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The New Normal Ten Years In: The Job Market for New Lawyers Today and What it Means for The Legal Academy Tomorrow

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THE NEW NORMAL TEN YEARS IN: THE JOB MARKET FOR NEW LAWYERS TODAY AND WHAT IT MEANS FOR THE LEGAL ACADEMY TOMORROW

Bernard A. Burk*

ABSTRACT

Despite record-low general unemployment and a strong economy, the graduating law-school Class of 2017 entered a much smaller and more constrained labor market than existed ten years before. Overall, the number of entry-level, strongly law-related jobs (“Law Jobs”) that the Class of 2017 obtained was 26% lower than the Class of 2007, and remains at levels not seen since the early 1990s. The only reason that greater proportions of the graduating class are obtaining Law Jobs than in recent years is the dramatic decrease in the number of students attending law school since 2010.

Examination of the various sectors of the entry-level Law-Jobs market shows that no sector produces more Law Jobs today than it did in 2007. That said, some sectors’ hiring shrank more than others. While there are fewer entry-level Law Jobs overall today than in 2007, there were no drastic changes in the non-law-firm sectors’ share of all Law Jobs or of the graduating class. Among private law firms, it is the smallest (2–10 lawyers) and the largest (over 500 lawyers) that have reduced their entry-level hiring least.

In addition, a look at the pattern of entry-level hiring in the ABA’s “JD Advantage” category (referring to jobs that are law-related but do not require a law license) provides quantitative evidence that many of these positions have long been, and remain, distinctly less preferred by and less satisfying to new graduates than conventional law practice. These findings call into doubt comments touting work that is merely law-related as the future of the

*Former Assistant Professor, University of North Carolina. This Article was presented at Florida International University’s Summit on the Future of Legal Education and Entry to the Profession on April 12, 2018. Thanks to the Florida International University College of Law and the Summit’s organizer, Prof. Scott Norberg, for arranging the Summit and inviting the author, as well as to the FIU Law Review for its support throughout the Summit and in the preparation of this Article for publication. Professor Norberg also provided invaluable suggestions to improve this Article. Judith N. Collins and James Leipold of the National Association for Law Placement graciously provided extremely useful supplemental data. Thanks also to Jerome Organ for his unfailingly enlightening perspectives on market and data issues, and Emma Rasiel for her help on quantitative issues and data presentation. Ariela Burk provided excellent data processing and research assistance. All errors remain my own, of course, and given that this is my second Article on the subject using the same dataset, I really ought to know better.

profession, and suggest that most law schools would be wise to concentrate on preparing their students for practice.

For reasons explained in detail, there is no reason to believe that any of these patterns will change in the foreseeable future. Overall, this implies that the steady and rapid entry-level legal-employment growth common from the 1970s through the mid-2000s is over, and a stable “New Normal” has established itself. This New Normal likely will see only gradual growth in entry-level Law-Jobs hiring at rates roughly equal to the growth rates of the domestic population and economy—about 1%–2% per year overall.

These changes impose a straitened perspective on the recent increase in applicants to law school in the 2017–2018 admissions cycle, the first meaningful increase since 2010. Given that any substantial expansion in the need for new lawyers is unlikely, any continued improvement in the employment prospects of new law graduates at most law schools will be dependent on keeping entering-class sizes steady or making them smaller. Law schools that grow without a specific and quantifiable basis to predict commensurate expansion in particular labor markets that they directly serve risk diluting their graduates’ employment outcomes, with corresponding adverse effects on their life and career prospects, as well as the reputation of the institution.

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I. INTRODUCTION

This Article seeks to update the author’s earlier efforts to describe the changes in the market for entry-level, strongly law-related jobs (“Law Jobs”) for new law-school graduates, *What’s New About the New Normal: The Evolving Market for New Lawyers in the 21st Century*.¹ Much has continued to change in the last several years, but it may now be fair to suggest that a true baseline “New Normal” with a definable shape and prospects has emerged.

The Article begins with a discussion of the sources of the data used, and the methods employed to conform those data to the qualitative categories defined and examined.²

Those data are used to describe the stabilizing size and contours of the entry-level Law-Jobs market. Despite record-low unemployment and a generally strong economy, the graduating law-school Class of 2017 entered a much smaller and more constrained labor market than existed ten years before, which marked the height of the entry-level Law-Jobs market. Overall, the number of Law Jobs that the Class of 2017 obtained was 26% *lower* than the Class of 2007, and remains at levels not seen since the early 1990s. The only reason that greater *proportions* of the graduating class are obtaining Law Jobs than in recent years is the dramatic decrease in the number of students

¹ Bernard A. Burk, *What’s New About the New Normal: The Evolving Market for New Lawyers in the 21st Century*, 41 FLA. ST. U. L. REV. 541 (2014) [hereinafter Burk, *New Normal*].

² See *infra* Part II.

attending law school since 2010. But even those proportions remain 4.2 points (-6%) below the levels prevailing in the mid-2000s. If the legal academy had been able to maintain its enrollment since 2010, *more than half* of all law graduates today would not be able to find a job requiring a law license within 10 months after graduating. As it is, more than a third of them still can't.³

In addition, a look at the pattern of entry-level hiring in the ABA's "JD Advantage" category (referring to jobs that are law-related but do not require a law license) provides quantitative evidence that many of these positions have long been, and remain, distinctly less preferred by and less satisfying to new graduates than conventional law practice. These findings call into doubt comments touting work that is merely law-related as the future of the profession, and suggest that most law schools would be wise to concentrate on preparing their students for practice.⁴

Examination of the various sectors of the entry-level Law-Jobs market shows that *no* sector produces more Law Jobs today than it did in 2007. That said, some sectors shrank more than others. While there are fewer entry-level Law Jobs overall today than in 2007, there have been no drastic changes in the non-law-firm employers' relative share of the available Law Jobs or of the graduating class.⁵

Among private law firms, entry-level hiring continues to vary by size of firm.⁶ Medium Firms (11–50 lawyers) and Large Firms (51–500 lawyers) have considerably contracted their entry-level hiring over the last ten years as clients force them to do more with less. The outlook is less constrained at the extremes: Small Firms (2–10 lawyers) and Very Large Firms (501+ lawyers), though hiring fewer new lawyers than they did in 2007, are hiring relatively more than their mid- and large-sized competitors did at that time. Very Large Firms have been increasing new hiring, and Small Firms appear to be stabilizing new hiring at levels significantly higher than those during the recessionary dip, while other sectors are stagnating or worse.⁷

For reasons explained in detail, there is no reason to believe that any of these patterns will change in the foreseeable future as to any of the market sectors examined.⁸ Overall, this prediction implies that the steady and rapid growth in entry-level legal employment common from the 1970s through the mid-2000s is over, and a true "New Normal" has established itself. This New Normal will be characterized by gradual growth in entry-level Law Jobs at

³ See *infra* Part III.A.1.

⁴ See *infra* Part III.A.2.

⁵ See *infra* Part III.B.

⁶ See *infra* Tables 3.2, 3.3.

⁷ See *infra* Part III.C.

⁸ See *infra* Part IV.A.

rates roughly equal to the growth rates of the domestic population and economy—roughly 1%–2% per year overall.

These changes impose a straitened perspective on the roughly 8% increase in applicants to law school in the 2017–2018 admissions cycle, the first meaningful increase in applicants since 2010. As of 2016–17, the average law-school entering class was 26% smaller than it was in 2010. Given that any substantial expansion in the need for new lawyers is unlikely, any continued improvement in the employment prospects of new law graduates at most law schools will be dependent on keeping entering-class sizes stable or making them smaller. Law schools that grow without a specific and quantifiable basis to predict commensurate expansion in particular labor markets that they directly serve risk diluting their graduates' employment outcomes, with corresponding adverse effects on their life and career prospects, as well as the reputation of the institution.⁹

II. DATA AND METHODS

A. Sources and Limitations of the Data

The data and methods used here are based on those originally developed in the author's earlier article.¹⁰ That paper included a 30-year study of the entry-level employment market for lawyers based on the employment outcomes that accredited law schools were required to report to the National Association for Law Placement ("NALP") and the American Bar Association Section for Legal Education and Admission to the Bar ("ABA").¹¹

It bears repeating that both that study and this one are limited to *entry-level* Law Jobs. In terms of the data relied on, that means jobs obtained by law-school graduates within nine (and starting with the class of 2015, ten) months of graduation and reported by their law schools as provided in the ABA's accreditation standards.¹² The period between graduation and reporting provides enough time for new graduates to study for and take a licensing examination once, and to search for a job for a few months after

⁹ See *infra* Part IV.B.

¹⁰ See generally Burk, *New Normal*, *supra* note 1.

¹¹ See *id.* at 550–53.

¹² AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018–2019, STANDARD 509(B) (2018); *e.g.*, AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, EMPLOYMENT QUESTIONNAIRE INSTRUCTIONS (FOR 2018 GRADUATES) (2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/Questionnaires/2019-employment-questionnaire-data-entry-questions.pdf [hereinafter *2018 ABA Employment Questionnaire*].

receiving their results.¹³ The results documented and discussed here thus amount to law graduates' first jobs following graduation (or nearly first after only a very short detour). The focus on entry-level employment does not account for what graduates do at any time later in their careers, though failure to obtain a law-practice or very closely law-related job promptly after graduation appears to have been, and to remain, likely to seriously hamper or altogether prevent any intended career as a lawyer.¹⁴

It also bears repeating that the data gathered by NALP and the ABA has evolved over time, but in many important respects has never closely conformed to any qualitatively optimal definition of the kinds of employment this study and its predecessor seek to document. Approximations and estimates of various kinds are necessary, though this is hardly unusual in empirical studies.¹⁵

B. *The Time Frame of the Data Examined*

Although NALP and the ABA began gathering employment data from law schools in 1975, this study focuses on such data for background and context beginning in 1991 when examining the Law-Jobs market as a whole,

¹³ See Burk, *New Normal*, *supra* note 1. Historically, the bar exam has been administered twice per year in all fifty states and the District of Columbia, once at the end of July, and once at the end of February. Results for the July administration (which is the one that most recent law graduates sit for) have generally been announced, depending on the jurisdiction, between Labor Day and Thanksgiving. Law Schools were asked (and as of 1996, required (*see id.* at 568 n.54)) to report on their most recent graduates' employment outcomes on March 7 of the year following their graduation (with results posted on the school's website by March 15) until 2015, when results were to be reported by April 7 (with posting by April 15). See AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, PROTOCOL FOR REVIEWING LAW GRADUATE EMPLOYMENT DATA, AND STATEMENT OF PROCEDURES FOR COLLECTING, MAINTAINING, AND REPORTING LAW GRADUATE EMPLOYMENT DATA – FINAL 11 (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_june_protocol_and_statement_employment_data_final.authcheckdam.pdf.

¹⁴ See Burk, *New Normal*, *supra* note 1, at 546–47; Anonymous Recruitment Director, *Anonymous Recruitment Director Answers Your Email Questions (Part 1)*, ABOVE THE LAW (Apr. 30, 2014), <https://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.”); Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES (July 15, 2012), <https://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html>; Annie Lowrey, *Caught in a Revolving Door of Unemployment*, N.Y. TIMES (Nov. 16, 2013), <https://www.nytimes.com/2013/11/17/business/caught-in-unemployment-revolving-door.html> (describing the increasing difficulty of obtaining employment the longer a worker remains unemployed).

¹⁵ For a detailed description of how the employment outcomes data collected and reported has evolved since NALP and ABA began the effort in the 1970s, and its limitations in describing employment outcomes for purposes such as those involved here, see Burk, *New Normal*, *supra* note 1, at 546–47, 550–55.

and beginning in 2001 when considering separate market sectors. In 1975, nearly half of all new graduates' employment outcomes (45%) either are not reported at all (because their schools reported no employment data), or are disclosed by reporting schools as "employment status unknown"; by the early 1980s the total remains a quarter to a third.¹⁶ The employment status of about 23% of all new graduates is still unknown by 1991, but from there the proportion shrinks steadily, especially after 1996, when disclosure of employment outcomes became a mandatory condition of accreditation.¹⁷ The proportion of unreported or unknown outcomes falls under 10% in the late 1990s, and under 5% in 2012.¹⁸

In addition, "JD-Advantage" jobs (also referred to at some points in the ABA/NALP data as "JD Preferred," but abbreviated here "JDA")—ones that are to some degree law-related but that do not require a law license—are not broken out from those requiring a law license ("Bar Passage Required" or "BPR" jobs) until after 2000. Before that, NALP and the ABA categorized jobs as either "Legal" or "Non-Legal," with Legal positions apparently including some work not requiring a law license, and Non-Legal positions including both some law-related careers not explicitly amounting to the practice of law as well as non-law-related work.¹⁹ Focusing on data starting with the Class of 2001 for separate market sectors thus allows for more consistent reporting and comparisons.

C. What Counts as a "Law Job"?

Qualitatively, this author's definition of the kind of employment outcome that counts as a Law Job is one

that someone would, *ex ante*, rationally plan to attend law school to obtain. This should include only placements for

¹⁶ See *id.* at 566–68 & fig.3.

¹⁷ *Id.* at 568 & n.54.

¹⁸ *Id.* at 566–68 & fig.3. As discussed in the earlier study (*id.* at 567–68, 570–71), unreported and unknown results are more likely to be bad outcomes, simply because law schools and graduates have natural incentives to discover and report good ones. That said, *some* of the unreported or unknown results were likely Law Jobs, especially when a number of law schools were not reporting at all, resulting in at least some undercounting of Law Jobs and some understatement of the Law-Jobs Ratio (which counts all unknown outcomes as not employed in a Law Job).

¹⁹ When the distinction switches from Legal vs. Non-Legal to BPR vs. JDA (and other less law-related categories) after 2000, the number of BPR positions drops noticeably year-over year in 2001 while the total of BPR + JDA jobs jumps noticeably. A fair inference is that what reporting schools now call JDA jobs were previously divided between the "Legal" and "Non-Legal" categories. See *id.* at 565 fig.1 (depicting the Law-Jobs Ratio, or proportion of the graduating class securing a Law Job). For detailed discussion of the development of the standards for Legal vs. Non-Legal and BPR vs. JDA jobs, and the indeterminacy and ease of abuse of both, see *id.* at 555–59.

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.²⁰

This standard is objective, and although necessarily imprecise, does its best to limit the uncertainty in categorizing law-related jobs. As part of that effort, it skirts the shoals of hedonic (individual satisfaction-based) and economic (compensation-based) measures.²¹

Quantitatively, this definition results in a measure based on NALP and ABA employment-outcome data that counts as “Law Jobs” any “Bar Passage Required” placement that is full-time, long-term, and non-school-funded, excluding “JD Advantage” and solo practice positions, and counting as not employed in a Law Job those pursuing a further degree or whose status is unreported or unknown.²²

D. *The Law-Jobs Ratio*

Qualitatively, the Law-Jobs Ratio is intended to approximate the proportion of the aggregate graduating class that obtained a Law Job within nine (or beginning with the class of 2015, ten) months of graduation. Quantitatively, it is determined simply by dividing the aggregate number of

²⁰ *Id.* at 547.

²¹ *See id.* at 547–50. In brief, individual satisfaction is all but impossible to measure. As for compensation-based measures, the data available are less complete and thus probably less reliable than for the measures used here, and more importantly many placements traditionally viewed as desirable and sought-after Law Jobs are much less remunerative than those available at large law firms. *See* Bill Henderson, *How the “Cravath System” Created the Bi-Modal Distribution*, EMPIRICAL LEGAL STUD. (July 18, 2008), https://www.elsblog.org/the_empirical_legal_studi/2008/07/how-the-cravath.html.

²² *See* Burk, *New Normal*, *supra* note 1, at 555–63 (discussing the reasons for the inclusions and exclusions, and their potential effects on accurately approximating the preferred qualitative definition). Unemployed graduates at nine or ten months are treated as unemployed whether or not they are reported as “seeking” employment. *Id.* at 561–62. Beginning with the Class of 2015, the ABA has reported school-funded positions separately from conventional BPR and JDA placements, before that, school-funded positions were included in conventional BPR and JDA placements if they otherwise qualified. For recent definitions of these categories, see AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, EMPLOYMENT PROTOCOLS FOR THE CLASS OF 2018, at 5–7 (2018), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/Questionnaires/2019_EQ_Protocol_FINAL.pdf (2018); *2018 ABA Employment Questionnaire*, *supra* note 12, at 1–5.

Bar-Passage-Required Law Jobs reported for the aggregate graduating class by the total number of graduates from all law schools in that same class.²³

E. A Note on Counting Law Jobs in Separate Market Sectors

The numerator of the Law-Jobs Ratio (as defined here; that is, the total number of “Law Jobs”) is relatively easy to determine after the Class of 2010 because at that point the ABA and NALP started requiring reporting schools to disclose specifically the total number of full-time, long-term, Bar-Passage-Required placements each graduating class obtained. Counting Law Jobs before the Class of 2011, or broken down by market sector, becomes more difficult and uncertain, however.

Before the Class of 2011, the proportion of each market sector’s Bar-Passage-Required placements that is part-time, short-term, or both (and thus not a “Law Job” as defined here) must be estimated.²⁴ The estimates of those proportions through the Class of 2010 that are used here are those developed in the prior study.²⁵ In addition, when the ABA and NALP first introduced BPR, JDA, and related categorizations for the Class of 2001, NALP also provided breakdowns of the non-law-firm market sectors specifying the proportion in each that was Bar-Passage-Required. Those are used here to factor out the non-Law Jobs in each non-law-firm market sector.²⁶ Even in

²³ See Burk, *New Normal*, *supra* note 1, at 564. Because Law Jobs exclude from the Ratio’s numerator solo practitioners and JDA positions as well as unreported and unknown placements, some of which would likely qualify as Law Jobs under the qualitative definition used here, and because all graduates (including those seeking a further degree, those reported as not seeking employment, and those whose outcomes are unreported or unknown) are included in the denominator, the Law-Jobs Ratio will tend to understate somewhat the proportion of graduates actually holding a Law Job. For the reasons discussed (*see id.* at 555–63) this more conservative approach is believed to result in less undercounting than the overcounting that would result if these policies were reversed. Counting a portion of these positions is no better, as there are no reliable data by which a meaningful proportion could be estimated.

²⁴ For definitions of “full-time” and “long-term,” see *2018 ABA Employment Questionnaire*, *supra* note 12, at 2.

²⁵ See Burk, *New Normal*, *supra* note 1, at 552–53.

²⁶ “Academia,” which is referred to in the most recent ABA and NALP reports as “Education,” includes not only professorial appointments in law schools (which are rare straight out of law school), but also any teaching or school administrator or librarian position at any educational level. See *2018 ABA Employment Questionnaire*, *supra* note 12, at 10–17. Accordingly, the vast majority of these positions are not “Law Jobs.” Similarly, a position in Business & Industry could be any job with a for-profit business, for example an in-house lawyer, a non-lawyer manager or salesperson, a manual laborer on an assembly line, or a janitor. The latter three are not “Law Jobs”; while they are steady, honest work, they are not the sort of positions a rational person would invest the time and money necessary to attend law school to obtain. See Burk, *New Normal*, *supra* note 1, at 547–50; *supra* Part II.C. Placements in the Government and Public Interest categories likewise contain some mix of Law Jobs and non-Law Jobs, which varies from category to category and over time. All Judicial Clerkships that are full-time and long-term (that is, lasting a year or more) are treated as Law Jobs. Virtually all such positions meet the qualitative test applied

private law firms, a small portion of new-graduate hires (typically around 6%-7% each year in the aggregate) fill positions not requiring a law license, such as legal secretary (administrative assistant) or paralegal.²⁷

III. WHAT THE NEW NORMAL HAS TURNED OUT TO BE

This section will discuss the evolution of the Law-Jobs market since 1991 both as a whole and by sector in an effort to put the entry-level Law Job market's current condition in perspective. In addition to graphs illustrating trends, the reporting includes two charts with numbers at a few consistent reference points for the market as a whole and its various sectors. The reference points are:

- 1991: The beginning of the comparison period for the Law-Jobs market as a whole, and a time when non-reporting starts to fall below levels that make counting unacceptably unreliable;²⁸

here for a Law Job: They traditionally serve as a stepping-stone after a year or two to another more permanent Law Job, or are themselves a more permanent position as a court's staff attorney.

²⁷ For the Class of 2011 forward, NALP provides a breakdown of law-firm categories by size, which includes full-time BPR jobs in each category as well as positions reported in each category as part-time and short-term. *See, e.g.*, NALP, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2017 34 (2018) [hereinafter JOBS & JDS, CLASS OF 2017]. Unfortunately, these three groupings are not mutually exclusive, which means that the BPR percentage includes some short-term jobs (and apparently the short-term figures include some non-BPR jobs). For clarity and consistency this study, like its predecessor, applies the single BPR percentage that NALP furnishes for all private law firms in the aggregate to each separate size category of law firm, and uses the number of full-time, long-term BPR jobs in that size category provided by the ABA. This introduces some distortion: The data NALP makes available suggests that, at least in recent years, the smaller the firm, the greater the proportion of non-Law Job new hires, with the smallest firms significantly more likely to hire new graduates as other than practicing lawyers—roughly 15%-20% of them. For example, the JOBS & JDS, CLASS OF 2017, *supra*, lists the following percentages of full-time BPR jobs by size category:

Size	% Full-Time BPR
1-10	84.4%
11-25	94.1%
26-50	94.3%
51-100	97.1%
101-250	97.1%
251-500	97.6%
501+	99.0%
All	92.4%

²⁸ *See supra* notes 16–18 and accompanying text.

- 2001: The end of the effects of the dot-com recession on the entry-level Law-Jobs market, and the beginning of the biggest “rally” in the history of that job market;²⁹
- 2007: The graduating class that enjoyed the most Law Jobs in most sectors of the market, and the highest Law-Jobs Ratio, since systematic gathering of employment information began in 1975;³⁰
- 2013: The reporting endpoint of the author’s previous description of the Law-Jobs market, and the end of what had appeared to be a partial recovery but proved to be a “dead-cat bounce”;³¹
- 2017: The reporting endpoint of this paper.

A. *The Entry-Level Law-Jobs Market Overall*

Table 3.1
Whole Entry-Level Law-Jobs Market at Various Comparison Points
Classes of 1991–2017

Year	1991	2001	2007	2013	2017
Number of Law Jobs	22,827	25,812	30,509	26,637	22,370
Number of JDA Jobs	n/a	2,057	3,129	4,714	3,072
Number of Graduates	38,800	37,909	43,518	46,776	34,391
Law-Jobs Ratio	58.8%	68.1%	70.1%	53.6%	65.9%

1. The Number of Law Jobs and the Law-Jobs Ratio

As the market for entry-level Law Jobs contracted rapidly and substantially after 2007, many voices in the academy insisted that the employment downturn was, like the recession with which it coincided, temporary and cyclical. This view turned out to be wrong.³² As the drop in the number of Law Jobs levelled out more recently, some again predictably suggested that the job market was returning to its former strength and

²⁹ See *infra* Figs. 3.1–3.2.

³⁰ See *infra* Table 3.1 and Figs. 3.1–3.2.

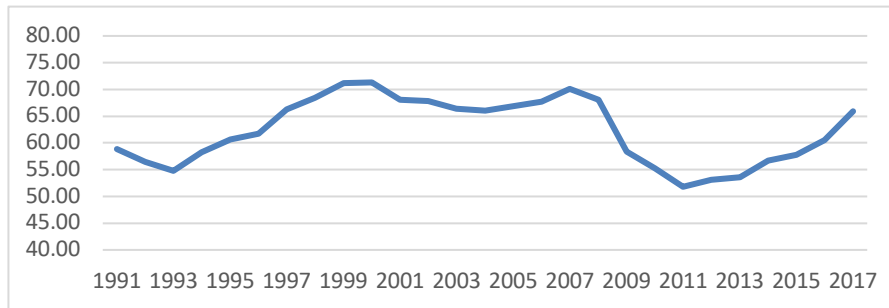
³¹ See *infra* Table 3.1 and Figs. 3.1–3.2 “Dead-cat bounce” is a term borrowed from the financial markets, referring to a small bounce upward after a significant fall, and which (because the “cat” has “died” from the fall), quickly falls back down again. See *Dead Cat Bounce*, URBAN DICTIONARY <https://www.urbandictionary.com/define.php?term=dead%20cat%20bounce> (last visited Feb. 14, 2019).

³² See Burk, *New Normal*, *supra* note 1. This author took the opposite view. *Id.* at 591–95.

capacity, and was even “hot.”³³ But if there is one thing a reader takes away from this Article, let it be that this description is simply inaccurate. Both historical trends and current figures illustrate the reality.

Figure 3.1 depicts the source of some observers’ excitement:

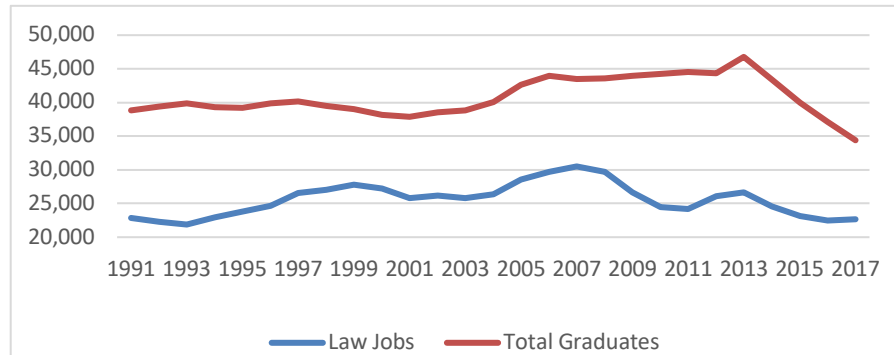
Figure 3.1
Law-Jobs Ratio (Excluding JDA)
Classes of 1991–2017



What this graph shows is that the Law-Jobs Ratio (the proportion of the graduating class that obtained a Law Job within 9–10 months of graduation) bottomed out in 2011, and has risen steadily since. But this observation disregards the sole reason the Ratio has increased, which is illustrated in Figure 3.2:

³³ See, e.g., Hilary Mantis, *Employment Market is Hot, Choose Wisely*, 28 NAT’L JURIST 1, 38 (2018), <http://cdn.coverstand.com/52741/521323/8526434acf7295bb6dcf2114c8e7a5ede8f1b592.1.pdf> (“Those entering the legal job market can breathe a sigh of relief.”). While NALP issued a much more nuanced press release detailing the very limited improvements in entry-level legal employment, JUDITH N. COLLINS, OVERALL EMPLOYMENT RATE UP MODESTLY EMPLOYMENT IN LEGAL JOBS UP MORE, JOBS & JDs: EMPLOYMENT FOR THE CLASS OF 2017—SELECTED FINDINGS (2018), <http://www.nalp.org/uploads/SelectedFindingsClassof2017.pdf>, and industry journalists also fairly reported the decidedly less-than-optimistic results, headline writers relentlessly accentuated the positive at the expense of the larger picture. See, e.g., Staci Zaretsky, *Job Market For Law School Grads Is ‘Best Since The Recession,’ Bolstered By Biglaw Hiring*, ABOVE THE LAW (Aug. 2, 2018, 2:16 PM), <https://abovethelaw.com/2018/08/job-market-for-law-school-grads-is-best-since-the-recession-bolstered-by-biglaw-hiring/> (with subheading “Exciting News that Must be Tempered with Some Cold, Hard Facts”); Karen Sloan, *Job Market for Law Grads ‘Surprisingly Strong,’ NALP Finds*, LAW.COM (Aug. 1, 2018, 6:00 PM), <https://www.law.com/2018/08/01/job-market-for-law-grads-surprisingly-strong-nalp-finds/>.

Figure 3.2
Number of Entry-Level Law Jobs (BPR) and Total Graduates
Classes of 1991–2017



As Figure 3.2 shows, the *number* of Law Jobs has *fallen* in most years since its peak in 2007, although it now appears to be flattening out at levels well below those prevailing ten years ago. Specifically, following a big tumble from 2007-2011 and a slight recovery (“dead-cat bounce”) in 2012-2013, the number of Law Jobs was *down* year-over-year for the classes of 2014 (-7.7%), 2015 (-6.1%), and 2016 (-2.6%). It was effectively flat in 2017 (+0.8%). Overall, the number of Law Jobs is 25.7% *lower* for the Class of 2017 than it was for the Class of 2007, and remains at levels not seen since the early 1990s.

As Figure 3.2 also shows, the reason for the rise in the Law-Jobs Ratio in recent years is simply that the denominator of the Ratio—the number of new graduates—has gotten much smaller: 23% fewer graduates than when the Law-Jobs Ratio bottomed out in 2011, and 21% fewer graduates than at the peak of the Law-Jobs market in 2007. In other words, because there are so many fewer graduates chasing the reduced number of Law Jobs today, more of those graduates are succeeding. But there are still many thousands fewer Law Jobs today than there were 10 years ago.³⁴ The implications of these critical facts are discussed below.³⁵

³⁴ The falling number of law-school graduates predictably follows from a substantial reduction in the number of people applying to and beginning law school. Unique applicants fell 36%, and applications fell 44%, between the classes starting in fall 2010 and fall 2016. The number of JD-degree matriculants fell 27% during that same period. See Bernard A. Burk, Jerome M. Organ & Emma B. Rasiel, *Competitive Coping Strategies in the American Legal Academy: An Empirical Study*, 19 NEV. L.J. & App. 1 (forthcoming 2019) (manuscript at 12–14) (on file with author) [hereinafter Burk, Organ & Rasiel, *Coping Strategies*].

³⁵ See *infra* Part IV.C.

2. A Note About JD-Advantage Jobs

As discussed in the previous study, NALP's and the ABA's definition of JD-Advantage (or JD-Preferred) placements fits poorly with the qualitative definition of a Law Job used here, namely a placement that at least potentially justifies the time and expense to obtain a law degree. More specifically, the prevailing definition of a "JD Advantage" job is prone to overinclusiveness. As a result, the category has created temptations for, and likely some actual, misreporting.³⁶ These placements are accordingly excluded from the count of "Law Jobs" in this and the prior study.

The trends in the number of postgraduate placements reported as JD Advantage since the last study's publication confirm the analysis proposed there:

Figure 3.3
Number of JD-Advantage Jobs
Classes of 2001–2017



After a sudden drop in JDA jobs, which coincided with rapidly rising unemployment generally and in the legal sector during the credit crisis of 2008 and 2009, the number of JDA placements gradually doubled as the number of BPR jobs fell and the number of new law graduates continued to rise. As the number of BPR jobs started to level out, the number of graduates per year started to fall (in 2014, reflecting decreasing enrollments starting

³⁶ See Burk, *New Normal*, *supra* note 1, at 555–59 (also providing a history of law-related job categories promulgated by NALP and the ABA over the roughly 40 years they have been collecting employment data from law schools).

three years earlier), and the Law-Jobs Ratio started to rise again. During this time, the number of reported JDA jobs began to fall, and has continued to do so as graduates' chances of obtaining a BPR placement (as directly measured by the Law-Jobs Ratio) continued to increase.

In other words, the harder it has been for the average new graduate to get a BPR job, the more new graduates (and, perhaps, their reporting law schools in interpreting outcomes) resort to JDA placements. These trends illustrate that JDA work has long been, and still is, a widely and significantly less-preferred alternative to BPR work for most new graduates (and may also be a reporting alternative on which administrators rely more aggressively when conventional BPR placements are weaker).³⁷ This inference is supported quantitatively by the fact that since 2001, when the JDA category was first reported, the aggregate number of JDA placements at accredited law schools is *inversely* correlated with the Law-Jobs Ratio (which is effectively a measurement of the likelihood of the average new graduate's obtaining an entry-level BPR Law Job).³⁸ It is also supported quantitatively by the fact that the proportion of JDA-job holders who report that they are seeking other employment remains close to 40%, over four times the proportion of BPR-job holders looking to change jobs.³⁹ In short, the easier it is for new graduates to find a BPR job, the less likely those graduates are to take a JDA job; and a lot more JDA job-holders than conventional BPR job-holders are looking for a different (and presumably more directly law-related) job just 10 months after graduating.

These findings cast grave doubt on any assertion that the future of post-law-school employment will and should increasingly be merely law-*related* rather than in conventional law practice; or that JD-Advantage placements should generally be considered just as satisfying, sought-after or "good" as conventional Bar Passage Required placements.⁴⁰

³⁷ Compare *supra* Fig. 3.3, with *supra* Table 3.1, and *supra* Figs. 3.1 & 3.2.

³⁸ From 2001-2017, $\rho = -68\%$; $p < .003$. ρ (the Greek letter rho) is the correlation coefficient, a statistical measure about the degree to which two datasets tend to move in the same direction and magnitude; a negative correlation coefficient indicates an inverse correlation and shows that the two datasets tend to move in opposite directions. The p-value is the probability that the correlation occurred merely by chance; p-values less than .05 are typically viewed as statistically significant.

³⁹ JOBS & JDS, CLASS OF 2017, *supra* note 27, at 128 (38.7% of all JDA job holders seeking other employment vs. 8.8% of all BPR job holders).

⁴⁰ These concerns are appreciably less applicable to the small group of the most selective and highly-regarded law schools in the nation. These schools tend to attract extraordinarily talented and creative students whose career aspirations somewhat more frequently point off the beaten path of conventional law practice. Yale Law School is probably the most extreme example: Its Class of 2017 had a Law-Jobs Ratio of only 75%, with 6% more in JDA placements and another 10% in school-funded public-interest positions (including short-term and part-time). Stanford Law School similarly had a Law-Jobs Ratio of 82%, with another 8% reported in JDA positions and 3.6% in school-funded positions. These

These findings have strong implications for the future direction of law-school curricula, which are predominantly a topic for another day. But in broad overview, they tend to suggest that the typical law school is wiser focusing on preparing its students more effectively for conventional law practice rather than for imaginary hybrid vocations lurking just over the horizon.

B. Market Sectors: Non-Law-Firm Law Jobs

Non-law-firm work includes several distinct categories of employers. As discussed above, the NALP and ABA data distinguish Academia, Business, Government, Judicial Law Clerks, and Public Interest.⁴¹

Table 3.2
Non-Law-Firm Entry-Level Law Jobs by Category
At Various Comparison Points (estimated)
Classes of 2001–2017

Class Year		2001	2007	2013	2017
Academic	Number of Law Jobs	56	87	96	52
	% of all Law Jobs	0.2%	0.3%	0.4%	0.2%
	% of all grads	0.1%	0.2%	0.2%	0.2%
Business	Number of Law Jobs	965	1,665	1,546	860
	% of all Law Jobs	3.7%	5.5%	5.8%	3.8%
	% of all grads	2.5%	3.8%	3.3%	2.5%
Government (excl. judicial law clerks)	Number of Law Jobs	3,262	3,412	3,156	2,846
	% of all Law Jobs	12.6%	11.2%	11.8%	12.6%
	% of all grads	8.6%	7.8%	6.7%	8.3%

results were likely the result of actual student preferences rather than second-best solutions, and undoubtedly included some unique and exciting outcomes involving unconventional uses of a law degree. Even so, many of the most highly regarded law schools in the country have very high Law-Jobs Ratios. For example, for the Class of 2017, whose overall Law-Jobs Ratio according to the methodology described above is 66%, Duke has a Law-Jobs Ratio of 94% + 1.7% school-funded, 2% JDA; Columbia: 93% + 3% school-funded, 0% JDA; University of Virginia: 92% + 3% school-funded, 2% JDA; University of Chicago: 92% + 4% school-funded, 2% JDA; University of Pennsylvania: 91% + 2% school-funded, 6% JDA. Simply put, at most of the best-reputed law schools, graduates concentrate overwhelmingly in conventional law-practice placements.

⁴¹ For the period through the Class of 2010, the proportion of each category comprising full-time, long-term placements must be estimated. NALP has provided a proportion of each category's placements that is Bar-Passage-Required (except for Judicial Clerkships, as to which all full-time, long-term placements are assumed to be Law Jobs). See *supra* Part I.E. The number of entry-level Law Jobs with Academic employers each year is so small that they are not graphed in Figures 3.4A-C.

Judicial Law Clerks	Number of Law Jobs	3,397	3,397	3,317	3,156
	% of all Law Jobs	13.2%	11.1%	12.5%	13.9%
	% of all grads	9.0%	7.8%	7.1%	9.2%
Public Interest	Number of Law Jobs	693	1,701	1,294	1,173
	% of all Law Jobs	2.7%	5.6%	4.9%	5.2%
	% of all grads	1.8%	3.9%	2.8%	3.4%
Total Non-Law-Firm Law Jobs	Number of Law Jobs	8,373	10,262	9,409	8,087
	% of all Law Jobs	32.4%	33.6%	35.3%	35.7%
	% of all grads	22.1%	23.6%	20.1%	23.5%

Fig. 3.4A
Number of Non-Law-Firm Entry-Level Law Jobs
Per Year by Category
Classes of 2001–2017

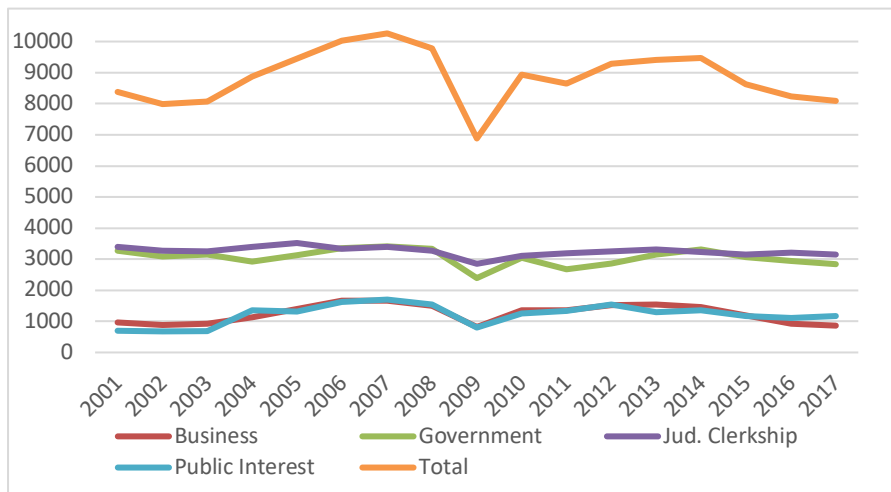


Fig. 3.4B
Non-Law-Firm Entry-Level Law Jobs Per Year by Category
As a Percentage of Total Law Jobs Per Year
Classes of 2001–2017

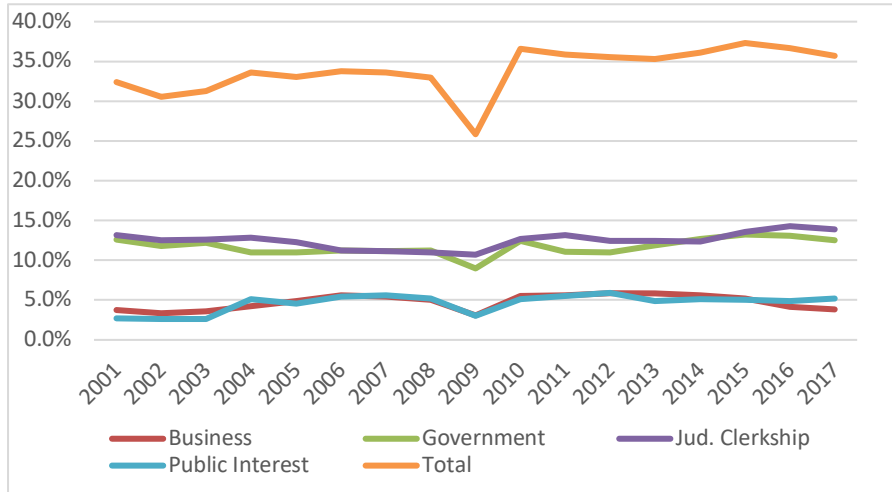
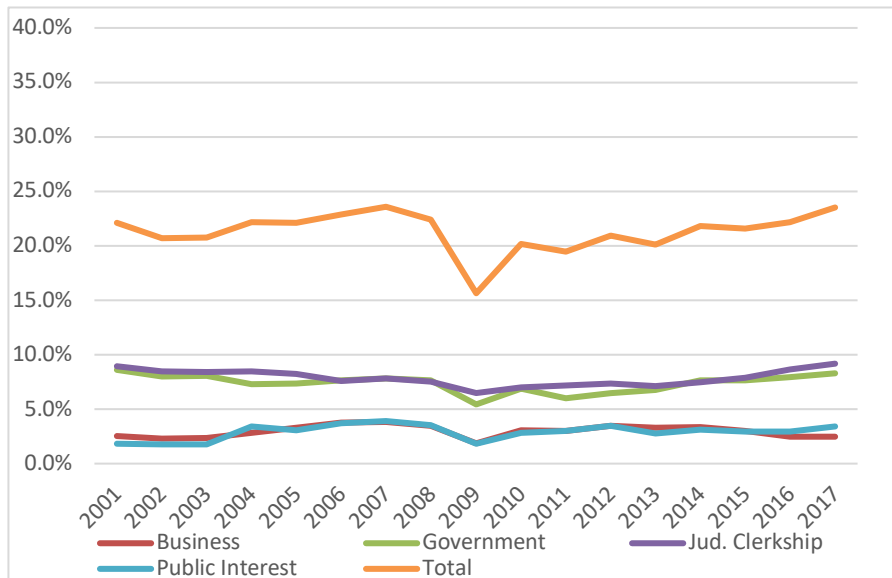


Fig. 3.4C
Non-Law-Firm Entry-Level Law Jobs Per Year by Category
As a Percentage of Total Graduates Per Year
Classes of 2001–2017



As Figures 3.4A–C show, non-law-firm Law-Job hiring has been relatively flat over the last 20 years except for a significant drop from 2007 to 2009, and a fairly gradual recovery since then. No category of non-law-firm employer provides a greater number of Law Jobs today than it did in 2007. Government and Judicial-Clerkship hiring have shrunk less than the other categories, and thus consume a slightly bigger share of the overall Law Jobs obtained recently and a slightly larger portion of the graduating class. Overall, non-law-firm Law Jobs have fallen in number (-21.2%), but they comprise roughly the same proportion of the Law Jobs annually as they did before the Great Recession, and about the same proportion of the aggregate graduating class.⁴²

C. *Market Sectors: Private Law-Firm Law Jobs*⁴³

Table 3.3
Entry-Level Law-Firm Jobs at Various Comparison Points
Classes of 1991–2017

Year		2001	2007	2013	2017
All Law Firms (excl. solos)	number	14,624	17,409	15,620	14,147
	% of Law Jobs	56.7%	57.1%	58.6%	62.4%
	% of all grads	38.6%	40.0%	33.4%	41.1%
Solo Practice	number	428	532	941	390
	% of Law Jobs	1.7%	1.7%	3.5%	1.7%
	% of all grads	1.1%	1.2%	2.0%	1.1%

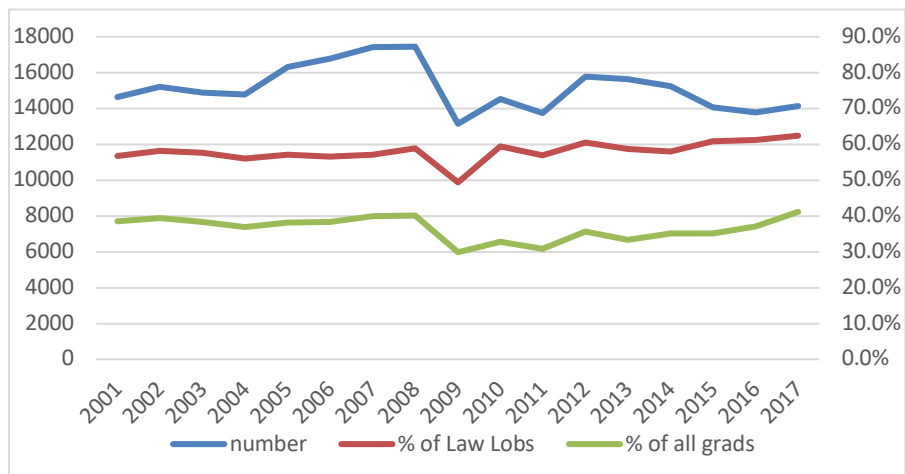
⁴² All of these quantifications depend on the accuracy of the estimation process described in *supra* Part I.E. One small anomaly that emerges is that the proportions of all Law Jobs comprising non-law-firm and law-firm Law Jobs are both up modestly from 2007 to 2017. This is likely attributable in part to some variation in the accuracy of estimation year to year, but more substantially to shrinking numbers of unknown-category BPR Law Jobs. These unknown-category jobs are not categorized as either law-firm or non-law-firm, as a result of which those two categories alone do not total 100% in any year. In fact, the difference in the total proportion of law-firm plus non-law-firm Law Jobs in 2007 (90.7%) and 2017 (98.1%) equals the amount by which the proportion of all Law Jobs that non-law-firm Law Jobs (+2.1%) and law-firm Law Jobs (+5.3%) increased over the same period.

⁴³ The vigilant reader will notice that the categorizations of private firms by size in this Article (discussed in the text that follows) differ from those in the earlier article on which it expands. *Compare infra* Table 3.3, with Burk, *New Normal*, *supra* note 1, at 572, Figs. 4A & 4B. This shift is partly a result of patterns that emerged more clearly over the additional years between the two papers, but in all candor the earlier categorizations may also have been influenced by the author's preconceptions of the meaning of certain size gradations. Regardless of the reasons, private firms have been grouped together in this Article according to their similar patterns of entry-level hiring over time. No claim is made about whether the firms in the size categories used here to measure entry-level hiring also perform comparably (similarly within categories and differently among categories) in other performance metrics, such as promotion rates, gross revenues, profitability, etc. That is an interesting and important inquiry for another day.

Small Firm (2-10)	number	4,496	5,949	6,502	4,839
	% of Law Jobs	17.4%	19.5%	24.4%	21.3%
	% of all grads	11.9%	13.7%	13.9%	14.1%
Medium Firm (11-50)	number	2,585	2,813	2,697	2,432
	% of Law Jobs	10.0%	9.2%	10.1%	10.7%
	% of all grads	6.8%	6.5%	5.8%	7.1%
Large Firm (51-500)	number	4,990	4,276	2,721	2,563
	% of Law Jobs	19.3%	14.0%	10.2%	11.3%
	% of all grads	13.2%	9.8%	5.8%	7.5%
Very Large Firm (501+)	number	2,553	4,371	3,700	4,312
	% of Law Jobs	9.9%	14.3%	13.9%	19.0%
	% of all grads	6.7%	10.0%	7.9%	12.5%

As Table 3.3 shows, the *number* of new law graduates taking jobs in private law firms (excluding solo practitioners)⁴⁴ is roughly the same as it was in 2001 and is down 18.7% since 2007. As we will see, *no* subcategory of law firm is hiring more new lawyers today than it did in 2007. At the same time, the relative proportions of different-sized law firms' share of overall Law-Jobs hiring also has changed in the last ten years.

Figure 3.5
Entry-Level Law-Firm Jobs (All Firms Except Solos)
Classes of 2001–2017

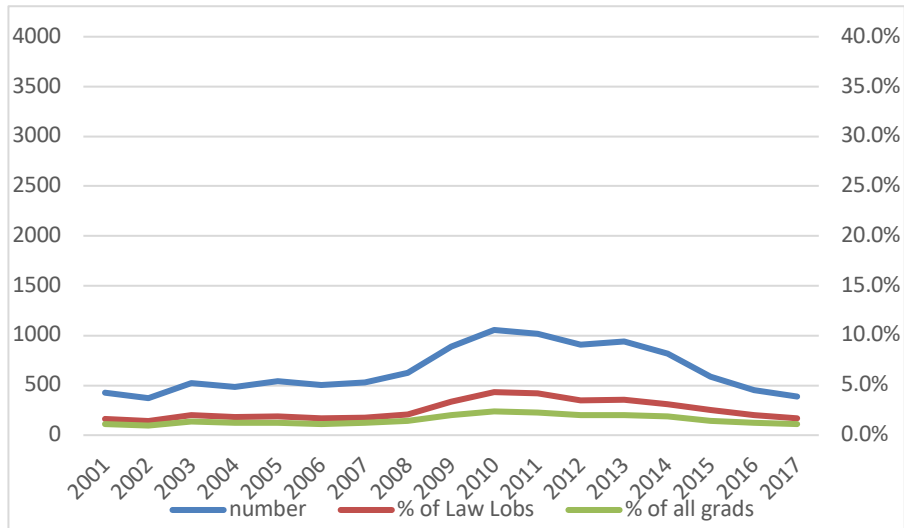


⁴⁴ The exclusion of immediately post-graduate solo practice from “Law Jobs” is explained in Burk, *New Normal*, *supra* note 1, at 560–61. As discussed in *supra* Part II.B.2, and illustrated in *supra* Table 3.3, and *infra* Fig. 3.6, only a small number of new graduates immediately strike out on their own in any event, historically (and currently) roughly 1%–2% of the graduating class per year since 1991.

1. Solo Practitioners

As Table 2.3 shows, there have never been very many graduates who hang out their own shingles straight out of law school. However, roughly one in three lawyers eventually ends up in solo practice, almost all after gaining experience in supervised placements.⁴⁵

Figure 3.6
Entry-Level Solo Practitioners
Classes of 2001–2017



The number of solo practitioners starting straight out of law school has hovered between 1% and 2% of the aggregate graduating class since 1991.⁴⁶ Solo practice straight out of law school is a disfavored outcome among new law graduates, a perspective reflected not only in the consistently low numbers of graduates who choose this path, but also by the fact that the outcome is negatively correlated with law-school prestige, reflecting that the greater the range of other options graduates are presented, the less likely they are to select immediate solo practice.⁴⁷ As reflected in Figure 3.6, solo practice's share of all Law Jobs rose to record highs during major contractions in the entry-level Law-Jobs market—around 4% of all entry-level Law Jobs in 2009-13, when appreciably fewer alternatives were available. Recent years' results are consistent, in that the number of

⁴⁵ Burk, *New Normal*, *supra* note 1, at 560–61; *see supra* notes 40–43.

⁴⁶ *Id.*

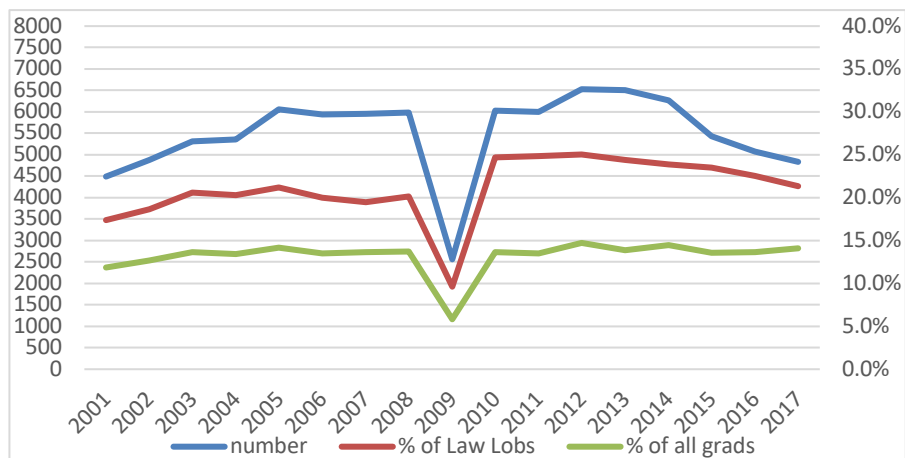
⁴⁷ *Id.* at 561; *supra* note 42.

immediately post-graduate solos, as well as their proportion of all Law Jobs and of the aggregate graduating class, has fallen from the relative (though still very modest) highs of the early 2010s as the Law-Jobs Ratio has increased, and the alternative placements available to new law graduates have correspondingly broadened.⁴⁸

2. Small Firms (2–10 Lawyers)⁴⁹

Small firms reacted to the contraction of the overall Law-Jobs market that began after 2007 in a manner distinct from other sectors of the job market:

Figure 3.7
Entry-Level Law Jobs in Small Firms (2–10 Lawyers)
Classes of 2001–2017



As Figure 3.7 shows, entry-level hiring in Small Firms plummeted after the onset of the Great Recession, but only briefly. This was a period in which the demand for legal work generally and suddenly fell as the economy seized up in reaction to the Great Recession’s credit crisis, general unemployment rapidly increased, and the middle-class individuals and small businesses

⁴⁸ See *supra* Fig. 3.1.

⁴⁹ The ABA breaks private-firm employment data into categories by firm size. These categories include firms of 2–10 lawyers, 11–25 lawyers, 26–50 lawyers, 51–100 lawyers, 10–250 lawyers, 251–500 lawyers, and more than 501 lawyers. The hiring patterns described in this section are most prominent and accentuated in the 2–10 lawyer category. While the hiring patterns of firms of 11–25 unsurprisingly echo those of firms of both 2–10 and 26–50, they more strongly resemble those of the next larger category, and thus firms of 11–50 are grouped together in this study as “Medium” sized.

predominantly served by Small Firms had fewer resources to devote to legal services.⁵⁰

The contraction in large-firm hiring continued for some years after 2009 and remained at lower levels than before the recession when it stabilized, while the business of smaller firms apparently recovered more quickly.⁵¹ Greater numbers of new graduates thus were driven to positions with small firms, which temporarily had relatively greater need than their larger siblings and were more than happy to find students with what previously would have been Big-Law credentials ready and willing to sign on. From 2009 on, the smallest and largest firms' hiring have tended to move inversely to one another to an extent not found with other hiring categories.⁵²

Small-Firm hiring for the Class of 2017 is nevertheless down 25.6% in number from its peak in 2013, and down 18.7% from 2007. It is up 7.6% in number since 2001 and, significantly, even though down in number since 2007, consumes a larger proportion of total Law Jobs (up 1.8 points = +9.2%) and the aggregate graduating class (up 0.4 points = +2.9%) than it did in 2007. Today over 20% of all new Law Jobs, and about 14% of the entire graduating class, start in Small Firms. It is currently the largest sector of the new Law-Jobs market.

3. Medium Firms (11–50 Lawyers)⁵³

Medium-sized Firms share hiring patterns reminiscent of both Small and Large Firms, though to a lesser degree than either:

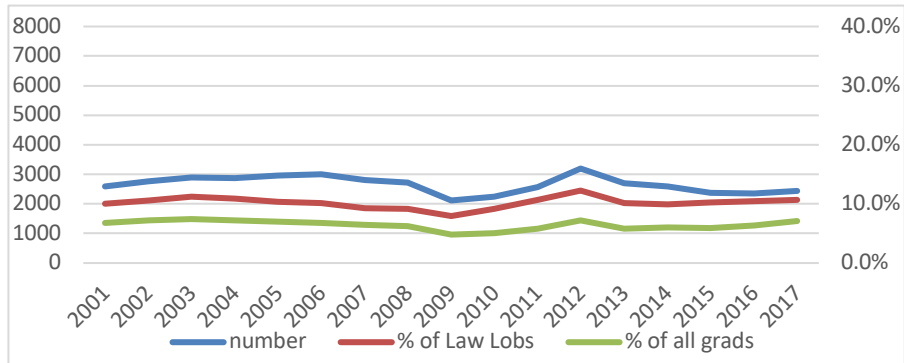
⁵⁰ See Bernard A. Burk & David McGowan, *Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 1 COLUM. BUS. L. REV. 1, 27–33 (2011) [hereinafter Burk & McGowan, *Big But Brittle*].

⁵¹ See *infra* Figs. 3.9–3.10. This is consistent with the observation, apparent from the graphs in this Part, that BigLaw is generally more cyclically sensitive than smaller firms.

⁵² Compare *supra* Fig. 3.7, with *infra* Fig. 3.10.

⁵³ In a bridging pattern similar to that between small and medium firms (*see supra* note 50), firms of 11–50 lawyers show hiring patterns that resemble those of firms of both 2–10 and 51–100. Firms of 11–50 show patterns sufficiently similar to one another and different from the next larger or smaller category to be grouped together as “Medium”-sized.

Figure 3.8
Entry-Level Law Jobs in Medium Firms (11–50 Lawyers)
Classes of 2001–2017



Like Small Firms, Medium Firms show a hiring dip in 2008–10 and a hiring spike in 2011–13, but both are smaller than those exhibited by Small Firms.⁵⁴ Medium Firms do not show the accelerating growth in the 1990s and 2000s characteristic of Large Firms, but do show the basically flat hiring numbers of Large Firms after 2013, a period during which Small-Firm hiring falls noticeably relative to earlier years, while Very-Large-Firm hiring rises.⁵⁵

Medium-Firm entry-level hiring for the Class of 2017 is down in number 23.9% from its brief peak in 2012, and down 13.5% since 2007. Medium Firms make roughly as many new hires today as they did in 2001, provide 10.7% of the entry-level Law Jobs, and consume 7.1% of the graduating class, slightly larger proportions than they did in 2001.

4. Large Firms (51–500 Lawyers)⁵⁶

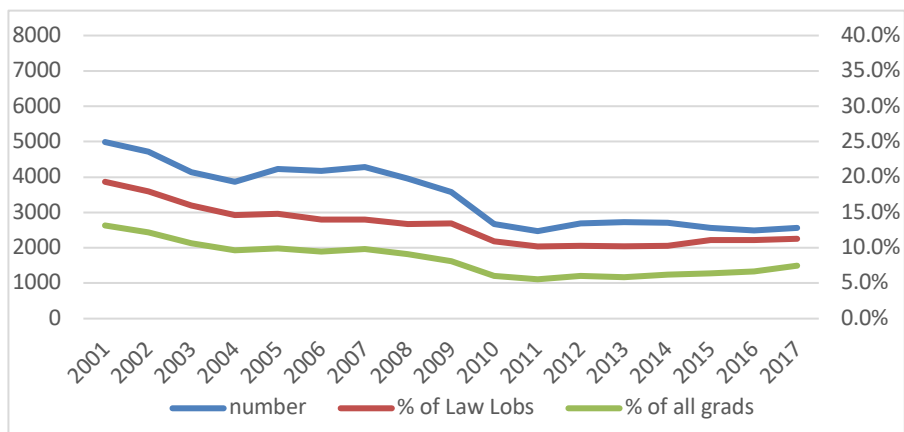
Large Firms showed stronger entry-level hiring in the mid- to late-1990s and again in the mid-2000s but slowed their hiring significantly after 2007. Entry-level hiring by Large Firms has more or less flattened out since 2010.

⁵⁴ See *supra* Fig. 3.7.

⁵⁵ Compare *supra* Fig. 3.7, with *supra* Fig 3.8, and *infra* Figs. 3.9 & 3.10.

⁵⁶ At a time when BigLaw is bigger than ever, it may seem strange to group firms of 51–100 lawyers with those of 101–500 as “Large.” But the purpose of the private-firm categorizations in this Article is to group firms that exhibit the most similar entry-level hiring patterns over time. Firms of 51–100 performed strikingly similarly to those of 101–250 and 251–500 in that regard, and noticeably differently from Medium Firms of 11–50 and Very Large Firms of over 500 lawyers. Compare *infra* Figure 3.9, with *supra* Figure 3.8, and *infra* Figure 3.10.

Figure 3.9
Entry-Level Law Jobs in Large Firms (51–500 Lawyers)
Classes of 2001–2017



Unlike other categories, this group's entry-level hiring peaked in 2000 (with the Class of 1999), just as the dot-com recession was beginning, with a lower peak in 2008 (the Class of 2007), just as the Great Recession was beginning. The explanation is likely twofold: The tech boom of the 1990s, and the financial services boom of the 2000s, fueled rapid growth among larger firms, which had expanding needs for junior lawyers to perform legal process work on larger deals and disputes.⁵⁷ In addition, the number of Very Large firms was limited until after the turn of the century, when rapid growth and increasing numbers of big-firm mergers with and acquisitions of other firms drove greater numbers of firms into the Very Large category.⁵⁸

The accelerating growth in hiring at the entry level typical of Large Firms in the mid- to late-1990s and to a lesser degree in the mid-2000s has given way to stagnancy. Large-Firm hiring for the Class of 2017 is down in number 40.1% since 2007, and down over 50% from its peak in 1999. It accounts for an over 40% smaller portion of all Law Jobs and a nearly 50%

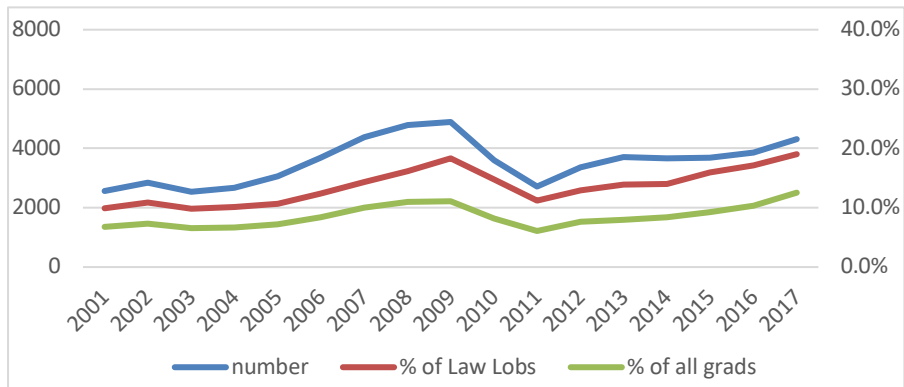
⁵⁷ See Burk & McGowan, *Big But Brittle*, *supra* note 50, at 11–13, 20, 22, 23, 25.

⁵⁸ *Id.* at 11–13. To this extent, it is fair to say that the entry-level hiring trends among firms larger than 50 lawyers exhibited in Figures 3.9 and 3.10, starting with the Class of 2004 or so, are to some degree an artifact of the category boundaries used in this Article. The distinction on the high end between Large (51-500) and Very Large (501+) firms does illustrate some important distinctions, however. One is an apparent difference in the number of firms achieving these respective category size limits—in other words, it would appear that not every Large Firm that become Very Large (or merged into a Very Large Firm) over the last 10–20 years was replaced by a Medium Firm that became Large (as those categories are defined here), and (if it is an accurate inference from the data) that is quite significant. At least as importantly, the largest firms have continued to hire at a relatively robust rate, while hiring among those in the next smaller category has stagnated. Compare *supra* Figure 3.9, with *supra* Figure 3.8, and *infra* Figure 3.10.

smaller portion of the aggregate graduating class today as it did at its 1999 peak.

5. Very Large Firms (501+ Lawyers)

Figure 3.10
Entry-Level Law Jobs in Very Large Firms (501+ Lawyers)
Classes of 1991–2017



Very Large Firms are the only law firms besides Small Firms that have shown any appreciable and lasting increase in entry-level hiring since the depths of the Great Recession. Their hiring numbers were small during the 1990s principally because there were few firms larger than 500 lawyers at that time, but show rapid growth in hiring during the 2000s as the megafirm comes into vogue, and mergers create greater numbers of them.⁵⁹ They also show some cyclical exposure to the economy in the years after the onset of the Great Recession, which reflects the constraints during that time on their large-company clients' expenditures on big transactions and big-case litigation.⁶⁰ And while their hiring has risen steadily since hitting its bottom in 2011, structural forces affecting the staffing and pricing of the complex legal services these firms provide has limited those increases to some degree.⁶¹

⁵⁹ See Burk & McGowan, *Big But Brittle*, *supra* note 50, at 11–13.

⁶⁰ See *id.* at 28.

⁶¹ For a discussion of these structural phenomena and their possible effects, see Burk, *New Normal*, *supra* note 1, at 581–99. See also CTR. FOR THE STUDY OF THE LEGAL PROFESSION AT THE GEORGETOWN UNIV. LAW CTR., THOMSON REUTERS LEGAL EXEC. INST. & PEER MONITOR, 2018 REPORT ON THE STATE OF THE LEGAL MARKET 14–18 (2018), <http://legalexecutiveinstitute.com/wp-content/uploads/2018/01/2018-Report-on-the-State-of-the-Legal-Market.pdf> [hereinafter Georgetown/Thomson Reuters Report]. These forces include downward competitive pressures on pricing for the substantial portion of complex legal services comprising gathering and organizing documents and

Overall, Very Large Firms' hiring for the Class of 2017 is up in number 59.4% since its recent bottom in 2011, but down 11.8% since its peak in 2009. These firms are responsible for 19% of all new Law Jobs in 2017, and 12.5% of the aggregate graduating class. In short, this sector and Small Firms are the most dynamic and substantial hiring forces in the entry-level job market today.

IV. OBSERVATIONS AND PREDICTIONS

From the preceding discussion, it's apparent that the entry-level Law-Jobs market is significantly weaker and less capacious than it was ten years ago. There were 26% fewer Law Jobs available for the graduating Class of 2017 than there were for the Class of 2007. The portion of the graduating class getting Law Jobs (the Law-Jobs Ratio) has fallen 4.2 points (-6%) during the same period, and is only as high as it is because of the drastic reductions in the number of students attending law school. The size of the aggregate graduating class has fallen from its peak in 2013 (reflecting the largest entering class in history three years earlier) by 26.5%. If the legal academy had been able to maintain its enrollment since 2010, the Law-Jobs Ratio today would be *under 50%*, meaning that *more than half* of all law graduates would not be able to find a job requiring a law license within ten months after graduating. As it is, more than a third of them still cant.

A. Market Sectors

Perhaps the most important finding of this Article and its predecessor is the recognition that different sectors of the entry-level Law-Jobs market serve differing areas of the market for legal services, and can be differently affected by the various competitive and economic forces at play at any given time. Considering market sectors separately:

information (often referred to as "legal process" work), as well as for complex legal services more generally; the re-sourcing of legal process and other repetitive or client-knowledge-specific work in-house at the client, or to less expensive labor either inside or outside private law firms ("insourcing," "downsourcing," and "outsourcing," respectively); the growing large-company client refusal to pay for inexperienced associates or their training; and a growing shift in the demographics of larger law firms in which nonpartners stay at firms longer than in prior decades.

1. Non-Law-Firm Employers

a. Academia

This category, which includes teachers, librarians, and administrators at any school or educational institution,⁶² has always contributed negligible numbers of entry-level Law Jobs. There is no reason to believe that will change. The legal academy itself (which rarely appoints professors straight out of law school) has experienced a demand shock of its own in recent years, with the number of applicants shrinking 36% and the number of applications shrinking 44% between academic years 2011-12 and 2016-17.⁶³ Many law faculties are downsizing, and new faculty hiring is proceeding at a fraction of the rate prevailing just a few years ago.⁶⁴

b. Business

In-house law departments have never hired significant numbers of lawyers straight out of law school, preferring to hire laterally after five to ten years' of training and experience in BigLaw.⁶⁵ Although a few companies are beginning to experiment with training new lawyers themselves, the phenomenon is still rare and increasing in extent only gradually.⁶⁶ Thus while in-house law departments have been expanding in recent years,⁶⁷ the

⁶² See 2018 ABA Employment Questionnaire, *supra* note 12, at 7.

⁶³ See Burk, Organ & Rasiel, *Coping Strategies*, *supra* note 34, at (manuscript at 12–14).

⁶⁴ See Sarah Lawsky, *Who Stopped Hiring?*, PRAWFSBLAWG (May 24, 2018, 5:23 PM), <https://prawfsblawg.blogs.com/prawfsblawg/2018/05/who-stopped-hiring.html>.

⁶⁵ See, e.g., Julie Brush, *Are More Companies Today Hiring Lawyers Straight Out of Law School?*, RECORDER (Jan. 22, 2018, 1:25 PM), <https://www.law.com/therecorder/sites/therecorder/2018/01/22/are-more-companies-today-hiring-lawyers-straight-out-of-law-school/> [<https://advance.lexis.com/search?crd=0b678df8-1e5a-40ab-80db-bd1ab551c077&pdsearchterms=LNSDUID-ALM-RECRDR-hdg45lmej&pdbyasscitatordocs=False&pdmfid=1000516&pdisurlapi=true>].

⁶⁶ See, e.g., *id.*; Caroline Spiezio, *Summer Internships in Silicon Valley Offer New Route In-House for Law Students*, LAW.COM (Aug. 7, 2018, 4:15 PM), <https://www.law.com/2018/08/07/summer-internships-in-silicon-valley-offer-new-route-in-house-for-law-students/> [<https://advance.lexis.com/search?crd=5537350b-64fe-4f5e-b601-23f909d3fed5&pdsearchterms=LNSDUID-ALM-CORPCM-gmd45elfej&pdbyasscitatordocs=False&pdmfid=1000516&pdisurlapi=true>].

⁶⁷ See, e.g., Stephanie Forshee, *Legal Departments Want to Add More In-House Lawyers, But Will They?*, LAW.COM (Apr. 3, 2018, 9:05 AM), <https://www.law.com/2018/04/03/legal-departments-want-to-add-more-in-house-lawyers-but-will-they/> [<https://advance.lexis.com/search?crd=b35dece2-94f1-470a-8409-1c4f2c323a1d&pdsearchterms=LNSDUID-ALM-CORPCM-gmd45edhii&pdbyasscitatordocs=False&pdmfid=1000516&pdisurlapi=true>]; Burk & McGowan, *Big But Brittle*, *supra* note 50, at 76–87.

proportion of that hiring at the entry level has been, and can be expected to continue to be, small.⁶⁸

c. Government

Government spending on lawyers is, if anything, more unpopular than ever. Slack in other parts of the job market may also be inducing government lawyers to keep their jobs longer, and delay moving into the private sector, reducing the need for new hires. In addition, many agencies at the state and federal levels have exploited the surplus of unemployed or underemployed graduates to offer temporary, part-time, or full-time but unpaid “volunteer” “internships” that give ambitious new graduates experience they can sell elsewhere, at the same time blunting any entry-level labor needs those agencies may be experiencing.⁶⁹ Here also there is little reason to predict any expansion in entry-level hiring at a rate greater than the growth in the domestic economy and population overall.

⁶⁸ Much optimism has been lavished on law schools’ futures in training compliance officers. Recent legislation has expanded the role of compliance staff in such industries as securities and healthcare, but such positions do not require a JD degree, and there is legitimate doubt whether the time and money required to get there supports the career economically and otherwise. There is also doubt whether a law-school education is the best preparation for a position that critically depends on an understanding of institutional dynamics and organizational behavior largely ignored in the JD curriculum. See Deborah J. Merritt, *Campbell on Compliance*, LAW SCHOOL CAFÉ (May 20, 2015), <http://www.lawschoolcafe.org/thread/campbell-on-compliance/>. As of this writing many American law schools have introduced *non-JD* compliance programs (some denominated as such; others called degrees in, e.g., “Health Care Law and Policy”) that last only a year (or two part-time) and eventuate in a pre-JD Master’s Degree or post-JD LLM. See, e.g., Avi Wolfman-Arent, *Are Non-lawyers the Future of Law School? One School in Delaware Thinks So*, WHY (June 15, 2016), <https://why.org/articles/are-non-lawyers-the-future-of-law-school-one-school-in-delaware-thinks-so/>; Derek Muller, *One in Ten Law School Enrollees is Not Part of a JD Program*, EXCESS OF DEMOCRACY: LEGAL EDUCATION (Jan. 22, 2016), <http://excessofdemocracy.com/blog/2016/1/one-in-ten-law-school-enrollees-is-not-a-part-of-a-jd-program>. All non-JD programs at accredited American law schools are listed at https://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_school/. These programs may add revenue streams for financially struggling law schools but may draw new-graduate hiring away from JDs, and thus deplete whatever limited support these positions might otherwise have provided to new-JD employment.

⁶⁹ See, e.g., Parth Shah, *Challenging D.C.’s Tradition of Unpaid Internships*, NPR, (Dec. 7, 2016, 3:42 AM), <https://www.npr.org/2016/12/07/502018797/challenging-d-c-s-tradition-of-unpaid-government-internships>. Wage and hour restrictions do not apply to volunteers at government and nonprofit agencies; thus it is perfectly legal for them to offer unpaid internships. U.S. DEP’T. OF LABOR, WAGE & HOUR DIV., FACT SHEET #71: INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT (2018), <https://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

d. Judicial Clerkships

The number of such positions, as well as their share of the number of Law Jobs and of the aggregate graduating class, has proved fairly stable since 2001.⁷⁰ While nearly all of these positions at the entry level last only a year or two, they are widely considered gateways to better Law Jobs. Neither the state nor the federal judiciary should be expected to expand at any extraordinary rate, and there is arguably a gradual trend among judges in both systems to opt for more experienced (and thus non-entry-level), and longer term, staff research attorneys rather than entry-level law clerks. These factors augur continued stability with slow growth for this category.

e. Public Interest

The congressionally created Legal Services Corporation, which funds many legal aid programs for the poor across the country, has suffered years of budget cuts, and the current administration and others before it have expressed ambitions to eliminate it altogether.⁷¹ Legal services programs funded by state-bar IOLTA funds and nongovernment grants have been asphyxiated by years of record-low interest rates and financial hard times limiting charitable giving.⁷² Nonprofits other than legal services programs don't need or hire many lawyers, and especially not ones with little or no experience. And both legal services programs and other nonprofits, like government agencies, have access to both school-funded and unpaid "volunteer" interns to help meet their labor needs.⁷³ Public Interest offers almost a third fewer entry-level Law Jobs today than it did 10 years ago.⁷⁴

⁷⁰ See *supra* Table 3.2 and Figures 3.4A–C.

⁷¹ See, e.g., Hilarie Bass, *Thank You for Your Efforts to Defend Legal Aid* (Mar. 16, 2017), http://maestro.abanet.org/list/inxsxxpc/170919J/mlqmgv.vib?a0=0DEF&a2=Bernie.Burk%40bernieburk.com&a1=%26UNSUBSCRIBE_TOKEN%3B (Sept. 19, 2017) (email from the ABA President: "over the past 12 years the House has had a number of amendments filed and has taken 8 votes to cut or eliminate LSC funding"); Debra Cassens Weiss, *Trump Budget Eliminates Legal Services Corp. Funding*, ABA JOURNAL (Mar. 16, 2017, 8:45 AM), http://www.abajournal.com/news/article/trump_budget_eliminate_funding_for_legal_services_corp/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email.

⁷² Interest on Legal Trust Account ("IOLTA") funds derive from legislative programs extant in nearly every state that require lawyers and the depository institutions at which they maintain their client trust accounts to pay the interest accruing on most of those accounts to the State to fund legal services for indigents. See, e.g., Cheryl Miller, *Legal Aid Funding Still Waiting for Recovery*, RECORDER (Dec. 18, 2015).

⁷³ See U.S. DEPARTMENT OF LABOR, *supra* note 69. On school-funded positions, see Burk, *New Normal*, *supra* note 1, at 559 n.38.

⁷⁴ See *supra* Table 3.2.

Despite the admirable intentions of many prospective law students to use a law degree in service of the public interest,⁷⁵ it is very difficult to imagine this sector becoming a growth area.

f. General Outlook

Nothing about any non-law-firm sector of the entry-level Law-Jobs market suggests any significant increase in entry-level hiring is in the offing. Growth commensurate with the domestic economy and population overall is the best that can be expected.

2. Private Law Firms

As noted above, while there are significantly fewer entry-level Law Jobs than there were ten years ago,⁷⁶ different sizes of law firms have been affected differently and for different reasons:

a. Small Firms (2–10 lawyers)

Small Firms were the most active source of new hiring when larger-firm hiring remained more depressed in the wake of the Great Recession.⁷⁷ The absolute number of Small-Firm hires has fallen in recent years as the size of the graduating class has fallen, but Small Firms today account for a larger portion of all Law Jobs (21.3%) and of the aggregate graduating class (14.1%) than any other market sector.⁷⁸

Currently, the competitive and technological developments that are slowing Large and Very Large Firm growth are by their nature much less salient to Small Firms, as these developments affect predominantly big-case and big-deal engagements.⁷⁹ Small Firms are feeling some competition from technology in some of the simplest and most repetitive tasks for which they are engaged (e.g., simple estate plans; routine small-company formation; uncontested divorces). This competition at the lowest-cost end of the market may increase as interactive legal software improves and more consumers become more comfortable with relying on computers to serve personal needs

⁷⁵ See Jodi Teti, *Are More Students Going to Law School as a Reaction to Trump?*, BLUEPRINT LSAT: LSAT BLOG (Aug. 29, 2017, 4:00 AM), <http://blueprintlsat.com/lsatblog/law-school-2/students-going-law-school-reaction-trump/> [hereinafter Teti, *Law School as a Reaction to Trump*].

⁷⁶ See *supra* Table 3.3.

⁷⁷ See *supra* Table 3.3 & Figure 3.7.

⁷⁸ See *supra* Tables 3.2, 3.3 & Figure 3.7.

⁷⁹ See *supra* note 60.

of this kind. Likely this shift (in part technological, in part generational) will occur relatively gradually over time, and will affect only a modest portion of many Small Firms' typical workload for some years to come.

Small Firms have shown themselves to be less sensitive to the ups and downs of the broader economy than larger firms.⁸⁰ While the number of these positions ran up more rapidly in the mid-2000s and early 2010s, generally growth in this sector has been gradual and responsive to the growth of the population and economy overall. There is no reason to believe this will change materially in the foreseeable future.

b. Medium Firms (11-50 lawyers)

Other than a very brief spike around 2012 that likely reflected the depressed hiring at larger firms (making better-qualified candidates available to Medium and Small ones), the number of new positions at Medium Firms has remained basically flat since 2001.⁸¹ Probably the number of such firms has fallen as well, as more Medium Firms have allowed themselves to be acquired by larger ones.⁸² As the size of the graduating class has fallen, Medium Firms have taken up a fairly steady portion of the available Law Jobs (about 10%) and the aggregate graduating class (about 7%). The available data suggest that this share of the hiring has shifted toward the smaller Medium Firms, which likely perform more similarly to Small Firms; and away from the larger ones, which face the difficulty of increasing complexity of administration without adequately compensating economies of scale in growing from 26 to 50 lawyers. These phenomena may explain the increasing number of Medium Firms sacrificing their independence and succumbing to acquisition. Medium Firms thus are not likely to prove an area of dynamic entry-level hiring growth in the foreseeable future.

⁸⁰ This accords with common sense. While some of the work typical to smaller firms (e.g., estate planning; small business formation and counseling) is responsive to potential clients' financial resources, a good deal of it is more acyclical (e.g., personal injury; workers' compensation; family law; employee-side employment work—need for all of which arises in both good times and bad), and some may actually increase in hard times (e.g., consumer bankruptcy).

⁸¹ See *supra* Table 3.3 & Figure 3.8.

⁸² See, e.g., Burk & McGowan, *Big But Brittle*, *supra* note 50, at 12–13, 29; *supra* note 70; Scott Flaherty, *Firm Mergers Near Record Pace at Midyear Point*, LAW.COM (July 2, 2018, 2:00 PM), <https://www.law.com/2018/07/02/firm-tie-ups-near-record-pace-at-mid-year-point/?et=editorial&bu=Law.com&cn=20180703&src=EMC-Email&pt=Morning%20Minute>; Nell Gluckman, *Report: 2015 Could Set Record for Number of Law Firm Mergers*, LAW.COM (Oct. 5, 2018, 5:08 PM), <http://www.americanlawyer.com/id=1202738996969/Report-2015-Could-Set-Record-for-Number-of-Law-Firm-Mergers#ixzz3oHkwNOsp>.

c. *Large Firms (51–500 lawyers)*

There were relatively few firms bigger than 500 lawyers in the 1990s, and during this period Large Firms' number and share of new hires were more robust.⁸³ The number of new-graduate hires in this category is currently at its lowest recorded levels ever (other than during a brief dip in 2011).⁸⁴ Large Firms' portion of all Law Jobs and all graduates has, as for Medium Firms, risen slightly from the depths of the post-recession dip but, as with Medium Firms, this increase is likely attributable more to the reduction in the number of Law Jobs and graduates than to any strength in this sector.

Large Firms are most susceptible to the structural forces driving down rates (prices) for the work they do; they compete on price with Very Large Firms for complex work that is now viewed as more commodified. They have kept their average actual hourly rates lower (or increased them less) as Very Large Firms have continued to increase theirs, and have reduced their costs by using either low-cost resources in-firm for legal process and other repetitive work, or else sourced this work outside the firm to the client or a third-party outsourcer.⁸⁵ Once again, entry-level hiring growth in this sector more rapid than that of the economy overall seems unlikely in the foreseeable future.

d. *Very Large Firms (501+ lawyers)*

This is the sector whose future hiring patterns are hardest to predict. Certainly it has been one of the most dynamic in hiring growth in recent years.⁸⁶ Some of that growth likely has to do with sheer size and dispersion alone: When you have 1,000 lawyers scattered across many offices and a very large footprint, ordinary attrition requires you to hire a great many replacements every year just to stay where you were.

⁸³ See *supra* Table 3.3 & Figure 3.9.

⁸⁴ See *supra* Table 3.3 & Figure 3.9.

⁸⁵ See Nicholas Bruch, *Midsized Firms Are Struggling Where Competition is Fiercest*, LAW.COM (May 31, 2017, 4:27 PM), <http://www.law.com/sites/ali/2017/05/31/midsized-firms-are-struggling-where-competition-is-fiercest/>; Aebra Coe, *Why Midsized Firms Are Stealing Work From BigLaw*, LAW360 (Dec. 7, 2016, 12:24 PM), <https://www.law360.com/articles/869529/why-midsized-firms-are-stealing-work-from-biglaw/>; Miriam Rozen, *Billing Rate Gap Widens as Big Firms Demand Ever-Higher Premiums*, LAW.COM: THE AM. LAWYER (Feb. 28, 2018, 2:12 PM), <https://www.law.com/americanlawyer/2018/02/27/billing-rate-gap-widens-as-big-firms-demand-ever-higher-premiums/>; Jennifer Smith, *Smaller Law Firms Get More M&A Work*, WALL ST. J. (Aug. 5, 2014, 12:01 AM), <https://www.wsj.com/articles/smaller-law-firms-get-more-m-a-work-1407211262>; *supra* note 60 and authorities cited; Georgetown/Thomson Reuters Report, *supra* note 61, at 14–18.

⁸⁶ See *supra* Table 3.3 & Figure 3.10.

In addition, some of Very Large Firms' hiring volume has to do with the economics of their practices: Some of these firms are known for their special ability to excel in globe-spanning or otherwise truly one-of-a-kind, ultra-high-stakes transactions and disputes.⁸⁷ This work tends to be fee-insensitive, and therefore less susceptible to the pricing pressures that have been affecting staffing and pricing of more commonly recurring complex legal work.⁸⁸ While large corporate clients currently disfavor (or outright forbid) including (or at least billing for) junior lawyers in many engagements today,⁸⁹ in these exceptional "bespoke" matters highly credentialed junior associates' cost and efficiency are sometimes viewed as less important than their intelligence and industry, and they can be more liberally included on the very large teams that accomplish these exceptionally complex undertakings.

In addition, Very Large Firms are more likely than other firms to have established in-firm legal process staffs, a corps of lawyers typically sited in an affordable location in the Midwest or South who do exclusively discovery, document, due diligence, form contract, and similar repetitive work. Such "staff" or "diligence" or "discovery" counsel are paid perhaps a third of what a junior associate is paid, and are billed out to clients at correspondingly lower rates.⁹⁰ How much of Very Large Firms' more active entry-level hiring

⁸⁷ Not all Very Large Firms actually meet this description (though virtually all of them claim they do, as do many Large Firms). And, conversely, some Large Firms and even a few ultra-high-end boutiques do significant amounts of truly "bespoke" work. Wachtell Lipton is currently around 250 lawyers and handles some of the most demanding mergers and acquisition work (both transactional and litigation) in the world. See *Wachtell Lipton Rosen Katz*, LAW.COM: INT'L, <https://www.law.com/international/law-firm-profile/?id=318&name=Wachtell,-Lipton,-Rosen-%26-Katz> (last visited Dec. 22, 2018). Cravath is currently around 500 lawyers and has a similar reputation. See *Cravath, Swaine & Moore LLP*, LAW.COM, <https://www.law.com/law-firm-profile/?id=71&name=Cravath,-Swaine-%26-Moore-LLP> (last visited Dec. 22, 2018). Some of the most profitable firms in America, such as Kirkland & Ellis, Skadden Arps, Latham & Watkins, and Weil Gotshal, have well over 1,000 lawyers each. See *List of US Law Firms By Profits Per Partner*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_US_law_firms_by_profits_per_partner (last updated Oct. 8, 2018). Other Very Large Firms, while undoubtedly good at what they do, do not universally command the very highest rates for the most difficult and unusual work.

⁸⁸ See *supra* notes 59, 83.

⁸⁹ The recent increase in BigLaw first-year associate salaries to \$190,000, with corresponding increases up the scale, was met with open hostility among corporate counsel. See, e.g., Dan Clark, *CLOC Survey Shows In-House Legal May Rethink Staffing After Associate Raises—Or Maybe Not*, LAW.COM (June 15, 2018, 4:27 PM), <https://www.law.com/2018/06/15/cloc-survey-shows-in-house-legal-may-rethink-staffing-after-associate-raises-or-maybe-not/?et=editorial&bu=Law.com&cn=20180618&src=EMC-Email&pt=Morning%20Minute>. Generally, increasing numbers of corporate clients are refusing to pay for junior associates' time. See Miriam Rozen, *Pay for Associate Hours? More Companies Say 'No Thanks,'* LAW.COM: THE AM. LAWYER (Sept. 19, 2017, 3:44 PM), <https://www.law.com/americanlawyer/almID/1202798363967/>; Burk, *New Normal*, *supra* note 1, at 586–87.

⁹⁰ See Burk, *New Normal*, *supra* note 1, at 575 n.69 and authorities cited; Burk & McGowan, *Big But Brittle*, *supra* note 50, at 82.

is attributable to recruiting elite graduates receiving \$190,000 per year and how much to staff discovery departments far from their fancier urban offices that pay a third of that is not reflected in the available data, which do not distinguish between the two positions despite their obvious differences.

In all events, the last ten years have seen a growing segmentation between a relatively small number of exceptionally profitable firms, many but not all of them Very Large, and somewhat less (but still very) profitable firms, both Large and Very Large.⁹¹ The supra-profitable segment of the American legal profession, which probably does not exceed twenty or most forty firms, can be expected to make more substantial numbers of new lawyer hires because of their size and the economics of their practices just described.

What remains uncertain is how much the structural forces dragging down the pricing and staffing of some legal services will affect these super-elite firms' staffing choices. Demand for these firms' services is somewhat stronger than for complex legal work overall, but still increasing only modestly.⁹² Some of these firms face the overstaffing and underproductivity problems that seem to plague many Large and Very Large Firms.⁹³ There is also increasing competition abroad from internationally-based firms (especially London's "Magic Circle" firms) and global accounting and consulting conglomerates (the so-called "Big Four") for the supra-profitable work that distinguishes their performance.⁹⁴

⁹¹ See, e.g., David Lat, *The 2014 Am Law 100: The Super-Rich Get Richer*, ABOVE LAW (Apr. 28, 2014, 3:46 PM), <https://abovethelaw.com/2014/04/the-2014-am-law-100-the-super-rich-get-richer/>; Gina Passarella, *Can Firms in the Am Law 51-100 Keep from Falling Further Behind?*, LAW.COM (May 1, 2017, 7:49 PM), <https://www.law.com/sites/almstaff/2017/05/01/can-firms-in-the-am-law-51-100-keep-from-falling-further-behind/?et=editorial&bu=Law.com&cn=20170502&src=EMC-Email&pt=ALM%20Morning%20Minute>; Joe Patrice, *Top Firms Get Richer in Otherwise Poor Year For Legal Industry*, ABOVE THE LAW (Feb. 13, 2017, 1:15 PM), <https://abovethelaw.com/2017/02/top-firms-get-richer-in-otherwise-poor-year-for-the-legal-industry/>; Burk & McGowan, *Big But Brittle*, *supra* note 50, at 100–01.

⁹² See *supra* note 60 and accompanying text; Part IV.A.2.c.

⁹³ *Supra* note 92; *infra* note 96.

⁹⁴ See, e.g., Alex Berry, *PwC Eyes Global Expansion of Its Flexible Lawyering Service*, LAW.COM (Feb. 23, 2018, 5:08 AM), <https://www.law.com/2018/02/22/no-limit-on-growth-pwc-eyes-global-expansion-of-flexi-lawyering-service-as-1000-sign-up-since-launch/?et=editorial&bu=Law.com&cn=20180223&src=EMC-Email&pt=ALM%20Morning%20Minute>; John Kang & Anna Zhang, *Law Firms Uneasy as the Big Four Make Their Big Push in Asia*, LAW.COM (Aug. 3, 2018, 12:38 PM), <https://www.law.com/2018/08/03/law-firms-uneasy-as-the-big-four-make-their-big-push-in-asia/?et=editorial&bu=Law.com&cn=20180806&src=EMC-Email&pt=Morning%20Minute>; Roy Strom, *The Law Firm Disrupted: PwC Will Take Your Client's Call Now*, LAW.COM: THE AM. LAWYER (Jan. 12, 2018, 7:00 AM), <https://www.law.com/americanlawyer/sites/almstaff/2018/01/12/the-law-firm-disrupted-pwc-will-take-your-clients-call-now/?kw=The%20Law%20Firm%20Disrupted:%20PwC%20Will%20Take%20Your%20Client%27s%20Call%20Now&et=editorial&bu=The%20American%20Lawyer&cn=20180112&src=EMC-Email&pt=Afternoon%20Update>.

And even with this sector's growing claim on the new workforce emerging from the academy each year, at this point it still accounts for only 12.5% of the graduating class.⁹⁵ The extremely lucrative and in many cases very challenging positions these firms offer have always been available only to a modest minority of highly accomplished graduates, mostly from the most elite law schools. That is unlikely to change, though that elite minority may expand a bit.

e. General Outlook

In an otherwise strong economy, demand for law firms' services generally remains stagnant. Sophisticated observers of the legal services market have documented flat demand for at least a decade.⁹⁶ There have been modest (single-digit) increases in some law firms' revenues, but these appear to be attributable principally to rate increases, not increased demand.⁹⁷ And obviously it is increased demand for services that drives more hiring, not increased prices for the same amount of work. In fact, most Medium to Very Large Firms appear to have been overstaffed for a long time.⁹⁸ Sophisticated observers predict more of the same in the foreseeable future.⁹⁹

⁹⁵ See *supra* Table 3.3; see also Karen Sloan, *The Top 50 Go-To Law Schools*, LAW.COM (Mar. 7, 2019, 7:00 P.M.), https://www.law.com/2019/03/07/the-top-50-go-to-law-schools-2/?utm_source=email&utm_medium=enl&utm_campaign=morningminute&utm_content=20190311&utm_term=law (showing that only about 15% of the accredited law schools in the country send at least 15% of their graduates to the 100 largest US firms).

⁹⁶ Georgetown Thomson/Reuters Report, *supra* note 60, at 4, 14.

⁹⁷ See CITI PRIVATE BANK & HILDEBRANDT CONSULTING LLC, 2018 CLIENT ADVISORY 3–4 (2018), <https://www.privatebank.citibank.com/ivc/docs/2018CitiHildebrandtClientAdvisory.pdf> (“Through the first nine months of 2017, the US law firm industry saw revenue growth of 3.6 percent. This has been entirely driven by standard rate increases (4.0 percent) as demand declined by 0.2 percent and collections slowed by 0.9 percent”; “51 percent of firms saw demand decline in the first nine months of 2017 versus the first nine months of 2016, as compared to just 27 percent of firms on average during 2004-07. This almost even dispersion between firms who grow and firms who shrink in a given period has been a constant since 2010 and it illustrates how, in this modest growth environment, one firm’s success comes at the expense of another firm.”) [hereinafter CITI/HILDEBRANDT CLIENT ADVISORY].

⁹⁸ See Georgetown/Thomson Reuters Report, *supra* note 61, at 5–6; Georgetown/Thomson Reuters Report, *supra* note 61, at 5–6; Jason Tashea, *Half of Firms Miss Billing Goals and Majority of Partners Resist Change, Says New Survey*, ABA JOURNAL (May 21, 2018, 4:20 PM), http://www.abajournal.com/news/article/half_of_firms_miss_billing_goals_majority_of_partners_resist_change_says_ne/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email; Debra Cassens Weiss, *Law Firm Leaders Report Lawyer Oversupply and ‘Chronically Underperforming Lawyers,’* ABA JOURNAL (May 24, 2017, 4:26 PM), http://www.abajournal.com/news/article/law_firm_leaders_report_lawyer_oversupply_and_chronically_underperforming_1/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email.

⁹⁹ See CITI/HILDEBRANDT CLIENT ADVISORY, *supra* note 97, at 6; Georgetown/Thomson Reuters Report, *supra* note 61, at 14.

As a measure of the industry's recalibrated expectations, predictions from a bank that finances many law firms for growth in the demand for legal services in 2018 of 3.3% (roughly the likely rate of GDP growth during that year) have been celebrated as a recent-term record. Moreover, most of that predicted demand increase is concentrated in the 50 most profitable firms in the country; the Am Law Second Hundred is predicted to see a small *drop* in demand in 2019.¹⁰⁰

B. The Entry-Level Law-Jobs Market Overall

As noted above, for a while many voices in the academy insisted that the contraction in the entry-level job market was entirely cyclical (that is, reflective only of the economic downturn comprising the Great Recession), and that everything would soon return to normal.¹⁰¹ Those voices haven't been heard from for a while. The Great Recession is well behind us; general unemployment is at historic lows; the economy is widely viewed as strong.¹⁰² Yet the number of entry-level Law Jobs filled per year is down 26% from the days just before the recession.¹⁰³

Among Large and Very Large Firms, structural forces forcing down the staffing and pricing of complex legal services seem to be the only plausible explanation.¹⁰⁴ There is no reason why any of those forces should abate anytime soon, and in fact they likely have not yet fully taken hold, suggesting further headwinds to growth in entry-level legal hiring at larger law firms for

¹⁰⁰ Roy Strom, *Wells Fargo Adds to the Consensus: The Law Firm Market Is Setting Records*, LAW.COM: THE AM. LAWYER (Dec. 7, 2018, 12:03 PM), <https://www.law.com/americanlawyer/2018/12/07/wells-fargo-adds-to-the-consensus-the-law-firm-market-is-setting-records/>.

¹⁰¹ See Burk, *New Normal*, *supra* note 1, at 543 & n.2, 581; *supra* note 32 and accompanying text.

¹⁰² See, e.g., Ben Casselman, *With 8 Years of Job Gains, Unemployment Is Lowest Since 1969*, N.Y. TIMES (Oct. 5, 2018), https://www.nytimes.com/2018/10/05/business/economy/jobs-report.html?emc=edit_na_20181005&nl=breaking-news&nid=13011787ing-news&ref=cta.

¹⁰³ See *supra* Table 3.1. The federal Bureau of Labor Statistics' broader measure of the number of persons employed in the legal industry, which includes practicing attorneys at all levels of seniority (not just at the entry level) as well as legal support staff, judges and court staff (excluding self-employed solos and law-firm partners), is 3% lower than it was in 2008, and has remained essentially flat for quite some time. See *Data Retrieval: Employment, Hours, and Earnings (CES)*, BUREAU OF LABOR STATISTICS, <https://www.bls.gov/webapps/legacy/cesbtb1.htm> (under "Professional and business services" select the check-box to the right of "Legal services" under the "Seasonally adjusted" column, scroll down and select the "Retrieve data" button); Scott Flaherty, *Legal Sector Adds Jobs in September After Two Months of Decline*, LAW.COM: THE AM. LAWYER (Oct. 5, 2018, 1:00 PM), <https://www.law.com/americanlawyer/2018/10/05/legal-sector-adds-jobs-in-september-after-two-months-of-decline/> ("From December 2016 onward, the total has remained between 1.13 million and 1.14 million people employed in the industry.").

¹⁰⁴ See Burk, *New Normal*, *supra* note 1, at 581–99; *supra* note 60.

the foreseeable future.¹⁰⁵ As for Small and Medium Firms, except for the recent gyrations induced by the Great Recession, hiring growth has historically been, and is likely to remain, gradual.¹⁰⁶ Similarly, entry-level hiring has remained largely flat with some very gradual expansion for non-law-firm employers, and again appears likely to stay that way.

In short, the entry-level Law-Jobs market has reset to a significantly lower benchmark, and there is no reason to expect it to grow any faster than the domestic economy or population at large. The United States' population has grown on average 0.7% per year since 2010,¹⁰⁷ and gross domestic product generally expanded at a rate of 1.5%–3% per year during the same period.¹⁰⁸ The Bureau of Labor Statistics predicts even slower growth in overall legal services employment, about 8% total from 2016 to 2026.¹⁰⁹ Overall, an average annual growth rate in entry-level Law-Jobs hiring of 1%–2% per year for the foreseeable future seems like a reasonable guess.

C. *Implications for the Legal Academy*

These changes bear an important message that not all law schools may be heeding. While the number of applicants and applications to accredited law schools declined steadily and significantly after 2010, total applicants and applications each rose about 8% in 2018.¹¹⁰ The increase was also skewed toward applicants with stronger conventional qualifications, a marked change from prior years.¹¹¹ A contemporaneous survey of prospective law students suggests the increase was prompted in significant

¹⁰⁵ *Id.*

¹⁰⁶ *See supra* Parts III.C.2–3, IV.A.2.a.–b.

¹⁰⁷ *See* Niraj Chokshi, *Growth of U.S. Population Is at Slowest Pace Since 1937*, N.Y. TIMES (Dec. 22, 2016), <https://www.nytimes.com/2016/12/22/us/usa-population-growth.html>.

¹⁰⁸ TRADING ECONOMICS, <https://tradingeconomics.com/united-states/gdp>, <https://tradingeconomics.com/united-states/gdp>.

¹⁰⁹ *See supra* note 101; *Occupational Outlook Handbook*, BUREAU LAB. STAT., <https://www.bls.gov/ooh/legal/home.htm> (last modified Apr. 13, 2018).

¹¹⁰ *See YTD ABA 2019 Applicant and Application Counts*, LAW SCH. ADMISSIONS COUNCIL, <https://report.lsac.org/VolumeSummaryOriginalFormat.aspx?dataDate=8-8-2018> (last visited Aug. 8, 2018) (select “US Applicant Counts”) (Law School Admissions Council (“LSAC”) applications data for 2018). There was a small increase in the number of applicants reported by LSAC in 2016, but this may have been an artifact of a change in LSAC’s counting methodology, which for the first time included both spring and fall applicants rather than (as previously) only those seeking admission for fall term. *See* Burk, Organ & Rasiel, *Coping Strategies*, *supra* note 34 at (manuscript at 132 fig. 1.1, 14 & n.34).

¹¹¹ *See* LAW SCHOOL ADMISSIONS COUNCIL, *supra* note 110 (select “US LSAT Scores”) (greater increases in number of applicants with LSAT scores of 155 or better compared with those with lower scores). *Compare id.*, with Burk, Organ & Rasiel, *Coping Strategies*, *supra* note 33, at (manuscript at 14–15, Fig. 1.2).

part by a surge in graduating college students' interest in involving themselves in the political events of the day.¹¹²

While seeking to facilitate more active and direct political participation is undoubtedly an appropriate (indeed, an admirable) motivation to obtain a law degree, for the reasons just discussed there is unfortunately little reason to believe that significantly greater numbers of Law Jobs will be available to the class of 2021 than are available today. The continuing improvement in the Law-Jobs Ratio (the proportion of the graduating class obtaining Law Jobs within 10 months after graduation) is attributable specifically and uniquely to the substantial decline in the number of law graduates seeking employment.¹¹³ Thus continued improvement for future graduating classes of the Law-Jobs Ratio, which is a direct measure of the likelihood of the average graduate's obtaining a Law Job, is in most cases likely dependent on *keeping entering classes at or near current sizes* in the absence of specific and quantifiable reasons for a particular law school to believe that the employment markets that school predominantly serves can accommodate in three or four years the extra graduates it plans to matriculate now. Deans and admissions officers who expand their entering classes without such grounds do so at the risk that a commensurately smaller portion of their graduating classes will be able to get jobs that justify the time and effort of obtaining a JD. Students choosing among multiple law-school acceptances would be wise to bear this in mind as well.

The recently released disclosures regarding 2018 entering-class size and qualifications exhibit some important patterns.¹¹⁴ While the applicant pool expanded by about 8% in 2018, the aggregate entering class size increased by only 3%. Predictably, that additional 3% was not evenly distributed. Prof. Jerome Organ has shown that there is a roughly linear relationship between the 2018 changes in a law school's entering class size and its 2017 median LSAT, with law schools having a median LSAT of 160 or greater (about the 80th percentile among all test-takers) having increased their entering-class sizes on average by 6.4%, while law schools with a median LSAT of 149 or less (about the 40th percentile of all test takers) having actually *reduced* their entering-class sizes on average by 5.9%. "All of the growth in enrollment," he reports, "functionally occurred among law schools with a median LSAT of 155 or higher in 2017 [about the 63rd percentile among all test-takers]."¹¹⁵

¹¹² See *supra* note 75.

¹¹³ See *supra* Part III.A.

¹¹⁴ The 2018 entering-class statistics are available at <http://abarequreddisclosures.org/Disclosure509.aspx>.

¹¹⁵ Jerry Organ, *Analyzing Enrollment And Profile Patterns Across Different Tiers Of Law Schools For Fall 2018* (Jan. 2, 2019), https://taxprof.typepad.com/taxprof_blog/2019/01/analyzing-enrollment-

Even more intriguing, and in striking contrast with recent years, 95% of all accredited law schools either increased (54%) or held (41%) their entering class's median LSAT scores in 2018.¹¹⁶ This appears to reflect a widespread strategy to preserve or improve the conventional qualifications of the entering class, with increasing revenue by increasing class size as at most a secondary goal at most institutions.¹¹⁷

The wisdom of any law school's increase in entering-class size remains to be seen, and its effectiveness appears likely to vary with the circumstances of each school. Here's why: There is no discernible evidence that the reductions in entry-level hiring over the last ten years are the result of any growing mismatch between the abilities or skills of new graduates and the needs of legal employers generally—while it can be argued how much better law schools have gotten at meeting prospective employers' needs over the last decade, there does not appear to be any serious argument they have gotten any worse. Instead, the reductions in entry-level hiring appear to result from structural changes in what new law graduates are used for in the legal services market and under what circumstances an employer's marginal addition of more of them at any given time is economic. Thus, although the larger graduating classes three and four years from now will generally be as “good” as or “better” than current graduates (in terms of the conventional qualifications on which law schools rely to make admissions decisions), there would seem to be limited reason to believe that this fact would induce legal employers to hire more of them.

That said, it bears noting that the overall expansion in the 2018 entering class is only 3%, not much more than the rate at which this Article predicts the entry-level Law-Jobs market might reasonably be expected to expand.¹¹⁸ But as just discussed, that 3% increase is an academy-wide average, and a good many law schools have expanded their entering classes a good deal more than that.¹¹⁹ Roughly half the law schools in the country, including

and-profile-patterns-across-different-tiers-of-law-schools-for-fall-2018.html [hereinafter Organ, 2018 Enrollment]; see also Karen Sloan, *First-Year Enrollment Soars by Double Digits at Some Law Schools*, LAW.COM (Aug. 21, 2018, 1:09 PM), <https://www.law.com/2018/08/21/first-year-enrollment-soars-by-double-digits-at-some-law-schools/>.

¹¹⁶ Organ, 2018 Enrollment, *supra* note 115.

¹¹⁷ In other research, Prof. Organ and the author, along with economist Emma Rasiel, have shown that these strategic priorities became widespread in the legal academy during the Great Recession and its aftermath. For more prestigious institutions, the strategy likely was motivated by a desire to preserve or enhance prestige; for less prestigious institutions, it likely was motivated by a desire to avoid regulatory consequences triggered by the ABA's accreditation standards requiring the matriculation only of students reasonably likely to be able to complete the course of study and pass a bar exam. See Burk, Organ & Rasiel, *Coping Strategies*, *supra* note 34, at (manuscript at 36–40).

¹¹⁸ See *supra* notes 106–108 and accompanying text.

¹¹⁹ See *supra* note 114 and accompanying text.

some that are well-regarded in their local markets, have Law-Jobs Ratios that are under the aggregate Class of 2017 average of 65.9%, and a Law-Jobs Ratio of 65.9% still leaves over a third of the class without a Law Job ten months after graduation. Under these circumstances, a goal of maintaining current levels of placement success seems an anemic ambition for any law school whose placement numbers are not excellent already.

It also is not insignificant that the bulk of the recent entering-class growth has taken place among relatively more prestigious law schools.¹²⁰ There likely is a “prestige effect” that will to some degree reduce the erosion of some more prestigious law schools’ Law-Jobs Ratios as their class sizes increase, but the strength of this effect will typically depend on how highly regarded a particular law school is relative to others with which it competes in the job-placement market. In addition, the extent of any such effect for the substantial majority of law schools will likely be limited and dynamically dependent on other competing law schools’ actions, and accordingly quite difficult to predict. There also may be geographical or specialty areas uniquely or predominantly served by a particular law school that provide reason to believe that employment outcomes for that school may improve at greater rates than the job market as a whole. But such a conclusion must depend on a clear-eyed, data-driven analysis of features demonstrably specific to that law school. Generalized optimism regarding some impending employment tide that will lift all student boats will probably prove for many only a prelude to a shipwreck.¹²¹

V. CONCLUSION

The number of Law Jobs for new graduates is unlikely to get a lot bigger in the foreseeable future than it is today. Gradual growth is likely; rapid growth of the kind seen in large parts of the 1980s, 1990s, and 2000s is not.

In recent years, the probability of eventually obtaining a job that made use of a law degree and provided sufficient personal and economic rewards to justify the effort, time, and cost involved has increasingly influenced prospective law students’ choices whether to attend law school. The Law-Jobs market began to contract after 2007; by 2011, applicants were staying

¹²⁰ *Id.*

¹²¹ Those law schools less concerned with prestige that are choosing to raise revenue by increasing enrollment as far as they can without violating ABA accreditation Standard 501 should beware the deterrent effect poor employment outcomes has had on the enrollment of increasingly vigilant prospective students. *See infra* note 123. In addition, responsible observers have suggested that the ABA deter this strategy by making minimum employment outcomes a condition on continued accreditation. *See* Scott F. Norberg, *JDs and Jobs: The Case for an ABA Accreditation Standard on Employment Outcomes*, <https://ssrn.com/abstract=2998306> (2017).

away in droves. Law students are increasingly attending to individual law schools' employment outcomes (behind location and school prestige, which itself is correlated with employment outcomes) in deciding whether or where to matriculate.¹²²

At the risk of shameless repetition, increasing entering class size is likely to degrade employment outcomes at graduation three (or for part-time students, four) years later, with the degree of degradation likely inversely related to the expanding law school's reputation for overall quality relative to the other schools with which it competes for matriculants.¹²³ In other words, the weaker a law school's reputation, the less likely (absent particular identifiable and unusual circumstances specific to that law school) it will be able to place its graduates in desirable positions. Poor employment outcomes will be reflected in rankings losses and deterioration in the size and quality (as measured by the conventional metrics of LSAT or other standardized test score and undergraduate grade-point average) of that school's applicant pool. This cycle may rapidly become irreversible at particular institutions and thus is wisely avoided.

More widespread deterioration of employment outcomes would likely drive more prospective law students toward other career choices, shrinking the size and quality of the applicant pool for everyone as it did after 2007.¹²⁴

These circumstances bear all the earmarks of a classic collective action problem, and the incentives—or to put it a bit more colorfully, temptations—are clear. It is difficult to avoid sounding censorious (or Cassandra-esque) in these circumstances—especially when I have the luxury of not having a budget to meet or a law school to run. But Cassandra was, after all, granted the gift of prophecy.¹²⁵ It was just conjoined with the curse that no one would believe her.

122 ASS'N OF AMERICAN LAW SCHOOLS, BEFORE THE JD: UNDERGRADUATE VIEWS ON LAW SCHOOL 54, Fig. 8.1 (AALS and Gallup 2018), (noting that among over 2,700 first-year law students from over 80 law schools, location, reputation and financial support offered were three of the five most important criteria in selecting law school (along with employment outcomes and quality of faculty); Christopher J. Ryan, Jr., *Analyzing Law School Choice* 20, Table 4 (Roger Williams Univ. Sch. of Law Working Paper, Paper No. 186, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3309815 (noting that among students at four different types of law schools, two of the most significant factors that influenced choice of law school were reputation and financial aid (along with job placement)).

123 See *supra* Part IV.C.

124 See Burk, Organ & Rasiel, *Coping Strategies*, *supra* note 34, at (manuscript at 12–15).

125 See *The Myth of Cassandra*, GREEK MYTHS & MYTHOLOGY, <https://www.greekmyths-greekmythology.com/the-myth-of-cassandra/> (last visited Mar. 6, 2019).