

Washington University Journal of Law & Policy

Volume 41 *The Law School in the New Legal Environment*

2013

The Job Gap, the Money Gap, and the Responsibility of Legal Educators

Deborah Jones Merritt

Follow this and additional works at: http://openscholarship.wustl.edu/law_journal_law_policy



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Deborah Jones Merritt, *The Job Gap, the Money Gap, and the Responsibility of Legal Educators*, 41 WASH. U. J. L. & POL'Y 001 (2013), http://openscholarship.wustl.edu/law_journal_law_policy/vol41/iss1/2

This Article is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Journal of Law & Policy by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

Washington University Journal of Law & Policy

The Job Gap, the Money Gap, and the Responsibility of Legal Educators

Deborah Jones Merritt*

TABLE OF CONTENTS

| | |
|--|----|
| I. THE JOB GAP | 3 |
| A. <i>The Projected Gap: BLS Predictions</i> | 3 |
| B. <i>The Actual Gap: Reported Job Outcomes</i> | 6 |
| C. <i>Not At My School!</i> | 10 |
| D. <i>Will the Gap Close?</i> | 16 |
| II. THE MONEY GAP | 16 |
| A. <i>Entry-Level Salaries: The NALP Numbers</i> | 17 |
| B. <i>Entry-Level Salaries: The BLS Numbers</i> | 19 |
| C. <i>The Money Gap: Entry-Level Salaries and Law School Tuition</i> | 21 |
| III. THE RESPONSIBILITY GAP | 24 |

Today's law school graduates face a grim prospect: more than half of them will not make a career practicing law. Some of those graduates will enjoy jobs in fields allied with law, but many will settle for work with little connection to the degree they earned. Many of the graduates who land lawyer jobs, meanwhile, will struggle with other limits: stagnant salaries, contingent work, and few promotions. Some number

* John Deaver Drinko/Baker & Hostetler Chair in Law, Moritz College of Law, The Ohio State University. I thank my son, Daniel C. Merritt, for both ongoing discussion of the legal job market and for his very helpful comments on this Essay.

of graduates, the ones who win the legal employment lottery, will build satisfying, remunerative careers as lawyers; there is still good work to be done in law. But the percentage of graduates in the last category is declining, and there is no credible evidence that this market reality will change.

Today's graduates are also paying considerably more for their legal education than graduates did ten, twenty, or thirty years ago. During the last decade alone, law school tuition jumped 67.8 percent at private schools and 151.2 percent at public ones.¹ Over the same ten years, consumer prices rose just 28.1 percent.² Law school tuition, in other words, has risen 2.4 to 5.4 times as fast as inflation. At the same time, the median starting salary for law school graduates has declined. Data from two different sources confirm that today's average graduate earns less, in inflation-adjusted dollars, than graduates did ten or twenty years ago.³

These trends generate two gaps. The first is between the number of students earning law degrees and the number of lawyering jobs available to them. The second is between the tuition that students pay and the early-career salaries they receive—if they are fortunate enough to find lawyering work. I explore these two shortfalls, the job gap and the money gap, in the first and second sections of this Essay. In the final section, I turn to an equally troubling lacuna: the failure of law schools to acknowledge the harms their graduates are suffering. This responsibility gap is one that we, as educators, have the power to bridge. As I explore the shortfall between our schools' actions and our responsibilities, I offer several concrete steps to close that gap.

1. This year, the average tuition and fees at a private law school is \$40,585. Karen Sloan, *Tuition Is Still Growing*, NAT'L L.J., Aug. 20, 2012, available at http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202567898209&Tuition_is_still_growing&slreturn=20120830215229 (last visited Sept. 30, 2012). At public law schools, the average resident price is \$23,590. *Id.* Ten years ago, in 2002, the average tuition at private law schools was \$24,193; at public schools, the average in-state student paid \$9,392. *Law School Tuition 1985–2011*, ABA SECTION ON LEGAL EDUC. & ADMISSIONS TO THE BAR, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf (last visited Sept. 30, 2012) [hereinafter ABA, *Law School Tuition*].

2. *CPI Inflation Calculator*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/cpi/cpicalc.htm> (last visited Sept. 29, 2012).

3. See *infra* notes 59–71 and accompanying text.

I. THE JOB GAP

At least two datasets describe the job gap facing today's law school graduates. The first consists of employment projections developed by the Bureau of Labor Statistics (BLS), a division of the United States Department of Labor.⁴ The second encompasses employment outcomes collected by NALP, the National Association for Law Placement.⁵ I first analyze aggregate BLS and NALP data in separate subsections below, then explore how employment outcomes differ across law schools. In the final segment of this section, I examine whether the current job gap is likely to close in coming years.

A. *The Projected Gap: BLS Predictions*

The Bureau of Labor Statistics has been monitoring the U.S. labor market for more than a century.⁶ As part of this work, the Bureau regularly projects job openings in hundreds of occupations.⁷ The projections, offered on a rolling basis, estimate the demand for new workers over a ten-year period. Businesses, government policymakers, individual job seekers, and some educational institutions rely upon these projections to inform their own behavior.⁸

The Bureau's estimates draw upon sophisticated economic models. Those models incorporate factors such as the current demand for each occupation; the occupation's growth curve; general trends, such as technology or globalization, that might alter occupational demand; and the occupation's demographic profile, which affects retirements and other labor market departures.⁹ Perhaps most important, the Bureau

4. For general information about the Bureau of Labor Statistics, see *BLS Information: About BLS*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/bls/infohome.htm> (last visited Sept. 29, 2012) [hereinafter *About BLS*].

5. For background on NALP, see *About NALP*, NALP, <http://www.nalp.org/aboutnalp> (last visited Sept. 30, 2012).

6. See *About BLS*, *supra* note 4.

7. See *Employment Projections*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/emp/> (last visited Sept. 29, 2012) (home page for the Bureau's Employment Projections program).

8. See Dixie Sommers & James C. Franklin, *Overview of Projections to 2020*, 135 MONTHLY LAB. REV. 3, 4 (2012).

9. See *id.* at 9–10; *Occupational Outlook Handbook: Projections Overview*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/ooh/about/projections-overview.htm> (last visited Sept. 29, 2012) [hereinafter cited as *Projections Overview*].

assesses how many workers the economy as a whole can support within each occupation.¹⁰ Consumers want more of almost everything, but they can't afford more of everything at once. The Bureau, therefore, estimates how many more cars, cupcakes, sandals, houses, haircuts, and legal services the public will demand—given that the public wants all of these goods and services in some mix.

In the category of legal services, the Bureau currently estimates that the economy will create 218,800 job openings for lawyers and judicial law clerks during the decade stretching from 2010 through 2020.¹¹ Those openings include both new jobs and vacancies created by lawyers who leave the occupation. The Bureau's estimate includes only net openings, not shifts within the occupational category. If two lawyers exchange jobs, for example, or if one company adds a position while another cuts one, those actions create no new openings. A new opening occurs only when lawyers exit the profession or the workforce expands.¹² The Bureau's occupational employment projections thus answer the very question that many law school applicants want to know: How many new lawyers will the economy be able to absorb this decade?

The answer, as noted above, is about 218,800 new lawyers. That number, unfortunately, falls far short of the number of aspiring lawyers that law schools are graduating. In 2010, ABA-accredited law schools

10. *See Projections Overview, supra* note 9:

Job openings result from the relationship that exists among the population, the labor force, and the demand for goods and services. The population restricts the size of the labor force, which consists of working individuals and those looking for work. The size and productivity of the labor force limits the quantity of goods and services that can be produced. In addition, changes in the demand for goods and services influence which industries expand or contract

11. *Employment Projections: Employment by Occupation*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/emp/ep_table_102.htm (last visited Sept. 29, 2012) (code 23-2010, lawyers and judicial law clerks).

12. *See Chapter 13: Employment Projections*, in BLS HANDBOOK OF METHODS 4–5, <http://www.bls.gov/opub/hom/pdf/homch13.pdf> (last modified Jan. 15, 2013) [hereinafter *Employment Projections*].

awarded 44,258 JD degrees.¹³ In 2011, that number rose to 44,495.¹⁴ Final figures for 2012 are not yet available, but ABA data suggest that the number will be about 46,480.¹⁵ Three years into the decade, according to these data, ABA-accredited law schools have graduated 62 percent of the lawyers that the economy can absorb over a full ten years. Put another way, the economy can absorb about 21,880 new lawyers per year, while law schools are producing well over double that number.

The bad news doesn't stop there. Recent graduates of ABA-accredited law schools are not the only lawyers competing for new legal jobs. In some states, graduates of state-accredited or unaccredited schools may sit for the bar.¹⁶ Additionally, more than half of the states offer some route for foreign lawyers to gain bar admission.¹⁷ Lawyers who left the occupation before 2010—either by choice or as unwilling casualties of the recession—may also seek to reenter the legal workforce. All of these lawyers are vying for the same 21,880 openings per year.

The jobs projected by the Bureau of Labor Statistics, finally, include all jobs that require a law license. The estimated openings encompass all of the staff attorneys, temporary lawyers, and solo practitioners that the Bureau's economists think the U.S. economy will support.¹⁸ Law graduates cannot create more jobs simply by hanging out their own

13. *Enrollment and Degrees Awarded, 1963–2011 Academic Years*, ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf (last visited Sept. 29, 2012) [hereinafter ABA, *Enrollment and Degrees*]. Note that in this table, the number of “degrees awarded” refers to the first year of the named academic year. The number of degrees awarded in 2010, therefore, appears in the line for the academic year 2010–11.

14. *Id.*

15. *See id.* According to the ABA's enrollment figures, 51,646 students matriculated in the fall of 2009; they would have supplied most of the 2012 graduates. *Id.* The full 51,646 students, however, would not have graduated in 2012; some students take four years to complete their JD, while others leave school without earning the degree. For the class of 2011, 90 percent of the students who began school in fall 2008 graduated in 2011. Applying the same percentage to the 2009 matriculates yields an estimate of 46,481 graduates in 2012.

16. *See Comprehensive Guide to Bar Admission Requirements*, NAT'L CONFERENCE OF BAR EXAMINERS & AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR 8–13 (2012), http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf [hereinafter *Comprehensive Guide*].

17. *Id.* at 14–19.

18. *See Employment Projections*, *supra* note 12, at 1–5 (describing the Bureau's macroeconomic approach to job projection).

shingles; the Bureau's estimates already include the full number of solo positions that the economy is likely to sustain in 2020.¹⁹

What if the economy recovers fully? Would robust growth and full employment improve the number of openings for new lawyers? Unfortunately, not: the Bureau's current projections already assume that the economy will return to full employment by 2020.²⁰ The Bureau admits that this assumption may be overly optimistic given the depth of the last recession, the slow recovery from that recession, and continued unease in the global economy.²¹ The number of new openings for lawyers might be even lower than the Bureau's current projections. At best, the Bureau estimates 21,880 new lawyer openings per year—less than one job for every two graduates of an ABA-accredited law school.

B. The Actual Gap: Reported Job Outcomes

The employment gap projected by the BLS is more than theoretical; it has already appeared in employment figures reported by law school graduates. ABA-accredited law schools collect extensive information about the jobs their graduates land, and they report that information to the ABA, NALP, and *U.S. News*.²² Those organizations, in turn, publish data about both individual schools and national trends. NALP publications currently offer the most comprehensive information over the longest historical period, so I focus on those sources here.

NALP derives its employment data from employment surveys distributed to graduates of all ABA-accredited law schools.²³ Schools urge graduates to return these surveys, using a variety of tactics to

19. *Id.* at 5 (noting inclusion of self-employed in all occupational projections).

20. See *Projections Overview*, *supra* note 9 (“Because of the unpredictability of the business cycle over a 10-year period, the Bureau assumes that the economy will be at full employment in 2020 (the projection year).”).

21. See Sommers & Franklin, *supra* note 8, at 5–9.

22. Other law schools also collect employment data, but this discussion—like the rest of this Essay—focuses on job outcomes for graduates of ABA-accredited schools.

23. See *Employment Report & Salary Survey (ERSS) Info*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), <http://www.nalp.org/erssinfo> (last visited Sept. 29, 2012) [hereinafter NALP, *ERSS Info*]. Before 2010, a few accredited schools declined to participate in NALP's survey. The most recent surveys, however, include some input from all accredited schools.

encourage high response rates.²⁴ In addition to informing placement efforts, the information in these surveys affects a school's place in the *U.S. News* rankings; for those reasons, schools have an incentive to obtain the most complete information. If a graduate fails to return a survey, NALP allows schools to gather employment information from other sources including websites, bar associations, professional mentors, and classmates.²⁵ Although NALP collects employment information both at graduation and nine months after graduation, most attention focuses on the latter data. By the nine-month mark, graduates have passed the bar and had substantial time to search for entry-level positions. The failure to obtain professional work by that point raises concern about a graduate's long-term prospects.

NALP's nine-month employment reports are bleak. Even the class of 2007, which enjoyed the strongest placement success in recent times, faced a significant job gap. By nine months after graduation, just 71.6 percent of those graduates had secured full-time jobs that required bar admission.²⁶ More than a quarter of the graduates, in other words, had failed to land full-time jobs as practicing lawyers—even in a legal economy that was booming. Some of those 2007 graduates found work in jobs labeled “JD Preferred” or “JD Advantage,” a category that NALP describes as jobs for which “the employer sought an individual with a JD, and perhaps even required a JD, or for which the JD provided

24. *NALP Best Practices Guide for Managing Law School Employment Outcomes*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), http://www.nalp.org/lseotf_bestpract (last visited Sept. 30, 2012).

25. *Id.*

26. *Class of 2007 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), http://www.nalp.org/uploads/1229_natlsummary07revised.pdf (last visited Sept. 29, 2012). According to the report, NALP gathered information on 41,707 of that year's graduates from ABA-accredited schools. *Id.* Among the graduates included in the NALP survey, 29,878 obtained full-time jobs that required bar admission—71.6 percent of the total.

In calculating employment percentages, I include all graduates from NALP-reporting schools in the denominator. NALP and some law schools exclude from the denominator graduates who were pursuing advanced degrees, those who were not seeking work, and those who did not report their employment status. Calculating jobs as a percentage of all graduates, however, yields a more realistic picture of employment opportunities. Those opportunities influence workers' decisions to pursue advanced degrees or seek work. Graduates who do not report employment status, meanwhile, are likely to be unemployed. This is particularly true given the incentives that law schools have to identify and report all of their employed graduates.

a demonstrable advantage in obtaining or performing the job.”²⁷ The jobs in this category remain somewhat ill defined; it is not clear how many law school graduates actively prefer positions of this type.²⁸ But even if we combine these jobs with the ones requiring bar admission, only 78.0 percent of the class of 2007 secured full-time jobs using their law degrees in some manner.²⁹ More than one out of every five graduates settled for entry-level work unrelated to their JD.

Succeeding classes fared worse. Among the 2008 graduates from ABA-accredited schools, almost one-third (31.1 percent) failed to find full-time jobs that required bar admission.³⁰ In 2009, the percentage climbed to well over one-third, 37.1 percent of the class.³¹ By 2010, the percentage who lacked full-time lawyering jobs was 40.1 percent.³² By 2011, the most recent year for which data are available, it had reached 42.1 percent.³³ This means that, for that class, more than two out of every five graduates failed to find work as licensed lawyers within nine months of graduation.

This widening job gap represents not only the steadily increasing number of law school graduates, but also an absolute decline in the number of lawyering jobs those graduates secured. As Table I shows,

27. *NALP Graduate Employment Survey for the Class of 2012: Frequently Asked Questions 2*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), https://www.nalp.org/uploads/ERSS/Grad_survey_and_FAQs_2012.pdf (last visited Sept. 30, 2012) [hereinafter NALP, *FAQ*]. In 2007, NALP referred to these jobs as “JD Preferred.” In more recent years, it has used the term “JD Advantage.”

28. For further discussion of this point, see *infra* notes 87–88 and accompanying text.

29. *Class of 2007 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), http://www.nalp.org/uploads/1229_natlsummary07revised.pdf (last visited Sept. 29, 2012). 2,635 graduates reported jobs for which bar admission was not required but a JD was “preferred.” Combining that category with the previous one yields 32,513 graduates who obtained full-time jobs using their law degrees.

30. *Class of 2008 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), <http://www.nalp.org/uploads/natlsummary2008.pdf> (last visited Sept. 29, 2012) (28,890 graduates, out of 41,951 reported to NALP, secured full-time jobs requiring bar admission).

31. *Class of 2009 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), <http://www.nalp.org/uploads/NatlSummaryChartClassof09.pdf> (last visited Sept. 29, 2012) (26,625 graduates, out of 42,330 reported to NALP, secured full-time jobs requiring bar admission).

32. *Class of 2010 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), <http://www.nalp.org/uploads/NationalSummaryChartforSchools2010.pdf> (last visited Sept. 29, 2012) (25,654 graduates, out of 42,854 reported to NALP, secured full-time jobs requiring bar admission).

33. *Class of 2011 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (NALP), http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf (last visited Sept. 29, 2012) (24,902 graduates, out of 43,001 reported to NALP, secured full-time jobs requiring bar admission).

the reported number of full-time jobs requiring bar admission has fallen every year since the class of 2007 joined the workforce:

TABLE I: NUMBER OF FULL-TIME JOBS REQUIRING BAR ADMISSION AS REPORTED TO NALP (NINE MONTHS AFTER GRADUATION)³⁴

| YEAR | JOBS |
|------|--------|
| 2007 | 29,978 |
| 2008 | 28,890 |
| 2009 | 26,625 |
| 2010 | 25,654 |
| 2011 | 24,902 |

Over just five years, the number of full-time lawyering jobs secured by law school graduates has fallen 16.9 percent.

The number of lawyering jobs reported for 2010 and 2011 exceeds the BLS projection of about 21,880 openings per year,³⁵ but that fact offers scant comfort. NALP collects data on all full-time jobs, even ones that will last just a few months.³⁶ BLS, on the other hand, projects openings that will last a full decade. The Bureau asks, “how many more people will be working as lawyers in 2020 than were performing those jobs in 2010?” Both the BLS projections and recent law school data suggest that several thousand graduates each year will secure initial work practicing law but will fail to keep that occupational status over the long term.

Recent data compiled by the ABA, for example, show that 4,562 of the jobs reported by the class of 2011 were short-term jobs scheduled to last less than a year.³⁷ More than half of those short-term jobs were ones

34. The figures in this table appear in the annual NALP reports cited in notes 29–33 *supra*.

35. See *supra* notes 11–21 and accompanying text.

36. NALP collects information about short-term and long-term jobs, but it does not publish information about the percentage of short-term and long-term jobs requiring bar admission. Even positions reported to NALP as “long-term,” moreover, need last only a year. See NALP, *FAQ*, *supra* note 27, at 2. It is difficult, therefore, to predict the long-term stability of jobs reported to NALP.

37. See *Employment Summary Report*, ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, <http://employmentsummary.abaquestionnaire.org/> (last visited Feb. 27, 2013) [hereinafter ABA, *Employment Summary*]. The number of short-term jobs is the sum of figures appearing in

that required bar admission; law schools themselves are funding a significant number of those temporary jobs for their graduates.³⁸ Some graduates will use these “bridge” positions or other temporary work to land permanent, full-time legal positions, but others will have difficulty remaining in the lawyering workforce. Law schools can create temporary jobs for their graduates, but they can do little to stimulate demand for legal services. Long-term trends, meanwhile, suggest that lawyering work is becoming increasingly contingent.³⁹ These patterns suggest that over the next ten years, the NALP numbers will converge with the BLS projections: some lawyers who initially secure lawyering jobs will not sustain that work for a full decade. Movement will occur both into and out of the legal workforce, but the net change will be negative. If law schools maintain their current graduation rates, less than half of this decade’s graduates will be working as lawyers in 2020.

C. *Not At My School!*

The BLS projections and NALP data are clear, but many professors assume that the employment gap affects solely graduates of “lower ranked” schools.⁴⁰ Graduates of low-ranked schools have, in fact, suffered more than graduates of high-ranked ones, but the employment gap exists at every level of legal education.

Even at the highest ranked schools, employment patterns have shifted markedly. Between 2009 and 2011, for example, the number of Harvard Law School graduates securing jobs in the largest law firms fell from 276 to 226—a decline of 18.1 percent.⁴¹ To help some of its 2011

columns DT and DV of the downloadable spreadsheet compiling data from all law schools.

38. *See id.*, columns C and E (reporting the number of short-term jobs requiring bar admission); *New Research on Law School Funded Positions for Law School Graduates*, NAT’L ASS’N FOR LAW PLACEMENT (NALP) (Sept. 2012), http://www.nalp.org/sept12_research_lsfunded.

39. *See, e.g.*, ROBERT A. BROOKS, *CHEAPER BY THE HOUR: TEMPORARY LAWYERS AND THE DEPROFESSIONALIZATION OF THE LAW* (2011); JACKIE KRASAS ROGERS, *TEMPS: THE MANY FACES OF THE CHANGING WORKPLACE* (2000).

40. *See, e.g.*, Steven M. Davidoff, *The Economics of Law School*, N.Y. TIMES DEALBOOK (Sept. 24, 2012, 3:01 PM), <http://dealbook.nytimes.com/2012/09/24/the-economics-of-law-school/> (“There may be valid criticism about lower-ranked law schools, particularly those U.S. News places in the third and fourth tier. Such private schools often charge significant tuition but do not obtain the same employment outcomes.”).

41. *Office of Career Services: Additional Employment Data*, HARVARD LAW SCHOOL, <http://www.law.harvard.edu/current/careers/ocs/employment-statistics/additional-employment-data>

graduates, Harvard created a fellowship program funding jobs for 5.7 percent of the class.⁴² At the University of Michigan, ranked tenth by *U.S. News*, the percentage of graduates obtaining jobs that required bar admission fell from 94.4 percent in 2009 to 78.9 percent in 2011.⁴³ And at fifteenth-ranked UCLA Law School, just 61.3 percent of the class of 2011 found full-time, long-term jobs that required bar admission.⁴⁴

Outside the top fifteen schools, the job gap grows even larger. Table II lists the remaining thirty-five schools ranked in the top tier of *U.S. News*. For each school, the table first displays the percentage of 2011 graduates who held long-term, full-time jobs that required a law license. The second column adjusts that percentage to remove graduates who held long-term, full-time jobs funded by their own law school. A number of schools, like Harvard, have created these jobs to assist their graduates—and to enhance their employment outcomes reported in *U.S. News*. These programs may provide significant assistance to individual graduates, but they are unlikely to increase the demand for legal services or the total number of job openings in the market.⁴⁵ The adjusted percentage in the final column, therefore, offers the best measure of the percentage of graduates who were able to secure full-time, long-term lawyering jobs.

.html (last visited Sept. 29, 2012). The graduating class size increased slightly between those years, from 567 to 583, so the percentage of graduates obtaining big firm jobs fell even more noticeably—from 48.7 percent of the class to 38.8 percent. *Id.*

42. *Id.*

43. *Comprehensive Employment Statistics*, UNIV. OF MICH. LAW SCHOOL, <http://www.law.umich.edu/careers/classstats/Pages/employmentstats.aspx> (last visited Sept. 29, 2012). These percentages, as reported on Michigan's website, include any part-time and/or temporary jobs.

44. ABA, *Employment Summary*, *supra* note 37 (Report for the University of California at Los Angeles) (211 of the 344 graduates held full-time, long-term jobs requiring bar admission).

45. Schools outside the ring of wealthy top-ranked institutions, furthermore, may be unable to continue funding these jobs over the coming decade. Even now, as Table II shows, only a small number of schools in this market segment can afford to fund a significant number of full-time, long-term jobs for graduates.

TABLE II: PERCENTAGE OF 2011 GRADUATES HOLDING FULL-TIME, LONG-TERM JOBS REQUIRING BAR ADMISSION (“LAWYERING JOBS”) NINE MONTHS AFTER GRADUATION⁴⁶

| U.S. NEWS RANK | SCHOOL | RAW PERCENTAGE | ADJUSTED PERCENTAGE |
|----------------|---------------------------------|----------------|---------------------|
| 16 | Texas | 69.9 | 69.6 |
| 16 | Vanderbilt | 73.7 | 73.7 |
| 18 | USC (Gould) | 64.7 | 64.7 |
| 19 | Minnesota | 59.4 | 59.4 |
| 20 | George Washington | 81.3 | 65.8 |
| 20 | University of Washington | 52.7 | 51.6 |
| 22 | Notre Dame | 62.1 | 61.1 |
| 23 | Washington University | 59.3 | 59.0 |
| 24 | Emory | 68.9 | 57.8 |
| 24 | Washington & Lee | 55.0 | 55.0 |
| 26 | Arizona State (O'Connor) | 68.2 | 68.2 |
| 26 | Boston University | 50.9 | 50.9 |
| 26 | Indiana-Bloomington (Maurer) | 63.6 | 63.6 |
| 29 | Boston College | 68.4 | 68.4 |
| 29 | Fordham | 57.5 | 56.5 |
| 29 | Alabama | 78.0 | 78.0 |
| 29 | UC Davis | 56.4 | 56.4 |
| 29 | Iowa | 65.6 | 65.6 |
| 34 | Georgia | 61.2 | 61.2 |
| 35 | William & Mary (Marshall-Wythe) | 54.9 | 54.9 |
| 35 | Illinois | 51.1 | 46.8 |

46. The data in this table derive from the ABA Employment Summaries for each school. These summaries are available at ABA, *Employment Summary*, *supra* note 37. To calculate the percentage of graduates holding full-time, long-term jobs that required bar admission, I divided the number of graduates reported in that category by the total number of graduates. To calculate the adjusted percentage, I subtracted the number of full-time, long-term positions funded by the school from the former number of graduates, then divided once again by the total number of graduates.

Some of the full-time, long-term positions funded by schools may not have required bar admission. If so, then the adjusted percentage understates the true percentage of full-time, long-term lawyering positions secured by graduates on the open market. Any differences, however, are likely to be small.

The *U.S. News* rankings are the 2013 rankings, released in March 2012. *2013 v. 2012 U.S. News Law School Rankings*, TAXPROF BLOG (Mar. 15, 2012), http://taxprof.typepad.com/taxprof_blog/2012/03/2013-us-news.html.

| U.S. NEWS RANK | SCHOOL | RAW PERCENTAGE | ADJUSTED PERCENTAGE |
|----------------|--------------------------------|----------------|---------------------|
| 35 | Wisconsin | 62.6 | 62.6 |
| 38 | North Carolina | 68.4 | 68.0 |
| 39 | Brigham Young (Clark) | 51.4 | 50.0 |
| 39 | George Mason | 60.0 | 58.8 |
| 39 | Ohio State (Moritz) | 58.4 | 58.4 |
| 39 | Maryland (Carey) | 47.1 | 47.1 |
| 43 | University of Arizona (Rogers) | 75.3 | 75.3 |
| 44 | UC Hastings | 46.5 | 46.2 |
| 44 | Colorado | 55.7 | 54.0 |
| 44 | Wake Forest | 56.3 | 56.3 |
| 47 | Utah (Quinney) | 68.7 | 67.2 |
| 48 | University of Florida (Levin) | 59.4 | 58.9 |
| 49 | American | 35.8 | 35.3 |
| 49 | Pepperdine | 42.8 | 41.0 |

This group of thirty-five schools shows considerable variation in outcomes. After adjusting for school-funded jobs, the percentage of graduates obtaining full-time, long-term lawyering jobs ranges from a low of 35.3 percent (at American University) to a high of 78.0 percent (at the University of Alabama). Those varied percentages probably reflect a variety of factors, including rank, proximity to strong legal markets, local competition within those markets, alumni networks, and class size. But as a group, the percentages are distressingly low. More than a fifth of the graduates from this group's *best* performing school lacked full-time, long-term lawyering jobs. At twenty-seven of these thirty-five schools, more than one-third of the graduates failed to secure those jobs. At six schools, 50 percent or more of 2011 graduates were left without lawyering jobs nine months after graduation. Across the full span of these schools, all ranked within the first tier of law schools, the average placement rate for full-time, long-term lawyering jobs was just 59.1 percent.

Placement rates are even lower in schools ranked below the top tier. Table III displays the same placement information as Table II, but for a

sample of schools drawn from the second, third, and fourth tiers of the *U.S. News* ranking.⁴⁷

TABLE III: PERCENTAGE OF 2011 GRADUATES HOLDING FULL-TIME, LONG-TERM JOBS REQUIRING BAR ADMISSION (“LAWYERING JOBS”) NINE MONTHS AFTER GRADUATION—*U.S. NEWS* TIERS II, III, AND IV⁴⁸

| US NEWS RANK | SCHOOL | RAW PERCENTAGE | ADJUSTED PERCENTAGE |
|--------------|-----------------------------|----------------|---------------------|
| 58 | Temple (Beasley) | 55.5 | 55.5 |
| 69 | Cincinnati | 53.3 | 53.3 |
| 79 | St. John’s | 47.8 | 47.8 |
| 89 | Hofstra (Deane) | 40.7 | 40.7 |
| 99 | Tulsa | 65.8 | 65.8 |
| 110 | Chapman | 40.1 | 40.1 |
| 119 | Howard | 47.8 | 47.8 |
| 129 | Southwestern | 34.6 | 34.6 |
| 135 | Mississippi | 55.0 | 54.3 |
| NR | Barry | 39.2 | 39.2 |
| NR | Florida Coastal | 36.6 | 36.1 |
| NR | Ohio Northern (Pettit) | 56.7 | 56.7 |
| NR | Texas Southern (Marshall) | 53.4 | 53.4 |
| NR | University of D.C. (Clarke) | 20.5 | 20.5 |
| NR | University of St. Thomas | 44.0 | 44.0 |

These schools, like the ones in the first tier, display considerable variation in their placement rates. As schools’ *U.S. News* ranks decline, however, the percentages of graduates obtaining full-time, long-term lawyering jobs fall. The average placement rate for the five second-tier schools was 52.6 percent; for the third-tier schools, 44.2 percent; and for the unranked schools, 41.6 percent. The least successful schools in these three tiers placed only one-fifth (at the University of the District of

47. I generated this sample by choosing every tenth school after Pepperdine, which ranks at the bottom of the first tier. The school ranks do not follow that rigid pattern because of ties.

48. The data in this table derive from the ABA Employment Summaries for each school. The *U.S. News* rankings are the 2013 rankings. See *supra* note 46 for more information.

Columbia) or one-third (at Southwestern Law School) of their graduates in full-time lawyering jobs that would last at least one year.

Why do employment gaps appear throughout the full range of law schools, rather than exclusively at bottom-ranked schools? At least three factors account for this phenomenon. First, legal jobs exist throughout the United States. The openings projected by BLS, and reported by NALP, occur in Arkansas, North Dakota, and West Virginia, as well as in New York, the District of Columbia, and California. Graduates from the most elite schools, as well as many students from other moderately ranked schools, are not willing to relocate to *any* community to secure a legal job. Even if they were willing to do so, they would find that many jobs in small legal markets go to graduates of nearby schools, which generally have strong ties with those markets. The U.S. legal market is not a single national market; it is a patchwork of local, regional, and national markets of different types.

Second, graduates of different schools anticipate—and accept—different types of legal jobs. The 218,800 lawyer openings projected by BLS include all types of lawyer jobs: staff attorneys, contract workers, document reviewers, and solo practitioners. Graduates of first- and second-tier schools eschew some of these jobs because they have better options outside of law practice. These graduates might prefer to practice law; that, after all, is why most of them came to law school. But if their only practice opportunities are as document reviewers or solo practitioners, graduates of more elite schools may opt for jobs outside of law practice that pay as well (or better) and offer more room for professional advancement.⁴⁹

Finally, many legal employers consider both the prestige of an applicant's law school and the applicant's rank within that school. Although both of these factors affect hiring, recent research suggests that class rank exerts a stronger influence than school selectivity.⁵⁰ As long as employers maintain this preference, some students from lower ranked schools will win jobs away from students at higher ranked

49. The fact that graduates take these jobs does not eliminate the employment gap they experience. These graduates anticipated practicing law, they trained to practice law, and they paid for a degree that they thought would allow them to follow that path.

50. Richard Sander & Jane Yakowitz Bambauer, *The Secret of My Success: How Status, Prestige, and School Performance Shape Legal Careers*, 9 J. EMPIRICAL LEGAL STUD. 893 (2012).

institutions. This factor helps produce job gaps throughout the law school hierarchy.

D. Will the Gap Close?

The employment gaps documented in this section are unlikely to disappear—at least as long as law schools continue graduating so many lawyers each year. As explained above, the BLS projections already assume that the economy will return to full employment by 2020.⁵¹ Even under that rosy circumstance, the Bureau projects less than half as many openings for lawyers as the number of graduates law schools are producing. The NALP data, meanwhile, document a significant shortfall in legal positions even in 2007—when the legal economy was booming.⁵² The absolute number of full-time jobs requiring bar admission has declined each year since then, consistent with the BLS predictions.⁵³

This gap, finally, affects schools at every rung of the reputational ladder. Graduates of the most elite schools are suffering relatively little, although they have experienced clear shifts in employment patterns. Graduates of the thirty-five schools ranked outside the top fifteen, but still within the top tier, have suffered a surprisingly large job gap. Overall, about two-fifths of those graduates are failing to find full-time jobs practicing law.⁵⁴ Below the top tier, placement rates are even lower. But even widespread closure of those lower-ranked schools might do relatively little to boost employment rates at top-tier schools; these schools supply overlapping but distinct markets. We have entered an era in which the job gap for law school graduates is both pervasive and permanent.

II. THE MONEY GAP

The oversupply of entry-level lawyers deprives many graduates of any opportunity to practice law. At the same time, the lawyer surplus constrains entry-level salaries. Despite the flashy wages awarded

51. *See supra* notes 20–21 and accompanying text.

52. *See supra* notes 26–29 and accompanying text.

53. *See supra* note 34 and accompanying text.

54. *See supra* note 46 and accompanying text.

associates at the biggest law firms, the median starting salary for law school graduates has *declined* over the last twenty years when measured in constant dollars. As in the previous section, we can trace this decline in two different datasets. The first derives from the graduate employment data collected by NALP; the second stems from payroll data collected by the Bureau of Labor Statistics. I examine information from these two sources below, then compare that salary data with trends in law school tuition.

A. Entry-Level Salaries: The NALP Numbers

Each year, as explained above, NALP attempts to collect placement information about every law school graduate.⁵⁵ As part of this effort, NALP requests salary data about each graduate's job. When individual graduates fail to report this information, law schools may impute the salary from alumni surveys, public records, or other reliable sources.⁵⁶ Based on this combination of individual reporting and imputation of missing data, NALP obtains salary information for about half of the jobs that graduates report.⁵⁷

NALP recognizes that, because of the manner of data collection, its reported salaries skew high.⁵⁸ Graduates with high salaries are more likely than low wage earners to report those salaries. Alumni surveys and public data, meanwhile, are more likely to document salaries from large organizations than from small ones; many of those large organizations pay the highest salaries. NALP's aggregate salary reports, finally, include only wages reported by graduates who hold full-time, long-term positions. Salaries for temporary or part-time positions, which are often quite low, do not appear in NALP's salary figures.

55. See *supra* notes 22–24 and accompanying text.

56. See *supra* note 25 and accompanying text.

57. For the class of 2011, the percentage was 52.6 percent. See NALP, *Class of 2011 Report*, *supra* note 33 (35,653 graduates reported a job to NALP, and 18,630 provided usable salary information). The percentage of all graduates supplying salary information is considerably smaller, since some graduates report no employment. The class of 2011, for example, included 44,495 graduates, and NALP collected some information on 43,001 of them. The salaries reported by NALP, therefore, represent only 41.9 percent of the full graduating class or 43.3 percent of the graduates reporting to NALP.

58. See *Starting Salaries Re-Examined: A Critical Look at Averages*, NAT'L ASS'N FOR LAW PLACEMENT (NALP) (Oct. 2010), <http://www.nalp.org/oct2010adjustedsalmean>.

Despite these biases, the NALP data provide information about salaries in a segment of the entry-level job market. The data are particularly useful in documenting salary trends in that sector; they may also suggest trends in other, unreported segments of the market. Additionally, the NALP data are useful in tracking salary trends over time; no information suggests that the upward bias has changed over time.

In 1991, law school graduates reported a median salary of \$40,000 to NALP.⁵⁹ Twenty years later, in 2011, the reported median was \$60,000—equal to just \$36,330 in 1991 dollars.⁶⁰ According to the NALP data, therefore, starting salaries for our graduates have lost 9.2 percent of their purchasing power over the last twenty years. That drop, furthermore, has occurred among the half of our graduates for whom salaries are available—the ones holding full-time, long-term jobs with relatively high wages.

This 9.2 percent drop, unfortunately, does not stem simply from the recent recession. Median starting salaries were flat during the first five years after 1991, producing a constant-dollar decline of 13.2 percent during those years.⁶¹ Salaries edged up during the next ten years, although inflation accounted for most of that increase. By 2006, the median starting salary for law school graduates was \$62,000, equal to just \$41,887 in 1991 dollars.⁶² Over the first fifteen years of this period, in other words, median starting salary had increased just 4.7 percent in constant dollars.

The next three years, 2007–2009, showed more substantial gains. Median starting salaries rose to \$65,748 in 2007 and to \$72,000 in both 2008 and 2009.⁶³ But those three years were the outliers; in 2010, the

59. *Salaries for New Lawyers: An Update on Where We Are and How We Got Here*, NAT'L ASS'N FOR LAW PLACEMENT (NALP) (Aug. 2012), <http://www.nalp.org/august2012research> [hereinafter *Salaries for New Lawyers*].

60. *Id.* (reporting 2011 median salary); *accord CPI Inflation Calculator*, *supra* note 2 (used to calculate 1991 equivalent). Throughout this section, I use the BLS's CPI Inflation Calculator to provide inflation-adjusted figures.

61. *See Salaries for New Lawyers*, *supra* note 59 (reporting 1996's median starting salary as \$40,000, equal to \$34,723 in 1991 dollars).

62. *Id.*

63. *See Class of 2007 National Summary Report*, *supra* note 26 (reporting median salary for the class of 2007 as \$65,748); *Class of 2008 National Summary Report*, *supra* note 30 (reporting median salary for the class of 2008 as \$72,000); *Class of 2009 National Summary Report*, *supra* note 31 (reporting median salary for the class of 2009 as \$72,000).

median fell back to \$63,000,⁶⁴ and the following year it dropped to \$60,000.⁶⁵ Starting salaries have stagnated, risen, and fallen over the course of the last twenty years. But in the end, the average 2011 graduate earned a starting salary 9.2 percent lower (in constant dollars) than the salary achieved by the average 1991 graduate.

B. Entry-Level Salaries: The BLS Numbers

Data from the Bureau of Labor Statistics confirms the trend observed in NALP's data while offering another perspective on the salaries of entry-level lawyers. BLS produces a regular series of "Occupational Employment Statistics" based on data gathered from a revolving sample of employers.⁶⁶ BLS obtains a high response rate from its samples and uses recognized techniques for imputing missing data, so the series offers a reliable window on wages paid in different occupations.⁶⁷

When studying mid-level or senior lawyers, the BLS data suffer from one serious drawback: the sample includes only salaried workers, so it excludes solo practitioners, law firm partners, and other lawyers who receive non-payroll income. Relatively few law school graduates, however, immediately join the ranks of solo practitioners or law firm partners. Since most recent graduates draw a salary, the BLS data offer a useful guide to their wages.⁶⁸

The BLS's Occupational Employment Statistics do not distinguish employees by seniority, so the series does not directly reveal entry-level salaries for lawyers or other workers. The Bureau does, however, publish earnings for the tenth, twenty-fifth, fiftieth, seventy-fifth, and ninetieth percentiles within each occupation. Although some law school graduates draw very high salaries from their first paycheck, most start near the bottom of the occupational payscale. The "average" new lawyer, one earning the median salary for all new graduates, is unlikely

64. *Class of 2010 National Summary Report*, *supra* note 32.

65. *Class of 2011 National Summary Report*, *supra* note 33.

66. For an overview of the BLS's method, see *Occupational Employment Statistics: Technical Notes for May 2011 OES Estimates*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/oes/current/oes_tec.htm (last modified Mar. 29, 2012).

67. *See id.* (noting 77.3 percent overall response rate and techniques for imputing missing data).

68. Importantly, the BLS's Occupational Employment Statistics include federal, state, and local government workers, as well as workers employed in the private sector. *Id.*

to earn more than the tenth percentile salary registered for all salaried lawyers.

Table IV reports that figure, the annual income earned by the tenth percentile of salaried lawyers, for every year from 2002 through 2011. These figures are relatively close to the NALP medians, suggesting that they offer a useful measure of median entry-level salaries for lawyers.⁶⁹ The table also displays these salaries in constant 2002 dollars, allowing an inflation-adjusted comparison over time. Although the BLS figures do not cover as long of a period as the NALP data, they show a similar pattern. Between 2002 and 2004, salaries declined in real dollars. Wages rose over the next five years, although the increases were modest. At their highest level, in 2009, the tenth percentile of lawyers earned only 4.2 percent more than they did in 2002. By 2011, that gain had disappeared. In fact, attorneys in the tenth percentile earned 2.7 percent less in 2011 than they did in 2002.⁷⁰

TABLE IV: TENTH AND TWENTY-FIFTH PERCENTILES OF ANNUAL INCOME FOR SALARIED LAWYERS: 2002 THROUGH 2011⁷¹

| YEAR | 10TH PERCENTILE INCOME | | 25TH PERCENTILE INCOME | |
|------|------------------------|-----------------------|------------------------|-----------------------|
| | NOMINAL DOLLARS | CONSTANT 2002 DOLLARS | NOMINAL DOLLARS | CONSTANT 2002 DOLLARS |
| 2002 | 44,490 | 44,490 | 61,060 | 61,060 |
| 2003 | 45,380 | 44,369 | 61,950 | 60,570 |
| 2004 | 46,900 | 44,665 | 64,620 | 61,541 |

69. The NALP and BLS samples differ in three notable ways. First, as noted in text, the BLS omits non-salary income. Second, as also noted in text, the NALP figures suffer from more response bias. The NALP medians, finally, include all long-term, full-time salaries reported by graduates—even for jobs outside law practice. BLS, on the other hand, defines the occupational category of “lawyers and judicial law clerks” to require bar admission.

70. This figure may understate the decline because BLS relies upon three-year rolling panels to estimate salaries. See *Occupational Employment Statistics: Frequently Asked Questions*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/oes/oes_ques.htm (last modified Aug. 23, 2012) (“Can OES data be used to compare changes in employment or wages over time?”). As a result, declines due to the recent recession may not have emerged fully in BLS’s data.

71. The data in this table derive from the current and archived BLS “National Occupational Employment and Wage Estimates” for the United States. See *May 2011 National Occupational Employment and Wage Estimates*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/oes/current/oes_nat.htm (last modified Mar. 29, 2012) (linking to 2011 results); *Archived OES Employment and Wage Estimates*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/oes/oes_arch.htm (last modified Mar. 27, 2012) (linking to archived data).

| YEAR | 10TH PERCENTILE INCOME | | 25TH PERCENTILE INCOME | |
|------|------------------------|-----------------------|------------------------|-----------------------|
| | NOMINAL DOLLARS | CONSTANT 2002 DOLLARS | NOMINAL DOLLARS | CONSTANT 2002 DOLLARS |
| 2005 | 49,180 | 45,302 | 67,540 | 62,214 |
| 2006 | 50,580 | 45,136 | 69,910 | 62,385 |
| 2007 | 52,280 | 45,361 | 72,060 | 62,523 |
| 2008 | 54,460 | 45,505 | 74,980 | 62,651 |
| 2009 | 55,270 | 46,347 | 76,270 | 63,956 |
| 2010 | 54,130 | 44,658 | 75,200 | 62,041 |
| 2011 | 54,120 | 43,284 | 75,370 | 60,279 |

For comparison, the fourth and fifth columns of Table IV show the salaries that BLS reported for the twenty-fifth percentile of salaried lawyers between 2002 and 2011. Some new lawyers start in this pay range, and others hope to reach this level within the first five to seven years of practice. The salary pattern for lawyers in the twenty-fifth percentile is very similar to the one for tenth-percentile lawyers: in constant dollars, salaries dipped at the beginning of the period, then advanced to a modest premium (4.7 percent) over 2002 wages. By the end of the decade, however, salaries were 1.3 percent lower than they had been at the start.

Inflation-adjusted salaries for the average new lawyer, in sum, have fallen over the last two decades. The NALP data show a 9.2 percent decline in real dollars between 1991 and 2011, even for salaries biased toward the high end of the earning range. The BLS data are available only for the second half of this period, but they also show a decline in real wages. According to the BLS, the average new lawyer earned about 2.7 percent less in 2011 than in 2002. Even for lawyers who started at higher salaries, or who had progressed several years up the seniority ladder, 2011 salaries were lower than those in 2002 after adjusting for inflation.

C. The Money Gap: Entry-Level Salaries and Law School Tuition

The declining salaries documented in the last two subsections are worrisome; the average new lawyer today earns less than her colleague ten or twenty years ago. But the money gap is much larger if we consider what both groups of lawyers paid for their legal education. In 1991, when law school graduates reported a median salary of \$40,000 to

NALP,⁷² the average tuition at private law schools was \$12,738; the mean in-state tuition at public schools was just \$3,591.⁷³ Three years of tuition at a private law school, therefore, represented 95.5 percent of the median starting salary. For public schools, three years of in-state tuition accounted for just 26.9 percent of the median starting salary. If the average 1991 graduate borrowed the full cost of her legal education, the total was unlikely to exceed her starting salary.⁷⁴

Twenty years later, the relationship between average tuition and median starting salary has flipped: at the average school, three years of tuition now exceeds median starting salary, even for students who pay in-state rates at a public institution. In 2011, the average tuition at private law schools was \$39,184.⁷⁵ A full three years thus cost graduates about \$117,552—or almost twice the median salary (\$60,000) reported by NALP for that year's graduating class. At public schools, the average in-state tuition for 2011 was \$22,116.⁷⁶ Students at those schools were paying about \$66,348 for three years of education, a total that was 10.6 percent higher than the median starting salary reported by NALP for their class.

Law schools, in other words, have been raising tuition aggressively at the same time that entry-level salaries have been declining. Table V further documents that phenomenon by comparing the BLS salaries for the tenth percentile of salaried lawyers (a proxy for median starting salary in jobs that require bar admission) with law school tuition over the last decade:

72. See *supra* note 59 and accompanying text.

73. ABA, *Law School Tuition*, *supra* note 1.

74. Many financial advisors counsel that students should not borrow more to finance an education than their expected starting income. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 111 (2012).

75. ABA, *Law School Tuition*, *supra* note 1.

76. *Id.*

TABLE V: TENTH-PERCENTILE LAWYER INCOMES COMPARED TO
LAW SCHOOL TUITION⁷⁷

| YEAR | NOMINAL DOLLARS | | | 2002 CONSTANT DOLLARS | | |
|------|------------------------------|------------------------------|-----------------------------|------------------------------|------------------------------|-----------------------------|
| | 10TH PERCENTILE SALARY | PRIVATE SCHOOL TUITION | PUBLIC SCHOOL TUITION | 10TH PERCENTILE SALARY | PRIVATE SCHOOL TUITION | PUBLIC SCHOOL TUITION |
| 2002 | 44,490 | 24,193 | 9,392 | 44,490 | 24,193 | 9,392 |
| 2003 | 45,380 | 25,574 | 10,819 | 44,369 | 25,004 | 10,578 |
| 2004 | 46,900 | 26,952 | 11,860 | 44,665 | 25,668 | 11,295 |
| 2005 | 49,180 | 28,900 | 13,145 | 45,302 | 26,621 | 12,108 |
| 2006 | 50,580 | 30,520 | 14,245 | 45,136 | 27,235 | 12,712 |
| 2007 | 52,280 | 32,367 | 15,455 | 45,361 | 28,083 | 13,410 |
| 2008 | 54,460 | 34,298 | 16,836 | 45,505 | 28,658 | 14,068 |
| 2009 | 55,270 | 35,743 | 18,472 | 46,347 | 29,972 | 15,490 |
| 2010 | 54,130 | 37,447 | 20,238 | 44,658 | 30,894 | 16,697 |
| 2011 | 54,120 | 39,184 | 22,116 | 43,284 | 31,338 | 17,688 |

As the right-hand side of the table shows, average tuition at private law schools rose 29.5 percent between 2002 and 2011 when measured in constant dollars, from \$24,193 to \$31,338. Average in-state tuition at public schools jumped even more dramatically, from \$9,392 in 2002 to \$17,688 in 2011—a rise of 88.3 percent in constant dollars. At the same time, salaries reported by the Bureau of Labor Statistics declined in constant dollars.

Law schools, notably, continued raising tuition faster than inflation even after the Great Recession. Between 2009 and 2011, inflation was low (4.85 percent)⁷⁸ and starting salaries for law school graduates were falling—in both nominal and constant dollars. Yet private law schools raised tuition an average of 9.6 percent, and public schools increased in-state tuition by an average of 19.7 percent. These increases, imposed at a time when salaries were falling dramatically, intensified the money gap for recent graduates.

77. The second and fifth columns in this table repeat data from Table IV. See *May 2011 National Occupational Employment and Wage Estimates*, *supra* note 71. The other columns draw tuition information from ABA, *Law School Tuition*, *supra* note 1, and calculate constant dollars using the BLS's inflation calculator. See *CPI Inflation Calculator*, *supra* note 2.

78. See *CPI Inflation Calculator*, *supra* note 2.

Law schools have offset some of their tuition increases with enhanced scholarship aid, but that money assists only some students. Law schools distribute their scholarship money quite unevenly: a few students receive full-ride scholarships, and a larger number obtain partial scholarships. However, a substantial portion of each class receives no aid at all.⁷⁹ The latter part of the class pays full tuition and bears the full brunt of the money gap outlined above. Indeed, these students may experience a particularly large shortfall between tuition and entry-level salary because schools distribute most scholarship funds based on LSAT scores and undergraduate GPAs rather than financial need.⁸⁰ If high LSAT scores and undergraduate GPAs correlate with higher entry-level salaries, then the students who receive scholarships are the ones most likely to obtain higher starting salaries. Conversely, the students who pay full tuition may reap lower rewards in the marketplace.⁸¹

III. THE RESPONSIBILITY GAP

Today's law school graduates are paying more for their degrees but are receiving less. Fewer graduates are finding jobs that fully use their legal training; those that do face declining salaries. Globalization and technology are partly to blame for these trends: they have reduced the need for some legal services while reducing the cost of others.⁸² But law schools themselves bear significant responsibility for the hardships suffered by their graduates. At best, schools have ignored the job and money gaps plaguing their graduates. At worst, they have actively contributed to those burdens by raising tuition in a declining job market and using statistical gimmicks to hide those declines from applicants. These acts and omissions add up to a serious responsibility gap among legal educators. I explore four facets of that gap in this section, which describes the shortfalls and suggests how law schools might close them.

79. See TAMANAHA, *supra* note 74, at 96–99.

80. *Id.* at 97–98.

81. *Id.* at 98–99 (describing this phenomenon and labeling it a “reverse-Robin Hood arrangement”).

82. See generally RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (rev. ed. 2010).

The first gap is one of omission. Although the data presented in this Essay are readily available, law schools have largely ignored the implications of these figures. Schools track their graduates' jobs and salaries, but they do so primarily to enhance their *U.S. News* ranking or to develop marketing materials that will attract new applicants. Some schools have also devoted considerable financial resources to bolstering short-term employment outcomes for their graduates.⁸³ Few schools, however, have been willing to ask what the job gap portends about the future of law practice, the structure of legal education, or the price of that education. Interest in these topics is growing, as evidenced by this symposium, but we need much more scholarly attention to all aspects of the market for legal services.

Scholarship about that market could tell us many things. It could, for example, inform us about the growing impact of globalization, technology, and commoditization on law practice. Five years from now, how much of the work currently handled by U.S. lawyers will be performed in other countries? How much of that work will be replaced by new computer software? If globalization and technology replace a significant portion of current legal services, what type of jobs will remain? Will those jobs require different training than the education that law schools currently provide? Will communication and counseling skills, for example, command a premium in a market that has computerized more routine work?

Similarly, this scholarship could illuminate the growing role of non-lawyers who handle legal issues. As the general workforce has become more educated and regulation has become more pervasive, an increasing number of workers apply legal rules as part of their daily tasks.⁸⁴ How does this trend affect the demand for fully licensed lawyers? How will those lawyers interact with workers performing quasi-legal work? What role should law schools assume in training employees who handle the law but do not practice it? Rather than training JDs who increasingly fall

83. See *supra* note 45 and accompanying text.

84. These workers occupy many of the jobs that law schools include in the "JD Advantage" category. See *supra* notes 27–28 and accompanying text. Contract administrators, compliance officers, human resources managers, regulatory analysts, and many other employees sometimes hold law degrees. But the vast majority of workers in these categories apply legal principles without law school training.

back on “JD Advantage” jobs, should we be training more “Law Related” graduates who welcome that work?

Addressing these questions could inform key policy questions as well as help our own graduates. As a law-dependent society, we need to understand the evolving relationship between workers licensed to practice law and those permitted to apply the law within their own workplaces. As legal educators, should we support the broad dissemination of legal knowledge or attempt to preserve it for the legal profession? We also need to know whether our institutions of higher education will be able to meet the public’s demand for legal services at a price the public can afford to pay. These research questions cry out for interdisciplinary inquiry, integrating economic models, empirical research, and other insights.

The second facet of the responsibility gap is one of commission. Too many law schools have actively misrepresented their employment outcomes to applicants.⁸⁵ Public pressure has partly remedied this egregious gap, but most schools continue to view employment outcomes as a matter of marketing rather than education. As teachers and scholars, law school faculty have a responsibility to inform prospective students about the job market—not simply to paint the best possible picture allowed by current disclosure standards.

Some law schools are still obscuring major employment outcomes with nested statistics, small print, and other devices.⁸⁶ The major source of today’s misleading information, however, stems from aggressive assertions that lack little factual foundation. Law schools, for example,

85. See Ben Trachtenberg, *Law School Marketing and Legal Ethics*, NEB. L. REV. (forthcoming 2013).

86. For an example, see *Office of Career Services: Employment Statistics for 2011 and 2010 Graduating Classes*, UCLA LAW SCHOOL, <http://www.law.ucla.edu/career-services/Pages/employment-statistics.aspx> (last visited Sept. 30, 2012). The page seems to report that 92.4 percent of 2011 graduates held jobs that required bar admission. See *id.* A footnote, however, reveals that this percentage is “of those [graduates] employed.” *Id.* The percentage of all graduates holding bar-admission-required jobs was just 84.6 percent. *Id.* But even that statistic paints an overly optimistic picture. The ABA’s report on UCLA employment outcomes reveals that 27.5 percent of those bar-admission-required jobs were part-time, temporary, or both. See ABA, *Employment Summary*, *supra* note 37. The law school itself funded many of those part-time, temporary positions. *Id.* Some information about UCLA’s part-time, temporary, and school-funded jobs appears on its website, but the information is fragmented. A visitor to the site would not be able to determine that only 61.3 percent of the 2011 class found full-time, long-term jobs that required bar admission. See ABA, *Employment Summary*, *supra* note 37 and accompanying text.

vigorously proclaim the “versatility” of the law degree.⁸⁷ But very little hard data support that assertion—especially under current economic conditions. If law schools want to tout the versatility of their degree, they should seriously study the career paths of graduates who pursue jobs outside of law practice. Do graduates prefer those jobs, or do they accept them as “Plan B” alternatives? How much do the jobs pay, what are their working conditions, and how much room do they offer for advancement? Can graduates succeed in those jobs immediately after law school, or do the best opportunities arise for graduates who first practice law for a few years? Until law schools can answer questions like these, they should not affirmatively defend the value of a JD with vague assertions about versatility.

So far, law schools have neglected to offer even rudimentary information about these “versatile” positions. NALP provides numerous examples of “JD Advantage” jobs, including “a corporate contracts administrator, alternative dispute resolution specialist, government regulatory analyst, FBI agent, and accountant . . . [as well as] jobs in personnel or human resources, jobs with investment banks, jobs with consulting firms, jobs doing compliance work for business and industry, jobs in law firm professional development, and jobs in law school . . . administrative offices.”⁸⁸ Law schools parrot some of this language on their websites, but I have seen no accounting of what jobs their graduates actually obtain in this category. Are there many who land jobs with investment banking firms? How many choose compliance or human resources work? What salaries have the graduates secured? Did their JD really assist in obtaining the job?

Collecting and publishing this information would better inform prospective applicants about the full range of their post-JD job prospects. These data would also assist law schools in shaping their own educational programs. If significant opportunities exist to work in compliance, contract administration, or any of the other “JD Advantage” fields, what combination of training and work experience would best prepare graduates for those jobs? Does a three-year JD offer the right

87. See, e.g., Jay Conison, *What Is Legal Education Good For?*, HUFFINGTON POST (July 6, 2012), http://www.huffingtonpost.com/jay-conison/law-school-_b_1653400.html.

88. See NALP, *FAQ*, *supra* note 27, at 2.

preparation or would a one-year master's degree, with an opportunity to return later to complete the JD, better serve these students?

Law schools' third act of irresponsibility is their persistence in admitting many more students than the number who will be able to find jobs as lawyers. Correcting our second shortcoming has started to address this one; as we disclose more forthright information about the job market, fewer students are choosing a legal education.⁸⁹ But even if students continue to take their chances on law school, we owe a broader responsibility to both them and the society that helps pay for their legal studies.

If the economy will provide jobs for only 218,800 new lawyers over the current decade, should we really produce more than twice that number of law school graduates? If careful research demonstrates that a legal education pays off in a wide variety of allied fields and if those fields can support the surplus graduates we are producing, then law schools could justifiably maintain current enrollment levels. But if these allied fields are not hiring law graduates, if the economic return falls short of the tuition we charge, or if our educational program does not fit the demands of those fields, then shouldn't we focus some of our teaching resources elsewhere?

The markets for legal education and legal services suffer from several distortions,⁹⁰ so we can't count on the market to create the right number of law school seats. Instead, we need to rely upon our own research, ingenuity, and sense of responsibility. After conducting research about the demand for legal services, law schools need to assess the best use of their educational resources. Perhaps we should be teaching more undergraduates to "think like lawyers" or to apply legal rules in limited contexts. Perhaps we should be creating programs that will teach some aspects of lawyering to regulators, educators, and administrators who work with the law. Perhaps we have other skills or knowledge we can share with workers in other fields.

89. See *Current Volume—Three-Year Summary*, LSAC, <http://www.lsac.org/lsac/resources/data/three-year-volume.asp> (last visited Jan. 22, 2013) (showing declines in applications to ABA-accredited law schools from fall 2010 through fall 2012).

90. See Deborah J. Merritt & Daniel C. Merritt, *Unleashing Market Forces in Legal Education and the Legal Profession*, GEO. J. LEGAL ETHICS (forthcoming 2013).

Legal education has substantial value, but legal educators have been remarkably stodgy in recognizing or distributing that value. We keep pouring the same wine into the same old bottle, the standard three-year JD program. It's time to analyze the many components of our wine, as well as its different uses. We need to conduct that analysis quickly, before we graduate too many more JDs into a market that cannot absorb their talents.

Legal education's fourth failure of responsibility is also our most grievous one. For more than twenty years, we have aggressively raised tuition at rates much higher than inflation. Our graduates were not reaping greater rewards during this period. On the contrary, they faced contracting job opportunities and declining salaries. Continuing to raise tuition in the face of those trends has been a callous act of irresponsibility.

Law school, like most formal education, creates economic value among its graduates. A legal education confers skills and knowledge that enhance productivity in the workplace. The workplace responds by rewarding at least some law graduates with higher salaries than they would have commanded without their training. The workplace, however, does not determine how much of this extra value belongs to the educator and how much to the student; tuition draws that line.

Through tuition, a student gives the educator part of the economic value she hopes to recoup from her training. If an educator offers to train a promising protégé for free, then the student retains the entire economic value of her education; the educator's share is zero. At the other extreme, if the educator holds sufficient market power, the student may be willing to pay the full present value of her expected lifetime return for the training. The student will break even economically, while the educator reaps the full economic reward.

As a practical matter, educators enjoy significant discretion in the tuition they charge. For many students, education is a necessary ticket to higher earnings, fulfilling work, or particular occupations. Students have difficulty determining the present value of those benefits; even economists dicker over those amounts. Because of that uncertainty, students may accept a wide range of tuition amounts as "fair" for a particular education. This is particularly true in fields like law, where

education holds the only key to an occupation;⁹¹ in those fields, students must pay the educator's price or relinquish their occupational dreams.

Government-backed student loans, ironically, have further strengthened the educator's hand in allocating the economic value of a student's education. The federal government will issue loans for any tuition that accredited law schools set; market lenders play no role in assessing the relationship between that tuition and the economic value of the education. Students may assume that, if the federal government is willing to lend the money, then the degree has sufficient economic value to justify the tuition. The ready availability of loan money, meanwhile, frees educators to claim a high percentage of the educational value—without worrying that students will be unable to pay those charges up front.

These factors mean that the market cannot readily determine a fair division of economic value between educators and students. Educators, however, recognize a professional obligation to act in the interests of their students.⁹² That duty suggests that teachers should allocate significant educational value to students rather than exploiting the students' need for instruction by charging the highest possible tuition. Society also prefers the educator to leave significant value with the student. That value rewards the student for her investment of time and intellectual effort, leaves her resources to build upon her educational investment, and cements a societal bond in which each generation prepares the next to succeed at higher levels. No one expects professors to teach for free, but both academic ethics and social policies suggest that the educator should let the student retain much of the economic value of her education.

Over the last three decades, law schools have moved in the opposite direction: we have relentlessly claimed an increasing percentage of the

91. In some states, aspiring lawyers can gain admission to the bar through self-study. *See Comprehensive Guide*, *supra* note 16, at 1. Very few students, however, successfully pursue that path. For most students, law school graduation is a necessary prerequisite to law practice.

92. The American Association of University Professors, for example, refers to professors as “intellectual guides and counselors” of students; recognizes the “confidential nature of the relationship between professor and student”; and prohibits professors from engaging in any “exploitation, harassment, or discriminatory treatment of students.” *Statement on Professional Ethics*, AAUP, <http://www.aaup.org/AAUP/pubsres/policydocs/contents/statementonprofessionalethics.htm> (revised 2009).

educational value we generate. Rather than bestowing that value on graduates to use for their own advancement and that of society, we are demanding more of that value for ourselves. Every rise in tuition, while salaries are flat or declining, represents a transfer from students to educators. One recent analysis concludes that law school no longer makes financial sense for some students: the tuition costs are higher than the current value of the increased income conferred by the degree.⁹³ If that study is correct, then law schools have already taken the full value of their degrees—and more—from some graduates.

No outside authority will tell law schools that we have taken too much from our students. Only our own sense of responsibility as educators can make that determination. The job and money gaps faced by our graduates, however, strongly counsel that we have seized too much economic value for ourselves and left too little for our students. Tuition has risen inexorably over the last twenty years, but what goes up can also come down. In addition to researching the legal job market, correcting our misrepresentations about that market, and adapting our educational structure, we need to reassess our economic contract with students. Education is an investment in the future; it should not be a hard bargain that allocates all economic gain to the educator.

93. Herwig Schlunk, *Mamas 2011: Is a Law Degree a Good Investment Today?*, 36 J. LEGAL PROF. 301 (2012).