. See, e.g., Paula S. Linden, Gail G. Peshel & Jamiene S. Studley, *What Happened to Class of '87?: Most Went to Private*

Those observations in turn suggest that the measurements from the 1980s and portions of the 1990s are problematic. One possible explanation is that there is something wrong with this Article's qualitative definition of Law Jobs; another is that there is something wrong with the quantitative translation of that definition onto the available data. The qualitative definition has been explained in Part II and does not appear to have potential defects that could explain the particular details under consideration. The quantitative translation, however, may have created some distortions.

One of these distortions may result from the fact that the rate of nonreporting changed significantly over the period examined. Figure 3 details the percentage of the total number of graduates who attended a school that failed to participate in placement reporting at all, as well as the percentage of graduates from a reporting school whose employment status was reported as unknown. The proportion of both nonreporting schools and of nonresponding graduates at reporting schools is much higher in the early 1980s (near the beginning of NALP's data-gathering project) than later—as much as 35% of the graduating class was unaccounted for in the early-to-mid 1980s, with over half of that attributable to law schools that did not report at all.

Practice, Annual Study by NALP Shows, NAT'L L.J., Mar. 27, 1989, at 18; Daniel Trigoboff, *More Law Grads Turn to Major Firms*, LEGAL TIMES, Dec. 19, 1983, at 10; Thomas R. Trowbridge III, *Dramatic Increase in Number of Jobs Affects Recruiting*, N.Y. L.J., May 15, 1989, at 1. Strains returned to the job market during the recession of the early 1990s. See, e.g., Claudia MacLachlan, *Another Paltry Summer: The Largest Firms Offer Even Fewer Jobs*, NAT'L L.J., June 8, 1992, at 21; Ken Myers, *New Placement Survey Confirms Just How Bleak Job Market Is*, NAT'L L.J., May 4, 1992, at 10; Jamiene S. Studley, *Legal Recruiting in a Slow-Growth Market*, RECORDER, Mar. 14, 1991, at 2. While the recovery took hold in pockets, see Mike France, *Glory Years' Are Gone: Fewer Grads Get Traditional Legal Jobs*, NAT'L L.J., July 17, 1995, at 28; Marcia Pennington Shannon, *Temporary Jobs That Build a Resume: The Jobs Are Out There, but It Can Take a While to Find the Right One. Here's What to Do While Waiting*, NAT'L L.J., Aug. 1994, at 14, hiring boomed again as the economy recovered. See, e.g., Ken Myers, *Placement Officials See Upticks in Summer Jobs, Full-Time Offers*, NAT'L L.J., Apr. 3, 1995, at 11; Cynthia L. Rold, *Jobs for the Many, Not Just the Stars: Ace Students Are Generally Self-Confident, but the Rest of the Class Has Wide Options, Too*, NAT'L L.J., Aug. 1994, at 18; Anna Snider, *City's Firms Lure Back Most Summer Associates*, N.Y. L.J., Jan. 19, 1999, at 3.

Figure 3:
% Unknown Status Graduates
1975-2013



Sources: NALP Reports, Classes of 1982-2013; ABA Placement Outcomes Data, 2010-2013

As Figure 3 illustrates, both nonreporting rates fall over the 1980s and 1990s until they more or less level out in the late 1990s under 10%.⁵⁴ Because the definition of Law Jobs used here excludes any unknown result from being counted as a Law Job, the initially higher extent of nonreporting (especially of entire graduating classes at nonreporting schools) likely appreciably underreports Law Jobs and depresses the Law Jobs Ratio in the 1980s, and does so at a rate that later declines until the late 1990s.

Another possible distortion in the data concerns JD Advantaged jobs. As discussed above, most or all JD Advantaged jobs, including most or all of those that should count as Law Jobs, cannot be differentiated in the available data until after 2000.⁵⁵ There are no reliable data of which the author is aware from which the proportion of JD Advantaged placements during this period that should qualify as Law Jobs could be estimated. The result may well be that Law Jobs between 1982 and 2000 are to some degree undercounted for this separate reason as well.

54. There are likely several reasons for the change over time. The notion of reporting placement data undoubtedly became more commonplace and widely accepted over time, creating a self-reinforcing norm of reporting that also (and significantly) became externally enforced when the ABA adopted placement-reporting requirements as a condition of accreditation in 1996. See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Std. 509 & Interp. 509-1, at 49 (Aug. 1996), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1996_standards.authcheckdam.pdf. At least as important to the increase in reporting levels is the advent of the Internet, email, and social media, which simplify and accelerate locating and communicating with alumni, and in many cases also determining their employment status even if they fail to respond.

55. See *supra* Part II.C.1.

B. *Is There Anything New Lately?*

Figure 1 shows a sudden and rapid decline in the Law Jobs Ratio after 2007. Some observers nevertheless contend that the deterioration of the legal job market is nothing particularly new.⁵⁶ Figure 1 and 2 suggest otherwise, showing that—at least at the entry level—even as the number of law graduates increased during the 1990s and 2000s, the number of Law Jobs appears to have increased even faster, leading to a Law Jobs Ratio peak in about 2007 at something less than 80% (or somewhat less to the extent JD Advantaged jobs are discounted).⁵⁷

The reasons for this decline are debatable and will be discussed in Part V below. But one thing that is difficult to debate is that the entry-level Law Jobs market has shrunk substantially and rapidly since 2007.

C. *What Might Comprise a Practical Maximum Law Jobs Ratio at the Entry Level?*

Given the likely correct conventional wisdom that the 1980s through 2007 were, outside of periods of recession, generally times of robust and increasing entry-level legal hiring, it may seem somewhat surprising that the best Law Jobs Ratio in the last thirty years is only 70% to 77% (depending on how many JD Preferred placements are counted as Law Jobs). This result becomes less surprising when the particular circumstances of entry-level employment are taken into account.

The most significant impediment to entry-level placement is probably bar examination results. Roughly 20% of all law graduates nationwide fail the bar exam each year on their first attempt.⁵⁸ Some of those who fail the bar the first time get Law Jobs within nine months of graduation anyway; some larger law firms extend employment offers before graduation and allow their associates to fail the exam

56. See, e.g., Marc Gans, *Not a New Problem: How the State of the Legal Profession Has Been Secretly in Decline for Quite Some Time* (June 24, 2012) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2173144. William Henderson has argued that law firm employment of both attorneys at all levels of seniority and staff was “stagnating” for several years prior to the onset of the Great Recession, which is not necessarily inconsistent with the sudden changes documented here in the market for entry-level lawyers as the recession began. See *infra* note 113.

57. As discussed in the following section, although this may initially seem a surprisingly low historic high, it reflects some relatively common reasons for failure to obtain a Law Job within nine months of graduation, principally (though not exclusively) failure on a graduate’s first try on a bar exam.

58. See *Bar Examination and Admission Statistics*, NAT’L CONF. BAR EXAMINERS (2014), available at <http://www.ncbex.org/publications/statistics/> (compiling statistics from each year’s report). The 20% first-time failure rate is a composite figure; pass rates differ from state to state.

once without immediate adverse result, and some unsuccessful first-time bar takers probably find their way into genuinely JD-Advantaged positions that do not require a law license but for which a law degree actually makes a serious and substantial difference in the ability to obtain and perform the job.⁵⁹ But many Law Jobs require a law license, and many employers do not even consider candidates until they have one.⁶⁰ The NALP data is gathered roughly nine months after graduation—enough time to study for and take a bar exam, receive the results, and spend a few months job-hunting after passing, but not enough time to get results on a second attempt if the first is unsuccessful. Thus some significant portion of the roughly 20% of graduates who fail the bar exam on their first try are unlikely to hold a Law Job as of the NALP reporting date.⁶¹

Other natural exclusions from those able to obtain Law Jobs within nine months after graduation seem likely. Some graduates conclude that they simply do not wish to practice law (or work in a job sufficiently law-related that it ought to be considered a Law Job). Some, with pressing student loan obligations or basic economic needs, may feel the need to take any job that helps pay the bills while continuing to look for a Law Job.⁶² Still others, owing to uninspiring performance in law school (particularly at less prestigious schools) or personal quirks likely to emerge in an interview, may struggle to find any job in the currently oversupplied market until well past the reporting date.⁶³ And it should be recalled that while counting an unreported outcome as not employed in a Law Job is probably more accurate than excluding it from both the numerator and the denominator of the Law Jobs Ratio, it also almost certainly undercounts the number of Law Jobs among those not reporting to some degree, even at

59. See, e.g., Sarah Mui, *How Does Your Firm Handle Unlicensed Law Grads? What Happens if They Fail the Bar Exam?*, A.B.A. J. (June 20, 2012, 11:39 AM CST), http://www.abajournal.com/news/article/how_does_your_firm_handle_unlicensed_law_grads; *What Happens if You Fail the Bar Exam the First Time?*, TOP-LAW-SCHOOLS.COM (Mar. 31, 2011, 1:17 AM), <http://www.top-law-schools.com/forums/viewtopic.php?f=23&t=151960>; *What Happens to Your Job if You Fail the Bar?*, ALL4JDS (Sept. 27, 2012, 4:26 PM), <http://all4jds.com/forums/aft/19689.aspx>.

60. See, e.g., Barros, *supra* note 2; Elie Mystal, *Should the ABA Push Back Jobs Data Collection from Nine Months to Ten Months After Graduation?*, ABOVE THE L. (June 11, 2013, 1:27 PM), <http://abovethelaw.com/2013/06/should-the-aba-push-back-jobs-data-collection-from-nine-months-to-ten-months-after-graduation/>.

61. And at less prestigious schools where bar passage rates tend to be lower, this factor will likely have disproportionate impact on entry-level employment nine months after graduation compared with graduating classes from schools with higher first-attempt pass rates.

62. See *supra* notes 33-37 and accompanying text.

63. A small-scale study of recent graduates from Widener Law School's Harrisburg campus suggests that, while some new graduates unemployed after nine months had a Law Job three to six months after the nine-month reporting deadline, some of them did not obtain their first Law Jobs until two or three years after graduation. Barros, *supra* note 2, at 3.

the relatively low levels of nonreporting that prevail after the turn of the century. It does not take a great many of these circumstances, combined with the portion of graduates delayed from obtaining employment by first-time bar exam failure, to suggest that a Law Jobs Ratio of about 80% may approach the highest level of Law-Job employment nine to ten months after graduation that is likely to be achievable in the entry-level legal markets of the last thirty years.⁶⁴

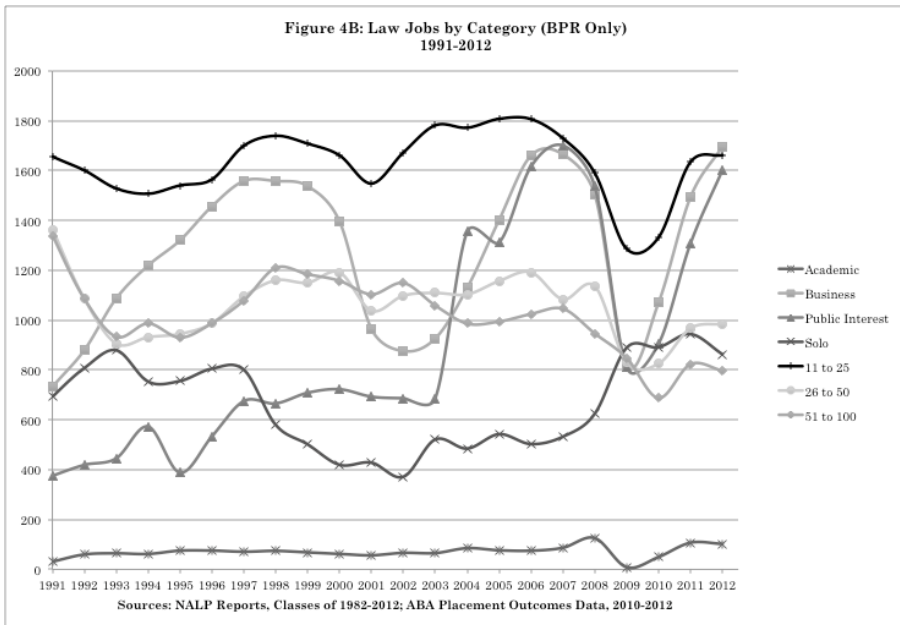
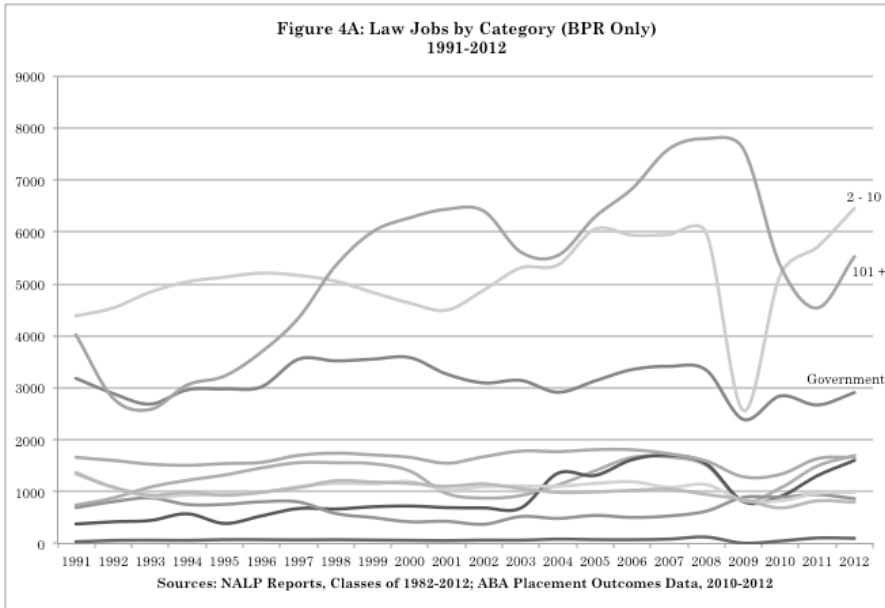
IV. WHAT'S NEW ABOUT THE NEW NORMAL?

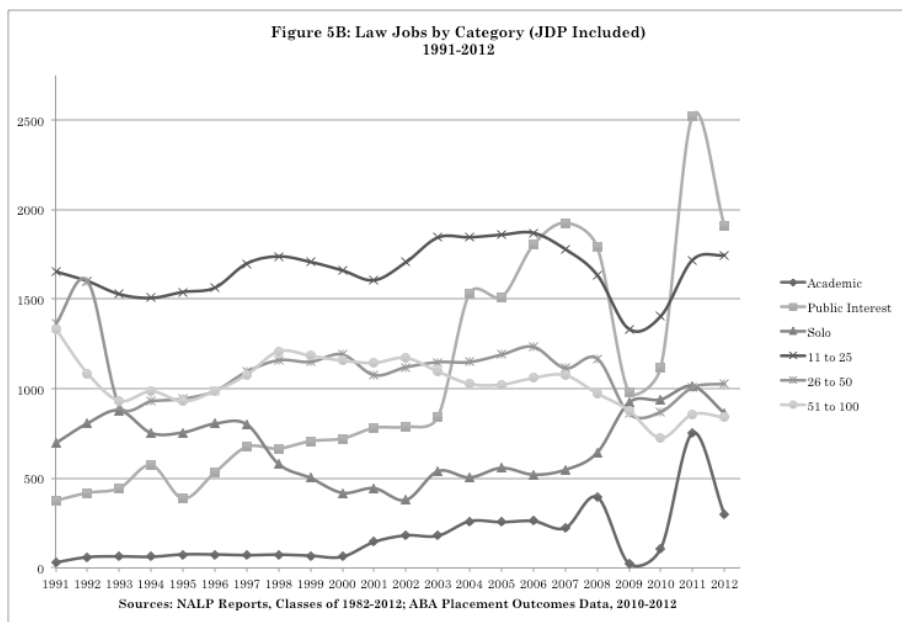
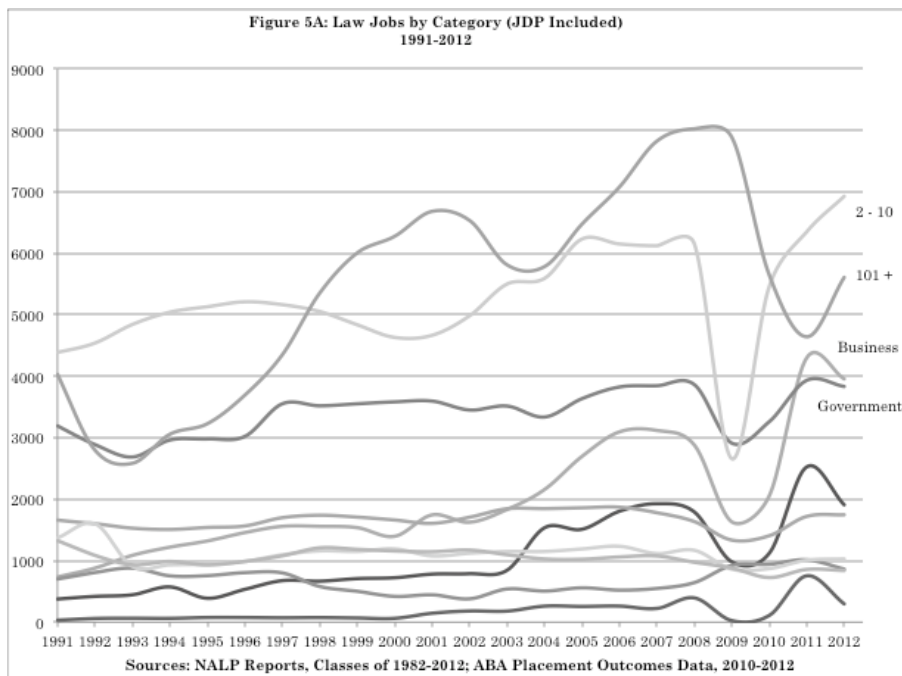
Beyond the consensus that the market for new lawyers is much more constricted than it was five years ago, there has been surprisingly little investigation regarding the more particular characteristics of the contraction. This Part will begin to fill that gap.

To illustrate how the market has changed, Figures 4-A and 4-B graph the numbers in each graduating class with Law Jobs that require a law license in the various employer categories annually reported to NALP.⁶⁵ Figures 5-A and 5-B graph the number of Law Jobs in those categories that are either Bar Passage Required or JD Preferred.

64. It is fair to ask whether this hypothesized 80% limit is nothing more than a measure of what happened to be the best Law-Jobs market in recent history, or whether it also reflects some deeper truths about the entry-level Law-Job market. Certainty is of course elusive, but one basic fact seems probative: As Figure 2 generally illustrates, the 2000s marked the culmination of an extended period of substantial and consistent growth not only in the number of available entry-level Law Jobs, but in the output of the legal academy as well. If we accept the significant but not irrational assumption that this market, like most others, tends dynamically more or less to equilibrium over time, the extended period of consistent growth in both demand for and supply of new law graduates suggests at least the possibility that consumption of new lawyers was approaching its practical limits when the bottom fell out in 2008. There are numerous variables at play, not least among them the degree of risk potential law school applicants were willing to tolerate (probably mediated by the press, which for a long time presented prospects as excellent and then, rather suddenly, as terrible, when in both cases the reality was more situational and nuanced), the very significant increase in the cost of a law degree over the last ten to fifteen years (*see supra* note 10), and how confounded, motivated, or just plain bad the estimates of demand for additional output may have been by those who yearned to open new law schools or expand existing ones. How translatable this tentative measure of a practical maximum Law Jobs Ratio may be to conditions prevailing some years from now when new lawyers may be filling different niches in the job market, the cost of a law degree may have changed, and legal services may be produced with different staffing and pricing, remains to be seen.

65. NALP reports the numbers in each Employer Type without direct reference to which placements have the characteristics of Law Jobs discussed in Part II.C, *supra*. Calculations to limit the totals to Law Jobs are in some cases approximations.





The differences among different market sectors are quite striking. Figures 4A and 5A show all the employer types on which NALP reports from 1991–2012.⁶⁶ Placement in non-law-firm employer categories (Academic, Business & Industry, Government, Judicial Clerkship, and Public Interest, whether or not Law Jobs) has shown strikingly little variability over the last twenty years generally, and collectively was down only about 5% overall during the 2008–2012 period. Hiring in non-BigLaw firms (fewer than 100 attorneys, excluding solos for the reasons discussed *supra* Part II.C.2) was also down only about 5%.⁶⁷ Figures 4B and 5B show the sectors other than small firms (2-10) and BigLaw (over 100) on a dilated scale so that the relative differences can be discerned. But it should be borne in mind that in both absolute and percentage terms the sectors other than small firms and BigLaw have remained relatively stable over the last twen-

66. NALP data for the Class of 2013 was unavailable at the time this Article went to press.

67. The spike in Business positions during 2008–2012 likely reflects the disproportionate increase in jobs reported as JD Advantaged or Professional that was apparently forced by the contraction in available Bar Passage Required positions. *See supra* notes 33-37 and accompanying text. The jump in Public Interest positions during the same period probably reflects the large number of laid-off or deferred BigLaw associates, some of whom received grants or stipends from their firms to perform such work. *See* Burk & McGowan, *supra* note 4, at 27-33. There was also a sharp increase in school-funded Public Interest jobs, only some of which could be factored out of the data before graphing. *See supra* notes 38-39 and accompanying text. Solos straight out of school increased in number, probably because many of these graduates had no other options. The number of new graduates taking jobs in small firms (2-10 lawyers) also increased modestly, which is consistent with the long-term inverse relationship between entry-level hiring in BigLaw and in firms of 2-10 lawyers illustrated in Figures 4-5. All of these comparisons suffer from some degree of mismatch, both between the Classes of 2007 and 2011, and between the job counts listed here and the Law Jobs counted elsewhere in this Article. NALP started counting which placements were only part-time in 2009, and which were short-term in 2011. Thus the 2007 placement numbers likely include some complement of part-time or short-term jobs that are excluded from the 2011 numbers. *See supra* note 39. Given that the Class of 2007 enjoyed more or less the high-water mark for Law Jobs both in absolute numbers and in Law Jobs Ratio, while short-term and part-time jobs appear to have become much more common as the Great Recession descended, the distortion caused by the inability to count part-time and short-term positions in 2007 is hopefully only modest. Separately and in addition, the employer categories cut across whether the placement within the employer category requires or prefers a law degree; thus employment in any of these categories could be other than a Law Job. For example, a job with a law firm could be as a paralegal or secretary rather than as a lawyer; a position in Business & Industry could be as an in-house lawyer or compliance officer (though such positions are still relatively rare straight out of school), but also could be anything from a nonlegal manager or salesperson to a janitor. *See* ABA 2012 DEFINITIONS, *supra* note 29, at 6-7. For the Class of 2011, Law Firm employment was reported 94% as Bar Passage Required, with another 5.5% JD Preferred. Government and Public Interest are each a little less than 75% Bar Passage required, and a little less than 20% JD Preferred. In contrast, Business is only 29% Bar Passage Required and 38% JD Preferred, while Academic jobs are reported 26% Bar Passage Required and 46% JD Preferred. NALP CLASS OF 2011 REPORT, *supra* note 14, at 15. The comparisons in the text are made with the best approximations the author could achieve of the number of Law Jobs in each Employer Type.

ty years, even as the entry-level market overall has changed dramatically. By contrast, during the recent tumble into the New Normal, hiring at firms larger than 100 lawyers (“BigLaw”)⁶⁸ has fallen by over one-third, from 19% to 12% of the graduating class, and from 22% to 14% of all full-time, long-term jobs obtained.⁶⁹ By comparison, placement in non-law firm employer categories (Academic, Business & Industry, Government, Judicial Clerkship, and Public Interest, whether or not Law Jobs) has shown strikingly little variability over the last twenty years generally, and was down only about 5% overall during the 2008–2012 period. Hiring in non-BigLaw firms (fewer than 100 attorneys, excluding solos for the reasons discussed *supra* Part II.C.2) was also down only about 5%.⁷⁰

68. It is fair to ask why the author chose to group firms of over 100 attorneys together as “BigLaw,” when some might envision only much larger organizations as properly responsive to that label. The reason is purely functional: While every law firm is unique, and subpopulations of comparable size may generally share some features in more comparable proportions, firms over about 100 lawyers in size generally have many features in common that are both central to the analysis here and much less common in other practice aggregations. These include a business model that seeks complex, premium work charged at premium rates, an array of skilled and developing specialists that work collaboratively to serve their clients’ complex needs, an evolving promotion-and-retention model that historically centered around “up or out” promotion to partnership, and a historically “leveraged” service model. See Burk & McGowan, *supra* note 4, at 8-10 (basic historical form), 11-27 (evolution generally consistent with the form from the 1970s up to the Great Recession), 27-39 (developments during the early years of the Recession); see also *infra* Part IV.B. For reference, in 2013 the 350th largest law firm in the United States had 117 lawyers. See *The 2013 NLJ 350*, NAT’L L.J. (June 10, 2013), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202603325795>.

69. These percentages come from a comparison of data located in NALP CLASS OF 2007 REPORT and NALP CLASS OF 2012 REPORT, *supra* note 14. Some portion of this BigLaw hiring was probably in “staff” or “discovery” attorney positions, non-partnership-track placements that pay perhaps one-half to one-third as much as conventional associate jobs and are billed out at much lower rates to do simpler and more repetitive work such as document review, due diligence, and customization of form agreements. See, e.g., Ralph Baxter, Michael A. McAndrews & Will Turani, *At the Beginning*, AM. LAW., Nov. 1, 2012, at 41; Meredith Hobbs, *A Lawyer’s Job, with Time for Life*, DAILY REP. (Aug. 9, 2013), <http://www.dailyreportonline.com/PubArticleDRO.jsp?id=1202614513218&slreturn=20130718132845>; Justin Miller, *Second Tier Associates, a New Trend in Big Law*, RECORDER (July 14, 2010), <http://www.law.com/jsp/ca/PubArticleCA.jsp?id=1202463535998>; Catherine Rampell, *At Well-Paying Law Firms, a Low-Paid Corner*, N.Y. TIMES (May 23, 2011), <http://www.nytimes.com/2011/05/24/business/24lawyers.html>.

70. The spike in Business positions during 2008–2012 likely reflects the disproportionate increase in jobs reported as JD Advantaged or Professional that was apparently forced by the contraction in available Bar Passage Required positions. See *supra* notes 33-37 and accompanying text. The jump in Public Interest positions during the same period probably reflects the large number of laid-off or deferred BigLaw associates, some of whom received grants or stipends from their firms to perform such work. See Burk & McGowan, *supra* note 4, at 27-33. There was also a sharp increase in school-funded Public-Interest jobs, only some of which could be factored out of the data before graphing. See *supra* notes 38-39 and accompanying text. Solos straight out of school increased in number, probably because many of these graduates had no other options. The number of new graduates taking jobs in small firms (2-10 lawyers) also increased modestly, which is consistent with the long-term inverse relationship between entry-level hiring in BigLaw and in firms of 2-10

Put slightly differently, over half of all the full-time, long-term Bar Passage Required jobs that were lost between the Class of 2007 and the Class of 2011 were lost out of BigLaw alone, even though in 2007 BigLaw hired less than one-fifth of the graduating class.⁷¹ Thus simply as a matter of volume, many of the recent contractions in the entry-level Law Jobs market are focused far more in larger private law firms than in any other sector of the legal employment market.

And there are good reasons to believe that changes in BigLaw hiring are also disproportionately disruptive to hiring in most other sectors of the entry-level Law Job market.⁷² Law school prestige and grades or class standing have been for generations, and largely remain, the principal criteria of entry-level employability for all kinds

lawyers illustrated in Figures 4–5. All of these comparisons suffer from some degree of mismatch, both between the classes of 2007 and 2011, and between the job counts listed here and the Law Jobs counted elsewhere in this Article. NALP started counting which placements were only part-time in 2009, and which were short-term in 2011. Thus the 2007 placement numbers likely include some complement of part-time or short-term jobs that are excluded from the 2011 numbers. *See supra* note 39. Given that the Class of 2007 enjoyed more or less the high-water mark for Law Jobs both in absolute numbers and in Law Jobs Ratio, while short-term and part-time jobs appear to have become much more common as the Great Recession descended, the distortion caused by the inability to count part-time and short-term positions in 2007 is hopefully only modest. Separately and in addition, the employer categories cut across whether the placement within the employer category requires or prefers a law degree; thus employment in any of these categories could be other than a Law Job. For example, a job with a law firm could be as a paralegal or secretary rather than as a lawyer; a position in Business & Industry could be as an in-house lawyer or compliance officer (though such positions are still relatively rare straight out of school), but also could be anything from a nonlegal manager or salesperson to a janitor. *See ABA 2012 DEFINITIONS, supra* note 29, at 6-7. For the Class of 2011, Law Firm employment was reported 94% as Bar Passage Required, with another 5.5% JD Preferred. Government and Public Interest are each a little less than 75% Bar Passage required, and a little less than 20% JD Preferred. In contrast, Business is only 29% Bar Passage Required and 38% JD Preferred, while Academic jobs are reported 26% Bar Passage Required and 46% JD Preferred. NALP CLASS OF 2011 REPORT, *supra* note 14, at 15. The comparisons in the text are made with the best approximations the author could achieve of the number of Law Jobs in each Employer Type.

71. Part-time and short-term entry-level positions are now strikingly rare in BigLaw, comprising only 1% of the reported hires. They are much more common in smaller firms, including 15% of the hires in firms of 2-10, and 14% of the hires in firms of 11-50. (Source: ABA Class of 2012 employment data.) It appears that smaller firms are taking on new law graduates on a low-cost, low-commitment “tryout” basis while they have the luxury of a buyer’s market to do so. Presumably the larger firms are filling some of this need with permanent “staff” attorneys, *see supra* note 69, and the rest with more experienced lawyers with whom they are already familiar (including associates they laid off in 2009 and 2010, and current associates who wish to step off the partnership track) willing to do part-time and short-term contract work; the firms thus do not need to take chances on new graduates with no track record, practice experience, or skills. By contrast, part-time and temporary entry-level positions were widespread outside larger law firms, with 47% of all Academic positions, 27% of all Public Interest positions, 24% of all Business positions, and 14% of all Government positions, part-time, short-term, or both. (Source: ABA Class of 2012 placement data.)

72. “Disruptive” here is intended to mean “disturbing to the established order of things,” not necessarily “interfering with” or “preventing.”

of Law Jobs.⁷³ Because of the longstanding and still widespread belief among law students that BigLaw offers rich compensation and stimulating, high-profile work, significant numbers of the most employable law graduates (that is, with credentials most likely to appeal to any prospective employer) have gravitated, and continue to gravitate, toward it.⁷⁴ When entry-level opportunities in BigLaw suddenly constrict, as they have over the last six years, some of the highly credentialed candidates who previously might have landed there must seek other opportunities. Because they are among the candidates most attractive to other employers as well, they tend to displace the somewhat less well-credentialed candidates who had gen-

73. Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1244-46 & n.51 (1991) (relating how, in 1991, larger law firms were looking beyond the top 10% of the top 10 law schools simply because the supply did not meet their demand); Richard Sander & Jane Bambauer, *The Secret of My Success: How Status, Eliteness, and School Performance Shape Legal Careers*, 9 J. EMPIRICAL LEGAL STUD. 893, 925 (2012) (“Major law firms hire from a wide range of law schools, employing heuristics that weigh law school performance against law school eliteness.”); William D. Henderson, *Why the Job Market Is Changing*, NAT’L JURIST, Nov. 2010, at 20, 21 (“In 2007 and 2008, 46 percent of all entry-level associates at an AmLaw 100 law firm were graduates of a Top 14 law school (the composition of the top 14 law schools in the U.S. *News* rankings has not changed in 20 years).”) [hereinafter Henderson, *Job Market*]. BigLaw’s narrow focus on these criteria has recently come under criticism as an inadequate predictor of practice success in a BigLaw context, but they nevertheless remain predominant. See, e.g., Theodore P. Seto, *Where Do Partners Come From?*, 62 J. LEGAL EDUC. 242 (2012); Robert Anderson, *A Last Word on the Seto Rankings*, WITNESSETH: L., DEALS, & DATA (Dec. 23, 2012, 5:26 AM), <http://witnesseth.typepad.com/blog/2012/12/a-last-word-on-the-seto-rankings.html>; William Henderson, *A Reply to the Empiricists at NWU Law*, LEGAL WHITEBOARD (Mar. 17, 2012), <http://lawprofessors.typepad.com/legalwhiteboard/2012/03/a-reply-to-the-empiricists-at-nwu-law.html>; William D. Henderson & Rachel M. Zahorsky, *The Pedigree Problem: Are Law School Ties Choking the Profession?*, A.B.A. J. (July 1, 2012, 5:20 AM CDT), http://www.abajournal.com/magazine/article/the_pedigree_problem_are_law_school_ties_choking_the_profession/; Bill Henderson, *“Too Good for BigLaw”: The Statistician Edition*, LEGAL WHITEBOARD (Mar. 9, 2012), <http://lawprofessors.typepad.com/legalwhiteboard/2012/03/too-good-for-biglaw-the-statistician-edition.html>; see also Henderson, *Job Market*, *supra*, at 21.

74. Obviously not all of the most employable graduates start out in BigLaw. Appreciable numbers have specific practice interests, political orientations, or personal preferences that they consider inconsistent with a BigLaw practice, and thus prefer positions in nonprofits, government, business, or smaller firms. Nor is this observation intended as an endorsement of the view accepted in some quarters that BigLaw jobs are “better” in any meaningful sense than other Law Jobs, other than that they generally pay more. But it is reasonably descriptive to generalize that many graduates who can get what is still called a partnership-track job in BigLaw do, and that those who do bear credentials that would be among the most attractive to most other employers. See MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 24, 55-57, 104-05, 110-11 (1991); Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567, 589-92 (1989); Richard H. Sander & E. Douglass Williams, *Why Are There So Many Lawyers? Perspectives on a Turbulent Market*, 14 LAW & SOC. INQUIRY 431, 476-77 (1989); Nick Brown, *Firms’ Ego-Driven Salary Structure Can’t Last: Experts*, LAW360 (Oct. 2, 2009, 2:30 PM), <http://www.law360.com/topnews/articles/125954/firms-ego-driven-salary-structure-can-t-last-experts>; see also *supra* note 73 and authorities cited therein.

erally occupied that next-most-sought-after tranche of jobs, and so on down the line, until the least employable candidates, who generally occupied the least-sought-after Law Jobs, get pushed out of Law Jobs altogether into less- or non-law-related positions or unemployment.⁷⁵

In sum, the recent contractions in the entry-level Law Job market have occurred disproportionately among larger law firms. In addition, the candidates who previously would have obtained BigLaw positions, but because of its recently constricted hiring now cannot, end up employed in Law Jobs that would have been held by other candidates but for BigLaw's contraction. As a result, reductions in BigLaw hiring affect hiring prospects for almost all law graduates, influencing the types of jobs most are likely to obtain and making some less likely to obtain any Law Job at all.

V. HOW NORMAL IS THE NEW NORMAL LIKELY TO BE?

If, as the analysis to this point has suggested, changes in BigLaw's hiring practices account for a disproportionate share of the changes in the entry-level employment market as a whole, then predicting BigLaw hiring into the future should provide valuable insight into the quantity and nature of the Law Jobs that will be available to new graduates in coming years. This Part attempts to do so in at least some rough proportions.

Demand for BigLaw's services fell precipitously as the economy contracted in 2008 and has remained depressed since.⁷⁶ There is no

75. Like the text accompanying the preceding footnote, this oversimplifies: Not every employer or type of employer applies identical hiring criteria, or applies them in the same way. But the predominance of school prestige and class standing as criteria across the market should make generalization along these lines descriptive enough to be meaningful.

76. The total number of attorneys in the NLJ 250 decreased 4% in 2009, and another 1.1% in 2010, only the second period since the *National Law Journal* started compiling these statistics in 1979 that total headcount has decreased in two consecutive years (the other was a 1% and a 0.9% decrease during the recession in the early 1990s). Most of those laid off were associates and other nonpartners—roughly 9% of the headcount in each of those categories in 2009 alone. Though about two-thirds of the 2009 losses in the “other” category were recouped in 2010, associate headcount in the NLJ 250 fell another 1.5% in 2010. Leigh Jones, *Jump in the Number of ‘Other’ Attorneys at NLJ 250 Firms*, NAT'L L.J. (Nov. 11, 2010), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202474763926>; Leigh Jones, *So Long, Farewell: For Attorney Headcount, 2009 Worst Year in Three Decades, Survey Shows*, LEGAL INTELLIGENCER (Nov. 10, 2009), <http://www.thelegalintelligencer.com/id=1202435311650>; Leigh Jones, *Vanishing Act: Year II*, NAT'L L.J. (Nov. 8, 2010), <http://www.nationallawjournal.com/id=1202474471365>. Lawyer headcount at larger firms rose 1-2% in 2012 and less than 1% in 2013, though the largest firms tended to grow a little more rapidly. Dan DiPietro & Gretta Rusanow, *Citi: Firms Posted 4.3 Percent Rise in 2012 Profits*, AM. LAW. (Feb. 6, 2013), <http://www.americanlawyer.com/id=1202587253629/Citi%3A-Firms-Posted-4.3-Percent-Rise-in-2012-Profits>; Sara Randazzo, *Yet Another Warning for Law Firms That Major Change Is Afoot*, AM. LAW. (Feb. 4, 2013), <http://www.americanlawyer.com/id=1202586968705/Yet-Another-Warning-for-Law-Firms-That-Major-Change-Is-Afoot>; Gretta Rusanow & Dan DiPietro, *Citi Report: Firms Saw*

serious argument that BigLaw hiring will recover unless demand for its services does, and the longer that takes, the longer hiring will remain depressed on any theory. To the extent that the widespread belief is correct that the economic recovery that is hopefully beginning as this Article is written will be unusually slow and gradual, there would appear to be little reason for optimism in the near term.⁷⁷

Modest Growth in 2013, AM. LAW. (Feb. 5, 2014), <http://www.americanlawyer.com/id=1202641665337/Citi-Report%3A-Firms-Saw-Modest-Growth-in-2013>.

Even after these unprecedented reductions in force, demand for legal services continued to fall on average 0.4% per year between 2008 and 2012. CITI PRIVATE BANK & HILDEBRANDT CONSULTING LLC, 2013 CLIENT ADVISORY 2 (2013), available at http://hildebrandtconsult.com/uploads/Citi_Hildebrandt_2013_Client_Advisory.pdf. The number of hours billed per remaining attorney—a colorable if imperfect proxy for demand for BigLaw’s services because it is an indication of how much personnel were called upon to work—fell by over 100 hours per attorney per year between 2007 and 2008 (down 6% from 2007, in addition to the 5.4% of all attorneys who were laid off and thus reduced their hours to 0), and has stayed near those reduced levels since. *Id.* at 3; Sara Randazzo, *Report: The Boom Years Are Not Coming Back, Get Used to It*, AM. LAW. (Jan. 13, 2013), <http://www.americanlawyer.com/id=1202584230190/Report%3A-The-Boom-Years-Are-Not-Coming-Back%2C-Get-Used-to-It>. Demand grew only 0.2-0.5% for larger firms in 2012. DiPietro & Rusanow, *supra*; Randazzo, *Yet Another Warning, supra* (“The Georgetown-Peer Monitor study also found that demand for legal services increased just 0.5 percent last year, based on the number of billable hours logged by firms that report to Peer Monitor. Labor and employment lawyers saw the biggest increase in demand, 4.1 percent, while litigators’ were off slightly and corporate lawyers racked up 1.2 percent more billable hours.”). Larger firms remained stagnant in 2013. While the two dozen or so most profitable firms in the nation improved modestly (mid-single digits) in revenue and profits in 2013, the Am Law 100 (the 100 most profitable large firms in the country) overall saw average revenue per lawyer fall 0.4% while profits per partner grew 0.2%. David Lat, *The 2014 Am Law 100: The Super Rich Get Richer*, ABOVE THE L. (Apr. 28, 2014, 3:46 PM), <http://abovethelaw.com/2014/04/the-2014-am-law-100-the-super-rich-get-richer>. More broadly among larger firms, demand was down 0.4% again in 2013, with very modest (low single-digit) increases in profits per partner and gross revenue. Rusanow & DiPietro, *supra*; see also Aric Press, *For Attorneys, It’s the Season for Collecting*, AM. LAW. (Dec. 20, 2013), <http://www.americanlawyer.com/id=1202628538271/For-Attorneys-Its-the-Season-for-Collecting-> (summarizing recent industry studies showing continuing slow demand); Lisa Shuchman, *Companies Expect More Litigation, Less Spending in 2014*, CORP. COUNS. (Sept. 12, 2013), <http://www.corpcounsel.com/id=1202618917112?slreturn=20140227172125> (same, but noting IP litigation as a potential growth area). Wells Fargo Private Bank’s Legal Specialty Group reported larger firms’ hours down about 2.5% in the first half of 2013. One-third of partners were billing at a rate below 1400 hours per year, raising the possibility of further partner de-equitization and dismissal. Sara Randazzo, *Bank Says Firms on Track for Anemic Growth in 2013*, AM. LAW. (Aug. 9, 2013), <http://www.americanlawyer.com/id=1202614521189>.

77. See Binyamin Appelbaum, *Cautious on Growth, Bernanke Offers No Hint of New Action*, N.Y. TIMES (July 18, 2012), <http://www.nytimes.com/2012/07/18/business/economy/bernanke-testifies-before-senate-panel.html?smid=pl-share>; Timothy F. Geithner, Op-Ed., *Welcome to the Recovery*, N.Y. TIMES (Aug. 3, 2010), <http://www.nytimes.com/2010/08/03/opinion/03geithner.html> (“[E]conomic growth will come slower than we would like.”); Kaitlyn Kiernan, *Stocks Start ’14 Nursing Hangover*, WALL ST. J. (Jan. 4, 2014), <http://online.wsj.com/news/articles/SB10001424052702303870704579297800065669192> (quoting Federal Reserve Chair Ben Bernanke: “The headwinds I have mentioned may now be abating. . . . The aftereffects of the housing bust also appear to have waned. . . . [But] recovery clearly remains incomplete.”); Floyd Norris, *Most G-7 Nations Still Trying to Recoup Lost Jobs*, N.Y. TIMES (Apr. 18 2014), <http://www.nytimes.com/2014/04/19/business/>

But what is likely to happen to entry-level law hiring assuming that demand for the kind of complex, premium-priced legal services BigLaw has traditionally provided⁷⁸ eventually returns to prerecession levels?⁷⁹ There are, broadly speaking, two schools of thought. One hypothesis holds that the current shortfalls in hiring are grounded predominantly in the cyclically depressed demand for BigLaw services resulting from the Great Recession. On this theory, entry-level hiring in BigLaw and elsewhere should return to prerecession levels as the economy improves. The other hypothesis holds that the current shortfalls in hiring are grounded predominantly in structural changes in the way that complex legal services are produced, staffed, and priced. On this theory, recovering demand should have only a limited effect on hiring, and entry-level employment should remain depressed from prerecession levels for many years to come.

These theories yield very different predictions about the course and scope of the market for new lawyers, and probably for more experienced lawyers as well. The following sections test their relative plausibility.

economy/most-g-7-economies-still-struggling-to-recoup-lost-jobs.html (quoting Federal Reserve Chair Janet Yellen: “The recovery in the labor market has been exceptionally slow.”). The effect on legal hiring in particular is likely to be retarded further by the “overhang” of thousands of highly credentialed younger lawyers laid off from BigLaw in 2009 and 2010, as well as the additional thousands of excess unemployed and underemployed who graduated in recent years, and who will be competing with new law graduates for some years to come.

78. Throughout this Article, the modifiers “complex,” “high-end,” “premium-priced,” and “BigLaw” will be used interchangeably to refer to the general range of services BigLaw has traditionally provided.

79. There are thoughtful commentators who believe that legal services in the forms traditionally provided across the market for such services are doomed to extinction by technological innovation and changes in consumer habits in the Information Age. *See, e.g.*, RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (2008). These innovations would be highly disruptive if not transformative of the structure and pricing of most legal services, and very likely would significantly reduce demand for services from producers in the BigLaw model, particularly to the extent those services are provided by entry-level lawyers. A full consideration of these provocative and interesting ideas is well beyond the scope of this Article, but the author believes that their proponents are at the very least overoptimistic as to the rate at which these innovations will emerge and transform both producer and consumer behavior. *See* Gillian K. Hadfield, *Legal Infrastructure and the New Economy*, 8 I/S: J. L. & POL’Y FOR INFO. SOC. 1 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567712 (describing infrastructural impediments to possible technological and conventional innovations in the form and production of law and legal services). This Article thus assumes that (other than the effect of certain technological innovations on legal process work discussed *infra* Part V.A–B, if that is within the scope of what these futurists predict) these forces will have only limited effect for the foreseeable future—measured at, say, ten to fifteen years.

A. *Arguments Favoring a Cyclical, Demand-Based View of the Forces Driving Entry-Level Legal Hiring*

To the extent they are data-based, arguments for a cyclical view of the current state of the Law-Job market generally reason inductively from past patterns to future events. Adherents point out that, since at least the 1970s, BigLaw hiring has been (subject to modest cyclical fluctuation) fairly consistently robust, with growth rates in BigLaw overall of 8% per year or more.⁸⁰ As Figure 4-A shows, entry-level BigLaw hiring dipped contemporaneously with the past recessions of the early 2000s and early 1990s (and as Figure 1 suggests, likely did the same during the Reagan Recession of the early 1980s), and in each case returned to its prior accelerating levels. This recession, the argument goes, is more severe than prior ones, but all that should mean is that the dip in hiring has been deeper, and the recovery will take longer, than in prior years.⁸¹ In fact, the Law Jobs Ratio calculated here, as well as the absolute number of Law Jobs, has already begun to increase slightly. Adherents to this view believe these developments demonstrate its merit.⁸²

B. *Arguments Favoring a Structural View of the Forces Driving Entry-Level Hiring*

Those favoring a structural view cite changing circumstances especially salient to BigLaw that, they contend, are likely to change the way that complex legal services are staffed and priced long-term. These include the following:

80. See, e.g., Robert L. Nelson, *Of Tournaments and Transformations: Explaining the Growth of Large Law Firms*, 1992 WIS. L. REV. 733, 736 (reviewing MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991)).

81. See, e.g., Steven M. Davidoff, *Debating, Yet Again, the Worth of Law School*, DEALBOOK – N.Y. TIMES (July 18, 2013, 11:44 AM), <http://dealbook.nytimes.com/2013/07/18/debating-yet-again-the-worth-of-law-school/?emc=tnt&tntemail0=y> (“To be sure, the job market for lawyers has historically been a cyclical [sic], and it is currently at a low. . . . The market may recover, as markets tend to do and as the population grows. There may even be more legal jobs. . . .” However, the author also acknowledges the possibility that “the current figures represent the new normal. . . .”); Barros, *supra* note 2, at 11 (“In both booms and busts, there is a tendency to talk as if the current situation will be permanent. . . . I think we need to be very careful in both booms and busts not to become overly convinced that our current situation is the result of permanent change.”); Diamond, *supra* note 2 (citing “trends over many decades where legal employment responds cyclically to the macroeconomy”); Mitchell, *supra* note 2 (“[A] little historical perspective will reveal that the law job market has been bad—very bad—before.”).

82. See Diamond, *supra* note 2; Karen Sloan, *Large Firms in a Hiring Mood Again*, NAT’L L.J. (June 24, 2013), <http://www.nationallawjournal.com/id=1202607980312/Large-Firms-in-a-Hiring-Mood-Again->; *supra* Figure 1.

1. Pressure on Premium Pricing for Legal Process Work

As the advent of email and widely available electronic data storage multiplied the volume of durable information potentially relevant to transactions and disputes, the gathering and organization of documents and information (referred to with increasing frequency as “legal process” work) became a larger and larger portion of the services for which BigLaw charged.⁸³ BigLaw offered highly credentialed but inexperienced junior associates at high hourly billing rates for this work; “leveraged” service structures, featuring larger and larger numbers of associates per partner spending greater and greater proportions of their time doing more menial and less supervised work, were increasingly important to BigLaw profitability in the 1990s and 2000s.⁸⁴ The portions of each graduating class lured into this service model by generous and continually escalating starting salaries increased for many years.⁸⁵ Figures 4 and 5 show the portion of the aggregate graduating class entering BigLaw over time.

But clients grew increasingly restive about paying what became \$250 or more per hour for what often amounted to legally literate clerical work.⁸⁶ Recession-induced budget cuts suddenly imposed on in-house law departments forced more clients to rethink this pricing structure at the same time as large-scale layoffs and hiring deferments in BigLaw created an army of credentialed and skilled labor

83. See, e.g., Burk & McGowan, *supra* note 4, at 80-85; Montgomery Kosma, *As M&A Heats Up, Expect Antitrust Reviews*, RECORDER (CAL.) (Feb. 5, 2010), <http://www.therecorder.com/id=1202442014957> (“[D]ocument review can account for more than 75 percent of the cost in a merger investigation . . .”).

84. See Henderson & Zaring, *supra* note 7, at 1096-1104 (including the startling empirical finding of a *negative* correlation between work that associates characterized as interesting and firm profitability). On leverage (the ratio of associates and other nonpartners to partners), see, for example, William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691, 1714 tbl.1, 1728 tbl.6 (2006) (describing that by 2003, median leverage in the AmLaw 200 was 3.5:1, with 4:1 at the 75th percentile) [hereinafter Henderson, *Single vs. Two-Tier Partnerships*]; Steven Harper, *Permanent Leverage*, AM L. DAILY (Nov. 12, 2010, 5:10 PM), <http://amlawdaily.typepad.com/amlawdaily/2010/11/permanentleverage.html> (discussing recent erosion of the traditional BigLaw profitability model based on leverage).

85. See Bill Henderson, *How the “Cravath System” Created the Bi-Modal Distribution*, EMPIRICAL LEGAL STUD. (July 18, 2008, 2:14 AM), http://www.elsblog.org/the_empirical_legal_studi/2008/07/how-the-cravath.html; Leigh Jones, *For Law Firm Associates, It’s Been a Decade of Thrills and Chills*, NAT’L L.J. (Dec. 21, 2009), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202437225554> [hereinafter Jones, *Thrills & Chills*].

86. Typical large-firm associate rates rose about 75% between 1997 and 2007, and over 130% between 1997 and 2013. (Source: Comparing average high and low associate rates for firms participating in the National Law Journal Billing Survey in 1997, 2007, and 2013. The NLJ Billing Survey reports are proprietary and on file with the author.) By 2007, many large firms were charging \$250 per hour or more for inexperienced new law graduates. *Firms Report Their Billing Rates by Associate Class*, NAT’L L.J. (Dec. 10, 2007), <http://www.law.com/jsp/article.jsp?id=1197281081525> (2007 associate billing rates by class). Regarding client insistence on legal process cost control, see *infra* note 90.

willing to perform these services for a fraction of the pay commanded by BigLaw associates.⁸⁷ Contemporaneously, technology began to allow document review and information organization to be seamlessly performed from multiple remote locations. These developments fueled the rapid expansion of legal process outsourcing firms such as Pangea3 and others, operating both abroad and domestically.⁸⁸ As of 2012, legal process outsourcing had become a \$2.4 billion industry worldwide and was growing at 28% per year.⁸⁹ These events have also inspired BigLaw to respond to the competition from outsourcers and to clients' demands to slash legal process costs by starting their own internal legal process functions, staffed by less-credentialed contract and "staff" lawyers at much lower salaries and billing rates, a process referred to as "downsourcing."⁹⁰ More recently, technological innovation in the form of "predictive coding"—proprietary software that is becoming increasingly effective at reducing the number of documents that require human review for responsiveness and privilege—is reducing the personnel needed for legal process work.⁹¹

87. See Erin Marie Daly, *Weak Economy Slows Litigation Growth*, LAW360 (Jan. 4, 2010), <http://www.law360.com/articles/141372>; Elie Mystal, *In-House Counsel Don't Intend to Give You Hours*, ABOVE THE L. (June 1, 2010, 4:18 PM), <http://abovethelaw.com/2010/06/in-house-counsel-dont-intend-to-give-you-hours>; Karen Sloan, *For Litigators, a Different Kind of Recession*, NAT'L L.J. (Aug. 17, 2009), <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202433112312>.

88. See Rhys Blakely & Alex Spence, *Brief for India's Outsourcing Lawyers: Keep It Cheap*, TIMES (Jan. 15, 2010), http://business.timesonline.co.uk/tol/business/industry_sectors/support_services/article6988773.ece; Debra Cassens Weiss, *Want to Outsource Legal Work? Ohio Can Be as Cheap as India, Report Says*, A.B.A. J. (Dec. 12, 2011, 5:30 AM CST), http://www.abajournal.com/news/article/want_to_hire_an_outsourced_lawyer_ohio_can_be_as_cheap_as_india_report_says/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email.

89. See Mary Cecelia Lacity & Leslie P. Willcocks, *Survey of IT Outsourcing Experiences in US and UK Organizations*, J. GLOBAL INFO. MGMT., Apr.–June 2000, at 5; Leigh Jones, *The Old Rules No Longer Apply on the NLJ 350*, NAT'L L.J. (June 10, 2013) http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202603399812&The_Old_Rules_No_Longer_Apply_on_The_NLJ_350 [hereinafter cited as Jones, *Old Rules*].

90. See Jocelyn Allison, *Firms Roll Out 5 Cost-Cutting Strategies for 2010*, LAW360 (Jan. 2, 2010, 5:37 PM), <http://lp.law360.com/articles/139219> ("If law firms want to keep [legal process] work, they're either going to have to outsource it themselves or create some department or division of their firm that can do more of those routine tasks at a lower rate."); Jocelyn Allison, *Temp Attorneys Boon for Some, Liability for Others*, LAW360 (May 14, 2009, 12:00 AM), <http://www.law360.com/web/articles/101669> ("[A]n overall increase in the demand for temporary attorneys [has been seen] in recent years in part because of the sheer volume of document review needed in the age of electronic discovery and because of the value."); Liz McKenzie, *Contract Attys Sitting Pretty as Associates Deferred*, LAW360 (Feb. 9, 2010, 2:58 PM), <http://www.law360.com/web/articles/148068> ("Clients are looking to firms to perform solutions for cost control, and one of those is using contract attorneys for lower-level work. . . . More and more clients are saying if you can't figure out how to get lower-level work done at lower rates, then we'll find a way to do it ourselves."); see also *supra* note 69 (citing sources documenting increasing use by larger firms of permanent staff attorneys for legal process and similar work).

91. Maura R. Grossman & Gordon V. Cormack, *Technology-Assisted Review in E-*

Because a substantial number of the junior partnership-track associates in BigLaw had spent increasing portions of their time doing the legal process work for which they were finally being priced out of the market, associate layoffs, deferred start dates, and reduced entry-level hiring goals in BigLaw were expected results of these forces. And there is no reason to expect any of these phenomena to do anything other than accelerate. Clients who know they can pay 30% to 90% less for their legal process work will never again allow outside counsel to charge them more.⁹² Increasing client willingness to disaggregate legal process work from more complex pieces of a case or deal and treat it as a commodity service will result in even greater price competition and pressure on margins.⁹³ So will continuing innovation and improvement in predictive coding and similar natural language and artificial intelligence technologies designed to limit the human effort in document and information gathering and review.⁹⁴

In short, these forces driving down the need for entry-level hiring in BigLaw are already entrenched and should gather momentum in coming years as their influence spreads. They seem likely to depress entry-level BigLaw hiring for the foreseeable future.

2. *Outsourcing, Downsourcing, and Insourcing*

As just discussed, the growth of inexpensive outsourcing for legal process work is leading to BigLaw's competitive response: the downsourcing within BigLaw firms of legal process and other repeti-

Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review, 17 RICH. J.L. & TECH. 1, 3-4 (2011); *Panel Discussion: Judge Peck, Da Silva Moore and the Outlook for Predictive Coding*, METRO. CORP. COUNS., June 2012, at 8; see also Herbert L. Roitblat, Anne Kershaw & Patrick Oot, *Document Categorization in Legal Electronic Discovery: Computer Classification vs. Manual Review*, 61 J. AM. SOC. FOR INFO. SCI. & TECH. 70 (2010).

92. Heather Timmons, *Outsourcing to India Draws Western Lawyers*, N.Y. TIMES (Aug. 5, 2010), <http://www.nytimes.com/2010/08/05/business/global/05legal.html> ("Thanks to India's low wages and costs and a big pool of young, English-speaking lawyers, outsourcing firms charge from one-tenth to one-third what a Western law firm bills an hour."); Debra Cassens Weiss, *Lawyer's Lament: Pressure to Review 80 Docs an Hour, for \$23 an Hour*, A.B.A. J. (Oct. 21, 2009, 7:52 AM CST), http://www.abajournal.com/news/article/lawyers_lament_pressure_to_review_80_docs_an_hour_for_23_an_hour; *Down in the Data Mines*, A.B.A. J. (Dec. 1, 2008, 7:40 PM CST), http://www.abajournal.com/magazine/article/down_in_the_data_mines/ (reporting on a contract lawyer doing document review for \$35 per hour); Weiss, *supra* note 88 ("Contract lawyers in the Midwest are charging \$25 to \$30 an hour . . .").

93. See sources cited *supra* note 92.

94. See sources cited *supra* note 91; see also Barry Murphy, *Is Predictive Coding the Future of Document Review?*, E-DISCOVERY J. (Oct. 28, 2010, 11:56 PM), <http://ediscoveryjournal.com/2010/10/is-predictive-coding-the-future-of-document-review>; Andrew Peck, *Search, Forward: Will Manual Document Review and Keyword Searches Be Replaced by Computer-Assisted Coding?*, L. TECH. NEWS (Oct. 2011), http://www.recommind.com/sites/default/files/LTN_Search_Forward_Peck_Recommind.pdf.

tive work to much lower-paid and much lower-rate contract and staff attorneys, rather than highly compensated, high-rate junior associates.⁹⁵ Also growing in prevalence is more discriminating judgment on the part of in-house counsel about whether to buy certain recurring services from outside counsel or low-cost outsourcers, or to generate them in-house by hiring more lawyers and paralegals.⁹⁶

Many companies have found that it is more efficient and reliable, and less expensive, to develop a relationship with an outsourcing company, collaborate directly with the company on some projects, and require outside counsel to work with the outsourcer and in-house counsel on others.⁹⁷ General counsel may also elect to develop in-house expertise for recurring work, such as common types of litigation or more routine licensing issues. Similarly, in-house professionals are increasingly handling recurrent legal process tasks, such as tracking the company's organizational structure and understanding its archiving systems and information technology architecture in order to implement document "holds" required by incipient or pending litigation or regulatory action, and to determine where and from whom needed documents and information can be gathered.⁹⁸ This "insourcing" moves tasks that previously were often handled by junior associates from outside counsel's billing and purview back to the client company.

95. See *supra* notes 69, 71, and accompanying text.

96. See Steven L. Schwarcz, *To Make or to Buy: In-House Lawyering and Value Creation*, 33 J. CORP. L. 497 (2008); *Q&A with FMC Technologies GC Jeffrey Carr*, LAW360 (Mar. 30, 2010, 5:19 PM), <http://www.law360.com/web/articles/157416> ("Since we are always less expensive than outside counsel, we do a make-or-buy on all legal issues—asking ourselves do we have the capacity (time) and the capability (expertise) to handle the matter. Only if the answer to both of those questions is 'no' do we go outside.").

97. See, e.g., Alex Aldridge, *Tech Lawyers Say 'Uh Oh' As Microsoft Outsources Legal Work to India*, LAW.COM (Feb. 23, 2010), <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202444082821> ("Microsoft has been outsourcing basic intellectual property (IP) and patent renewal work to [legal outsourcing provider CPA Global] for five years, using a team of about 70 CPA staff," and now is expanding the services to include other legal research; other large companies, such as global mining giant Rio Tinto, use similar services.); Blakely & Spence, *supra* note 88; John Wang, *E-Discovery Moves In House*, RECORDER (CAL.) (Jan. 11, 2011), <http://www.therecorder.com/id=120247740398/E-Discovery-Moves-In-House> (growing proportions of client companies are bringing some or all of their e-discovery work in-house); Kosma, *supra* note 83 ("One way that major corporations are starting to handle increasing regulatory burdens is to keep their outside counsel focused on high-complexity legal questions, while augmenting their team with outsourcing specialists who have expertise in managing high-volume, document-intensive analysis and synthesis tasks.").

98. See George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1654-55 (2006) (discussing growth in size and scope of in-house law departments in the late 1990s and early 2000s); Milton C. Regan, Jr. & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 78 FORDHAM L. REV. 2137, 2142-44 (2010); see also Schwarcz, *supra* note 96.

All of these practices appear to be grounded in sound judgments about reducing the cost of complex legal services over the long haul. All of them reduce the need for BigLaw firms to have junior associates on hand, and thus depress demand for such positions.

3. *Other Pressure on the Use of Junior Associates*

As the rates charged for junior associate work increased, clients became increasingly unhappy with its cost and the extent to which, as they put it, they were paying for the junior lawyers' training.⁹⁹ Entry-level lawyers became more and more widely viewed (with, sad to say, some justification) as unskilled and inefficient. Growing numbers of clients started refusing outright to pay for any first- or second-year associate time.¹⁰⁰ A 2010 survey of in-house lawyers conducted by the Association of Corporate Counsel showed that 63% of those responding—compared with 20% in 2003—had minimum seniority requirements for the associates assigned to their matters by outside counsel.¹⁰¹

99. Mike France, *Dilemma: Who Will Teach Associates? Squeezed by Their Clients' Unwillingness to Subsidize Training, Firms Seek Alternatives*, NAT'L L.J., Nov. 20, 1995, at 8 ("Clients used to be willing to pay for the time lawyers spent reading introductory treatises about unfamiliar subjects, but many large corporations now explicitly tell partners that they refuse to pay for any training time. At the same time, increased pressure to bill hours is robbing attorneys of the time that used to be devoted to activities such as continuing education seminars and one-on-one partner-associate mentoring."); Shannon Henson, *Change May Be Coming to Law Firm Staffing Models*, LAW360 (Dec. 8, 2009, 3:55 PM), <http://www.law360.com/articles/135593>; Elie Mystal, *Corporate General Counsel Puts Fear of God into Legal Educators (And You Should Be Worried Too)*, ABOVE THE L. (Apr. 9, 2010, 6:08 PM), <http://abovethelaw.com/2010/04/corporate-general-counsel-puts-fear-of-god-into-legal-educators-and-you-should-be-worried-too/>; Jones, *Thrills & Chills*, *supra* note 85; see also *infra* note 100.

100. Esther Lardent, *Solving the Professional Development Puzzle*, NAT'L L.J. (Mar. 28, 2012), <http://www.nationallawjournal.com/id=1202547220793/Solving-the-professional-development-puzzle-> ("More and more corporate clients are refusing to compensate their outside law firms for the time of young associates assigned to their matters. . . . [Associates] can't do the work without experience, and they can't gain experience without the work. . . . The era of simply learning on the job is over."); Aric Press, *How the Am Law 100 Makes Its Money: Client Demand for Am Law 100 Hours Dipped Last Year Even as Invoiced Rates Jumped*, AM. LAW. (Apr. 25, 2013), <http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202596738495&slreturn=20130603175302> ("Clients have been noisily demanding that firms not assign junior associates to their matters."); Debra Cassens Weiss, *Nixon Peabody Hiring Partner: Student Recruitment Model Is 'Antiquated'*, A.B.A. J. (Oct. 5, 2009, 9:58 AM CST), http://www.abajournal.com/news/article/nixon_peabody_hiring_partner_student_recruitment_model_is_antiquated (quoting Nixon Peabody hiring partner John Snellings: "If a young lawyer can't work on a matter because their rates are too high—how do we get them the training they need?").

101. Lardent, *supra* note 100; see also Jones, *Old Rules*, *supra* note 88; Claire Zillman, *Law Firm Leaders Survey 2010: The New Normal*, AM. LAW., Dec. 1, 2010, at 66 (stating that by 2010, nearly half of the AmLaw 200 firms had clients that refused to pay for the work of first- or second-year associates).

Once again, there is no reason to believe that this trend will reverse in the absence of serious price reductions for junior associates' time (which would require a radical retooling of the economics of junior associate positions, including drastic salary reductions to support the lower rates and substantially increased firm expenditures on nonbillable training).¹⁰² The fewer the clients that will tolerate entry-level lawyers on their bills, the fewer such lawyers any firm can sensibly hire. This trend is also a structural impediment to increased entry-level hiring going forward.

4. *The Disappearance of the Partnership Track*

The paradigm BigLaw model of hiring and promotion was the "Cravath System," developed (so the legend goes) by Paul Cravath in the 1920s at what became Cravath, Swaine & Moore, and widely emulated since. It involved the recruitment and training of a "class" of highly qualified associates each year selected from the cream of the most elite law schools, who were rigorously trained and provided with graduating levels of responsibility until, after a fixed period of years, a very small number of those remaining were elevated to partner.¹⁰³ Those "passed over" understood they were expected to leave the firm and often received assistance from the partners in locating other employment.¹⁰⁴ Growth in the partnership came almost entirely from internal promotion; lateral movement of partners was very rare until the 1970s.¹⁰⁵

This "up or out" promotion and retention model, which became pervasive in BigLaw, was difficult to justify. Why should a firm invest substantial resources in training and acculturating new lawyers, and introduce them to institutional clients, knowing that the vast majority of them—including many who were well-liked by and useful to the firm's partners and clients—would leave? As the circumstances that allowed the BigLaw style of promotional tournament to create any value—for example, strongly institutionalized clients and rigorous personal training and acculturation based on unique firm prac-

102. A few larger firms have begun to experiment with "apprenticeship" programs that devote significant parts of their associates' first two years to training, with substantially reduced billable-hour requirements and salary, and a developing curriculum of skills instruction. Whether these experiments will ultimately generate any widespread practices or results is impossible to predict. See Jeff Jeffrey, *For Some Firms, An Extra Step for the Newest Recruits*, NAT'L L.J., June 29, 2009, at 1; Julie Trieman, *Associate Pay Cuts Here to Stay, Say Firms, Analysts*, AM. LAW. (Dec. 14, 2009), <http://www.law.com/jsp/article.jsp?id=1202436246170>.

103. 2 ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS 1819–1948*, at 2-12 (1948); GALANTER & PALAY, *supra* note 74, at 9, 14-15.

104. GALANTER & PALAY, *supra* note 74, at 28-29.

105. *Id.* at 23-24; ERWIN O. SMIGEL, *THE WALL STREET LAWYER* 259 (Midland Book ed. 1969).

tices and knowhow—became less and less common, the value of the policy eroded.¹⁰⁶ By the 1990s, firms were confronted with larger and larger entering classes that they were obligated to recruit, train, and support at a cost of hundreds of thousands of dollars per person, virtually all of whom were gone within a few years.¹⁰⁷

Partnership tracks gradually grew longer and more flexible, and in most instances have lost their fixed endpoint altogether.¹⁰⁸ Ninety-two percent of large-firm managing partners responding to a 2013 survey reported that they no longer had an “up or out” promotion policy.¹⁰⁹

The late 1980s saw the high-water mark for associates as a percentage of all lawyers in BigLaw. From there, associates continued to increase in number, but comprised a falling percentage of lawyer census overall, with the principal percentage gains in the category delicately referred to as “other” (the non-equity-partner, non-associates referred to variously as “non-equity,” “service,” or “income”

106. The most plausible explanation for the widespread “up or out” promotion practices that historically prevailed in BigLaw is offered in Gilson & Mnookin, *supra* note 74. In briefest possible overview, Gilson and Mnookin suggest that “up or out” is a “bonding mechanism” that protects partners and associates in a pre-1980s Cravath-style firm from opportunistic behavior by either with respect to the “firm-specific capital” (that is, knowledge and connections much more valuable at that firm than they would be anywhere else, for example relating to the firm’s institutional clients) that associates would acquire during their tenure at such a firm. As the circumstances conducive to the creation of firm-specific human capital by associates erode, the risk of opportunistic behavior is likewise mitigated, and more associates become happier with the prospect of being kept on as long-term nonpartner employees. *Id.*; see Burk & McGowan, *supra* note 4, at 16-19, 54-55.

107. See, e.g., Michael D. Goldhaber, *National Law Firms Wage a War of Attrition: Some Grew, Some Shrank, but the Real Game Was Turnover*, CONN. L. TRIB., Dec. 27, 1999, at 16 (“The current consensus figure for the hard cost of losing a midlevel associate is \$200,000 to \$250,000 . . .”); Kristin K. Stark & Blane Prescott, *Why Associates Leave: Special Report*, LEGAL TIMES, May 7, 2007, at 45 (Each associate departure costs a firm “an estimated \$200,000 to \$500,000 connected to original recruiting costs, sunken training and development costs, resource shortage and replacement costs, administrative and human resource costs, and other factors.”); Peter D. Zeughauser, *Time to Buckle Up? When a Firm’s Lawyers Are Eyeing the Exits, Can Silver Seatbelts Keep Them Strapped In?*, AM. LAW., Sept. 1999, at 41 (citing the 1994 NALP Report that “46 percent of 1994 law school graduates left the firms that they entered directly out of law school after three years or less”); see also Steven Harper, *Misery Index as a New Law Firm Metric?*, AM. LAW. (Apr. 15, 2011), <http://amlawdaily.typepad.com/amlawdaily/2011/04/harper040711.html> (“NALP’s last report — before the 2008 financial crisis — showed big law’s five-year associate attrition rates skyrocketing to more than 80 percent, but significant differences existed among firms.”).

108. See Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1877-80, 1906 (2008); Baker & Parkin, *supra* note 98, at 1670-71 (documenting rising partnership track length (to nearly ten years) and falling promotion rates (to around 5%) in the late 1990s and early 2000s, with variation among geographic markets); Henderson, *Single vs. Two-Tier Partnerships*, *supra* note 84, at 1709-13.

109. THOMAS S. CLAY, ALTMAN WEIL, INC., 2013 LAW FIRMS IN TRANSITION iii, 19 (2013), available at http://www.altmanweil.com/dir_docs/resource/2d831a80-8156-4947-9f0f-1d97eec632a5_document.pdf.

partners or as “senior associates,” “counsel,” and the like).¹¹⁰ Associates were 60.2% of large-firm lawyers in 1987, 55% in 2001, 48% in 2010, and 47% in 2012.¹¹¹ What this change appears to reflect as a practical matter is an effort to reduce the expenses of training that clients were increasingly reluctant to underwrite, and the deadweight losses of personnel attrition and turnover, by keeping

110. See Baker & Parkin, *supra* note 98, at 1673-75 (empirically analyzing apparent erosion of “up or out” practices in BigLaw during late 1990s and early 2000s); Michael Allen, *The Of-Counsel Carousel*, ABOVE THE L. (Aug. 8, 2013, 11:12 AM), <http://abovethelaw.com/2013/08/the-of-counsel-carousel/#more-262893>; Leigh Jones, *NLJ 250 Records a New Low Point for Legal Associates*, NAT’L L.J. (Nov. 10, 2010), <http://www.nationallawjournal.com/legaltimes/id=1202474693179> [hereinafter Jones, *Low Point*]; *Checked Your Demographics Lately?*, ADAM SMITH, ESQ. (Aug. 30, 2013), <http://www.adamsmithesq.com/2013/08/checked-your-demographics-lately/?single> (reporting that among NLJ 250 firms between the years 2002–2012, equity partners grew by 2%, while non-equity partners grew by 112%).

111. Jones, *Low Point*, *supra* note 110; see also WILLIAM HENDERSON & EVAN PARKER-STEPHEN, LAWYER METRICS, THE DIAMOND LAW FIRM: A NEW MODEL OR THE PYRAMID UNRAVELING? (2013), available at http://lawyermetrics.com/downloads/20131203_Henderson.pdf; Leigh Jones, *Jump in the Number of ‘Other’ Attorneys at NLJ 250 Firms*, NAT’L L.J. (Nov. 11, 2010), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202474763926>; *The NLJ 350: Our Annual Survey of the Nation’s Largest Law Firms*, NAT’L L.J. (June 10, 2013), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202603325795> (source for the data from which the 2012 statistic in the text is derived). One striking feature of the distribution of associates in BigLaw is that bigger firms tend to have greater proportions of associates in their attorney census:

<u>Rank by Headcount</u>	<u>% Associates</u>
1 to 50	55%
51 to 100	44%
101 to 150	40%
151 to 200	34%
201 to 250	34%
251 to 300	39%
301 to 350	32%

(Source: Derived from data in *The NLJ 350*, *supra*.) A quantitatively grounded explanation for this distribution is beyond the scope of this Article, but one possible explanation is that larger big firms have historically tended to maintain greater associate-to-partner ratios and to bill disproportionately greater portions of their professional time to more highly leveraged, heavily staffed matters; thus their proportion of associates started higher, and is falling more slowly, than smaller big firms. Another possibility is that larger big firms tend to have longer (or more-indeterminate-length) partnership tracks (to the extent such “tracks” exist as such these days, see *supra* notes 108-09 and accompanying text), so as a practical matter more associates stay longer before either leaving or moving into a differently denominated role. Yet another possibility is that there are nomenclature issues, with different firms calling greater numbers of non-partners “associates” even when there is no particular time at which they might be considered for promotion to any position denominated “partner” (equity or otherwise). The question bears further examination for those interested in the evolution of the large law firm.

more people on for a longer time. The approach also provides clients with more of what they are asking for by increasing the inventory of more experienced (and thus more knowledgeable and efficient) lawyers available to handle their work.¹¹²

Once again, there is no discernible reason for the BigLaw firms that are quietly abandoning the custom to return to the churning expense of huge entering classes winnowed to almost nothing by “up or out” attrition. The much more interesting question is why the practice has lasted as long as it has even in its eroding form, and why it persists to any degree today. But the more that a firm keeps more of its hires for longer periods of time, the less it needs to hire new graduates at the front end of its less-rapidly-emptying pipeline. These trends in retention practices, which appear grounded in sound business economics and thus are likely to hold if not increase in prevalence, further reduce any incentive or need for BigLaw to acquire entry-level lawyers.¹¹³

112. William Henderson and Evan Parker-Stephen argue in a recent monograph that this demographic change does not reflect a new sustainable model for the large law firm, but rather is merely “the shape of the [traditional leveraged BigLaw “pyramid” structure] as it unravels.” HENDERSON & PARKER-STEPHEN, *supra* note 111, at 4. This author respectfully disagrees. While the new diamond-shaped structure taking hold in BigLaw (fewer entry-level hires; more and more lawyers at middle levels of seniority, status, and compensation, and fewer true owners at the top) presents challenges in developing new strategies for training and retention of more junior lawyers, it responds quite directly to the evolving demands of BigLaw clients and firm management. Specifically, it provides reduced attrition and turnover costs, a greater concentration of more skilled and experienced lawyers to perform the tasks clients need with less cost and inefficiency from on-the-job training, and a continuing re-channeling of the profits of the enterprise from service workers to those who bring law business to the firm. (The costs and benefits these changes visit on the various constituencies within a law firm are important and interesting, but beyond the scope of this particular discussion; the only point made here is that they can be traced to evolving market forces largely beyond the participants’ control.)

113. It is fair to ask why these phenomena’s effects emerged contemporaneously with the recent recession if the changes in BigLaw really are predominantly structural and respond to forces that have been gathering for many years. One (and probably the best) answer may be that in fact they did not all emerge as the economy contracted, but were asserting themselves well before. William Henderson has documented what he describes as a “stagnation” in overall legal employment in place by 2002 or 2003, which would be consistent with the earlier origins of all of the concerns discussed here. William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, A.B.A. J. (July 1, 2011, 3:40 AM CST), http://www.abajournal.com/magazine/article/paradigm_shift. Henderson and Zahorsky use Census Bureau figures that encompass all law-firm workers, including nonlicensed personnel such as secretaries and paralegals as well as lawyers, so it is difficult to draw inferences regarding any changes in demand specifically for persons holding law degrees. For example, the growing number of computer-literate lawyers willing to do much of their own typing (rather than dictating or drafting in longhand as was typical in the twentieth century) has significantly reduced the demand for secretaries, typist/word processors and stenographers. See ALM LEGAL INTELLIGENCE, FINDING THE RIGHT BALANCE: NON-ATTORNEY STAFFING IN LAW FIRMS 13 (2012) (proprietary report on file with the author). We do know that entry-level lawyer hiring continued to accelerate through 2008 (see *supra* Figures 1–2) even as law firm attorney and staff employment overall declined. See Henderson & Za-

C. *So Which Is It, Cyclical or Structural?*

Given the severity of the recent recession and the demonstrated depression of the demand for BigLaw's services that accompanied it, it seems hard to deny that *some* of the falloff in entry-level hiring in BigLaw is cyclical and will moderate as the economy improves.¹¹⁴

horsky, *supra*. But that is not necessarily inconsistent with Henderson's suggestion that structural forces were exerting an observable drag on law firm growth and hiring well before the recession began.

As for those effects that did emerge most visibly contemporaneously with the recession, David McGowan and I explored some possible reasons for the conjunction in our last inquiry about BigLaw:

The recession, with its widespread law-department budget cuts and thousands of large-firm layoffs, seems to have awakened everyone involved to the forces that had been building for years, and brought those forces more fully into play. Clients triaged their legal work and, as to what was indispensable, began to scrutinize which constituent tasks truly needed high-end staffing and which required not the "best," but just those good enough to accomplish the task cost-effectively. Law firms economized by shedding expensive associates whose services were no longer in demand at prevailing rates, instead spot-contracting with foot-soldiers in the new army of the unemployed for legal process and similar work at much lower cost and more flexible commitment. Out-of-work associates often had few options other than lower-wage contract or staff attorney positions, and legal process outsourcers had greater access to licensed lawyers with legal process experience and a need for work. In short, the recession did not create the technological and cost-structure changes that had been slowly reshaping the market for legal services, but it did expose those changes in high relief, redistribute the workforce involved in them, and accelerate the market's internalization of them.

Burk & McGowan, *supra* note 4, at 92; *see id.* at 90-92.

114. One circumstance specific to BigLaw not yet discussed is the sudden disappearance in 2008 and 2009 of the large amounts of securitization work that had over the prior decade or so become a significant part of some larger firms' practice diets when the products of that work became widely viewed as "toxic." *See, e.g.*, Nate Raymond, *Cadwalader Lays Off 96 More Lawyers*, AM. LAW. (July 30, 2008), <http://www.americanlawyer.com/id=1202423408197> (The firm's chairman explained that "90 percent 'are being laid off because of the downturn in the real estate finance and securitization market.'"); Noam Scheiber, *The Last Days of Big Law: The Money Is Drying Up—and America's Most Storied Firms Are Terrified*, NEW REPUBLIC (July 21, 2013), <http://www.newrepublic.com/article/113941/big-law-firms-trouble-when-money-dries#> (describing Mayer Brown's contraction as its securitization work disappeared in the Great Recession). Some large firms concentrated their practices more in these kinds of transactions while others had relatively few, and it is beyond the scope of this Article to estimate the extent of this lost work to larger firms overall. While it is possible that no new class of transactional work will arise to replace the generation of toxic paper that lined many bankers' and lawyers' pockets in the 1990s and 2000s, this Article does not assume that. Instead, it assumes that demand for the kind of services BigLaw has traditionally provided will eventually return to levels comparable to and ultimately exceeding those prevailing prior to the Great Recession. The focus of the discussion in Part V.B, *supra*, was on changes not in *demand* for, but in the *staffing* and *pricing* of, the legal services BigLaw has traditionally provided, with the prediction that those changes will result in a substantially reduced need for entry-level hires in BigLaw over both the near and foreseeable term *even as demand for legal services recovers*. If no new Deal du Jour comes into vogue (as has typically occurred in the past as one wave of fashionable transactions has crashed on the beach of dashed expectations while

Broadening the perspective for a moment to the legal profession at large, it would appear that most of the employment-suppressing phenomena just discussed arise out of the circumstances and business model specific to BigLaw. Structural constraints on entry-level hiring in other sectors of the legal employment market are more difficult to identify. This suggests that the recent declines in sectors other than BigLaw (including smaller private firms not structured on a BigLaw model) may be predominantly cyclical, and could recover with the economy, albeit slowly. The figures discussed above indicate that entry-level hiring in these other sectors is down only about 5% in the aggregate since the recession began, so the recovery in legal hiring outside BigLaw promises to be only modest as well as slow.¹¹⁵

1. *What Is Missing from the Arguments Favoring Cyclicity*

The striking thing about the arguments favoring a cyclical view of the downturn in BigLaw hiring is that most amount to the unelaborated assertion that this downturn will resolve itself in just the same way that prior ones did, without any attention to the specific circumstances that structural change advocates contend have materially rearranged themselves since last time, or any attempt either to argue that these circumstances don't exist or to explain why they shouldn't matter.

That is essentially true even of the most sophisticated analysis to date, the study of the relative earning power of a law degree recently published by Michael Simkovic and Frank McIntyre of Seton Hall University.¹¹⁶ Simkovic and McIntyre provide a detailed econometric analysis of the enhanced earning power over the course of a career that they believe can be attributed specifically to obtaining a law degree versus ending higher education with a bachelor's degree. They conclude that this lifetime earnings premium is quite substantial across a surprisingly broad range of the workforce, remaining in the low six figures over a lifetime (present value as of graduation, net of tax effects and the cost of law school tuition) even at the 25th percentile.¹¹⁷

another rises behind it for the nation's CEOs to paddle their boards out to ride, and yes that pun was intended), demand for legal services will remain even more depressed.

115. See *supra* note 70 and accompanying text.

116. Simkovic & McIntyre, *supra* note 12, at 31-38. Professor Simkovic provides helpful elaborations on the authors' findings and answers to critics in, for example, Michael Simkovic, *Sample Size, Standard Errors, and Confidence Intervals*, BRIAN LEITER'S L. SCH. REPS. (Aug. 5, 2013), <http://leiterlawschool.typepad.com/leiter/2013/08/sample-size-standard-errors-and-confidence-intervals.html> [hereinafter Simkovic, *Sample Size*], and Michael Simkovic, *The Economic Value of a Law Degree: Correcting Misconceptions*, BRIAN LEITER'S L. SCH. REPS. (Aug. 1, 2013), <http://leiterlawschool.typepad.com/leiter/2013/08/the-economic-value-of-a-law-degree-correcting-misconceptions.html#more>.

117. See Simkovic & McIntyre, *supra* note 12, at 22-23. The authors provide their quantitative conclusions before taking tax and tuition into account, but appropriately note

The paper has stirred a good deal of early attention and comment, some of it raising thoughtful quantitative or methodological concerns, and some venting regrettably superficial criticism or praise of the piece as a betrayal or confirmation of deep-seated preexisting convictions.¹¹⁸ Any sustained and fair-minded attention to the piece shows it to be an intellectually energetic and honest attempt at a rigorous quantitative analysis of a complex and difficult question. It deserves serious engagement to explore both the reliability of the analysis and the implications of the conclusions.

Unfortunately, an assessment of the details of this impressively thoughtful effort is beyond the scope of this Article, with one exception: Simkovic and McIntyre predicate their conclusions about the earning power of a law degree on a U.S. Census Bureau dataset of earnings outcomes—the Survey of Income and Program Participation—from 1996 to 2011 (but not including anyone who graduated after 2008). They assume these data establish “historic norms” that are generalizable both back into the past preceding their study period and, most significantly for current purposes, indefinitely into the future.¹¹⁹ They make some effort to test this assumption, because they recognize (quite correctly) that if changing circumstances are affecting JD vs. BA earnings materially differently than in the past, and especially if any such differential continues, the predictive value of their calculations based on past trends diminishes, and diminishes more the greater the differences and the longer they last.¹²⁰ The authors examine the data available to them and conclude that earnings differentials across the workforce for JDs versus B.A.s do not appear to be fluctuating outside the recent historical ranges they examine. “The most sober interpretation of the recent decline in starting salaries and employment for recent law graduates,” they conclude in a finding of real potential relevance to the instant study, “is that it is part of a broad cyclical downturn following the shock of the financial crisis of 2007 to 2008 and the recession that followed. The historical data still offers the best, most objective indicator of value.”¹²¹

“That said,” they caution, “past performance does not guarantee future returns.”¹²² Indeed. In fact, the conclusion just quoted over-

the necessity of doing so. The text above estimates those effects in estimating the premium.

118. See Paul L. Caron, TAXPROF BLOG, taxprof.typepad.com (last visited June 22, 2014) (search archives for the weeks of July 21 and July 28, 2013), collecting much of the most interesting early commentary.

119. See Simkovic & McIntyre, *supra* note 12, at 13 n.31 & 33 (“[L]ong-term historical data remains a reasonable and appropriate data source to forecast future earnings premiums.”).

120. See *id.* at 31-32; see also Simkovic, *Sample Size*, *supra* note 116.

121. Simkovic & McIntyre, *supra* note 12, at 38; see *id.* at 33-38 (analysis).

122. *Id.* at 38.

states the authors' real point: As they later concede, whether the recent declines in *new lawyers' employment and starting salary* are cyclical is not nearly as pertinent to their conclusions as whether the *earnings differential between JDs and B.A.s* is more or less stable over time; after all, an ebbing tide may ground both JD and non-JD boats.¹²³ The conclusion the article states specifically regarding the job market for new law graduates thus overreaches the authors' actual analysis.

In short, with more sophistication and detail than most other commentators who favor a cyclical view, Simkovic and McIntyre's argument for cyclicity in entry-level legal employment ultimately boils down to the assertion that lawyer hiring and income have recovered after previous recessions, so they will this time too. Nothing in the Simkovic and McIntyre study addresses the multiple factors discussed in the preceding section that were falling into place as the period they studied ended; and nothing explains why those factors should not diminish lawyers' employment and earning prospects, both in absolute terms and relative to non-lawyers, both immediately and in the longer term.¹²⁴ For the reasons just discussed, these struc-

123. Simkovic, *Sample Size*, *supra* note 116.

124. To be sure, this Article focuses specifically on *entry-level* hiring, which it is fair to point out is only a narrow slice of an entire career, while Simkovic and McIntyre seek to estimate the earnings premiums attributable to a law degree over an entire career. But what we do know from historical data is that lawyers at large firms tend to make a good deal more money at all levels of seniority than lawyers in other sectors do, and that lawyers move laterally between BigLaw firms or out of BigLaw altogether as their careers advance much more frequently than they lateral into BigLaw from outside it. Galanter & Henderson, *supra* note 108, at 1899-1904 & tbls. 2-4.

There are broader concerns as well. While a more detailed quantitative examination is beyond the scope of this Article and might confirm Simkovic and McIntyre's predictions, it is worth investigating whether the specific period covered by their SIPP data (chosen, it should be stressed, because that is where the data are available, and not for any obviously opportunistic reason) may prove to have been the lawyers' "gilded age," when the earnings of a significant part of the workforce with JDs soared relative to non-JDs. And that period may have ended, coincidentally, at the far edge of their dataset in 2008. If entry-level employment in BigLaw—by far the most lucrative sector of the workforce holding JDs—has suddenly shrunk and stays smaller, *see supra* notes 68-71 and accompanying text; if a greater number of new hires in BigLaw get smaller "staff" attorney salaries rather than big partnership-track salaries and bonuses, *see* Anonymous Partner, *BigLaw's Unwritten Purpose*, ABOVE THE L. (July 30, 2013, 10:11 AM), <http://abovethelaw.com/2013/07/biglaws-unwritten-purpose-what-about-the-service-partners/#more-260730>; if firms make fewer new equity partners and "de-equitize" or dismiss existing ones, and pay larger numbers of longer-term employees less, *see* THOMAS S. CLAY & ERIC A. SEEGER, ALTMAN WEIL, INC., 2010 LAW FIRMS IN TRANSITION 5, 11 (2010), *available at* http://www.altmanweil.com/dir_images/upload/docs/2010LFITSurvey.pdf; Claire Zillman, *Law Firm Leaders Survey 2010: The New Normal*, AM. LAW., Dec. 1, 2010, at 68; all while the rest of the job market recovers cyclically as it historically has, there should be a compression in the JD earnings premium going forward. If that proves to be true, there will still be an earnings premium attributable to a law degree (no surprise there—it has always been true that many lawyers make more money than many non-lawyers), but the premium will be smaller and make the degree a "good investment" for fewer JD recipients than in the last fifteen to twenty years.

tural trends indicate that entry-level BigLaw hiring is likely to remain depressed even as demand for the services that BigLaw firms have traditionally provided returns to pre-recession levels.

In short, those arguing that current developments in BigLaw hiring are predominantly cyclical in origin leave the structural change argument advanced here essentially unanswered. That doesn't necessarily mean it is right, of course, but it does mean that if it's wrong we don't know how or why.

2. *How Profound Will the Influence of Any Structural Factors Be?*

Of course, accepting a structural explanation of BigLaw hiring changes does not tell us *how much* influence these structural factors will exert in coming years on BigLaw hiring in particular, and on entry-level hiring overall. Time will tell, but early signs suggest that the continuing effects may be more substantial than the most recent increases in hiring might have augured.¹²⁵ Observing that the number of lawyers with less than three years' experience had dropped 30% in Am Law 100 firms between 2010 and 2012, American Lawyer Media editor-in-chief Aric Press observed in April 2013 that "[t]he most endangered species in The Am Law 100 appears to be the junior associate."¹²⁶ Soon afterward, Weil, Gotshal & Manges, a 1200-lawyer, 21-office firm that is among the most profitable law firms in America, laid off 7% of its associates and 110 staff, the first large-scale BigLaw layoffs in some time. Its managing partner announced the layoffs as "essential . . . to enable our firm to . . . retain its historic profitability in the new normal." "If we thought this was a cycle and our business was going to pick up meaningfully next year," he observed, "we would not be doing this."¹²⁷

There is some evidence that such a transformation could be underway. By 2013, 72% of large-firm leaders (compared with 23% in 2009) believe that they can *permanently* expect fewer equity partners in their firm structure than in prior periods. CLAY, *supra* note 109, at 2. Nearly half said their firms had "significantly" changed their partner admission or retention standards "to stay competitive in the post-recession economy"; 78% said their firms had tightened partnership standards to some degree. *Id.* at 9, 18.

Nevertheless, as Professor Simkovic points out, "It would be a bad idea to extrapolate gloom or boom from a downward or upward trend in earnings using the last few years of data. Trends, even when present, can stop or reverse themselves through dynamic labor market responses or exogenous shocks." Simkovic, *Sample Size*, *supra* note 116. As discussed below, if the legal academy and the number of JDs awarded shrinks going forward as appears to be happening already, soon fewer JDs will be pursuing the same jobs, and thus there is a good chance that more of the smaller number entering the profession will do better, improving both entry-level employment and long-term earnings relative to non-JDs. See *infra* note 157 and accompanying text.

125. See *supra* Figures 1–2, Part III.B.

126. Press, *supra* note 100.

127. Lattman, *supra* note 3.

Citibank, which lends to a broad range of larger law firms and collects business data on them not accessible to the rest of us, commented in June 2013 that it saw many large firms as overstaffed on the order of 10% and expected to see more BigLaw layoffs.¹²⁸ The prediction proved all too accurate.¹²⁹ As of this writing, demand for

128. *Id.*

129. See, e.g., Dimitra Kessenides, *Big Law Still Needs to Get a Lot Smaller*, BLOOMBERG BUS. WK. (Nov. 13, 2013), <http://www.businessweek.com/articles/2013-11-13/big-law-still-needs-to-get-a-lot-smaller> (reporting layoffs at Fried, Frank); David Lat, *Nationwide Layoff Watch: 52 Lawyers and Staff Sent Packing*, ABOVE THE L. (Apr. 7, 2014, 2:59 PM), <http://abovethelaw.com/2014/04/nationwide-layoff-watch-52-lawyers-and-staff-sent-packing> (52 associates and staff at Edwards Wildman & Palmer); David Lat, *Nationwide Layoff Watch: A Reorganization Claims More Jobs*, ABOVE THE L. (Jan. 23, 2014, 3:18 PM), <http://abovethelaw.com/2014/01/nationwide-layoff-watch-a-reorganization-claims-more-jobs/#more-297077> (elimination of 33 staff positions and relocation of 21 more at Bingham McCutchen); David Lat, *Nationwide Layoff Watch: Arent You Glad You Still Have a Job?*, ABOVE THE L. (Sept. 12, 2013, 10:16 AM), <http://abovethelaw.com/2013/09/nationwide-layoff-watch-arent-you-glad-you-still-have-a-job/#more-270667> (staff layoffs at Arent Fox); David Lat, *Nationwide Layoff Watch: Expelled Beyond the K&L Gates*, ABOVE THE L. (Aug. 28, 2013, 1:51 PM), <http://abovethelaw.com/2013/08/nationwide-layoff-watch-expelled-beyond-the-kl-gates/#more-267591> (staff layoffs at K&L Gates); David Lat, *Nationwide Layoff Watch: Lateral Hiring Leading to Layoffs*, ABOVE THE L. (Sept. 11, 2013, 11:15 AM), <http://abovethelaw.com/2013/09/nationwide-layoff-watch-lateral-hiring-leading-to-layoffs/#more-270486> (staff layoffs at Duane Morris); David Lat, *Nationwide Layoff Watch: More About the Kasowitz Casualties*, ABOVE THE L. (Feb. 21, 2014, 12:03 PM), <http://abovethelaw.com/2014/02/nationwide-layoff-watch-more-about-the-kasowitz-casualties/#more-302984> (approximately 30 lawyers at all levels and staff at Kasowitz Benson); David Lat, *Nationwide Layoff Watch: Not Everyone's A Winner*, ABOVE THE L. (Apr. 14, 2014, 2:29 PM), <http://abovethelaw.com/2014/04/nationwide-layoff-watch-not-everyones-a-winner/#more-312433> (38 staff at Nixon Peabody); David Lat, *Voluntary Buyouts Offered by Another Leading Law Firm*, ABOVE THE L. (Sept. 12, 2013, 3:57 PM), <http://abovethelaw.com/2013/09/voluntary-buyouts-offered-by-another-leading-law-firm/#more-270842> (staff buyouts at Schulte Roth & Zabel); Staci Zaretsky, *Another 'Storied' Biglaw Firm Fails, Inciting Panic in the Legal Industry*, ABOVE THE L. (Feb. 6, 2014, 11:51 AM), <http://abovethelaw.com/2014/02/another-storied-biglaw-firm-fails-inciting-panic-in-the-legal-industry/#more-299806> (500-lawyer Canadian firm Heenan Blaikie announces dissolution); Staci Zaretsky, *Nationwide Layoff Watch: A Double-Digit Jump* (Apr. 11, 2014), ABOVE THE L., <http://abovethelaw.com/2014/04/nationwide-layoff-watch-a-double-digit-jump/#more-312220> (17 staff laid off at Downey Brand in light of 23 attorney departures since January 1); Staci Zaretsky, *Nationwide Layoff Watch: Attorneys and Staffers Never Again to See the Light Of Day*, ABOVE THE L. (Aug. 9, 2013, 10:44 AM), <http://abovethelaw.com/2013/08/nationwide-layoff-watch-attorneys-and-staffers-never-again-to-see-the-light-of-day/#more-263250> (layoffs and office closings at Jones Day, Goodwin Proctor, Winston & Strawn, WilmerHale, Davis Polk, and Day Pitney); Staci Zaretsky, *Nationwide Layoff Watch: California Dreamin' of Unemployment Benefits*, ABOVE THE L. (Sept. 26, 2013, 11:53 AM), (staff layoffs at Wilson Sonsini); Staci Zaretsky, *Nationwide Layoff Watch: Heads Continue to Roll in BigLaw*, ABOVE THE L. (Oct. 7, 2013, 12:08 PM), <http://abovethelaw.com/2013/10/nationwide-layoff-watch-heads-continue-to-roll-in-biglaw/#more-275774> (staff layoffs at Vedder Price); Staci Zaretsky, *Nationwide Layoff Watch: Law Firm Spreads Holiday Jeers, Trims Ranks Like Turkey*, ABOVE THE L. (Nov. 7, 2013, 12:32 PM), <http://abovethelaw.com/2013/11/nationwide-layoff-watch-law-firm-spreads-holiday-jeers-trims-ranks-like-turkey/#more-282551> (staff layoffs at Fried Frank); Staci Zaretsky, *Nationwide Layoff Watch: Partners in Peril at Patton Boggs*, ABOVE THE L. (Mar. 10, 2014, 1:31 PM), <http://abovethelaw.com/2014/03/nationwide-layoff-watch-partners-in-peril-at-patton-boggs/#more-306238> ("forced reductions" of 15 to 20 partners); Staci Zaretsky, *Nationwide Layoff Watch: Ringing in the New Year With Unemployment Woes*,

BigLaw services remains slack, and price competition for those services between the biggest firms and less-large, lower-priced firms is accelerating perceptibly, even as the broader economy may finally be recovering.¹³⁰

The sense that a good many things about BigLaw, including entry-level hiring, have changed for the long haul is now approaching a consensus among BigLaw managers. Large-firm summer programs, an important indicator of perceived future hiring needs, are generally one-third to one-half the size they were in 2007; most of these programs were even smaller in 2013 than they were in 2012.¹³¹ Nearly 80% of the responding Am Law 200 managing partners surveyed in 2012 said they believed their next entering class of associates would

ABOVE THE L. (Jan. 23, 2014, 11:16 AM), <http://abovethelaw.com/2014/01/nationwide-layoff-watch-ringing-in-the-new-year-with-unemployment-woes/#more-296911> (25 staff at Husch Blackwell); Staci Zaretsky, *Nationwide Layoff Watch: Slimming Down for the Holidays*, ABOVE THE L. (Nov. 14, 2013, 4:24 PM), <http://abovethelaw.com/2013/11/nationwide-layoff-watch-patton-boggs-slims-down-for-the-holidays/#more-284078> (two rounds of attorney and staff layoffs at Patton Boggs); Staci Zaretsky, *Voluntary Buyout Watch: The Bloom Is Off the Rose at This Firm*, ABOVE THE L. (Nov. 15, 2013, 12:27 PM), <http://abovethelaw.com/2013/11/voluntary-buyout-watch-the-bloom-is-off-the-rose-at-this-firm/#more-284215> (staff buyouts at Proskauer Rose and Katten Muchin); Staci Zaretsky, *Which Biglaw Firm Is Rescinding Offers?*, ABOVE THE L. (Apr. 14, 2014, 12:52 PM), <http://abovethelaw.com/2014/04/which-biglaw-firm-is-rescinding-offers/> (10 of 23 new associates' job offers rescinded by Brown Rudnick).

130. On slack demand, see *supra* notes 76, 129. As for price competition, surveys of large-company general counsel indicate that they are increasingly turning away from the super-premium priced, largest firms, and preferring the lower rates available at less-large firms (200 to 500 lawyers) for a wide range of complex and substantial but not truly "bet-the-company" work. The surveys report that the clients find they receive comparable quality and responsiveness for 30% less. Tom Huddleston Jr., *Study Suggests Biggest Firms Are Losing Market Share*, AM. LAW. (Oct. 22, 2013), <http://www.americanlawyer.com/id=1202624726113/Study-Suggests-Biggest-Firms-Are-Losing-Market-Share>; Dina Wang & Firoz Dattu, *Why Law Firm Pedigree May Be a Thing of the Past*, HARV. BUS. REV. (Oct. 11, 2013, 2:10 PM), <http://blogs.hbr.org/2013/10/why-law-firm-pedigree-may-be-a-thing-of-the-past>. On the improving state of the domestic economy, see *National Income and Product Accounts*, U.S. DEPT OF COMMERCE, BUREAU OF ECON. ANALYSIS (Mar. 27, 2014), http://www.bea.gov/newsreleases/national/gdp/2014/gdp4q13_3rd.htm (annualized U.S. GDP growth of 4.1% in the third quarter and 2.6% in the fourth quarter of 2013).

131. Brian Dalton, *More on the Decline of the Biglaw Summer Program*, ABOVE THE L. (Sept. 3, 2013, 4:40 PM), <http://abovethelaw.com/2013/09/more-on-the-decline-of-the-biglaw-summer-program/#more-268591> (broader survey of large firms shows reductions in summer-program size of roughly 30% to 50% nationwide, with roughly 20% average reductions in New York); Sara Randazzo, *Summer Hiring Survey: Big Firms Slimmed Down in 2013*, AM. LAW. (Aug. 6, 2013), <http://www.americanlawyer.com/id=1202614121454> (*American Lawyer's* Summer Hiring Survey shows 2013 summer programs modestly smaller than in 2012); *The Chart That Should Make Everyone Doing On-Campus Interviewing Absolutely Freaking Terrified*, ABOVE THE L. (Aug. 29, 2013, 5:33 PM), <http://abovethelaw.com/2013/08/the-chart-that-should-make-everybody-doing-on-campus-interviewing-absolutely-freaking-terrified/#more-268014> (reporting that 84% of the AmLaw 50 reduced their summer-program headcounts dramatically between 2007 and 2013, by an average of 46%).

be the same size as or smaller than the current year's.¹³² The 2013 Altman Weil *Law Firms in Transition* survey¹³³ reported that 62% of large-firm managers believe that smaller entering classes are a permanent phenomenon, compared with 11% in 2009.¹³⁴ Only slightly more than half (53%) believed that they would have a greater absolute number of partnership-track associates in five years than they do now, a startling prediction in a sector that has shown rapid growth in both entry-level hiring and overall headcount consistently for decades.¹³⁵ Seventy-six percent of firms (88% of firms over 250 lawyers) use contract lawyers, most of whom likely perform work previously allocated to junior associates, and 75% of managers think that more use of contract lawyers is a permanent future trend.¹³⁶ Seventy-nine percent anticipate greater competition from "non-traditional" service providers, the nature of which is not specified but which presumably includes legal process outsourcers.¹³⁷

These responses are not offered out of any belief that BigLaw managers are especially adept at anticipating or managing into the future, especially in rapidly changing times. In fact, in the face of widespread conviction that many essential features of their business environment have permanently changed and that the pace of change would accelerate going forward, 79% had a moderate or high degree of confidence in their firms' ability to "keep pace with the challenges of the new legal marketplace"¹³⁸ despite the fact that substantial numbers have not considered any significant changes to their business model.¹³⁹ But these are the gatekeepers of entry-level hiring,

132. *Highlights from the 2012 Law Firm Leaders Survey*, AM. LAW. (Nov. 29, 2012), <http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202579458620&interactive=true&sreturn=20130603171613>.

133. CLAY, *supra* note 109. The survey was distributed to managing partners of nearly 800 firms of fifty or more lawyers; nearly 250 firms from across the range of firm sizes responded. *Id.* at 67.

134. *Id.* at 1, 2, 23.

135. *Id.* at 34; *see supra* Figure 4.

136. CLAY, *supra* note 109, at 26-28. Eighty-two percent of firms use part-time lawyers, and 70.5% of managers believe that more part-time lawyers will be a permanent trend. *Id.*

137. *Id.* at 29. Firm managers generally think that the market for the services they provide is going to keep getting tougher. Ninety percent of them (compared with 26% in 2009) think more of their work will be considered "commoditized" as time goes on, and 96% of them (compared with 42% in 2009) anticipate greater price competition over the long term. *Id.* at iv, 1-2. More than half of firms with over 250 lawyers reported that 31% to 40% of their fees resulted from discounted rates, and over 11% of all responding firms discount more than half their fees, apparently reflecting widespread price competition already underway. *Id.* at iv, 50. *See also supra* note 130, regarding intensifying price competition from smaller large firms.

138. CLAY, *supra* note 109, at 4.

139. Specifically, 71% of firms have not made any significant strategic changes to their pricing model, and over half have not made any significant strategic changes to their policies on partnership admission/retention or on efficiency of legal service delivery. *Id.* at 7-10.

and it seems plausible to assume that they will act more consistently with their expressed perceptions and staffing plans than not, at least in the nearer term.

Given BigLaw's disproportionate share of the contraction in entry-level Law Jobs and its apparently disproportionate influence on such hiring in other sectors of the legal market, these considerations provide little reason for optimism. Instead, they suggest that entry-level hiring in BigLaw will remain depressed relative to its pre-2008 levels for many years to come. They also suggest that any improvement will significantly lag increases in demand for BigLaw's services or growth in BigLaw census overall.¹⁴⁰

VI. SOME IMPLICATIONS FOR THE FUTURE OF LEGAL EDUCATION

Given that law schools produce the new graduates that enter the legal employment market, the market for legal education is closely linked to the market for entry-level Law Jobs. If nothing else, the preceding discussion shows that there are significantly more new law graduates in recent years than there are entry-level Law Jobs. The Law Jobs Ratio has fallen from its apogee in 2007 at between 70% and 77% (depending on how JD Preferred placements are counted) to between 54% and 63% in 2013.¹⁴¹ At prevailing class sizes, that amounts to roughly 20% fewer Law Jobs per graduate, or some 8000 *additional* new graduates per year today as compared with the years preceding 2008 who are unable to obtain a Law Job within nine to ten months of graduation.

A. *Reduced Demand for Entry-Level Lawyers Prompts Reduced Demand for Legal Education*

While it seems to have taken a few years for this reality to have been broadly internalized across the market for legal education, there is little doubt that the growing drumbeat in the general-interest and legal press eventually made the point: Prospective law students are

Moreover, 44% of these managing partners believe their partners have little awareness of these challenges, and over half considered their partners' "adaptability to change" to be "low." *Id.* at 5-6. *The American Lawyer's* annual survey of Amlaw 200 managing partners has exhibited similar levels of denial. Fifty-six percent of the responding managers in 2009 believed that the "economic downturn ha[d] produced a fundamental shift in the legal marketplace," but 70% of the same group said that the recession "ha[d] not produced a similar shift in their own firm's business model." Drew Combs, *Law Firm Leaders Survey 2009*, AM. LAW. (Dec. 1, 2009), <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202435711003>.

140. The overall number of Law Jobs available is of course only one feature that is critical in describing the entry-level Law Jobs market. The number of law graduates competing for those jobs is also essential, and will be discussed in Part VI-B.

141. See *supra* Figures 1-2. (Source: The annual NALP Jobs & JD's Reports and ABA employment outcomes data for the Classes of 2007-2012.)

staying away in droves.¹⁴² The high-water mark for overall number of applicants to accredited law schools was just over 100,000 in 2004.¹⁴³ It has decreased, first gradually and then more rapidly, to an estimated 59,000 in the 2012–2013 applications cycle—a number that has not been seen since Ronald Reagan was President, there were 175 accredited law schools (as compared with over 200 today), and the median tuition for a private law school was about \$7400 per year (about \$16,000 in 2013 dollars, as compared with a median private school tuition of about \$40,000 today).¹⁴⁴ The overall number of applicants decreased by more than one-third between 2010 and 2013 alone.¹⁴⁵ The number of law school applicants in the current 2013–2014 cycle, which in the past has proved roughly proportional to the eventual total number of applicants in year-over-year comparisons, is down another 8%.¹⁴⁶

The largest aggregate entering law school class in history was the class beginning in the fall of 2010, for which about 88,000 applicants yielded a class of about 52,500.¹⁴⁷ The class entering in the fall of

142. See, e.g., Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES (Jan. 30, 2013), <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?smid=pl-share> (“The drop in applications is widely viewed as directly linked to perceptions of the declining job market.”).

143. LAW SCH. ADMISSION COUNCIL & ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS: 2011 EDITION 874 (2010), available at <http://www.scribd.com/doc/120669429/Law-School-Applicant-Volume> [hereinafter ABA-LSAC 2011 OFFICIAL GUIDE].

144. ABA-Approved Law Schools, A.B.A., http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited June 22, 2014) (202 ABA-accredited law schools in 2013, three provisionally); Dan Filler, *Historical Data: Total Number of Law Schools and Students, 1964–2012*, FAC. LOUNGE (Feb. 2, 2013, 7:01 AM), <http://www.thefacultyounge.org/2013/02/historical-data-total-number-of-law-students-1964-2012.html>; *Law-School Enrollment and Degrees Awarded*, WALL ST. J. (July 30, 2012), <http://online.wsj.com/article/SB10000872396390444860104577558914050201888.html>; *Projections for Law School Enrollments and Profiles for Fall 2013*, LEGAL WHITEBOARD (May 30, 2013), <http://lawprofessors.typepad.com/legalwhiteboard/2013/05/projections-for-law-school-enrollments-and-profiles-for-fall-2013.html>; Deborah Jones Merritt, *Historic Levels*, INSIDE THE L. SCH. SCAM (Jan. 15, 2013, 10:18 PM), <http://insidethelawschoolscam.blogspot.com/2013/01/historic-levels.html>; The median public law school tuition at that time was about \$1800 per year, about \$3800 in today's dollars, though the median today is around \$20,000. Merritt, *supra*.

145. See Bronner, *supra* note 142.

146. Alfred Brophy, *LSAC Data and Predicting Number of Applicants for Fall 2014, Part 17*, FAC. LOUNGE (June 10, 2014, 2:40 PM), <http://www.thefacultyounge.org/2014/06/lsac-data-and-predicting-number-of-applicants-for-fall-2014-part-17.html>; Karen Sloan, *Big Slump for LSAT*, NAT'L L.J. (Nov. 4, 2013, 12:00 AM), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202626211107&thepage=1> (reporting that number of LSAT takers for October 2013 administration was down 11% from prior year's October administration); *Three Year Applicant Volume Graphs*, LSAC, <http://www.lsac.org/lsacresources/data/three-year-volume> (last updated Mar. 21, 2014).

147. See Merritt, *supra* note 144 (including link to table of historical application and matriculation figures).

2012 was about 44,500, and the class entering in 2013 was under 40,000, the lowest aggregate enrollment since 1975 (when there were almost 20% fewer accredited law schools), and a nearly 25% drop in matriculating 1Ls since 2010.¹⁴⁸ Half of the accredited law schools in the United States reduced their first-year enrollment in 2012; 63% of those surveyed said they did so because of the poor job market.¹⁴⁹ Two-thirds of accredited law schools cut their entering classes in 2013, 40% by 10% or more.¹⁵⁰ Between 2010 and 2013, 70% of all accredited law schools reduced the size of their entering classes by at least 10%, 50% by at least 20%, 28% by at least 30%, and 14% by at least 40%.¹⁵¹

At one level, this reduces to the simple economic observation that there is an oversupply of new law graduates relative to the Law Jobs available for them. There does not seem to be any reason to believe that this market will not adjust as markets usually do: In the face of an excess supply of law graduates, demand and price for law degrees should fall.

In fact, it is apparent that this correction is already underway. Applications and enrollments are falling precipitously as just described. Apparently so is price. In addition to an increasing number of tuition freezes and reductions,¹⁵² there is evidence that many

148. *ABA Section of Legal Education Reports 2013 Law School Enrollment Data*, ABA (Dec. 17, 2013), http://www.americanbar.org/news/abanews/aba-news-archives/2013/12/aba_section_of_legal.html (aggregate class entering Fall 2013 was 39,675); Karen Sloan, *Nation's Law Schools See Lowest Enrollment Since 1975*, NAT'L L.J. (Dec. 17, 2013, 11:29 AM), <http://www.nationallawjournal.com/legaltimes/id=1202633403462/Nation's-Law-Schools-See-Lowest-Enrollment-Since-1975>; Jennifer Smith, *First-Year Law School Enrollment at 1977 Levels*, WALL ST. J. (Dec. 17, 2013, 1:12 PM), <http://blogs.wsj.com/law/2013/12/17/first-year-law-school-enrollment-at-1977-levels/>.

149. *Kaplan Test Prep Survey: Facing a Tough Employment Landscape for New Lawyers, Law Schools Cut the Size of Their Entering Classes and Revise Curriculum to Adapt to Evolving Market*, KAPLAN TEST PREP (Nov. 19, 2012), <http://press.kaptest.com/press-releases/kaplan-test-prep-survey-facing-a-tough-employment-landscape-for-new-lawyers-law-schools-cut-the-size-of-their-entering-classes-and-revise-curriculum-to-adapt-to-evolving-market>.

150. *ABA Section of Legal Education Reports 2013 Law School Enrollment Data*, *supra* note 148; Ashby Jones & Jennifer Smith, *In Rare Step, Law Schools Shrink Faculty*, WALL ST. J., July 16, 2013, at B1; Frank H. Wu, *Shrinking Law Schools*, HUFFINGTON POST (Oct. 3, 2012, 2:45 PM), http://www.huffingtonpost.com/frank-h-wu/shrinking-law-schools_b_1934539.html (20% reduction in class size at UC Hastings in 2012 explained by its dean); *see also* Bronner, *supra* note 142.

151. Jerry Organ, *Thoughts on Fall 2013 Enrollment and Profile Data Among Law Schools*, LEGAL WHITEBOARD (Mar. 2, 2014), <http://lawprofessors.typepad.com/legalwhiteboard/2014/03/thoughts-on-fall-2013-enrollment-and-profile-data-among-law-schools.html>.

152. *See, e.g.*, Bronner, *supra* note 142 (University of Illinois); Dan Filler, *Law School Tuition Wars, Ohio Style*, FAC. LOUNGE (Feb. 24, 2014, 6:11 AM), <http://www.thefacultyounge.org/2014/02/law-tuition-wars-ohio-style.html> (University of Toledo cuts tuition for Ohio and Michigan residents 14%; Akron cuts nonresident tuition to match resident tuition; Ohio Northern cuts tuition 26%; Cincinnati cuts nonresident tuition 30%); Dan Filler, *Roger Williams Law Hires a Dean and Lowers Tuition*, FAC. LOUNGE (Jan. 16, 2014, 2:12 PM), <http://www.thefacultyounge.org/2014/01/roger-williams-law>.

schools are engaging in price discrimination by selectively discounting tuition to more desirable applicants in the form of merit scholarships, especially at schools that are trying to maintain the strength of their entering class statistics in order to maintain their *U.S. News* rankings.¹⁵³ Nearly half of responding schools surveyed in 2012 reported they had increased the amount of financial aid available for that year's application cycle.¹⁵⁴ Widespread competition was reported among law schools for students with average or better qualifications during 2013.¹⁵⁵

hires-a-dean-and-lowers-tuition.html (tuition cut 18%); Molly Greenberg, *George Mason Votes to Freeze Law Tuition Through 2016-17*, INTHECAPITAL (Dec. 11, 2013, 5:28 PM), <http://inthecapital.streetwise.co/2013/12/11/george-mason-university-george-mason-votes-to-freeze-law-tuition-through-2016-17> (Dean Dan Polsby explained, "One thing we understand is law and economics."); Karen Sloan, *Get Your Free Textbooks at the University of Dayton*, NAT'L L.J. (Feb. 1, 2012), <http://www.njlawjournal.com/id=1202540970500/Get-your-free-textbooks-at-the-University-of-Dayton->; Karen Sloan, *Movement to Lower Law School Tuition Gains Steam*, NAT'L L.J. (Feb. 27, 2014), <http://www.nationallawjournal.com/id=1202644782051> (University of Tulsa and Thomas Jefferson); Karen Sloan, *Three Law Schools Freeze Tuition Rates*, NAT'L L.J. (Feb. 23, 2011), <http://www.newyorklawjournal.com/id=1202485767058/Three-Law-Schools-Freeze-Tuition-Rates?slreturn=20140227215130> (Ave Maria, University of Maryland, and University of New Hampshire); Karen Sloan, *UMass Law Freezes Tuition for Three Years*, NAT'L L.J. (June 22, 2012), <http://www.nationallawjournal.com/legaltimes/id=1202560496984/UMass-Law-freezes-tuition-for-three-years->; James B. Stewart, *A Bold Bid to Combat a Crisis in Legal Education*, N.Y. TIMES (Apr. 4, 2014), http://www.nytimes.com/2014/04/05/business/bold-bid-to-combat-a-crisis-in-legal-education.html?_r=0; (tuition freeze in the coming year and 15% reduction the year after at Brooklyn; 16% for resident and non-resident tuition at Iowa; 44% tuition cut (to \$25,000) with no merit scholarships at La Verne; \$20,000 (50%) tuition reduction for all Pennsylvania residents at Penn State); *UCincy, Others Cuts Non-Resident Tuition*, NAT'L JURIST (July 12, 2013), <http://www.nationaljurist.com/content/ucincy-others-cuts-non-resident-tuition> (University of Cincinnati, University of Arizona, and Seton Hall).

153. See, e.g., Dan Filler, *Philadelphia Tuition Price War Escalates; Prices Drop*, FAC. LOUNGE (Jan. 22, 2014, 3:56 PM), <http://www.thefacultyounge.org/2014/01/philadelphia-law-school-tuition-price-war-escalates-prices-drop.html> (Villanova offers 100% merit scholarship to any student with a 157 LSAT and 3.6 UGPA); Elizabeth G. Olson, *The Financial Aid Arms Race at Law Schools*, FORTUNE (Aug. 15, 2013, 10:16 AM), <http://management.fortune.cnn.com/2013/08/15/law-school-financial-aid-negotiation/>; Karen Sloan, *It's a Buyers' Market at Law School*, NAT'L L.J. (June 25, 2012), <http://www.nationallawjournal.com/id=1202560485444/It's-a-buyers-market-at-law-school->.

154. See *Kaplan Test Prep Survey*, *supra* note 149. One law school sheepishly confessed to overspending its financial aid budget by more than 100%, laying the blame for the excess on an admissions officer now under indictment for computer fraud. See Karen Sloan, *Louisville Blows Budget on Scholarships*, NAT'L L.J. (July 18, 2012), <http://www.nationallawjournal.com/legaltimes/id=1202563510746/Louisville-blows-budget-on-scholarships->; Andrew Wolfson, *Ex-UL Law School Worker Charged in Scholarship Case*, COURIER-J. (Louisville, Ky.) (July 15, 2013, 6:10 PM), <http://www.courier-journal.com/proart/20130715/news01/307150084/ex-ul-law-school-worker-charged-in-scholarship-case?odyssey=underbox%7Ctext%7Cchome&pagerestricted=1>.

155. "This year, the importance of financial aid got ratcheted up exponentially," the Georgetown Dean of Admissions told the *Washington Post* in September 2013. "The competition among the top schools is more ferocious because there are just fewer people in that very top group of applicants. You had an arms race going on among top law schools so the best applicants would seriously consider coming to your school." Debra Cassens Weiss, *DC Law Schools Shrink*, See *Declining LSAT Scores; Are Rich Schools Winning the Financial-*

B. Reduced Class Sizes Should in Turn Strengthen the Market for the Smaller Number of New Lawyers

It is worth pausing for a moment to appreciate the likely dynamic between the market for new law students and the market for new lawyers, not least because it offers a ray of hope in what otherwise might seem a dismal landscape. If, as it appears is already occurring, the legal academy significantly contracts, in just a few years there will be substantially fewer law graduates seeking Law Jobs. Even if the number of entry-level Law Jobs remains more or less flat, the Law Jobs *Ratio* will significantly improve. In other words, with fewer new lawyers chasing fewer Law Jobs, more graduates who want a Law Job should be able to get one. In yet other words, the poor employment prospects for new law graduates today can be attributed as much to an excess of law graduates as it can to a shortage of Law Jobs. Though the number of Law Jobs may prove largely immovable, the number of new law degrees is proving that it is not.

What this means is that while it currently appears that law school is a very questionable gamble for all but those confident of a good finish at a strong school, the odds may be better in the future. The Class of 2013 found (depending on how you count JD Preferred positions) something over 25,000 Law Jobs. That was dreadful considering that there were over 46,000 graduates,¹⁵⁶ but the latter number is falling. Assuming that the contraction in the overall output of the legal academy continues as it has begun, the job prospects for those happy few (or perhaps more accurately, happier fewer) beginning law school three to five years from now should be brighter for those further from the top of the class and not at the top-ranked schools.¹⁵⁷

This observation has prompted the predictable overreaction from law school promoters and apologists, some of whom have begun pro-

Aid War?, ABAJOURNAL (Sept. 16, 2013, 7:14 AM CDT) http://www.abajournal.com/news/article/dc_law_schools_shrink_see_declining_lsats_scores_are_rich_schools_winning_th/?utm_medium=email&utm_campaign=weekly_email&utm_source=maestro&sc_cid=130918AK; *see also* sources cited *supra* note 152.

156. ABA SECTION OF LEGAL EDUC. & ADMISSIONS 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.

157. This translates to an analogous observation regarding the earnings premium attributable to a law degree studied by Simkovic and McIntyre, discussed *supra* Part V.C.1: To the extent law schools continue to produce an oversupply of new lawyers while Law Jobs generally and the most lucrative Law Jobs in particular remain constricted, it seems reasonable to predict that the earnings premium across the workforce will be compressed, and law school will remain a dubious bet for larger numbers of potential applicants. If, however, the legal education market corrects, a greater proportion of a smaller graduating class should get better jobs, with the result that law-degree holders going forward will have better earnings results overall, though the overall number of lawyers enjoying the benefit will be smaller than before.

claiming that “recent law school graduates and current and future law students are standing at the threshold of the most robust legal market that ever existed in this country—a legal market which will grow, exist for, and coincide with, their entire professional career.”¹⁵⁸ As exhilarating as it would be to live in the best of all possible worlds these oracles foretell, their conclusions seem doubtful for a variety of reasons.

To begin with, there is real doubt when the legal academy’s output will fall to something close to market-clearing levels for the entry-level job market.¹⁵⁹ Law schools have aggressively resisted shrinking (or closing) in numbers proportional to the drop in the number of applicants: While the number of applicants has fallen about a third between the class entering law school in 2010 and the one entering in 2013, the 2013 aggregate entering class is still only 24% smaller than 2010’s, with even the groups of schools with generally weaker placement records shrinking on average less than the applicant pool.¹⁶⁰ Acceptance rates are climbing, and more recent graduates have entered law school with lower qualifications than their peers a few years earlier.¹⁶¹ How successfully the academy will continue to resist

158. René Reich-Graefe, *Keep Calm and Carry On*, 27 GEO. J. LEGAL ETHICS 55, 66 (2014) (emphasis removed); see also Steven Freedman, #1 – Intro – Enroll Today!, FAC. LOUNGE (Apr. 10, 2014, 10:08 AM), <http://www.thefacultyounge.org/2014/04/1-intro-enroll-today.html> (“Why 2017-2018 Will Be a Fantastic Time to Graduate from Law School”); Ben Barros, *Answers to, and Questions for, Professor Tamanaha on Why Now Is a Great Time to Go to Law School*, FAC. LOUNGE (Apr. 15, 2014, 5:03 PM), <http://www.thefacultyounge.org/2014/04/brian-tamanaha-has-asked-two-interesting-questions-in-response-to-steve-freedmans-recent-posts-on-jobs-and-law-school-admi.html#more> (“[T]he class of 2017 is virtually certain to graduate into the best job market in recent memory.”); Steven Freedman, #2 Supply – How Many Law Students Will Graduate in 2017 & 2018?, FAC. LOUNGE (Apr. 10, 2014, 11:57 AM), <http://www.thefacultyounge.org/2014/04/2-supply-how-many-law-students-will-graduate-in-2017-2018.html>; Steven Freedman, #3 Scenarios: Supply/Demand by 2017-2018, FAC. LOUNGE (Apr. 15, 2014, 1:31 PM), <http://www.thefacultyounge.org/2014/04/3-supplydemand-by-2017-2018-scenarios-.html>.

159. Since this author posted the prediction of improving prospects for smaller future graduating classes in the summer of 2013, more restrained and sober observers have made more conservative predictions than those quoted above. See, e.g., Deborah J. Merritt, *When Will Graduates = Jobs?*, LAW SCHOOL CAFÉ (Nov. 22, 2013, 8:40 PM), <http://www.lawschoolcafe.org/thread/when-will-graduates-jobs/> (predicting match between graduates and jobs around 2021).

160. Schools ranked 100 or greater, or unranked, shrank on average 23% and 27% respectively; higher-ranked schools typically shrank less. Organ, *supra* note 151.

161. “The average decline in median LSAT scores between 2010 and 2013 across U.S. News ‘tiers’ of law schools was 1.54 among top 50 schools, 2.27 among schools ranked 51-99, 2.11 among schools ranked 100-144, and 2.79 among schools ranked alphabetically.” *Id.* Twenty percent of all accredited schools saw declines in median LSAT of four or more points during that period. *Id.* “In 2010, there were 74 law schools with a median LSAT of 160; in 2013, that number has fallen to 56. At the other end of the spectrum, in 2010, there were only 9 schools with a median LSAT of less than 150 and only one with a median LSAT of 145. In 2013, the number of law schools with a median LSAT of less than 150 has more than tripled to 32, while the number of law schools with a median LSAT of 145 or less now numbers 9 (with the low now being a 143).” *Id.*

shrinking, and how the employers will react to what may be perceived as the falling quality of the average graduate, are factors whose effect is difficult to predict.¹⁶²

Meanwhile, the economics of the profession and its costs of entry have changed considerably for the worse. Adjusted for inflation, the average starting salary for law school graduates has retreated to levels last seen in the mid-1980s, a time when law school tuition was 20%-40% of what it is today.¹⁶³ Thus even with more Law Jobs per graduate in prospect, a graduate's likelihood of finding a job that supports the cost of the degree has fallen significantly.

And none of these anticipated corrections seem likely to improve the lot of the "Lost Generation" of JDs graduating between 2009 and 2014. Many of them entered law school at a time when almost no one would have predicted the suddenness or severity of the Law-Job market's contraction, or that so many of them would find themselves stranded on a mountain of student-loan debt while the winds of recession howled around them. Their inability to find legal work more economically or professionally nourishing than occasional temporary document review leaves them less and less likely to ever really practice law the longer their un- or under-employment continues.¹⁶⁴

Finally, whatever benefits these developments eventually deliver will come at great cost. If the downsizing of the legal academy results in better job prospects for future graduates, it will be a much smaller population of such graduates who enjoy the benefit. And that benefit will be achieved only at the expense of substantial downsizing at many law schools, resulting in widespread staff and faculty job loss, and quite probably outright closure of at least a few institutions.¹⁶⁵

162. Brian Tamanaha has acutely observed that the promotional rhetoric may have its own dynamic effects by encouraging greater number of applicants to attend law school than the job market upon their graduation will bear. See Barros, *supra* note 158.

163. Merritt, *supra* note 144; see also Organ, *supra* note 10.

164. See Anonymous Recruitment Director, *Anonymous Recruitment Director Answers Your Email Questions (Part 1)*, ABOVE THE L. (Apr. 30, 2014, 3:28 PM), <http://abovethelaw.com/2014/04/anonymous-recruitment-director-answers-your-email-questions-part-1/> ("A lawyer who is unemployed for two months is more employable to a prospective employer than a lawyer who has been unemployed for 14 months."); cf. Annie Lowrey, *Caught in a Revolving Door of Unemployment*, N.Y. TIMES (Nov. 16, 2013), http://www.nytimes.com/2013/11/17/business/caught-in-unemployments-revolving-door.html?_r=0 (describing the increasing difficulty of obtaining employment the longer a worker remains unemployed); see also Caplan, *supra* note 5.

165. See, e.g., Paul Campos, *80% to 85% of ABA Law Schools Are Currently Losing Money*, LAWYERS, GUNS & MONEY (Nov. 12, 2013), <http://www.lawyersgunsandmoneyblog.com/2013/11/80-to-85-of-aba-law-schools-are-currently-losing-money>; Paul Campos, *Law School Dean Threatens to Summarily Fire Faculty Who Don't Accept Buyouts or Doubled Teaching Loads*, LAWYERS, GUNS & MONEY (Oct. 25, 2013), <http://www.lawyersgunsandmoneyblog.com/2013/10/law-school-dean-threatens-to-summarily-fire-faculty-who-dont-accept-buyouts-or-doubled-teaching-loads>; Paul Campos, *Thomas Jefferson School of Law Slashes Jobs, Salaries, and Budget*, LAWYERS, GUNS & MONEY (Dec. 12, 2013),

Such change may be necessary and even salutary, but no one should underestimate the dislocation and loss that it will leave behind.

C. Questions for Further Inquiry

From one perspective, this simply means the pain experienced in recent years by many law graduates is being pushed back onto the institutions that produced those graduates, namely the law schools. This raises the question how that pain will be distributed. While the market for legal education appears to be correcting, the process is by no means affecting all producers the same. Between 2010 and 2012, the 15 top *U.S. News*-ranked schools reduced entering class size by an average of 5%, while all ranked schools together reduced entering class size by an average of 18%.¹⁶⁶ Tuition reductions also appear to be concentrating outside the more prestigious law schools.¹⁶⁷

All of that raises some serious and complex questions as we look toward the future of the legal academy. One is the simple quantitative question of where all the contraction will come to rest: Where will aggregate entering-class size bottom out? How will the shrinkage be distributed across existing institutions? How many schools will be forced to close their doors altogether?

More generally, we should be wondering which law schools are likely to be more affected, or affected in different ways, by the pending market corrections; and what characteristics distinguish them from those that will be less or differently affected. How are those institutions that are affected by growing market pressures going to react in the near term? How effective are those near-term reactions likely to be, and how consistent will they be with a deeply considered longer-term perspective?

<http://www.lawyersgunsmoneyblog.com/2013/12/thomas-jefferson-school-of-law-slashes-jobs-salaries-and-budget>; Mark Glover, *McGeorge Law School Downsizes Student Body and Staff*, SACRAMENTO BEE (July 5, 2013, 11:52 PM), <http://www.sacbee.com/2013/07/05/5547577/mcgeorge-law-school-downsizes.html>; Dave Gram, *Vt. Law School Cutting Jobs, Preparing for Changes*, BOSTON.COM (Nov. 25, 2012), <http://www.boston.com/news/education/2012/11/25/law-school-cutting-jobs-preparing-for-changes/QIBibvMJqGla0P9FAuSEPI/story.html>; Jones & Smith, *supra* note 150; David Lat, *A Law School's Possible Purge of its Junior Faculty Ranks*, ABOVE THE L. (July 1, 2013, 4:05 PM), <http://abovethelaw.com/2013/07/a-law-schools-possible-purge-of-its-junior-faculty-ranks>; David Lat, *Law School Rightsizing: This Is How You Do It*, ABOVE THE L. (Oct. 7, 2013, 2:48 PM), <http://abovethelaw.com/2013/10/law-school-rightsizing-this-is-how-you-do-it>.

166. *Projections for Law School Enrollments and Profiles for Fall 2013*, *supra* note 144.

167. See Matt Leichter, *U.S. News Data Show 2011 May Be Beginning of End for Law School Tuition Bubble*, AM. LAW. (Mar. 19, 2012, 4:31 PM), <http://amlawdaily.typepad.com/amlawdaily/2012/03/us-news-data-show-2011-may-be-beginning-of-end-for-law-school-tuition-bubble.html> (suggesting that relentless tuition increases are generally slowing, especially at "down-market law schools," though not at the highest-ranked schools); see also *supra* note 152.

Another set of concerns was recently highlighted by the newly appointed dean of the NYU School of Law, who questioned “to what extent [elite law schools should] feel a need to respond to any of the changing dynamics and challenges in the legal profession.”¹⁶⁸

If individual institutions or the legal academy as a whole are changing, what will they look like while they are changing, and what will they look like when they are done? What innovations in the cost and financing of legal education will emerge, and how will they be distributed? How much will curriculum, staffing, and teaching methods be affected, and at which kinds of institutions?

We are seeing experimentation on a number of these fronts. Which experiments will be judged successes remains to be seen, but hazarding guesses and suggestions seems particularly appropriate (albeit hazardous to one’s dignity) during this period of rapid change.

VII. CONCLUSION

While it is not easy to formulate a qualitative definition of the kind of postgraduate placement for which law school should be considered a rational substantive preparation, this Article suggests one focused on employment that someone would, *ex ante*, rationally plan to attend law school to obtain or, put slightly differently, jobs for which a law degree is either a condition of employment or provides dramatic and substantial advantages in obtaining or performing the job not more easily obtainable or substitutable (whether in nature or extent) another way. It then attempts to measure the proportion of each aggregate graduating law school class over the last thirty years that obtained such “Law Jobs” within roughly nine months of graduation using the placement data accumulated by NALP and the ABA.

While imperfect, these measurements appear descriptive enough to render some useful insights. One is that the best level of Law Jobs placement that can reasonably be expected within nine months of graduation in a very strong employment market has historically been something approaching 80%. This yields the observation that there have always been, and likely always will be, a significant number of law school graduates who do not obtain genuinely law-related employment soon after entering the workforce.

These measurements also show that there has been a significant contraction in the entry-level Law Jobs available to law school graduates since 2008, and that this contraction has been focused quite disproportionately on the large-firm sector of the legal employment

168. Staci Zaretsky, *Are Top Law School Grads Immune to Crushing Debt and Unemployment?*, ABOVE THE L. (July 9, 2013, 5:15 PM), <http://abovethelaw.com/2013/07/are-top-law-school-grads-immune-to-crushing-debt-and-unemployment> (quoting Trevor Morrison, dean of NYU School of Law).

market colloquially known as “BigLaw.” Analysis suggests that contractions in BigLaw hiring have not only been disproportionate in number relative to the size of the entry-level market as a whole, but also may disproportionately influence the prospects of entry-level job-seekers in other sectors of the Law-Job market.

These observations imply that future entry-level hiring in BigLaw is likely to affect the job prospects of many future law graduates. While some portion of the contraction in entry-level BigLaw hiring is cyclically linked to the prevailing economic downturn, this portion is likely modest, and the contraction is predominantly attributable to structural changes in the way that complex, high-end legal services are produced, staffed, and priced. These structural changes now appear to be well entrenched but still gathering in influence, with the result that entry-level hiring in BigLaw, and by extension in the entry-level Law-Job market as a whole, is likely to remain depressed below pre-recession levels for a considerable period of time, and also likely to lag any increases in demand for BigLaw services or in BigLaw census overall.

Finally, predicting an entry-level Law-Job market that remains constricted well after the current recession recedes has important implications for American law schools. The reduced demand for entry-level Law Jobs has already precipitated a rapid fall in the number of students considering law degrees and price competition among some law schools for potential matriculants. At the same time, a substantial contraction in the legal academy of the kind apparently underway could ironically improve future graduates’ job prospects even in a weak job market by reducing the number of new lawyers chasing even a persistently limited number of Law Jobs. Notwithstanding some observers’ optimism that this improvement will be profound and immediate, it seems more likely that improving job prospects for recent law graduates will develop more gradually over the next five to ten years, will produce significantly fewer jobs that will support the cost of a law degree than in prior years, and will be accompanied by a shrinking profession and a shrinking academy.