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**Reconsidering the Conventional Wisdom
on the Legal Job Market**

IHELG Monograph

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Reconsidering the Conventional Wisdom on the Legal Job Market

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Over the past year or so, a conventional wisdom has developed about the status of the legal job market. This conventional wisdom has at least three components: (1) Recent graduates are getting law jobs at distressingly low levels. (2) The legal job market is undergoing a profound structural change. (3) The lousy job market is a reflection of these long-term changes, and is not just a product of a recession and slow recovery.

In this and subsequent posts, I will push back against certain aspects of this conventional wisdom. At the outset, however, I want to be very clear about what I am NOT arguing. I am not arguing that the current legal job market is great – it is not. I am also not arguing in defense of the status quo in legal education – as I’ve explained in prior posts (here, here, here, and here)¹, I worry about many facets of legal education, not least the student debt problems caused by ever-increasing tuition.

I will argue that it is highly likely that more recent graduates throughout the country are getting law jobs than the conventional wisdom assumes. My argument will be based on data about what graduates from my school actually are doing now. I will also briefly discuss the claim that the poor job market is due to structural changes in the legal job market. I will explain why I am skeptical that the structural changes in the legal job market are significantly different than those that have occurred in the past, and why I am therefore skeptical that the current anemic state of the legal job market is the result of structural, rather than economic, factors. Finally, I will briefly discuss Bureau of Labor Statistics data on the legal job market, and will explain why caution must be used in interpreting this data in discussion of legal employment.

¹ <http://www.thefacultyounge.org/2013/02/moving-part-of-legal-education-to-the-undergraduate-level-advanced-placement-for-law-schools.html>

<http://www.thefacultyounge.org/2013/03/shifting-the-burden-of-persuasion-in-law-school-regulatory-change.html>

<http://www.thefacultyounge.org/2013/03/more-on-shifting-the-bar-exam-to-the-second-year-summer.html>

<http://www.thefacultyounge.org/2012/06/barros-guest-post-allow-students-to-take-bar-exam-after-two-years.html>

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This post focuses on the preliminary results of a study of the current employment of Widener-Harrisburg graduates from the classes of 2010 and 2011. These results are part of an ongoing study I am doing of alumni employment. The study was motivated in part by a mismatch between the experiences of alumni I know personally and the conventional wisdom. I talk a lot with current students and alumni about job issues. In the last several years, a number of graduates had trouble finding jobs right out of school but ultimately landed good jobs. My overall anecdotal impression was that our graduates were doing relatively well, though a small number of graduates were still struggling on the job market. I started working on the study to see if my anecdotal impression was consistent with actual data.

As some readers may know, Widener has two law school campuses, one in Harrisburg, PA and one in Wilmington, DE. I'm on the Harrisburg faculty, and the study is of Harrisburg graduates. I chose to focus on Harrisburg exclusively because the Harrisburg class sizes are significantly smaller, making it easier to do as thorough a study as possible. Focusing on Harrisburg also makes the study more accurate because I know many of the alumni personally. I don't have any reason to believe that the outcomes for our Wilmington campus would be substantially different, but I want to be clear that I have been looking exclusively at Harrisburg campus graduates.

The goal of my study was to find accurate employment data on each graduate. I worked on the study with research assistants and our faculty secretaries. We began with a list of the graduates from each class. We had some existing employment data, but we sought publicly-verifiable employment information for each person. The listings of lawyers admitted to practice maintained by state bar associations were especially helpful. As an example of how these sites work, you can go to the directory maintained by the Pennsylvania Bar Disciplinary Board (<http://www.padisciplinaryboard.org/lookup/pa-attorney-search.php>) and put in my name. You will be able to find basic information, including my current employer and phone number. At least two people independently searched for information for each graduate, and we followed up on any inconsistencies. If there was no publicly-available information for a particular graduate, we tried to contact that person individually. I'm sure that the results of our study are not perfect, but I am confident that we have developed a reasonably accurate snapshot of current employment for these alumni.

In the end, we were able to find solid job data on most of the graduates from each of these two classes. We couldn't find solid data on 7.7% of the graduates. We hope to find data on these people as we progress. We included the missing people in our totals, so they are counted in the percentages that I report below. In other words, if we did not find solid data for a person, that person is effectively treated as unemployed in our percentages. I'd make an educated guess that at around half of these people are employed in good jobs, but we took a conservative approach and assumed unemployment unless we had good data that proved otherwise.

The following table summarizes the results of our preliminary study, using the categories used by NALP and the ABA. The corresponding nine-month data is provided for each class.

DRAFT

	2010 – 9 month	2010 – Current	2011 – 9 month	2011 – Current
Bar Pass Required – Permanent	58 (47.5%)	99 (80.4%)	58 (46.8%)	92 (74.1%)
Bar Pass Required – Non-Permanent	11 (9.0%)	0 (0.0%)	2 (1.6%)	2 (1.6%)
JD Advantage	10 (8.2%)	8 (6.5%)	18 (14.5%)	8 (6.5%)
Professional	12 (9.8%)	6 (4.9%)	10 (8.0%)	8 (6.5%)
Non-Professional	1 (0.8%)	0 (0.0%)	6 (4.8%)	2 (1.6%)
Employed – Undeterminable	1 (0.8%)	0 (0.0%)	1 (0.8%)	0 (0.0%)
Graduate Study	6 (4.9%)	0 (0.0%)	1 (0.8%)	0 (0.0%)
Unemployed	16 (13.1%)	1 (0.8%)	21 (16.9%)	2 (1.6%)
Unknown/Unlocatable/Insufficient Information	7 (5.7%)	9 (7.3%)	7 (5.4%)	10 (8.1%)

I should note that the 2010 Nine Month numbers reflect 122 graduates while the 2010 Current numbers reflect 123 graduates. The discrepancy is due to one student who finished her third year at our Delaware campus, leading to some confusion about where she should be counted. There were 124 graduates in the class of 2011.

I should also note that the current numbers include some jobs that could cause underemployment concerns. For example, the Bar Pass Required numbers include solo practitioners. I will provide a further breakdown of this data below, and talk further about underemployment issues. Before I do that, I first want to talk about the comparison between the study data and the nine-month data.

What Nine-Month Job Data Does, and Does Not, Tell Us

The data from my study is significantly different from the nine-month data for each class. This should not be surprising, because the two sets of numbers reflect different time periods. The nine-month survey reports employment nine months after graduation. My study is reporting employment now – almost three years after graduation for the class of 2010 and almost two years after graduation for the class of 2011.

It makes sense that the data taken later in time is more positive on employment than the nine-month data. Some people who don't have jobs after nine months get jobs later. Indeed, the timing of the bar exam makes it likely that at least some students will get jobs more than nine months after graduation. A student who graduates in May might not get bar results until five months after graduation. Employers often wait for bar results to come out to hire new lawyers, and students sometimes don't even start searching for jobs until after they find out they pass the bar. (For the record, this isn't a good approach).

Some students fail the bar the first time. It should not be surprising that you can't get a job as a lawyer without passing the bar. Roughly half of these students will pass on the second time, but will not be admitted to the bar until more than nine months after graduation. To illustrate this point, consider a

DRAFT

jurisdiction with an 85% first time pass rate. 15% of graduates will fail the bar the first time. If 50% of these graduates pass the second time, then an additional 7.5% (50% of the 15% who failed the first time) of the graduates will be admitted to the bar almost a year after they graduate. In jurisdictions with lower first-time pass rates, the proportional increase in graduates able to practice over time will be even more pronounced.

As an aside, I note that many California schools dropped in this year's U.S. News rankings. It may be that this drop is due to increased emphasis on nine month job data in the rankings. Because of California's low bar pass rate, fewer graduates of California schools are admitted to the bar nine months after graduation than in most other jurisdictions. If, as I suggest, bar timing is contributing to lower job numbers, then California schools are being punished in the U.S. News rankings for California's low bar pass rate. (For the record, like most legal professionals, I think that the U.S. News rankings are deeply flawed.).

I would also note that the distortion caused in the legal job market by bar exam timing was one of my major motivations in proposing that students be allowed to take the bar exam in the summer after their second year of law school. Regardless of the current state of the job market, students would benefit from being able to start work earlier if they had already passed the bar exam when they graduate from law school.

None of this is to say that nine-month numbers are not useful or important. They provide an important snapshot of graduate employment. It is perfectly reasonable for students comparing schools to look at nine-month data. It is also reasonable to look at changes in nine-month data over time to track changes in the legal job market over time.

It is not reasonable, however, to treat the nine-month numbers as the final word on employment for a particular class of graduates. Consider three types of claims that could be made about the nine-month data:

- (1) The nine month data for schools around the country are lousy compared to prior years. Therefore there is at least some evidence that the legal job market is lousy as compared to prior years.
- (2) School X consistently has better nine-month job numbers than School Y. Therefore, School X tends to have better job placement than School Y.
- (3) The nine month data show that only X% of graduates of a particular class got legal jobs. Therefore, only X% of that class ever got legal jobs.

The first two claims are fair. The third claim is not, but claims of this form have become increasingly common in commentary on law schools. As a fairly innocuous example, take this recent post by Brian Tamanaha. (<http://balkin.blogspot.com/2013/03/the-law-graduate-debt-disaster-goes.html>). In this post, Professor Tamanaha discusses schools with high student debt that list relatively low legal employment. In the post, he observes: "Making these extraordinary debt levels all the worse, at the

DRAFT

majority of law schools on this list less than half the class obtained full time lawyer jobs.” It would be more accurate to add the words “within nine months of graduation” at the end of the sentence. I should note that I don’t think that this clarification would alter the core point that Professor Tamanaha is making in his post.

In other contexts, conflating nine-month job data with ultimate job performance might be more troubling. It is not at all unusual to see statements to the effect of “law schools are failing because only X% of graduates are getting legal jobs,” where X% is based on nine-month job data. The idea is that a huge percentage of law school graduates are not getting jobs as lawyers, comes up in places as varied as scamblogs to the editorial pages of the New York Times. Nine month data, however, simply does not tell the whole story of the employment outcomes for any particular graduating class. The timing of the bar exam is part of the story here. So is, I think, the economy. My anecdotal impression, which I think is backed up by the data from my study, was that many of my former students were getting good jobs, but it was taking some of them longer than it had in the past to get these jobs because of the poor economy. This phenomenon – job searches lasting longer in a poor economy – should not be surprising, at least to anyone who has tried to get a job in poor economic conditions. I graduated from college in 1991, in the middle of a very poor job market. I and many of my friends had a hard time getting jobs right out of school, especially compared to people who graduated five years later. We all got jobs eventually, and looking at the careers my college friends have had reinforces for me that it is a mistake to be unduly fixated on initial job outcomes in evaluating any higher educational program.

Taking a Closer Look at the Numbers

I have broken out my study data into a few additional categories, combining the numbers for the classes of 2010 and 2011:

DRAFT

Classes of 2010-11 Combined (N = 247)

Bar Pass Required (excluding solo and temp) N = 173 (70.0%)

Private firm: 91 (36.8%)

Private - In house: 12 (4.9%)

Judicial clerks: 25 (10.1%)

Prosecutors: 16 (6.4%)

Public Defenders/Legal Aid: 13 (5.3%)

Other Government: 16 (6.5%)

Bar Pass Required (including solo and temp) N = 193 (78.1%)

Solo: 18 (7.3%)

Private - temp: 2 (0.8%)

JD Advantage: N = 16 (6.5%)

Professional: N = 14 (5.7%)

Unemployed/Underemployed N = 5 (2.0%)

Cannot Locate/Insufficient Information N = 19 (7.7%)

Bar Pass Required (excluding solo and temp). These are what many people consider core legal jobs – people working in jobs that require a law license. Following convention, judicial clerks are included in this group even though in many circumstances bar passage is not required for a clerkship. I exclude solo practitioners and temporary positions from this number because concerns about underemployment can be raised about these categories. I will discuss these issues further below.

Private Firm. The vast majority of the graduates in this category are working in small firms. I would note two things about small firm work. First, most of my former students who are working in small firms are having a far better professional experience than I and my peers did in Biglaw. As just one example, I recently had coffee with a former student who is working in a small firm. He has had more courtroom experience – and significant experience at that – in one year of practice than most big firm associates have in six or seven years. Biglaw has its advantages, including higher salaries. But people shouldn't reflexively knock small firm practice. Second, Kyle McEntee and Derek Tokaz of Law School Transparency raised an important point about the 2-10 attorney firm category – it might capture “a group of recent graduates [who] band together to start their own firm.” [Take This Job and Count It, at 321]. If we have concerns about graduates entering solo practice, we might have concerns about this

DRAFT

category of graduates. It appears that only a couple of the graduates counted in my study would fit this description – recent graduates who grouped together with other junior attorneys to start their own firm.

Private – In-house. These positions are reasonably varied. The one thing that jumped out at me was the relatively large percentage of people in this category who are working for real estate title companies. My impression is that in the not-so-distant past, real estate title work was often done by attorneys at law firms. More recently, title work has shifted to specialist title companies. This may be an instance of the type of structural shift in the legal job market that Bill Henderson has discussed in various contexts. I will discuss structural changes in the job market below.

Judicial Clerks. Some graduates who had judicial clerkships right out of law school have now moved on to other jobs. I don't have comparative data to know for sure whether the number of students still in clerkships is unusually high. My anecdotal impression is that the number of people still in clerkships is fairly standard. Many clerkships on both the state and federal level last one or two years. Many others, however, last longer. It is not at all unusual in Pennsylvania for state court clerkships to last for several years. On both the state and federal levels, some clerk positions are permanent or quasi-permanent. My impression is that permanent clerkships are more common on the state level than the federal level. There also may be a good amount of jurisdictional variation on clerkship length. For example, my understanding is that all or most New Jersey state court clerkships are one year in length.

Prosecutors/Public Defenders/Legal Aid. These are very good entry-level legal jobs. They don't pay as much as firm work, but they provide excellent experience. They provide useful illustrations of why it is wrong to fixate on starting salaries. A person with three years of experience as a prosecutor or public defender typically can move to significantly higher-paying job if she chooses to do so.

Other Government. Most of the alumni in this category work for the Pennsylvania state government. As you might expect for a law school located in a state capital, Widener-Harrisburg tends to have a good number of graduates take positions with the state government. The percentages of graduates working for the state from the classes of 2010 and 2011 strike me as unusually low. A state hiring freeze significantly slowed state hiring in the last few years, and in better economic times I would expect these percentages to be higher.

Solo. Solo practice positions are tricky to evaluate. I generally agree with the view that most (but not all) people who become solos right out of law school would have preferred to spend at least a couple of years getting experience working for someone else. I know some former students who always wanted to go into solo practice – some of these people had extensive experience as small-firm paralegals that put them in a good position to open their own firm. But my impression is that these people are a minority, and that most people who start as solos do so due to a lack of other options. I therefore think it is appropriate to view solo practice, on the whole, as a less desirable employment outcome for lawyers fresh out of law school. This said, I don't think that people who start out as solos are doomed to failure. The students who I keep in touch with who started as solos tend to be making a pretty good go of it, and their practices unsurprisingly improve over time.

DRAFT

Private-Temp. The two alumni in this category are both working for agencies doing document review projects.

JD Advantage. This category is highly variable, both in terms of the kind of work involved and the desirability of the positions. Here are specifics on some of the jobs in this category. Two students from each class (1.6%) are doing regulatory compliance work. I would expect this percentage to go up over time, as some attorneys move from private practice into compliance work. At least when I was working in Biglaw, it was fairly common for people to move into compliance positions after a few years of experience as an associate. Two members of the class of 2010 (0.8% of the combined classes) are doing government relations/lobbying work. One person from each class is working in legal recruiting. One graduate is working in a permanent position in our admissions office (the only “law school funded” job for the combined classes). One graduate is working as a hearing officer for the federal government. Three graduates are working in jobs titled “Law Clerk” or “paralegal”. Even these jobs vary widely – one is a law clerk position in a government agency with a history of hiring attorneys through its law clerk positions; another appears to be a fairly standard paralegal position at a law firm.

Professional. Like the JD advantage category, the Professional category is highly variable. It includes what are probably the two highest salaried graduates in the study – graduates who did other degrees after receiving their JDs (one an LLM in tax, the other an MBA) and who are now working at financial firms. One graduate is an accountant. Another is a former evening student working for the same employer she had in law school (an education NGO). Two graduates are working in policy positions for political groups. One is an organizer for an animal rights group, and another is a researcher for a prisoner’s rights NGO. Another is working for BarBri in what, as near as I can tell, is more of a professional position than a JD Advantage position. One graduate is a billing manager for a private company, and another is working at an employee benefits firm. On the government front, one is working as a regional manager for a U.S. Senator, one is in a contracting position, and another is in a policy position for a state government agency. Some of these jobs are on the underemployed end of the spectrum. Many of the others are great jobs.

Some of the jobs in the Professional category might be fairly considered JD Advantage jobs. The line between the two categories is very blurry. Where there was ambiguity, I went with my instinct but tried to err on the side of putting graduates in the Professional category. Many people before have noted the wide range of jobs that fall into the JD Advantage and the Professional categories. Some of these jobs are outstanding, and some are not so great. I have two overall impressions from looking at this data set. First, the majority of the jobs in both of these categories are good jobs, and are in areas where it is not surprising to see law graduates. Second, it seems to me that the Professional jobs are, as a whole, about as desirable as the JD Advantage jobs.

Unemployed/Underemployed. I was only able to identify [five] graduates who are either unemployed or working in non-professional jobs. Two of these have not yet passed the bar. The one graduate who did pass the bar and is currently unemployed had an attorney job at one point, and has had a remarkable string of bad luck on the job market. I’ve also included a fourth graduate in this category who is working as an unpaid intern in public relations, as part of an effort to get into that industry. I

DRAFT

thought that this fit better as Underemployed than Professional. The fifth graduate in this category had been doing some work as an attorney, but now is substitute teaching on an infrequent enough basis that I put this person in Underemployed rather than Professional.

Can't Locate/Insufficient Information. For the bulk of the graduates in this category, I simply either can't locate the person or can't find reliable current job information for them. One person in this category had been in a paid position with the Obama campaign, but I haven't been able to find out what this person is doing now.

The Structural Change Issue. Another piece of the current conventional wisdom is the argument, generally associated (at least in US law circles) with Bill Henderson, that the legal job market is undergoing profound structural change. My reaction to this argument has taken an interesting trajectory. I was initially deeply skeptical of the argument. The more I thought about it, the more I started to think that there was something to the structural change idea. My current thinking is that some structural change is occurring in the legal job market, but that this change has been gradually occurring for many years. I therefore think that this structural change is something that legal educators should think deeply about, and I agree with some of what Professor Henderson has to say about the subject. I am skeptical, however, that the structural change has much, if anything, to do with the current state of the legal job market. I am also a bit skeptical of how deeply the structural change will penetrate into law practice. Professor Henderson has written a lot on this subject that deserves a more thorough analysis than I can give it in this post. For now, I want to focus on these last two points – whether structural change is responsible for the current state of the job market, and how deeply structural change will impact law practice.

The structural change argument has a few components to it, but for me the most interesting part of it is the claim that technology, specialization, and process engineering are making legal work increasingly standardized and systematized. Professor Henderson, discussing the work of Richard Susskind, writes that “Susskind asserts that legal work is gradually migrating from bespoke (e.g., court room practice), to standardized (e.g., form documents for a merger), to systematized (e.g., a document-assembly system for estate planning), to packaged (e.g., a turn-key regulatory compliance program), to commoditized (e.g., any IT based legal product that is undifferentiated in a market with many competitors).” (Blueprint for Change, at 479). As legal practice becomes more routine and commoditized, compensation for lawyers will come under pressure. The structure of legal services will change as well, with lawyers (or, more broadly, legal service providers) working for specialized firms that look more like service providers in other industries than contemporary law firms.

Although I think it has limits, I think it is true that at least some change of this kind is occurring in the legal industry. I do not think, however, that it is particularly new. One example of this kind of change discussed by Professor Henderson is the rise of firms that provide contract attorneys for discovery work. My first big assignment as a law firm associate in 1997 was to supervise a major document review and coding projects (ah, the glories of Biglaw!). At one point, I had 60 contract attorneys working for me.

DRAFT

We were using technology to make the review process more efficient. This technology has improved over time, but technological change has also created a dramatic increase in document review work. Even in 1997, the increased use of e-mail was creating many more documents for review than had been created in the past when written communication was exclusively on paper. In the document review world, technological change has probably created more work in the last 20 years (by exponentially increasing the number of documents to be reviewed) than it has eliminated (by automating parts of the process). It is also worth noting that while certain aspects of document review can be performed by trained monkeys (and thus can be automated), other parts require the work of human beings exercising judgment. More importantly to the subject of this particular post, I don't see change in the document review world in the last few years that is different in kind than change that had occurred in the prior 15, making it unlikely that any changes in this area are the cause of the present relatively poor job market.

Another example noted by Professor Henderson is the rise of internet form providers such as Legal Zoom. Form documents have been available on the internet for a while, so I'm skeptical that Legal Zoom et al. have much to do with the current job market. I'm also skeptical of how deeply the widespread availability of forms, no matter how good they are, will change the existing practice of law. To be clear, I do think forms are changing, and will continue to change, the practice of law. I'm not sure, however, how deep this change will go.

Forms have been a part of legal practice for as long as I've been a lawyer. Over time, the forms have become more sophisticated. Most residential real estate transactions today involve the use of form purchase-and-sale contracts. These forms aren't perfect, but tend to be pretty good. The widespread availability of good forms, combined with the availability of reasonably competent professional advice from real estate agents, has led to the reduction of the role of attorneys in residential real estate transaction. This is a pretty good example of the type of structural change Henderson and Susskind are talking about. An area of law where lawyers used to play a large role is now dominated by non-lawyers. This kind of change is also reflected in the real estate title search and closing processes. As I noted above, a fairly large number of our graduates included in my study are working in-house at title companies. These people are working as lawyers, but are doing so in specialized, non-law firm environments. I think this kind of structural change has been going on for a while, and will continue to develop in the future.

I think, however, that this kind of structural change, especially reliance on forms and non-lawyer professionals has its limits. I should first note that the reduced role of attorneys in the residential real estate context is not an unambiguously good thing for consumers. Real estate transactions are incredibly complex. They present a host of risks to the parties, especially the buyer. Most buyers would benefit from the advice of an attorney as part of the process. For my Real Estate Transactions class this semester, I obtained a random selection of deeds that had been recorded in our local Recorder of Deeds office for us to review. One of the deeds, for a home built and sold by a sophisticated developer, had an innocuous-looking provision that shifted a good amount of title risk from the seller to the buyer. I would never have advised a client to accept this deed. Considering the probability of a problem occurring, however, the price of this risk was fairly small. Given the amounts of money involved, it is often rational for a party to a simple residential real estate transaction to proceed without counsel.

DRAFT

When the amount of money at stake increases, however, the wisdom of proceeding without counsel becomes more doubtful. Even if a form is available, forms are subject to negotiation and change. Any time the parties can negotiate the terms of their agreement, the parties would benefit from counsel. Put another way, any transaction where (a) the terms are negotiable and (b) there is sufficient value to justify the cost of an attorney will involve what Susskind calls bespoke legal work. As I noted above, Professor Henderson refers to “form documents for a merger” in the second step of systemic change. Any merger of more than trivial value will be subject to negotiation, whether or not the parties start with set of form documents. The work that lawyers do on this kind of transaction will be customized to the particular facts of the deal. To be sure, in some areas of transactional practice, certain forms are widely accepted, and where repeat players are involved the amount of negotiation for a particular deal might be limited. In these contexts, law firms compete on price by using specialized lawyers who can get things done quickly and efficiently. Law firms were doing this when I was in private practice, and I’m sure that the trend towards specialization will continue in the future.

In sum, I think that specialization and technological progress are changing law firm practice to a degree. I’m sure that competition between law firms will lead to further specialization, technological innovation, and process engineering improvements in the provision of legal services. I’m skeptical, however, of how deeply these changes will penetrate into legal practice, because so much of legal work is fact or transaction specific, making a good deal of it what Professor Henderson refers to as “bespoke.” I also think that these changes have been gradually occurring over a long time, and have very little, if anything, to do with the current state of the legal job market.

I will close on this subject with three further thoughts. First, I see very little reflection of systemic change in the alumni study described above. Most of the people included in the study are doing work in traditional legal settings. Only 0.8% of the graduates are working for agencies that provide contract attorneys. The one exception is the apparent shift in real estate practice reflected in the number of graduates working in-house at title companies.

Second, I think it is a mistake to focus on loss of work in any one sector of the legal job market. A few years ago, for example, tons of attorneys were doing work on securitizations. Now, many fewer are doing securitization work. It is not at all unusual for work in particular sectors to expand and contract. There is something of a cliché of big firm M&A lawyers switching to bankruptcy workouts when the economy turns bad. Some areas of practice go the way of the dinosaurs, while others spring up. The shale gas boom and the implementation of the Affordable Care Act, for example, have provided a lot of work for lawyers that didn’t exist a few years ago.

Third, I am old enough to have lived through several economic cycles. In both booms and busts, there is a tendency to talk as if the current situation will be permanent. During the last boom, there was a lot of talk about how technology-created increases in productivity would lead never-ending growth. During the ‘80s, there was a lot of talk about how the US economy was never going to recover, and about how Japan would dominate the world economy in ‘90s and beyond. I think we need to be very careful in both booms and busts not to become overly convinced that our current situation is the result of permanent change.

DRAFT

The Bureau of Labor Statistics Projections. Recent projections by the Bureau of Labor Statistics have received a lot of attention in discussions of the legal job market. For example, Eric Posner recently wrote on Slate that “the Bureau of Labor Statistics estimated that 218,800 new legal jobs would be created between 2010 and 2020.”

(http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/04/the_real_problem_with_law_schools_too_many_lawyers.html). There is a significant mismatch between this number and the projected number of law graduates over the same period, and it is understandable why many people have raised concerns about them when talking about the future of law schools.

I think we need to be careful, however, in reading too much into these projections. I have two specific concerns about the numbers. Before I get to them, I want to note that the BLS is a remarkably user-friendly government agency. Fearing a huge, impenetrable bureaucracy, I asked a research assistant to try to find me someone to talk with about the projections. She came back ten minutes later saying that I could just call and they would connect me to the right department. When I did call, a human being picked up the phone, and connected me to Michael Wolf, the Branch Chief of the National Employment Matrix, who was happy to talk to me about the statistics. It was incredibly nice to not have to find my way through an automated phone maze to find someone to talk to.

Mr. Wolf explained to me that the job statistics are based on two surveys. The first is the Occupational Employment Statistics survey. This survey goes to employers throughout the economy (including government employers). The responses are typically filled out by Human Resources people at each employer. The second is the Current Population Survey, which is designed to help catch people who are self-employed. For our purposes, the Current Population Survey should capture solo practitioners. The data from these surveys are combined to form the base year data on employment – that is, a picture of employment in the current year. Projections of future employment are then based on macroeconomic factors, tailored to each specific industry. Estimates of job openings factor in both expected new jobs and expected retirements.

The BLS job statistics therefore have two basic components – the base year data, which is based on surveys of current employment, and projections of future employment, which are based on applying certain projected macroeconomic assumptions onto the base year data. I think there are reasons to be cautious in interpreting both sets of data.

We need to be cautious in interpreting the base year data because the people included in the category “Lawyer” are people who are identified by the HR people filling out the survey as lawyers. I should emphasize that I am not criticizing the HR people who complete the survey – the survey is designed to be based on their responses, and the “Lawyer” category is not designed to be tied in any way to having a JD degree or admission to the bar. Some jobs typically held by lawyers have their own, separate category. Take a look at this table. http://www.bls.gov/emp/ep_table_107.htm . Scroll down to category 23-1010, Lawyers and Judicial Law Clerks. Look over towards the right hand side, and you will see 218.8 – this is the 218,800 job openings projected for 2010-2020. This category, as its name implies,

DRAFT

combines both Lawyers and Judicial Law Clerks, each of which has their own category immediately below. The number for category 23-1011, Lawyer, is right below, with 212,000 job openings projected for 2010-2020. Look right below that to 23-1020, Judges, Magistrates, and Other Judicial Workers. Many (though not all) of these people will have a J.D., but are not included in the Lawyer category. Nor are people with J.D.s who are legislators, other elected officials, law professors, community organizers, lobbyists, people in policy positions, people in business positions, people working in non-lawyer positions for NGOs, bloggers at legal tabloids, FBI agents, or any of the other positions that people with J.D.s might fill but not be described as a “Lawyer” by the person filling out the survey. I would imagine that most of the people who take “JD Preferred” or “Professional” jobs, as described above, would not be categorized as lawyers in these surveys. As I mentioned above, some of these other jobs are good, some are not. The crucial point here is the one I mentioned above – the “Lawyer” category is not synonymous with either having a J.D. or being a member of a bar.

I should emphasize that there is nothing whatsoever wrong with the BLS doing the survey this way. We just need to be careful in how we interpret their data. The one thing I would criticize the BLS for is this statement: “Employment of lawyers is expected to grow by 10 percent from 2010 to 2020, about as fast as the average for all occupations. Competition for jobs should continue to be strong because more students are graduating from law school each year than there are jobs available.”

<http://www.bls.gov/ooh/legal/lawyers.htm> . According to Mr. Wolf, this statement is based on a comparison between the projected number of Lawyer jobs and the number of law school graduates taken from Department of Education statistics. The overall conclusion may or may not be correct, but there is a mismatch between these two sets of data. Not all people who graduate from law school go on to get a job that would fit in the Lawyer category.

We need to be cautious in interpreting the predictions of job growth because they are just that – predictions. If you have any experience working with long-term projections, you will know one thing with certainty – they are pretty much always going to be wrong in one direction or the other. The assumed growth rate has a tremendous impact on the numbers, and actual reality is almost certain to differ from the assumed growth rate. To illustrate how projections can differ, take a look back at the 2002 survey data. In that year, the base year survey had 695,000 lawyer jobs. Based on an assumed 17% growth rate, the report projected 813,000 lawyer jobs in 2012.

<http://www.bls.gov/opub/mlr/2004/02/art5full.pdf> - (Look at page 85 – under category 23-1011, you will see 813 under the 2012 column.) The 2010 base year data

(http://www.bls.gov/emp/ep_table_107.htm) had 728,200 lawyer jobs, with 801,800 projected for 2020. (Look at row 23-1011 – the Judicial Clerk stand-alone category is new to 2010, but the 23-1011 Lawyer category is the same in both the 2002 and 2010 surveys.) In other words, in 2002 the BLS projections had more lawyer jobs for 2012 (813,000) than there in fact were in 2010 (728,200) and are projected for 2020 (801,800). The difference is largely in the assumed growth rate. The significant point here is that projections will typically differ from reality, often in major ways. Maybe lawyer jobs in 2020 will be significantly higher than the projected 801,800. Maybe they will be significantly lower. We won't know for sure until we get there. The projections are useful in some ways, but they do not tell us with certainty about what the future will hold.

DRAFT

Concluding Thoughts

I have made three major points in this post. First, I have argued that based on data on what graduates of the Widener-Harrisburg classes of 2010 and 2011 are doing now, many more recent law schools graduates are getting legal jobs than the nine-month job data would suggest. Second, I have explained why I am skeptical that the current anemic state of the job market is the result of structural, as opposed to economic, factors. Third, I have explained why we should be cautious in our interpretation of Bureau of Labor Statistics data on the legal job market.

I will close with three other points. First, I think that the single biggest thing that we could do to improve graduate employment rates is to move the timing of the bar exam from the summer after graduation to the summer after the second year of law school. As I explained above, I think that bar timing is one part of the story of why nine-month data does not provide a full picture of graduate employment. Moving up the bar exam would help even in a more robust economy where more students are getting jobs within nine months of graduation, because graduates who landed jobs could start working sooner.

Second, nothing in this post suggests that we should not be concerned about student debt. At a few points in this post, I mentioned as an aside that I think it is wrong to focus on first year salaries when talking about law school affordability. I do think that – many entry level legal jobs (clerkships, ADA positions) have relatively low salaries but typically provide graduates with experience that can lead to higher paying jobs later. Entry level small firm jobs also often don't pay a high salary to start, but the salary goes up over time. I also think that statements about graduates' ability to service their debt that do not take cost of living into account paint with too broad a brush. A given salary goes a lot farther in, say, Harrisburg PA, than it does in New York City. This said, we could always use better and more thorough salary data, especially data that captures salary changes as a lawyer progresses through her career. I hope to include some data on salary in future iterations of my alumni study. Further, legal academics should be concerned about cost and student debt issues. Constant tuition increases of above the rate of inflation are inherently unsustainable.