The Current Anxiety About
JD Advantage Jobs:
An Analysis

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This Article is going to press as the enormity of the COVID-19 crisis continues to unfold. It was written before the outset of that crisis and thus does not address it, but much of its analysis about the increasing acceleration of change in the legal profession and the need for more flexibility in how we think about new graduate legal employment will likely become even more relevant in the face of COVID-19’s economic devastation.
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I. INTRODUCTION

For the last decade or more, many journalists and other commentators on legal education have decried what they see as a decline in “real” law jobs for new law school graduates.1 As they point out, this period has

seen more new law graduates enter jobs in which having a law degree is
preferred but not required. According to these journalists and commentators,
these so-called “JD Advantage” jobs should be considered second best—
jobs that new graduates take with disappointment after finding that they
cannot secure a Bar Passage Required job. Why, they argue, would a law
student incur the expense and aggravation of obtaining a law degree only
to take a job in which having a law degree is not necessary?

In this Article, I argue that this way of looking at JD Advantage jobs is
wrongheaded. Rather than viewing JD Advantage jobs as backup choices
new graduates take after their dreams of practicing law in the traditional
sense have been thwarted, opinion makers should recognize JD Advantage
jobs as potentially attractive opportunities generated by important ongoing
transformations in the legal profession. These transformations include
rapid and accelerating technological innovation, an increase in interdisciplinary
collaboration among various professions and disciplines, and the erosion
of the monopoly protections regulators traditionally granted lawyers engaged
in law practice. Globalization has further contributed to the transformation
of law practice, accelerating the “creative destruction” of traditional forms

2. See, e.g., Harper, supra note 1.
3. AM. BAR ASS’N, ABA GUIDANCE DOCUMENT: EMPLOYMENT PROTOCOLS FOR
legal_education_and_admissions_to_the_bar/2019-aba-employment-protocols-final-class-of-2018.pdf [https://perma.cc/YPD3-ZY9C]. The American Bar Association (ABA) defines JD Advantage jobs as those that “do not require passage of the bar exam or an active law license or involve practicing law” but for which “[t]he possession of a JD by the graduate was sought by the employer, required by the employer, or provided a demonstrable advantage in either obtaining or performing the duties of the position from the perspective of the employer.” Id.
4. See discussion infra Section II.C.
of legal services and the rise of new forms of law-related work that move around the globe in response to economic and deregulatory forces.

All this change—or creative destruction—has eliminated some traditional law jobs but produced new ones. Some of these new jobs potentially signal inroads of the legal profession into new interdisciplinary territories. Unlike in the past, however, the legal profession probably will not be able to claim exclusive rights over work in these interdisciplinary domains; put otherwise, the legal profession probably will not be able to fence in these new territories through monopoly barriers. Indeed, as already noted, one of the characteristics of this new legal landscape is the erosion of disciplinary silos as more professional work emerges at the intersections among disciplines. There is no inherent reason these new jobs should be considered any less valuable than traditional law practice jobs, as I will show below.

Despite these facts, those attached to traditional arrangements for legal work have exhibited great anxiety about the rise in JD Advantage jobs for new law graduates. Critics argue, for example, that JD Advantage jobs tend to pay less than Bar Passage Required jobs. This assertion, however, is not correct. As I show in Part III below, in most employment sectors new graduate JD Advantage salaries exceed those for Bar Passage Required jobs. Thus, on the salary dimension alone, there appears to be no good reason to look down on JD Advantage jobs as less appealing or valuable than traditional Bar Passage Required employment. Instead, the current anxiety about JD Advantage jobs reflects a reaction to the phenomenon of creative destruction. I suggest here that, better than attempting to prevent change, we should study and adapt to it in ways that will be most beneficial to new generations of law students.

History reveals many prior examples of transformations in the legal profession resulting from major shifts in the economics, organization, social and political conditions, or conceptual frameworks of law. My thesis is that similar forces at work today account for the rise in JD Advantage jobs. In the past, transformations in law practice mainly involved lawyers extending

6. See infra Part II (discussing many past instances of the legal profession’s entry into new territories).
7. See Richard Abel, American Lawyers 112–18 (1989). For the history of the legal profession’s efforts to construct monopoly barriers to law practice, see generally id.
8. See sources cited supra note 1.
10. See infra Part III.
11. See supra notes 5–6 and accompanying text.
12. See infra Part IV.
13. See infra Part II.
the legal profession’s monopoly more broadly; today, the rise in JD Advantage jobs reflects the partial collapse of the monopoly barriers that traditionally separated legal practice from nonlegal work. As more jobs arise at the intersections between law and other disciplines, the Bar has been unable to extend its monopoly into these new territories. This failure, understandably enough, causes anxiety in those attached to lawyers’ traditional privileges. But the appropriate response is not to denounce these jobs as somehow “less than” traditional lawyer jobs. Rather than bemoaning or resisting change and its results, those who seek to shape the course of the legal profession and legal education should react proactively with as much wisdom as possible.

To advance my argument, this Article will proceed in three parts. Part II provides background on how major changes in politics, economics, social organization, and conceptions of law produce change in the work lawyers do. Section II.A examines earlier eras and Section II.B situates the current changes taking place in the legal profession in this history of transformation. Section II.C examines current anxiety about JD Advantage jobs and Section II.D locates this anxiety in the forces currently producing change in how law work is organized.

Part III then undertakes a detailed empirical assessment of the publicly available data on the growth in JD Advantage employment for new law graduates. This investigation produces surprising results, including the fact, demonstrated in Section III.A, that JD Advantage jobs outpace Bar Passage Required jobs in salaries in all but one employment sector. Section III.B looks at the very incomplete data about job satisfaction in JD Advantage jobs; much more needs to be known to reach reliable conclusions here.

Finally, Part IV suggests some of the ways in which legal educators should respond to the growth in JD Advantage jobs for new law graduates, approaching this question as part of the larger issue of how legal education should respond to rapid ongoing transformations in law and legal practice. Part V offers a summary and conclusions.

II. JD ADVANTAGE JOBS IN HISTORICAL PERSPECTIVE

As legal historians have traced, the work U.S. lawyers do has undergone many transformations over time. It thus should come as no surprise that

14. See infra Section II.A.
15. See infra Section II.B.
16. See, e.g., Abel, supra note 7, at 112–18.
the legal profession is now again undergoing—and most likely will continue to undergo at an accelerating rate—still more transformation in the face of technological innovation, globalization, and other forces.

A. Transformations from the Colonial Period to the Recent Past

Leading historians of the U.S. legal profession have offered many accounts of change in the work lawyers do. A few notable examples from various historical periods can suffice to demonstrate this fact of recurring change.

1. The Revolutionary Period

Transformation in the U.S. legal profession began even before the country did. Historians Peter and William James Hoffer document how lawyers created a new field of law practice during the American Revolution.¹⁷ For the revolutionaries, that new work focused on theorizing the legal justifications for opposing “a tyrannous monarchy”; for the loyalists on the other side, the work involved defending the Crown.¹⁸ The Hoffers argue that lawyers’ new work in the Revolutionary period was to create “a public discourse, a republican language of the meaning of law and rights and constitutions in public forums.”¹⁹

Lawyers in the Revolutionary period and its aftermath not only invented a new kind of legal work in the public sphere, they also found new work in the field of private economic relations. Colonial legal historian Professor Sally Hadden investigates how lawyers developed new forms of commercial law practice after the Revolutionary War.²⁰ Scrutinizing detailed records from one South Carolina law partnership, Hadden shows how these lawyers focused on developing a new field of debt law after many individuals found themselves deeply in debt after the War with no hope for making repayment while creditors sought means of recovering against them.²¹

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¹⁸. Id. at vii.
¹⁹. Id. at 14.
²¹. Id. at 90–91 (tracing the growth of one fledgling law partnership in South Carolina that focused on debt collection cases). By carefully studying these law partners’ meticulous accounting books, Hadden further shows that sales of slaves kept the law firm afloat during the frequent years in which its expenses outweighed its revenues. See id. at 97.
2. The Nineteenth Century

Many more transformations in American law practices occurred over the nineteenth century. As Lawrence Friedman describes, the post-Revolutionary period saw a rapid growth in the number of lawyers in the United States, signifying growing opportunities for law practice; the last half of the century saw “an even greater increase.”22 These increases reflected the “nimble” nature of the profession, which proved adept at finding new types of work.23 Growth in the national economy generated many needs in the business sphere.24 In the United States, “the lawyers proved able to do it.”25 As Friedman points out, this movement of lawyers into business affairs was far from inevitable.26 In Japan, in contrast, lawyers did not become more important and numerous as business grew.27

Moreover, as Morton Horwitz notes, U.S. lawyers sometimes grew their work by converting into legal work processes that had traditionally existed outside the law, such as commercial arbitration between mercantile interests.28 Lawyers began to convince clients to take their commercial disputes to courts rather than leaving them to businesses to resolve among themselves.29

The U.S. Civil War and Reconstruction saw lawyers again assume new types of leadership roles, assisting in renegotiating constitutional arrangements.30 Peter Hoffer shows how lawyers’ work in this period not only filled courts but also involved creating “[e]xecutive orders, treatises, elections debates, even journal entries and letters.”31 Lawyers led the debate between old ideas about a states’ rights-based constitutional order and a new constitutional order grounded in national guarantees of civil rights and equality.32 In an epilogue, Hoffer suggests that lawyers are involved

23. Id.
24. Id.
25. Id.
26. Id.
27. Id.
29. See id. at 159.
30. See Peter Charles Hoffer, Uncivil Warriors: The Lawyers’ Civil War 4 (2018) (arguing that the Civil War was a war “by lawyers, of lawyers, and in the end, for lawyers,” which left behind a country that “bore an entirely new constitutional face”).
31. Id. at 2–3.
32. See id. at 180–81.
in analogous work in the present period in framing debates about the balance between civil rights and national security.  

Later in the nineteenth century, the legal work of elite lawyers transformed in still other ways. The rise of large corporations such as railroads supported law practices made up of specialists in a variety of fields, including litigation, tax, and business law; elite lawyers’ work thus became more specialized.  

As Robert Gordon explains, by the end of the nineteenth century, elite law practice had fundamentally transformed, changing from small firms and practitioners addressing local problems of the gentry to larger firms reflecting an alliance between the elite legal profession and large commercial interests.  

According to Friedman, the center of work for the most elite lawyers moved from courtrooms to Wall Street; now Wall Street lawyers rarely spoke to judges, “except [perhaps] socially.” And lawyers continued to prosper in competition with nonlawyers for business such as debt collection; again, the “profession was exceedingly nimble at finding new kinds of work and new ways to do it.” After the Civil War, elite lawyers developed still larger firms to address the correspondingly larger and more complex legal problems of large businesses spanning multiple jurisdictions. As Friedman puts it, by the end of the nineteenth century, the “corporation lawyer, on Wall Street and its sister streets in other cities” became “a dramatic new figure at the bar.” These jobs, as Gordon points out, did not involve traditional counseling and litigation. Instead, lawyers worked “as brokers and fixers,” connecting entrepreneurs with sources of capital. They also worked on law reform in order to redesign the legal structure to benefit these new business enterprises.  

Throughout the nineteenth century, as during the Revolutionary period, the lawyer-politician model continued to develop. Indeed, this work constitutes one of the oldest types of JD Advantage jobs, although not frequently recognized as such. Not only in the West but across the country, lawyers served in elected and appointed positions in local, state, and national

33.  See id. at 183.  
35.  Id. at 92–93; see also Horwitz, supra note 28, at 140–42, 144–45.  
36.  Friedman, supra note 22, at 483.  
37.  Id. at 484.  
38.  See id.  
39.  Id.  
40.  See Gordon, supra note 34, at 94.  
41.  Id.  
42.  See id. at 95–96 ("Lawyers played a critical part in both designing and staffing such institutional arrangements.").
government, using their skills to obtain what they saw as appealing opportunities outside the realm of law practice.\textsuperscript{43} Lawyers constructed new legal systems for Western states, offering themselves as possessing the best skill set for these tasks.\textsuperscript{44} As Friedman explains, “[i]t was not that public office required legal skill; rather, the lawyers were skillful at getting and holding these offices.”\textsuperscript{45} Similarly, as Deborah Rhode and others have pointed out, lawyers’ skills remain especially useful in a broad range of leadership positions to this day.\textsuperscript{46}

3. The Rise of the Administrative State

Toward the turn of the twentieth century, still other new JD Advantage jobs related to government grew along with the rise of the administrative state. Starting slowly in the last decades of the nineteenth century and continuing through the New Deal and beyond, the growth of the administrative state brought numerous new state and federal agencies into being.\textsuperscript{47} This development in turn created new jobs that required nontraditional but fundamentally law-related skills.\textsuperscript{48} Legions of professional policy analysts mediated between government demands and the needs of regulated entities, carrying out such tasks as drafting legislation and regulations, translating across various disciplinary knowledge bases and between politics and law, and negotiating with regulated entities.\textsuperscript{49} Many of these tasks went far beyond traditional law practice.

During the New Deal, Harvard law professor Felix Frankfurter and others began to cultivate generations of bright young law students to staff newly created agencies.\textsuperscript{50} Much of what these lawyers did was not traditional

\begin{itemize}
  \item \textsuperscript{43} See id. at 76.
  \item \textsuperscript{44} See Friedman, supra note 22, at 493. On the role of law and lawyers in Western U.S. history, see generally John Phillip Reid, Introduction: The Layers of Western Legal History, in LAW IN THE WESTERN UNITED STATES 3 (Gordon Morris Bakken ed., 2000).
  \item \textsuperscript{45} Friedman, supra note 22, at 495.
  \item \textsuperscript{46} See Deborah L. Rhode, Lawyers As Leaders I (2010) (discussing lawyers’ frequent leadership roles).
  \item \textsuperscript{47} See G. Edward White, Revisiting the New Deal Legal Generation, 18 Cap. U. L. Rev. 37, 41–42 (1989).
  \item \textsuperscript{48} See id.
  \item \textsuperscript{49} Id. at 43.
  \item \textsuperscript{50} Id. at 41–42. White points out that Thomas Corcoran was another active leader of this “placement network[ ]” at Harvard, and that Yale and Columbia law schools had similar ones. Id. For an examination of many such New Deal lawyers, see generally Peter H. Irons, The New Deal Lawyers (1982).
\end{itemize}
Bar Passage Required work. Not only did they draft legislation and write rules and regulations for federal agencies, they also pushed law into new realms by formulating ambitious new social policies, such as those designed to use the federal government’s reach and power to provide effective relief to the poor.\textsuperscript{51} Lawyers in New Deal jobs often primarily provided what amounted to political advice to the Executive Branch and Congress, strategizing about how best to implement political and electoral mandates rather than legal requirements.\textsuperscript{52}

G. Edward White deconstructs the political and legal consciousness of this generation of law-trained agency bureaucrats. As White points out, these law school graduates’ “educational status and achievements presented them with a wide number of options,” but their “political consciousness impelled them to seek positions in the public sector.”\textsuperscript{53} Despite the lower remuneration and nontraditional nature of these public service jobs, elite new law graduates were drawn to them because they offered the opportunity to “occupy[] positions of responsibility early in their careers” and to carry out large-scale experiments in regulating markets and redistributing wealth in ways “unique in the history of their profession in America.”\textsuperscript{54} So too, it bears pointing out, are many new law graduates of today attracted to nontraditional positions that offer opportunities to experiment with new ways of organizing modern life through the technological and other innovations of the contemporary era.

In their early careers, the lawyers White studied concentrated on recreating themselves as “a new class of professionals . . . whose clients were the public at large.”\textsuperscript{55} The new roles they cast for themselves were not to serve as advocates for particular interests, as traditional lawyers did, but instead to serve as “enlightened policymakers,” acting as the architects of a new political order based on an “increased federal regulatory apparatus, . . . federal social welfare legislation, [and] internationalism and humanitarianism in foreign affairs.”\textsuperscript{56} These lawyers, in other words, invented new ways of

\textsuperscript{51} See id. at 39, 41–43. For a discussion of one such lawyer and law professor who drafted the Social Security Act of 1935, see Susan D. Carle, \textit{The Way to Barbara Armstrong, First Tenure-Track Law Professor in an Accredited U.S. Law School, in Gender and Careers in the Legal Academy} (Ulrike Schultz et al. eds., forthcoming 2021).

\textsuperscript{52} See White, supra note 47, at 43 (listing these tasks as central to the work in which Frankfurter’s new law school graduates engaged).

\textsuperscript{53} Id. at 39.

\textsuperscript{54} Id. One career development expert has remarked to me that this is “exactly how students now talk about JD Advantage jobs.” E-mail from Ann Chernicoff, Senior Assistant Dean, Wash. Coll. of Law, to Susan D. Carle, Vice Dean, Wash. Coll. of Law (Jan. 15, 2020) (on file with author).

\textsuperscript{55} White, supra note 47, at 43.

\textsuperscript{56} Id.
putting their legal skills to work in response to changes in the structure of
government and society.

After leaving public service later in their careers, many of these lawyers
remained in Washington, D.C.\textsuperscript{57} There they again invented new forms of
law practice, building firms focused on generating and exploiting political
influence.\textsuperscript{58} As White explores, they built these practices in ways that
sometimes crossed ethical boundaries as they traded, not so much on their
legal know-how, but on the personal and political connections they had
made as public officials.\textsuperscript{59} Here again, lawyers invented a new type of
legal work: the revolving door between government service and private practice
focused on lobbying and government affairs.\textsuperscript{60} This generation of lawyers,
White explains, “created a plethora of new opportunities” that were
“undeniably distinctive” and related to “new conceptions of the functions
lawyers could perform.”\textsuperscript{61}

Ronen Shamir also studies the history of D.C. lawyers’ lobbying work
on behalf of regulated entities.\textsuperscript{62} As he explains, some of this work involved
litigation challenges to the lawfulness of government regulation, but much
of it short-circuited courts and even administrative tribunals to advance
clients’ interests by crafting testimony or appearing before Congressional
hearings.\textsuperscript{63} Shamir recounts how conservative elements in the Bar approached
such change in lawyers’ professional identities with “trepidation,” while
legal academics tended to be more open to new ways of looking at what
legally trained professionals could accomplish, having the benefit of
a vantage point in which their own jobs were not threatened by changes
in the structure of the legal system.\textsuperscript{64}

Again, much of what these lawyers did was what we would today
characterize as JD Advantage work that laypersons could also do. As
Shamir captures, the dramatic “social and economic reforms of the New Deal”
opened what he refers to—invoking the language of post-structuralist

\footnotesize{57. See, e.g., \textit{id.} at 49.}
\footnotesize{58. See \textit{id.} at 49–50.}
\footnotesize{59. See \textit{id.}}
\footnotesize{60. See \textit{id.} at 52.}
\footnotesize{61. \textit{Id.}}
\footnotesize{62. See Ronen Shamir, \textit{Professionalism and Monopoly of Expertise: Lawyers and
Administrative Law, 1933–1937}, 27 L. & Soc’y Rev. 361, 364 (1993); see also RONEN
SHAMIR, MANAGING LEGAL UNCERTAINTY: ELITE LAWYERS IN THE NEW DEAL, at ix–5
(1995) (presenting a more extended discussion of this study).}
\footnotesize{63. Shamir, supra note 62, at 364; see also \textit{id.} at 37.}
\footnotesize{64. See \textit{id.} at 386–87.}
Jacques Derrida—as “an ‘anxiety-ridden moment of suspense.’”

Similarly, as I have argued above, we are again suspended in an “anxiety-ridden moment,” reflected in some observers’ negative attitude toward JD Advantage employment.

The transformations in lawyers’ work that accompanied the rise of the administrative state were not exclusively a Washington, D.C.-centered phenomenon. The rise of administrative law changed how lawyers practiced in all the states. Some forms of legal practice transformed, not by being moved into law, as in the case of mercantile disputes in the early nineteenth century, but in terms of where within the legal system disputes would be resolved. In the early twentieth century, for example, states began to enact workers’ compensation laws. These laws moved negligence cases involving worker injuries from the common law-based tort system into administrative tribunals, where they often could be handled by employer and worker representatives who were not lawyers. But lawyers fought back against losing work. Shamir notes that introducing layers of legalism through the Administrative Procedure Act of 1946 helped lawyers wrest more control over administrative processes, thus creating more work for lawyers.

Transformations in the political landscape and notions about what problems law should address thus have moved areas of work for lawyers both into and out of law in different legal periods, as well as between forums within the legal system. The prestige assigned to various types of legal work varied over time as well, usually as the attractiveness of particular practice fields grew or waned. One example is the invention of a new highly prestigious, highly paid field of mergers and acquisitions (M&A) work. Writer Lincoln Caplan shows how this field, previously considered sleepy and low status, became highly valued after the leaders of the “outsider,” Jewish law firm of Skadden Arps embraced M&A work despite its being shunned by elite—mostly Protestant—practitioners in the mid-1900s. Once a small law firm, Skadden transformed itself into a powerhouse by finding ways to extract high legal fees from clients engaged in or resisting

66. See id. at 365–66.
68. See HORWITZ, supra note 28, at 208.
70. See SHAMIR, supra note 62, at 113.
corporate takeovers. Once Skadden identified and exploited this new field, other elite law firms sought to follow suit, upending a previous consensus that top law firms should avoid M&A work.

4. The Latter Twentieth Century

In yet another example, the U.S. Supreme Court created room for new areas of high prestige law practice when it announced in Carolene Products footnote four a policy of encouraging legal activism on civil and political rights matters, on the one hand, while leaving to far more limited judicial scrutiny matters of economic regulation, on the other hand. In an earlier era, intrepid African-American lawyers handled most racial justice legal work while also handling other matters through law practices at which they barely made a living. Thus Tomiko Brown Nagin’s and many others’ work explores lawyers’ and others’ activism on racial justice issues in the mid-twentieth century. The later twenty-first century saw the growth of new specialized areas of law practice in civil and political rights as well as, in time, other public interest matters as well. While never high paying, this practice sector likewise grew in prestige as major matters of legal and social policy began to be framed through lawyers’ innovative experiments in structural reform litigation and other social change techniques using law in creative ways.

72. Id. at 52, 70.
73. Id.
78. See Scott Cummings & Deborah L. Rhode, Public Interest Litigation: Insights from Theory and Practice, 36 FORDHAM URB. L.J. 603, 604–05 (2009). The leading scholar of this phenomenon is Scott Cummings. See Scott Cummings, GOOGLE SCHOLAR, https://scholar.google.com/citations?user=Ekt7fisAAAJ&hl=en [https://perma.cc/U3XY-LR4Z]; see, e.g., Cummings & Rhode, supra, at 605, 620 (“[L]itigation, although a necessary strategy of social change, is never sufficient; it cannot effectively work in isolation from other mobilization efforts.”).
B. Transformations in the Contemporary Era

The transformation of legal practice in the contemporary era represents yet another instance of change in the nature of the work law-trained professionals do. Earlier eras saw new matters brought into the reach of law, while other matters moved between legal forums and still other areas of practice moved up—or down—in prestige.79 Similar changes continue today.80 A group of Stanford researchers documented the latter phenomenon in an illuminating preliminary study about how the rise of the Silicon Valley technology industry led the formerly rather sleepy general practice law firms in Palo Alto, California, to transform themselves into a new kind of hard-driving practice providing the specific lawyering style high-tech firms prefer.81 This model focuses on nontraditional law-related services such as facilitating connections between promising start-ups and venture capitalists.82 Other work involves problem-solving in the mode of lawyers as “legal engineers,” whose jobs are not to counsel on what the law prohibits, but instead to figure out how a task or principle can be achieved.83 Silicon Valley clients reportedly view traditional New York and Boston lawyers as lacking facility in this “legal engineering” model of problem-solving and thus stay with local firms.84 These preliminary findings offer yet another example of lawyers reinventing what they bring to clients to meet new demands.

Today, not surprisingly, new demands are leading to new ideas about how law-trained professionals should use their skills. Stephanie Dangel and Michael J. Madison, for example, call on law schools to train lawyers as social entrepreneurs and innovators.85 Social movement lawyers and others call on legal regulators to loosen rules that restrict lawyers from creative experimentation in how lawyers practice.86 A broad movement has called

79. See supra Section II.A.
81. Id. at 556–67.
82. Id. at 562–63.
83. Id. at 562.
84. Id.
for loosening restrictions on unauthorized practice of law rules.\textsuperscript{87} Even with unauthorized practice restrictions still in place, new types of legal information industries are developing innovative ways of getting detailed legal information to consumers at lower cost than lawyers can provide.\textsuperscript{88} In these and a host of other ways, the legal landscape is changing. It thus should come as no surprise that the types of jobs available and appealing to new law graduates are changing too.

What in part distinguishes today’s transformations from those in the past, as already noted above, is the disintegration of the lines between what is and is not law practice.\textsuperscript{89} The monopolistic barriers to entry that previously fortified these lines\textsuperscript{90} no longer do so to the same extent today. Instead, legal work that previously required a bar license now skates outside this monopolistic fortress of law practice.\textsuperscript{91}

The bitter debate about instituting more permissive rules for multidisciplinary practice (MDP) in the United States is yet another reflection of these developments.\textsuperscript{92} Now permitted in varying forms in common


\textsuperscript{89} See supra note 14–17 and accompanying text.

\textsuperscript{90} See generally ABEL, supra note 7, at 112–18 (analyzing legal profession regulation as a form of monopoly protection for the legal services industry).

\textsuperscript{91} See, e.g., LegalZoo, https://www.legalzoom.com [https://perma.cc/7ADF-GSHD]. LegalZoom, for example, provides detailed legal information and forms tailored to client circumstances. See, e.g., Medlock v. Legalzoom.com, Inc., No. 2012-208067, 2013 S.C. LEXIS 362, at *26–27 (S.C. Mar. 11, 2014) (adopting the findings of a special referee that LegalZoom’s document preparation services are not unauthorized practice of law); Legalzoom.com, Inc. v. N.C. State Bar, No. 10-CVS-15111, 2015 NCBC LEXIS 100, at *1–3 (N.C. Sup. Ct. Oct. 22, 2015) (entering a consent judgment settling a lawsuit that had alleged that LegalZoom engaged in unauthorized practice of law; the judgment provided that Legal Zoom would vet its documents with lawyers licensed in North Carolina and make it clear to users its forms are not a substitute for an in-person attorney).

\textsuperscript{92} See, e.g., NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION 85 (6th ed. 2017); see also LAURA SNYDER, MODERNIZING LEGAL SERVICES IN COMMON LAW COUNTRIES: WILL THE U.S. BE LEFT BEHIND? at xxiii, 241, 272 (2017) (providing a blueprint for how the United States can take inspiration from its “common law sisters” to breathe new life into its regulatory environment for legal services and concluding modernization will require more—and better—regulation that is financed publicly through “equitable, progressive revenue sources”).

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law-based countries such as the United Kingdom\textsuperscript{93} and Australia,\textsuperscript{94} multidisciplinary practice would allow lawyers in the United States to share fees with nonlawyers and practice in entities owned in whole or in part by nonlawyers, both activities currently prohibited under ABA Model Rule 5.4.\textsuperscript{95} In 2000, a MDP proposal met defeat in the ABA House of Delegates under the reasoning that, in law practice, giving control over or sharing legal fees with nonlawyers is “inconsistent with the core values of the legal profession,” and the more recent ABA 2020 initiative to update the ABA Model Rules to take account of changes in the legal profession passed on revisiting this decision.\textsuperscript{96}

\textsuperscript{93} See, e.g., Legal Services Act 2007, c. 29, §§ 71–111 (Eng.). In the United Kingdom, the Legal Services Act of 2007 allowed lawyers in England and Wales to practice in alternative business structure firms, which include multidisciplinary practice (MDPs). See id.; Ted Schneyer, Thoughts on the Compatibility of Recent U.K. and Australian Reforms with U.S. Traditions in Regulating Law Practice, 2009 J. PROF. LAW. 13, 15 (2009) (“Under the U.K.’s Legal Services Act of 2007, lawyers in England and Wales will soon be able to practice in firms with ‘alternative business structures’ (ABSs), including MDPs, law firms in which lawyers and other personnel who assist in providing legal services are principals, law firms with outside equity investors, and law firms wholly owned by other businesses.”). This means that lawyers in the United Kingdom, unlike in the United States, can work for firms where the owners are not all lawyers. Schneyer, supra, at 15.

\textsuperscript{94} See id. at 30–31. Australia allows for MDPs and public offerings of ownership interests in law firms. See id. This 2002 change in the Australia National Model Laws permitted these alternative structures and encouraged local jurisdictions to follow this example. See Roberta S. Karmel, Will Law Firms Go Public?, 35 U. PA. J. INT’L L. 487, 488 (2013); see also Nick Robinson, When Lawyers Don’t Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism, 29 GEO. J. LEGAL ETHICS 1, 5 (2016); Paul D. Paton, Multidisciplinary Practice Redux: Globalization, Core Values, and Reviving the MDP Debate in America, 78 FORDHAM L. REV. 2193, 2194 (2010). The model laws’ guidance led New South Wales, the Northern Territory, Queensland, and Western Australia to loosen their legal regulations to allow for some forms of incorporated legal practices and MDPs, in part under the rationale that such deregulation of law practice would allow Australian firms to better compete against international firms in Asia. See Paton, supra, at 2241–42.

\textsuperscript{95} MODEL RULES OF PROF’L CONDUCT r. 5.4 (AM. BAR ASS’N 1983).

Observers are now carefully studying the regulatory changes the United Kingdom and Australia made, and some commentators have suggested that U.S. law firms have lost business to the Magic Circle firms in England and others because high-end clients often prefer one-stop shopping for a range of professional services. Further experience over time will be necessary to reach definitive conclusions; the basic point is simply that clients and lawyers alike see many opportunities for experimentation in how to provide law-related services. Current tradition-bound regulatory approaches have sought to block some such experimentation but have been rather unsuccessful in doing so.

Regardless of what side one takes on the MDP debate—in relation to which many compelling arguments exist both pro and con—one point


98. See, e.g., Jonathan Derbyshire, Big Four Circle the Legal Profession, FIN. TIMES (Nov. 14, 2018), https://www.ft.com/content/9b1fdab2-cd3c-11e8-8d0b-a6539b949662 [https://perma.cc/R959-UA24] (reporting that permitting MDPs in England has led Big Four Accounting Firms to hire thousands of lawyers). Derbyshire reports that these accounting firms excel at offering client services as multi-disciplinary units working in “tax, finance, consulting, strategy, information technology and project management.” Id. Moreover, the accounting firms have been able to add legal services at relatively low cost to them, in part because they are on the cutting edge of technological advancements that allow them to work with low cost online legal service providers. Id.

99. See J. Matthew Pfeiffer, Protecting Our Profession: The Case Against Fee-Splitting, Dupage County B. Ass’n Brief, May 2019, at 5, 5, 46 (arguing against MDPs because “[w]atering down the ethical rules governing our profession will lead to our demise”), with Howard J. Berlin et al., Pro-MDP Subcommittee, Facing the Inevitability, Rapidity, and Dynamics of Change, Fla. B.J., March 2000, at 12, 14 (arguing that MDPs are inevitable because “[t]imes have changed, and so has the delivery of legal services”). For a more in depth analysis of the pros and cons of MDPs, see generally Mary C. Daly, Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal
is clear: global technological, economic, social, and political forces are pressuring the legal profession toward change. With change comes anxiety, as shown in the negative reactions to the modest growth in JD Advantage jobs for new graduates, as I discuss further below.

C. JD Advantage Jobs as a Site of Cultural Anxiety Today

As already stated, the thesis of this Article is that the anxiety about the growth in JD Advantage jobs for new law graduates reflects anxiety about creative destruction in today’s legal profession. JD Advantage jobs represent the partial disintegration of the monopolistic barriers that previously preserved “law work” exclusively for lawyers. Work that the legal profession previously claimed as its exclusive preserve now sometimes falls outside the scope of work requiring bar licensure. A very small sampling of new JD Advantage jobs includes such position titles as Regulatory Specialist, Legal Problem Manager, E-Discovery Specialist, Governance Specialist, Compliance Manager, Risk Manager, and Legal Due Diligence Specialist. All of these are clearly law-related jobs, but are not classified as requiring bar licensure.

The history of the JD Advantage job classification further reflects the relatively recent anxiety that has developed around this category. The National Association for Law Placement (NALP) did not systematically collect statistics about JD Advantage jobs until recent decades, although such jobs have certainly existed for a very long time, as pointed out in the narrative in Part II supra as well as the advertisements from the 1970s reproduced below.

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101. See id. at 263, 281.
102. See supra notes 14–17 and accompanying text.
103. See supra notes 89–101 and accompanying text.
Starting in 2001, NALP began collecting statistics from all employment sectors on what it at that time referred to as JD Preferred jobs—defined as positions in “which the employer sought an individual with a JD, and perhaps even required a JD, or for which the JD provided a demonstrable advantage in obtaining or performing the job, but which are jobs that do not require bar passage, an active law license, or involve practicing law.”106

This category differed from NALP’s “[o]ther [p]rofessional [j]ob” and “[n]on-professional [j]ob” categorizations in that in those positions a JD would confer no benefit in the hiring selection process or the essential functions of the position.107 In contrast, for JD Preferred jobs, holding a JD confers a benefit in hiring, selection, or doing the positions’ essential functions.108

In 2011, NALP changed its terminology somewhat by adopting the term JD Advantage jobs.109 It did so at the urging of the ABA, which was already using this term.110 Using the same definition meant that law schools could report their employment outcomes using the same criteria to both the ABA and NALP. The ABA defines JD Advantage jobs as follows:

**Employed – JD Advantage.** A position in this category is one for which the employer sought an individual with a JD, and perhaps even required a JD, or for which the JD provided a demonstrable advantage in obtaining or performing the job, but itself does not require bar passage, an active law license, or involve practicing law. Examples of positions for which a JD is an advantage include a corporate contracts administrator, alternative dispute resolution specialist, government regulatory analyst, FBI agent, and accountant. Also included might be jobs in personnel or human resources, jobs with investment banks, jobs with consulting firms, jobs doing compliance work for business and industry, jobs in law firm professional development, and jobs in law school career services offices, admissions offices, or other law school administrative offices. Doctors or nurses who plan to work in a litigation, insurance, or risk management setting, or as expert witnesses, would fall into this category, as would journalists and teachers (in a higher education setting) of law and law-related topics. It is an indicator that a position does not fall into this category if a JD is uncommon among persons holding such a position.111

The ABA has continued to use this definition, with minor modifications, in its collection of employment statistical data ever since.112

106. Id.
107. See id.
108. Id.
109. Id.
110. See id.
Use of the definition quoted above to determine which law school graduates have obtained jobs that are full-time and long-term—whether Bar Passage Required or JD Advantage—has exacerbated the current anxiety about definitions. Some commentators have argued—wrongly in my view—that the definition is too expansive. Bernard Burk, for example, has argued that the category of jobs that count for purposes of measuring successful employment outcomes for law school graduates should exclude anyone who could get the job in question without a law degree, reasoning if one could do the job without having a law degree, then going to law school as a path to getting that job is not rational. I respectfully disagree. Even if new law graduates could obtain their jobs without going to law school, it may still be entirely rational for them to go to law school to learn the information and skills the law degree provides. It is easy to forget that many degrees are not essential for particular jobs; almost all master’s degrees, including the MBA degree, are examples. So too for the high school civics and government teachers Professor Burk uses as examples of unsuccessful law school employment outcomes; surely these are positions legal study can greatly enhance, much to the greater public interest. Moreover, the JD Advantage job classification excludes some jobs for which holding a JD nevertheless confers an employment advantage, including high school teachers; those jobs belong in the category of “Other Professional” jobs, which NALP defines as “one that requires professional skills or training, but in which a JD is neither required nor particularly applicable, such as teacher, business manager, doctor, etc.”

Interacting with law school alumni has left me with the impression that law school graduates, over the course of their careers, tend to migrate out of private practice and other Bar Passage Required jobs and into JD Advantage and other professional jobs, especially in business. These impressions find confirmation in the findings of the immensely important


114. See id. at 555, 607.
115. See id. at 555 n.28. Of course, these positions are included under the current ABA/NALP definition of an ABA Advantage job only if having the law degree helped the law graduate get them. See supra note 111 and accompanying text.
After the JD studies that the NALP Foundation has cosponsored with the American Bar Foundation and other supporters over the past two decades.117 Those studies longitudinally track a carefully sampled group of law school graduates from law schools across the selectivity spectrum who passed bar exams in 2000.118 Three interviews track this cohort’s professional lives over a period of more than a dozen years.119 Together, three surveys, completed at three, seven, and twelve years out of law school, reveal fascinating insights on many fronts, including movement out of law practice over time.120

The first study captures class of 2000 bar passage graduates two to three years into their careers.121 These lawyers enjoyed a 97% employment rate, with 91% practicing law.122 In this first wave, the researchers found that “9% of new lawyers were working in business settings (compared to 8% of all attorneys)” with about “a third [of those] doing primarily nonlegal work.”123 In other words, quite a miniscule percentage of these relatively new law graduates were working in jobs that did not involve law practice, and under 10% were working in business settings.

By the time this study cohort had reached roughly seven years out of law school, the distribution of jobs had altered substantially. As the researchers report, “[o]ne of the most dramatic changes over time has been the substantial shifting of lawyers out of private law firm practice,” a “movement . . . paralleled by a dramatic influx of lawyers into the business sector and a modest influx into nonprofits and education.”124 Of those moving into nonprofits and education, “almost one third of those working in public interest are not practicing law, while over two-thirds of those working in nonprofits/education are not practicing law.”125 In the business sector, where now 19% worked—more than double the percent from five years previously—

118. Id. at 13, 14.
119. See id. at 13.
120. See id.
121. Id. (explaining that the study’s data comes from questionnaires administered to approximately 5,000 lawyers two to three years into their careers).
123. AFTER THE JD I, supra note 117, at 26. Unfortunately, the After the JD studies do not use the JD Advantage/Bar Passage Required categories so it is not possible to map their data onto the NALP employment survey data, but some insights can still be gained, as I will discuss above. See generally id.
124. AFTER THE JD II, supra note 122, at 24.
125. Id. at 26.
a slim majority were working in in-house counsel positions while the remainder were not practicing law.\textsuperscript{126}

This rough distribution continued in the third and final \textit{After the JD} study, which provides a snapshot of the 2000 bar passage cohort twelve years into their careers, after the Great Recession of 2008–2009.\textsuperscript{127} In this “Wave 3” study, fewer than 40\% of women and 49\% of men remained in private practice, with the most frequent destination for those leaving private practice continuing to be the business sector.\textsuperscript{128} The percentage no longer practicing was now 20\%, just slightly above Wave 2 but much higher than the tiny percentage in the Wave 1 survey.\textsuperscript{129}

In the business sector, one third of respondents were no longer practicing, which is commensurate with the rate in the second wave of the \textit{After the JD} studies but much higher than the first wave.\textsuperscript{130} \textit{After the JD III} further reports that the practice locations of this group were distributed among Fortune 1000 firms (approximately 25\%), professional services firms (approximately 33\%), and other businesses or industry (40\%).\textsuperscript{131} In short, as the study authors report, “[o]ver the course of the three waves, we have seen a steady increase of lawyers indicating they had moved into business positions but were NOT practicing law.”\textsuperscript{132} Thus, movement out of law practice is an expected trajectory for a significant number of law school graduates over the course of their careers. The rapidly changing conditions in and around law appear to be producing a slow but generally steady trend toward more such JD Advantage jobs, entered into by a somewhat—but not dramatically—increasingly higher percentage of new law school graduates, as well as presumably more seasoned law school graduates.

In their earlier careers, the 2000 bar passage cohort faced conditions very different than those of the present day. This group graduated right before NALP began tracking JD Advantage—or, as then classified, JD Preferred

\textsuperscript{126.} See id. at 26–27.
\textsuperscript{128.} Id. at 17.
\textsuperscript{129.} Id. at 27.
\textsuperscript{130.} Compare \textit{AFTER THE JD I}, supra note 117, at 26 (reporting that about one-third of the 9\% of new lawyers working in business settings were doing primarily nonlegal work), \textit{with} \textit{AFTER THE JD II}, supra note 122, at 26 (reporting that about a third of lawyers in the business sector were doing primarily nonlegal work).
\textsuperscript{131.} \textit{AFTER THE JD III}, supra note 127, at 26.
\textsuperscript{132.} Id. at 65.
jobs. They encountered an easier time passing the bar, with a national average bar pass rate of 65% as opposed to 54% today. Based on figures for JD Preferred jobs in 2001, 6% of these new graduates entered JD Advantage jobs. By the time the Great Recession hit the legal profession in approximately 2009, the 2000 cohort was already fairly far along in their careers and generally reported faring well despite negative impacts on their employers. The Great Recession’s effects, along with other structural forces acting on the legal profession, hit later law school graduate cohorts far more severely.

D. What Accounts for the Changes in Today’s New Graduate Job Market

Explanations for the changing nature of job placements for new U.S. law graduates are complex and somewhat contested. The best evidence shows that shifts in the organization of the for-profit, law firm sector have been occurring for decades as a part of globalization and increasing competition for clients. These shifts have included some types of legal services moving overseas. These legal services have tended to involve law-related work, such as document management and work at the intersection of law and IT, as well as the kind of legal work that junior associates tended to perform in the past, such as supervising document production, handling privilege review, and performing basic legal research.

133. See Detailed Analysis of JD Advantage Jobs, supra note 105.
135. Detailed Analysis of JD Advantage Jobs, supra note 105.
136. AFTER THE JD III, supra note 127, at 86 (summarizing findings on the effect of the Great Recession on the 2000 cohort and concluding that “[t]hey did not face the hardship that entry-level lawyers reportedly experienced”).
137. Barton, supra note 1, at 32–41 (providing data and analysis on employment outcomes for new law graduates post Great Recession).
139. See William D. Henderson, The Globalization of the Legal Profession, 14 IND. J. GLOBAL LEGAL STUD. 1, 1–2 (2007) (describing shifts in the legal profession that are occurring as a result of globalization and other factors).
141. See id. (examining legal work outsourcing to India); see also Ian Connett, A Future of J.D. Advantage Jobs? Why the Future May Be Full of J.D. Advantage Jobs, ABOVE THE LAW (Nov. 18, 2018, 10:00 AM), https://abovethelaw.com/legal-innovation-
The 2008–2009 Great Recession accelerated these preexisting trends as well as producing further contraction in the larger law firm legal services market.\textsuperscript{142} The refusal of U.S. legal profession regulators to allow new types of legal services organization such as multidisciplinary practice and outside investor capitalization of law firms, as already discussed in Section II.B above, arguably contributed as well.\textsuperscript{143} New forms of practice organization may allow some English-speaking jurisdictions, such as England and Australia, to compete more effectively for law business, further increasing competitive pressures on traditional U.S. law firms.\textsuperscript{144}

To reduce costs and please clients by offering higher skilled lawyers, U.S. law firms today are less likely to hire brand-new lawyers whom they will have to train, and are instead more often seeking lawyers who have acquired basic practice skills in some other setting.\textsuperscript{145} Although the end of the Great Recession brought some relief to the U.S. legal employment market,\textsuperscript{146} this recovery has not yet fully restored the job market for entry level jobs in law firms to pre-2008 levels, despite what appears to be some slow and fragile progress on this front.\textsuperscript{147}

At the same time, economic pressures hit the public interest and government practice sectors as well. Sequestration and hiring freezes at agencies during...
both the Obama and Trump Administrations increased the squeeze in new law job opportunities at the federal level. \textsuperscript{148} While opposition to Trump Administration policies increased fundraising, and thus hiring, in the more left-leaning public interest sector, new employment in that sector has never been robust given lack of funds. \textsuperscript{149}

Less gloomily, the restructuring of the U.S. legal profession occurred in tandem with the creation of new jobs in nontraditional law-related areas, especially law and information technology, project management, cybercrime, national security, database management, e-discovery and the like. \textsuperscript{150} As labor economists would expect, this opening of new law-related fields, along with the shrinkage of traditional lawyer jobs in law firms, has led to a shift in new graduate placements into these new fields, many of which fall within the JD Advantage category. \textsuperscript{151} This shift is documented in the empirical evidence presented in Part III below. \textsuperscript{152}

Along with most law professors, I certainly wish for future growth in law firm jobs. My argument is not against law firm employment; my point is that the key issue in fairly assessing the growth in the JD Advantage new graduate jobs should be whether new graduates are getting good jobs they want, not necessarily Bar Passage Required jobs. Instead of denouncing growth in JD Advantage jobs as some observers of the legal profession do, we should do more to understand and study this trend. There is much more to know: For example, are these in fact good jobs in terms of professional satisfaction and opportunity for career growth? I consider this topic in more depth in Section III.D below.

At the outset, it is worth making the basic observation that, without doubt, many JD Advantage jobs are enormously fulfilling. One well-told narrative of a life trajectory that moved from success at the highest levels of elite large firm practice to the decision to move into a series of more personally fulfilling positions can be found in former First Lady Michelle Obama’s thoughtful biography. \textsuperscript{153} Her husband’s career trajectory provides

\begin{footnotes}
\item[149.] Cf. NALP, 2017 JOBS & JDs REPORT, supra note 116, at 55. In 2017, the median salary for Bar Passage Required jobs in the public interest sector was $50,000. See id.
\item[150.] See, e.g., HERMANN, supra note 104, at 19–21, 31.
\item[151.] See id.
\item[152.] See supra Figures 4, 5.
\item[153.] See MICHELLE OBAMA, BECOMING 134–35, 157 (2018) (describing these decisions and the reasons for them); see also VALERIE JARRETT, FINDING MY VOICE: WHEN THE PERFECT
another example, 154 as do the academic careers of this country’s many tenured law professors. So do the careers of many students I have known over my more than two decades of law teaching, who came to law school, even at the heyday of a robust law firm job market, with absolutely no interest in becoming traditional lawyers. I know students happy in FBI analyst—JD Advantage—jobs; one student followed her passion for international human rights work to become a child trafficking expert at the FBI; another specializes in cybercrime, his interest before coming into law school. I know dozens of students doing policy work on labor migration, human rights, criminal policy, police misconduct, and a host of other issues. Some of my law school’s most famous law graduates, such as the late Senator Robert Byrd of West Virginia, never intended or hoped to practice law,155 seeing law school as a stepping stone to political or business careers consistent with the long history of JD Advantage employment I discussed in Section II.A above.

Today, observers complain that too many new law school graduates enter jobs that do not involve practicing law.156 But in decades past, new graduates entered JD Advantage jobs without attracting much commentary.157 These jobs included lucrative ones such as investment banking and consulting, favorites for new graduates of the most elite schools.158 The recent cultural anxiety I have identified above perhaps is due in part to the uptick in students other than the super elite taking less traditional paths. But why should full-time, long-term JD Advantage jobs be excluded from the calculation of good law graduate employment outcomes, as Professor

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154. See David Garrow, Rising Star: The Making of Barack Obama 215–30 (2017) (recounting Obama’s years at the top of his Harvard Law School class and his return to Chicago to become a community organizer and then a legislator, first in the state legislature and then in the United States Senate).


156. See sources cited supra note 1 (identifying commentators who complain that too many new law school graduates enter jobs that are not JD Required).

157. See supra Section II.B.

158. See Lauren A. Rivera, Pedigree: How Elite Students Get Elite Jobs 17 (2015) (“[N]ewly minted JDs increasingly seek employment in banks and consulting firms as well as in large law firms.”).
Burk has argued? To be sure, all law students should graduate from law school capable of passing the bar; JD Advantage jobs should not serve as a substitute for bar readiness, as I argue in Part IV below. But whether all law students ideally should follow a traditional career path is a different question, and one that requires extensive analysis.

Observers’ concerns are well meaning. One legitimate concern relates to excessive law student debt. As law school tuitions have risen, causing average law student educational debt to grow alarmingly, observers have begun to scrutinize the return on investment of a law school education. Why, an observer might ask, should students be borrowing money to pursue an expensive degree for a career in a field in which that degree is not required? In this respect, law degrees are different from other “optional” degrees, such as the MBA, in that one can assume that the market calibrates the cost for such degrees to their value in the job market. In contrast, the sticker price for a JD degree is not subject to the same market forces because monopoly barriers force those wanting bar licenses into pursuing the JD degree at high cost and debt burden even if it may not be worth it in the collateral JD Advantage job market. Examining that concern calls for analyzing salaries in various JD Advantage job sectors, which I do below.

Another legitimate concern focuses on the connection between the growth in JD Advantage jobs and the unbundling of traditional law practice positions into less complex components. Whereas traditional law practice involved many tasks, including client counseling, legal advice, legal research, document management, appearances before legal tribunals, representation in litigation, compliance monitoring, and more, JD Advantage jobs often involve restructuring law work by taking tasks that do not require bar licensure, such as compliance monitoring or document management, and organizing them into positions separate from the work that only lawyers can do, such as giving legal advice

161. See, e.g., Michael Simkovic & Frank McIntyre, The Economic Value of a Law Degree, 43 J. LEGAL STUD. 249, 249–50 (2014) (examining the value of a legal education through a study comparing the average earnings of college graduates to law school graduates and concluding that the average value of a law degree over a lifetime is nearly $1 million).
162. See E-mail from Deborah L. Rhode, Dir. Ctr. on the Legal Profession & E.W. McFarland Professor of Law, Stanford Univ., to Susan D. Carle, Vice Dean, Wash. Coll. of Law (Mar. 29, 2020, 3:57 PM) (on file with author); see also DEBORAH L. RHODE, THE TROUBLE WITH LAWYERS 129–30 (2015) (describing problems of misfit between what lawyers do and the education they receive). My thanks to Deborah Rhode for making this important observation.
and appearing in court.163 Richard Susskind and others have documented this phenomenon, which has reduced the variety of tasks and overall complexity of the jobs that some new law graduates now do.164 However, the problem is not the existence of JD Advantage jobs per se but a far broader and more extensive commodification of law—just as other occupations previously underwent commodification and standardization in prior historical periods.165

The hypothesis I will test below is that there is no good reason for regulators and other observers to disparage nontraditional choices about post-graduate law jobs in a rapidly changing world, just as there was no reason to denigrate New Deal agency lawyers for their career choices in a changing world many generations ago. What matters to us as legal educators is whether new law graduates obtain job opportunities that are sufficiently remunerative and professionally and personally rewarding. Whether that is true about JD Advantage jobs today requires looking carefully at the available data, as I will do below.

III. JD ADVANTAGE JOBS TODAY: AN EMPIRICAL LOOK

A. Growth Trends in New Graduate Full-Time, Long-Term JD Advantage Jobs

In this section, I take a careful empirical look at publicly available NALP data on full-time, long-term JD Advantage and Bar Passage Required jobs today.166 The data show that the overall trend in the past decade has been toward more new law school graduates taking JD Advantage jobs, both in actual numbers and in percentages of overall reported jobs.167 Nonetheless,
the numbers of new law school graduates in JD Advantage jobs remain fairly small though rising: As shown in Figure Three below, in 2001, the number of new graduates in JD Advantage jobs was 2,058,168 at its highest, in 2014, this number more than tripled, rising to 6,228.169 In 2018—the latest data available at the time of this Article’s writing—the total number had decreased to 4,178,170 about double the number in 2001. Figure Three shows this trend over time using the data for raw numbers of jobs held by new JD graduates.171

FIGURE 3. COMPARISON OF NUMBERS OF BAR PASSAGE REQUIRED VERSUS JD ADVANTAGE JOBS HELD BY NEW LAW SCHOOL GRADUATES, 2001–2018


171. The data in Figure Three reflects total employment numbers, including both full- and part-time positions, as the 2001-2007 reports do not separately categorize these positions. See sources cited infra note 172.
from law schools in these years. The reason for this decline is that law schools had begun reducing the size of their student bodies in order to retain their selectivity despite fewer and less competitive applicants.173

B. Distribution of Full-Time, Long-Term New Graduate JD Advantage Jobs Across Employment Sectors

The data also present a good picture of the various employment sectors in which these JD Advantage jobs reside. Here is a pie chart showing the distribution of JD Advantage jobs across various employment sectors as aggregated for the past half-decade:

FIGURE 4. REPRESENTATION OF EMPLOYMENT SECTOR DISTRIBUTION OF JD ADVANTAGE JOBS AS AVERAGED FROM 2011 TO 2018174


174. See sources cited supra note 172.
Figure Four, showing the distribution of JD Advantage jobs as averaged over the period from 2011 to 2018, reflects a distribution across five categories: business, government, public interest, academic, and private practice. The business category makes up by far the largest percentage—almost half—of JD Advantage jobs (48%). This distribution has remained fairly stable during this time period, as shown by a comparison of Figures A and B in the Appendix, which present the same information for 2011 and 2018 respectively.

The significant difference between Bar Passage Required and JD Advantage jobs emerges from comparing employment sector distributions between these two types of employment. In contrast to Figure Four above, Figure Five shows the distribution for Bar Passage Required Jobs over the same period:

175. Although data regarding the business category exist for the period prior to 2011, they are not included in the above charts because no comparison data for other sectors were available. See sources cited supra note 172.

176. As shown in Appendix Figure A, essentially the same results are obtained in looking at raw numbers of jobs. See infra Figure A.

177. In 2017, NALP changed the title for this category to “Education,” see NALP, 2017 REPORT, supra note 172, at 1, but I have retained the academic title because that was the label attached to this category through all but the last year aggregated for this chart. See sources cited supra note 172.

178. See infra Figures A, B.
A comparison of Figures Four and Five shows that job distributions of Bar Passage Required versus JD Advantage jobs differs significantly. By far the most jobs in the JD Advantage job category are in business, as already noted (48%), while most Bar Passage Required jobs are in private practice (68%). These facts will be of significance in the analysis to follow. With respect to both the government and public interest sectors, the distributions are more similar between Bar Passage Required and JD Advantage jobs, perhaps because these sectors have a mix of litigation-related (Bar Passage Required) and policy-related (often JD Advantage) opportunities. I turn to both sectors below.

Two key critiques of the growth in JD Advantage jobs for new graduates focus on salaries and job satisfaction indicators. In Sections III.C and III.D below I examine each of those issues in turn.

179. See sources cited supra note 172.
C. Salaries in JD Advantage Jobs

1. JD Advantage Jobs in the Business Sector

An oft-repeated claim has been that JD Advantage jobs are a bad bet because they pay less than Bar Passage Required jobs.\textsuperscript{180} Close empirical analysis leads to a different conclusion. Disaggregating and unpacking the data produces surprising results. Indeed, for all but one employment sector, JD Advantage jobs on average pay more than Bar Passage Required jobs.\textsuperscript{181} As shown in Figure Six below, the mean new graduate salaries for full-time, long-term, JD Advantage jobs in the business sector are higher—and in many years, appreciably so—than mean salaries for Bar Passage Required jobs.

Similar results are shown in comparing 25th percentile, median, and 75th percentile salaries for new graduate, full-time, long-term JD Advantage jobs versus Bar Passage Required Jobs in the business sector, as shown in Figures C through E in the Appendix. These figures show that the 25th percentile salary for JD Advantage jobs in the business sector in 2017 was a respectable $62,000—identical to the 25th percentile for Bar Passage Required jobs—and the 75th percentile salary was almost $100,000, which was $10,000 higher than the 75th percentile for Bar Passage Required jobs in business. Obviously new law school graduates in the business sector are bringing skills to JD Advantage jobs for which employers are willing to pay handsomely. Moreover, as shown in Figures Seven, C, D, and E, salaries are rising rapidly for both JD Advantage and Bar Passage Required jobs in the business sector.


\textsuperscript{181} See infra Figure 6.
In the most recent two years for which data are available, 4,179 new law graduates took jobs in the business sector in 2017—for a total of 14% of all reported new law graduate jobs—and 49.7% of them were full-time JD Advantage jobs, while 26.5% were full-time Bar Passage Required jobs. In 2018, the business sector employed 3,877 new graduates—for a total of 12.9% of all reported new graduate jobs—and 52.1% were JD Advantage jobs, while 25.5% were Bar Passage Required Jobs. These data suggest that the business sector is more often using new law graduates in JD Advantage jobs than in Bar Passage Required jobs, reflecting the trend by businesses to “in source” more work rather than using outside resources.

182. See sources cited supra note 172.
183. See NALP, 2017 REPORT, supra note 172, at 1.
184. See NALP, 2018 REPORT, supra note 170, at 1.
counsel, thus transforming this work from “private practice” to “business.” Long-term trends in the face of the hoped-for recovery in Bar Passage Required employment market remain to be understood.

An obvious next question concerns what, specifically, these business-sector JD Advantage jobs entail. Unfortunately, here the NALP data are not sufficiently on point, because the NALP presents specific information on jobs in the business sector without further breaking apart this information into the JD Advantage versus Bar Passage Required categories. Nevertheless, job titles are fairly illuminating. Of the 4,179 new law graduate jobs in business and industry, 655, or 16%, were as in-house counsel, while 400, or 10%, were in compliance. Tax associates comprised 4% of business jobs, and fewer than 80 graduates held jobs as e-discovery attorneys or as land managers with energy companies. While these titles could be either Bar Passage Required or JD Advantage positions, it is likely that they are a mix of both, as shown by the aggregate data.

2. JD Advantage Jobs in the Government Sector

The surprising finding that starting salaries for JD Advantage jobs pay more than for Bar Passage Required jobs in certain employment sectors is not confined to business. The same phenomenon exists in the government sector, as shown in Figure Seven below, which illustrates comparative trends in mean salaries in the government sector.

185. See E-mail from Ann Chernicoff, supra note 54. My thanks to Ann Chernicoff for this insight. On the insourcing and transformation of legal work from legal practice to business, see generally NAT’L ASS’N FOR LAW PLACEMENT, REPORT OF THE EMERGING LEGAL JOBS WORK GROUP (2015); Dana A. Remus, Out of Practice: The Twenty-First-Century Legal Profession, 63 DUKE L.J. 1243, 1257–58 (2014) (discussing the increase of nontraditional legal work “at the boundary between law and business”).

186. NALP, 2017 JOBS & JDs REPORT, supra note 116, at 49.

187. Id.
As Figure Seven shows, throughout the period between 2011 and 2018, mean full-time, long-term JD Advantage new graduate salaries in the government sector were consistently and significantly higher than mean Bar Passage Required salaries. Moreover, as shown in Figure F in the Appendix, a similar trend can be seen in the government sector with respect to 75th percentile salaries—and, as shown in Appendix A, Figures G and H, respectively, in data for the median and 25th percentile salaries, JD Advantage salaries were less than $1,000 lower than Bar Passage Required jobs in 2017.189

In the past two years, these employment trends have remained fairly steady. In 2017, 3,614, or 12% of new graduates entered full-time, long-

188. See sources cited supra note 172.
189. See NALP, 2017 REPORT, supra note 172, at 1.
term government sector jobs and 17.5%, or approximately 630, of these were full-time JD Advantage jobs. In 2018, 3,579 new graduates found employment in the government sector, of which 18%, or approximately 644, were JD Advantage jobs. Moreover, it is important to note, NALP counts judicial clerkships in a separate category, so judicial clerkships do not account for these trends.

These data are surprising and raise questions about what higher-paying, entry-level JD Advantage jobs new graduates in government hold. As in the case of the business sector, publicly available NALP data do not separate specific types of jobs in government into the JD Advantage versus Bar Passage Required categories, so it is not possible to ascertain what specific jobs JD Advantage employees hold. Some hypotheses can be proposed. The number of new graduates in JD Advantage jobs in government is relatively small; those new graduates may have rare opportunities to move into higher level policy and political jobs based on connections forged prior to or during law school. Some of these new graduates may be returning to jobs they already held prior to or during law school, meaning they are not being paid entry level salaries. They also may be more likely to be situated in federal government jobs, which pay more than state and local government jobs. Finally, the results may be unreliable given the low numbers of new graduates who report entering JD Advantage jobs in government straight out of law school; NALP notes some confusion in survey respondents’ classification of their government jobs. Regardless, these data are interesting and worthy of further study when more information becomes available.

3. JD Advantage Jobs in the Public Interest and Education Sectors

If the numbers of new law graduates in full-time, long-term government sector JD Advantage jobs are small, the numbers for comparable JD Advantage jobs in the public interest and education sectors are even smaller. In 2017,

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190. Id.
191. NALP, 2018 REPORT, supra note 170, at 1.
192. See NALP, 2017 JOBS & JDs REPORT, supra note 116, at 47 (reporting on judicial clerkships).
193. See id. at 43–44 (showing what levels and branches of government and what general types of jobs new graduates entering the government sector held).
194. Cf. id. at 43 (noting that new graduates entering government jobs may be returning to or continuing jobs they held previously).
195. See id. (pointing out possible underreporting of some government job types in conjunction with possible overreporting of some government jobs as “other”).
a total of 7.2% (2,161) of new graduates took full-time, long-term public interest jobs, and of those 14.7% (317) were JD Advantage jobs and 80.6% (1,786) were Bar Passage Required jobs.196 In 2018, 7.4% (2,220) of graduates took comparable public interest positions, of which 15.3% (339) were JD Advantage and 81.6% (1,808) were Bar Passage Required.197 In other words, in both years, numbers and percentages were generally the same, as was the balance between JD Advantage and Bar Passage Required jobs.

Jobs in education accounted for only 1.6% of all new law graduates’ jobs, and in 2017, 38.9% of those jobs were full-time, long-term JD Advantage jobs (n=185) while only 16% (n=76) were Bar Passage Required.198 Within 2018 graduates with full-time, long-term jobs, a similar and tiny 1.6% (479) were employed in education; of these, 52.3% were JD Advantage and 17.4% were Bar Passage Required.199 Thus, in this tiny employment sector, many more jobs are JD Advantage than Bar Passage Required and numbers, while very small, remain basically stable.

Figure Eight below shows mean new graduate salaries in the public interest sector; more information about the public interest sectors appears in Appendix A, Figures I through K. In this sector, too, mean new graduate salaries in JD Advantage jobs are higher than mean salaries in Bar Passage Required jobs.

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196. See NALP, 2017 REPORT, supra note 172, at 1–2.
197. NALP, 2018 REPORT, supra note 170, at 1–2.
198. See NALP, 2017 REPORT, supra note 172, at 1.
199. NALP, 2018 REPORT, supra note 170, at 1.
FIGURE 8. MEAN NEW GRADUATE SALARIES IN JD ADVANTAGE VERSUS BAR PASSAGE REQUIRED JOBS IN THE PUBLIC INTEREST SECTOR, 2011–2018200

200. See sources cited supra note 172.
For the public interest sector, the NALP breaks down some of the information about what types of jobs new graduates in public interest hold, so it is possible to glean some information about full-time, long-term JD Advantage positions held in the public interest sector. In 2017, for example, approximately 18% of new graduates holding public interest jobs appeared to have held jobs for which bar passage was not anticipated or required (BPNR), broken down across jobs in community organizing and education (4%), BPNR policy and advocacy jobs (5.6%), BPNR legal services jobs (2.9%), and BPNR “other” public interest jobs (6%). 201 In 2018, the statistics were similar. Of the 2,220 graduates in public interest positions, approximately 20% appeared to have jobs for which bar passage was not anticipated or required, broken down across community organizing and education (4.1%), policy and advocacy (6.8%), legal services (2.9%), and “other” public interest jobs (6%). 202

The academic or education sector is by far the smallest sector for jobs overall, as already noted with only 486, or 1.6%, of all new graduate jobs in 2017. 203 A high percentage of these jobs (38.9%) were reported as JD Advantage in 2017, 204 and mean new graduate salaries for those jobs have tended to be higher than those for Bar Passage Required jobs, as shown in Figure Nine below.

Again, in the education sector NALP does not break down the specific types of positions into JD Advantage versus Bar Passage Required, but some positions clearly are JD Advantage—such as elementary and secondary school teacher, which accounts for 11.5% of these jobs—and others likely include many JD Advantage opportunities, such as law school fellow or research assistant (21.4%), college or university administration (13.2%), and various “other” law school (13.4%), college and university (30.7%), and education (9.9%) positions. 205

201. NALP, 2017 JOBS & JDs REPORT, supra note 116, at 54.
203. NALP, 2017 JOBS & JDs REPORT, supra note 116, at 57.
204. Id. at 17.
205. NALP, 2017 JOBS & JDs REPORT, supra note 116, at 57.
4. JD Advantage Jobs in the Private Practice Sector

Given that mean new graduate salaries for JD Advantage jobs in the business, government, public interest and education sectors are consistently higher over the past decade than those for Bar Passage Required jobs, the question arises as to how the composite mean new graduate salaries for JD Advantage jobs end up being lower than those for Bar Passage Required jobs. The answer lies in the final employment sector not yet examined, namely, new law graduate jobs in the private practice sector. This is the one employment sector in which new graduate salaries for Bar Passage

206. See sources cited supra note 172.
Required jobs outpace those for JD Advantage jobs, as shown in Figure Ten below.

**FIGURE 10. COMPARISON OF MEAN NEW GRADUATE SALARIES FOR PRIVATE LAW PRACTICE SECTOR**

Salaries in 25th, median, and 75th percentiles exhibit the same trend toward much higher pay for Bar Passage Required jobs, as shown in Appendix A, Figures O through Q. Thus, the mystery regarding the assumption that JD Advantage jobs pay less is solved: JD Advantage jobs pay less in one sector but not in the other four.

The fact that JD Advantage jobs pay less in the private practice sector is not at all surprising, since the mission of private law practice is to provide

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207. See sources cited *supra* note 172.
legal representation to clients, which only bar licensed practitioners can do. One can surmise that new graduates who end up in law firms without a bar license are generally doing tasks that are not as valuable to the employer as the tasks employees with bar licenses can do. It appears to be this rather obvious fact that accounts for the aggregate data showing that JD Advantage jobs pay less than Bar Passage Required ones. This chart for composite mean salaries is presented in Figure Eleven below.\(^{208}\)

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure11.png}
\caption{Composite Mean New Graduate Salaries\(^{209}\)}
\end{figure}

\(^{208}\) The 75th, median, and 25th percentile composite comparison can be found in the Appendix, Figures S through U. See infra Figures S, T, U.

\(^{209}\) See sources cited supra note 172.
Moreover, as shown by the statistics for the past two years, very few new graduates are employed in JD Advantage jobs in the private practice sector. In 2017, 92.4% of new graduates working in law firms held full-time Bar Passage Required jobs, while only 3.3% held full-time, long-term JD Advantage jobs.\textsuperscript{210} The percent of these JD Advantage job holders declines precipitously as the size of law firms increases, so that 6.4% of new graduates in law firms of no more than fifty lawyers hold JD Advantage jobs, but less than 2% of new graduates in law firms of fifty-one or more graduates hold JD Advantage jobs.\textsuperscript{211} In 2018, 94.1% of graduates working in private practice held full-time Bar Passage Required jobs, while only 5.6% held full-time, long-term JD Advantage Jobs.\textsuperscript{212} Similar to 2017, the percentage of JD Advantage jobs decreased as the size of the law firm increased with 7.2% of graduates holding JD Advantage jobs in firms of one to ten people and less than 1% of graduates holding JD Advantage jobs in firms of over 500 lawyers.\textsuperscript{213}

In short, it is important to correct the mistaken assumption that in general JD Advantage jobs are low paid, second-best employment for new law school graduates. In almost every sector and percentile, JD Advantage jobs pay more than Bar Passage Required jobs. Moreover, as graphically illustrated in Figure Eleven, although a pay gap continues between JD Advantage and Bar Passage Required jobs with respect to aggregate new graduate salaries for all employment sectors, salaries for both types of jobs continue to rise healthily. Of course, whether all of these trends will continue is an open question awaiting additional years of data collection, but commentators should at least start with the correct facts at hand as they are now available.

\textsuperscript{210} NALP, 2017 Jobs & JDs Report, supra note 116, at 34. In terms of the entire JD Advantage job pool, 5.2% were in private practice jobs in 2017. \textit{Id.} at 17. The data do not show what JD Advantage jobs these new graduates hold and whether they passed the bar so it is incorrect to speculate that these are “second best” jobs held by graduates who did not pass the bar. \textit{See id.} Potential job titles could include diversity and inclusion officers, recruitment managers, project managers, business operations, compliance managers and technology officers. \textit{See Detailed Analysis of JD Advantage Jobs, supra note 105; see also Hillary Mantis, What Is a J.D. Advantage Career?, Nat’l Jurist (Dec. 3, 2015, 12:50 PM), http://www.nationaljurist.com/national-jurist-magazine/what-jd-advantage-career [https://perma.cc/W9AC-L5U7].}

\textsuperscript{211} NALP, 2017 Jobs & JDs Report, supra note 116, at 34.

\textsuperscript{212} NALP, 2018 Jobs & JDs Report, supra note 202, at 21. In terms of the entire JD Advantage job pool, 21.9% were in private practice jobs in 2018. \textit{Id.} at 67.

\textsuperscript{213} \textit{Id.} at 38.
D. The Complex Issue of Job Satisfaction

Having debunked the myth of comparatively low pay for full-time, long-term JD Advantage jobs in most employment sectors, I turn to the more complex issue of job satisfaction. Critics of the rise in JD Advantage employment raise important questions about job satisfaction in JD Advantage jobs.214 They pointed out, correctly, data showing that new graduates holding JD Advantage jobs are more likely to report continuing to seek other employment than are those holding Bar Passage Required jobs.215 In 2017, for example, only 8.8% of new graduates in Bar Passage Required jobs reported continuing to seek other employment, while 38.7% of new graduates in JD Advantage jobs were continuing to look for another job.216 By way of comparison, 62% of those in “Other Professional” jobs, and 84.7% of those in nonprofessional employment, reported seeking other employment despite being employed.217 In 2018, 7.2% of graduates in Bar Passage Required jobs reported continuing to seek other employment compared to the 37.5% of graduates in JD Advantage jobs.218 Meanwhile, 54.8% of 2018 graduates in “Other Professional” jobs and 80.5% of graduates in nonprofessional jobs reported that they are continuing to seek other employment.219

I. The “Employed Still Seeking” Metric

Although these are noteworthy findings, their import is not clear. The “still looking” metric asks respondents whether they are “still looking” for alternative employment even though they have a job.220 The assumption underlying use of this measure as an indirect indicator of job satisfaction is that one presumably does not look for alternative employment if one is satisfied with one’s current position. That assumption can be subject to

215. See id. at 558 & n.37.
216. NALP, 2017 JOBS & JDS REPORT, supra note 116, at 128.
217. Id.
218. NALP, 2018 JOBS & JDS REPORT, supra note 202, at 136.
219. Id. at 136.
critique, however, especially for careers that do not involve the standard private law firm career track from associate, for approximately seven years, to possible promotion to partner. For that traditional law firm track, it makes sense to assume that associates will stay in their current jobs, if they like them, until they receive a signal regarding whether they are likely to make partner.

In contrast, for nontraditional jobs such as JD Advantage employment, there may be no standard career progression or time to hold a particular position. Job holders may feel more need to keep their eyes open for new opportunities—in other words, to be “still looking”—after accepting a position. Moreover, it is more likely that students in nontraditional jobs will report to their law school career development offices, which collect this data, that they are “still seeking,” simply because those offices must speak to these students in more depth in order to classify their jobs in collecting their reporting graduate employment statistics. The assumption that “still looking” equates to a lack of job satisfaction may lack validity. Additional measures of job satisfaction will be needed to test this question.

Other evidence likewise hints that the “still looking” metric is a flawed measure of job satisfaction. We know, for example, that gender and race affect the likelihood that law school graduates will report being employed but still looking. In the After the JD studies, women and persons of color are more likely to report still looking than are majority-identity employees in the same job. Indeed, the After the JD studies found that minority-race lawyers were most likely both to report high levels of satisfaction with becoming a lawyer and higher rates of continuing to seek alternative employment, perhaps responding to discrimination or perception of outsider status in their current legal employment or other factors.

223. Compare Dinovitzer & Garth, supra note 221, at 32 (“[L]awyers building their careers [must] anticipate the right move at the right time.”), with id. at 33 (describing an interviewee who was biding time in a law firm with no intention to stay at the firm but with plans to move to business or public service at the right time).
224. See E-mail from Ann Chernicoff, supra note 54.
225. See, e.g., AFTER THE JD I, supra note 117, at 58, 64–65.
226. See id. at 58, 65.
227. See id. at 64–65 (“Blacks, Hispanics, and Asians — were all more likely than their white peers to report that they were already looking for another position.”); see also Dinovitzer & Garth, supra note 221, at 6 (noting that minority lawyers report high rates of overall job satisfaction despite not being satisfied with certain aspects of lawyering and their jobs, leading to what has been called a “paradox” regarding satisfaction).
The reasons for these findings are not fully understood. They may reflect the awareness of women and persons of color of bias they may face in their place of employment. Like JD Advantage job holders, but for more invidious reasons, members of these identity categories may feel the need to plan ahead for contingencies that could affect whether they want to continue to hold the jobs they currently have. More research into these questions is necessary. In all events, the fact that percent still looking fluctuates with race and gender in a manner separate from reported career satisfaction suggests that using percent still looking as a reliable indicator of job satisfaction is questionable at best. What is needed is greater disaggregation of race and gender information in the JD Advantage category. If there are more women and persons of color in these positions, then the After the JD study data would predict they would be more likely to be still looking regardless of the type of job they hold.

Yet other factors that may affect the likelihood of being employed while still looking have to do with differences in socioeconomic background and education. As Bryant Garth and Ronit Dinovitzer point out in an important study based on the results of After the JD, job satisfaction strongly depends on what one has been led to expect out of one’s career. Somewhat paradoxically, Garth and Dinovitzer find, more socially privileged new lawyers tend to report lower satisfaction with their positions than those from less socioeconomically and educationally privileged backgrounds. The paradox is that less privileged new lawyers view even lower status legal positions as a desirable entryway into the professional class, while more privileged new lawyers are less likely to be satisfied with their job positions even when they are prestigious ones.

Somewhat analogously, those entering JD Advantage jobs may tend to have social—or personality—profiles that make them more inclined to

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229. See E-mail from Jerry Organ, Professor of Law, Univ. of St. Thomas Sch. of Law, to Susan D. Carle, Vice Dean, Wash. Coll. of Law (Jan. 31, 2020, 11:34 PM) (on file with author). My thanks to Jerry Organ for this point.

230. Dinovitzer & Garth, supra note 221, at 12.

231. Id. at 34–35.

232. Id. at 41–42 (noting that data show lawyers from less elite socioeconomic backgrounds report highest satisfaction levels in their careers).
professional restlessness. They may be more risk-seeking—more focused on what next good thing may lie around the corner. They may—or may not—have the financial safety net necessary to allow career experimentation. Further study will be necessary to assess these alternative explanations.

Unfortunately, NALP’s publicly available data on those “still looking” do not allow further disaggregation of the data by employment sector and JD Advantage job category; instead, these data group together Bar Passage Required and JD Advantage jobs and report percent still looking by employment sector only. But even this data shows some trends that may be illuminating. For example, in private practice, percent still looking decreases as the size of law firms grows. Second, aside from the small number (337) of new graduates employed in education in 2018—who were still seeking other employment at a rate of 46.3%—the highest percentage of employed new graduates in 2018 who were still seeking other employment are in business (36.7%). The percentages of new graduates employed in the government and public interest sectors had lower rates of still seeking other employment, both at levels of 15%. This dynamic may mean that new graduates in the business sector are more entrepreneurial and risk tolerant, and thus more likely to entertain job switches, as suggested above.

Or, those in smaller firms may be looking to lateral into bigger firms, though again this cannot be determined given the data; perhaps in future years employed new graduates who express that they are “still seeking” could be surveyed as to what type of next job they are seeking. For example, are those employed in small firms looking for larger firm employment or some other kind of work? Are those in JD Advantage jobs looking for Bar Passage Required jobs or new JD Advantage jobs? Note that commentators often assume that these latter respondents are looking for Bar Passage Required jobs, but there is no way to ascertain that from the data collected. Asking for more details from “still seeking” respondents would allow better answers as to whether new graduates holding JD Advantage jobs who are “still seeking” indeed do want to move into Bar Passage Required jobs or instead regard themselves as on a fast track to lateral or vertical moves within the JD Advantage sector.

In summary, the assumptions about lower job satisfaction for new graduate JD Advantage jobholders rest on precarious data. The measure of “seeking

233.  Cf. id. at 20 (noting that social networks play an important role in how satisfying lawyers perceive their jobs to be).
234.  See, e.g., NALP, 2018 JOBS & JDS REPORT, supra note 202, at 136.
235.  Id.
236.  Id. These numbers are substantially the same as for 2017. See NALP, 2017 JOBS & JDS REPORT, supra note 116, at 128.
237.  NALP, 2018 JOBS & JDS REPORT, supra note 202, at 136.
alternative employment” does not necessarily indicate unhappiness with one’s current job. Because the reasons employed new law graduates continue to seek alternative employment are complex, it remains to be seen whether those metrics do indeed correlate with new graduate job dissatisfaction in JD Advantage jobs. On the other hand, the “still seeking” statistics in the JD Advantage sector may be cause for concern and should not be discounted merely because they do not provide conclusive evidence.

2. Other Indirect Evidence: The After the JD Studies

Further indirect support for the possibility that new graduates working in JD Advantage employment in fact are not as satisfied with their work as those in Bar Passage Required jobs can be found in the three After the JD studies. One of the many contributions of these studies are the sophisticated, multipart measures of job satisfaction the study creators designed. They break job satisfaction into multiple dimensions, which they then group into four categories: (1) “Job Setting Satisfaction,” which involves such matters as relationships with colleagues, recognition of work, control over work, and job security; (2) “Work Substance Satisfaction,” which involves the “intrinsic value of the work”; (3) “Social Value Satisfaction,” which involves the perceived relationship between the work and social issues—such as diversity, pro bono, and the social value of the work; and, finally, what the researchers call (4) “Power Track Satisfaction,” which involves two job elements: compensation and opportunities for advancement.

As a separate indicator, the After the JD authors track intention to move to another job.

Unfortunately, as already noted, the important longitudinal After the JD studies are not as helpful on questions concerning JD Advantage employment as one might wish, because the study leaders designed the fundamentals

238. See AFTER THE JD II, supra note 122, at 48 (“[I]ntentions to leave one’s employer of course reflect some level of dissatisfaction, but they are also an indicator of the pattern of moves and adjustments that people make as they build their careers.”).
239. See, e.g., AFTER THE JD I, supra note 117, at 47, 53; AFTER THE JD II, supra note 122, at 48; AFTER THE JD III, supra note 127, at 53.
240. See AFTER THE JD I, supra note 117, at 47 (explaining these categories).
241. Id. at 53. For a comprehensive summary of the literature on lawyer job satisfaction, see Jerome M. Organ, What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being, 8 U. ST. THOMAS L.J. 225, 226 (2011). To my mind, the After the JD methodology presents the richest approach so I focus on it here.
of their research methodology prior to 2000, well before the Great Recession-related anxiety about JD Advantage jobs had come to the fore. Thus, the studies do not distinguish among JD Advantage, Bar Passage Required, and other types of post-graduate jobs. Moreover, the After the JD studies survey mid-career law school graduates, not the entry-level graduates NALP surveys.

Nevertheless, the After the JD findings support the implication that those not practicing law in their jobs experience less job satisfaction along some—but not all—job satisfaction dimensions. In the second and third phases of the After the JD studies, the researchers find that respondents employed in business jobs in which they are not practicing law report the lowest levels of overall career satisfaction, with 63.4% reporting being moderately or extremely satisfied with their decision to become lawyers twelve years into their careers as compared to 83% of those in the business sector who are practicing law. The overall rate of reported job satisfaction for those who have passed the bar but are in business and not practicing law is 69.3% for those two to three years out of law school, and declines to 64.3% for those in the same job category who are seven years out of law school, after which it basically holds steady at that percentage (63.4%) at the twelve years out mark. Thus, at the mid-career stage, levels of overall satisfaction are lower for those in business not practicing law than in practicing law at each career juncture.

More specifically, those in business not practicing law report less satisfaction with the substance of their work, i.e., Work Substance Satisfaction, across all waves of the After the JD studies. But examining Substance of Work Satisfaction index in After the JD III produces interesting results: By far the highest reported Substance of Work Satisfaction is for the nonprofit and education sectors. Second highest are those in public interest and small law firm work. Aside from business not practicing law, the lowest Substance of Work Satisfaction for those twelve years out come from lawyers in firms of 21–100, and firms of 101–250, which belies the assumption

243. Note that this category is not coterminous with the JD Advantage job category because its members may hold jobs in which having a law degree is not an advantage.
244. AFTER THE JD III, supra note 127, at 52–53. The highest levels of overall satisfaction twelve years out are for those in public interest (87.6%) and legal services/public defender (86.1%) work. Id.
245. Id. at 52.
246. See AFTER THE JD II, supra note 122, at 48 (reporting that the least satisfied respondents are in business not practicing); AFTER THE JD III, supra note 127, at 53.
247. See After the JD III, supra note 127, at 53.
248. Id. at 53–54.
that lawyers in smaller firms do less interesting work. Lawyers in the smallest firms report higher Substance of Work Satisfaction than those in larger ones.

It also bears noting that, on other dimensions of job satisfaction in the After the JD researchers’ survey, those in the business not practicing law group often report higher satisfaction than those in other types of jobs. For example, they are second highest, surpassed only by those practicing law in firms of more than 250 lawyers, on Power Track Satisfaction—involving compensation and advancement—and at the same time higher than large law firms in Job Setting Satisfaction.

3. Takeaways on Job Satisfaction for New Lawyers

In short, the available empirical data indicate that job choices, like all aspects of life, reflect complex tradeoffs between different aspects of satisfaction, with the reportedly less rewarding Substance of Work Satisfaction in the business not practicing law setting being counterbalanced in part by better compensation, opportunities for advancement, and Job Setting Satisfaction, where both in-house counsel and business not practicing law respondents report relatively identical satisfaction levels. Still, the relatively low level of Substance of Work Satisfaction for those in business not practicing law jobs in the After the JD studies remains a finding of note. In combination with NALP’s percentage still looking statistics, these indicators may raise issues about JD Advantage—and many traditional—jobs worthy of some concern.

If so, a task for employers, with the support of legal educators and researchers, will be to design JD Advantage—and traditional—positions that offer job satisfaction. This broaches the cavernous subject of the

249. Id. at 53.
250. See id. at 55.
251. See id. (showing graphically that those employed in business not practicing have higher Power Track Satisfaction than those in any category other than law practice in firms of more than 250 lawyers, and higher Job Setting Satisfaction than those in firms of 101–250 and more than 250 lawyers).
252. Id. at 53–55; see also AFTER THE JD I, supra note 117, at 47 (“Those with the highest incomes report relatively less satisfaction with the work they do and the practice settings in which they work than those earning far less from the practice of law.”); AFTER THE JD II, supra note 122, at 49 (noting that “[t]he findings highlight the almost inverse nature of the relationship between satisfaction with the substance of the work and with balance and control” and that respondents in government jobs have high levels of satisfaction with balance and control but relatively low levels of Power Track Satisfaction).
nature of satisfying labor in general, which would take me too far afield to address here. It bears note, however, that law practice is one of the few remaining work traditions that has not yet been fully commodified. Indeed, a large part of the current objections to the rise of JD Advantage jobs may be observers’ implicit and largely correct intuition that employers are using such new positions to break apart and render into less highly skilled parts the kinds of work lawyers traditionally did. Compare, for example, the traditional job of lawyer as trusted, all-purpose business counselor to that of corporate compliance officer. It is not surprising that the intellectual stimulation of traditional law practice is highly satisfying—more so than many other law-related jobs. Moreover, the data tell us, this is the case even or especially when law graduates work in small firms or relatively low paid and under-resourced government and public interest positions.

There is a great deal more to say about making legal work satisfying, and what needs to be said by no means pertains solely to JD Advantage jobs but to all jobs in which lawyers may—or may not—find high levels of satisfaction in their work. The most obvious and immediate policy takeaway from questions about work substance satisfaction is that law school graduates must enter the work force equipped with the highest relevant skills, which will allow them many choices in finding the type of intellectually stimulating, substantively rewarding work they wish to do. Legal employers should design jobs to allow lawyers to use to maximum advantage the skills and talents that make performing law work feel intrinsically valuable.

IV. RECOMMENDATIONS GOING FORWARD

The analysis I have just offered leaves for future discussion the question of how law schools and others should respond to the growth in JD Advantage jobs. Here I conclude with several preliminary thoughts. Most significantly,

253. See John Rawls, A Theory of Justice 374–75 (rev. ed. 1999) (arguing that satisfying work involves the optimal level of complexity suited to an individual’s personal strengths).

254. See generally Richard Susskind, The End of Lawyers?: Rethinking the Nature of Legal Services (2008) (making this point and discussing all of the ways in which law practice is being subjected to technological transformation in order to break it into its component parts and eliminate bespoke services in order to substitute lower cost, more routinized tasks).


256. See After the JD III, supra note 127, at 55.
as I have been emphasizing, there are many reasons to believe that JD Advantage jobs will remain a significant source of employment for new law school graduates even as—we hope—the job market for Bar Passage Required jobs continues to rebound. There is no reason, other than inaccurate assumptions and general cultural anxiety about the creative destruction occurring in the legal profession, that growth in this employment sector should be looked at askance. Having a greater variety of job choices for new law graduates should hardly be seen as a negative development, provided those jobs are good ones that new graduates want. The key issue is to ensure that the jobs our students get are of high quality, with ample compensation and opportunities for professional development, stimulation, challenge, and career growth. Some JD Advantage jobs clearly meet this definition while others may not. As educators, we should be working to ensure that our graduating students have many good choices for their careers rather than judging their paths according to a set of assumptions inherited from a different era.

Thus, my first suggestion is that we continue to study what kinds of JD Advantage jobs students are taking and how they progress in these jobs. Are these jobs the higher quality, higher paying kind? What happens to the careers of new graduates in JD Advantage jobs five, ten, and fifteen years after graduation? What are their direct self-reports about job satisfaction, using the sensitive, multidimensional indices of the After the JD studies?

Note that the negative commentary about the JD Advantage job phenomenon often assumes that students accept these jobs because they cannot get traditional ones. But the data do not establish this conclusion as a general proposition. We need to understand more about what kinds of students are attracted to JD Advantage job opportunities. Are they students interested in business? Students interested in policy work? Students interested in data analytics or law and technology and other interdisciplinary areas? Most likely, students with such interests and others are most attracted to these jobs. More detailed and thorough study will be required to test these assumptions.

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257. See, e.g., Burk, supra note 1, at 341; see also Anderson, supra note 1.
There is some evidence that women and minority law graduates are slightly more likely than their peers to end up in JD Advantage jobs.\textsuperscript{258} I have heard some commentators privately express concern that this trend is evidence of women and minority law graduates being devalued in the new graduate job market; but, again, this concern is only valid if the jobs are less worthwhile, and the evidence I have marshalled above does not point to that conclusion. Of course, law schools must work to prevent the devaluing of any types of jobs their new graduates seek. Law schools can do that by ensuring that the students graduate with the highest skills and most options possible, and by fighting fiercely against unlawful employer discrimination toward their students. Looking down one’s nose at newly emerging options is not a fruitful path to helping graduates achieve career success.

A key point is that educators should not view JD Advantage jobs as an alternative to students taking and passing the bar. All law schools should ensure that they graduate students who are bar-passage ready; many schools now have in place academic excellence centers to ensure that this occurs.\textsuperscript{259} Students who want Bar Passage Required jobs should graduate well prepared to obtain them. This is not to say that the aspirations of students who are interested in jobs other than traditional law practice should not be valued as they pursue the age-old project, described in Part II, of finding new ways to employ the skills a law degree provides.

Here is a key point the literature on JD Advantage jobs overlooks: employers who prefer or require a law degree for non-law practice jobs must see the degree as offering something of special value, to the extent that they are willing to pay quite well for it as graphically illustrated throughout Section III.C above. It comes as no surprise that the standard MacCrate Report list of law school-trained skills—including analysis, persuasive writing, oral advocacy, client counseling, and more\textsuperscript{260}—make the degree valuable for jobs outside traditional Bar Passage Required

\textsuperscript{258} See, e.g., NALP, 2018 Jobs & JDs Report, supra note 202, at 74. For example, whereas 12.5% of all graduates took JD Advantage jobs, 13.5% of women took JD Advantage jobs and 16.9 % of persons of color took such jobs. Id.


employment markets, today as in the past, as already discussed in Part II. Law schools must continue to educate students in all of those core skills. They must also prepare their law graduates for potentially novel challenges in a rapidly changing profession.

Just as researchers have done so much excellent work on what skills traditional employers value,261 investigators should study what makes law degrees valuable to nontraditional employers.262 Law schools must encourage students to assess their strengths and track their progress in obtaining skills in law schools.263 At the same time, not as a core mission but at the periphery along with many other options, law schools should offer students programs tailored toward JD Advantage jobs, such as by offering training in compliance work.264 Many law schools, including, to take an indiscriminate


262. See generally DEBORAH ARRON, WHAT CAN YOU DO WITH A LAW DEGREE?: A LAWYER’S GUIDE TO CAREER ALTERNATIVES INSIDE, OUTSIDE, & AROUND THE LAW (1992) (identifying transferable skills including the ability to analyze facts, work in teams or groups, be a self-starter, engage in counseling and establishing rapport, and reflect and problem-solve, as well as risk awareness, familiarity with legal terminology, ability to negotiate, and research and writing skills); KIMM ALAYNE WALTON, GUERRILLA TACTICS FOR GETTING THE LEGAL JOB OF YOUR DREAMS (2d ed. 1999) (suggesting that students explore the breadth of JD Advantage job opportunities).

263. See, e.g., CAREER DEV. OFFICE, CREIGHTON UNIV. SCH. OF LAW, ALTERNATIVE CAREERS FOR JDs 1–3 (Apr. 2010), https://www.luc.edu/media/lucedu/law/career/pdfs/Alternative_Careers.pdf [https://perma.cc/M7N4-LRHL] (offering resources for students who are interested in alternative careers with their JDs); Non-Law, STAN. L. SCH., https://law.stanford.edu/careers/career-possibilities/non-law/#slsnav-non-law-business [https://perma.cc/NXX2-SR22] (listing non-law careers for which law degrees are useful, including counseling, education, legal information science, business, entrepreneurship, ethics, communication, healthcare, and technology).

sampling, American University Washington College of Law, NYU, Fordham, and Seton Hall Law School, already do so.265

Finally, law schools should explore what new skills employers view as particularly valuable, both for Bar Passage Required and JD Advantage jobs.266 Among this emerging list of important new skills are the use of technology in law-related matters,267 as well as interdisciplinary collaboration with other professionals,268 the teaching of creative, out of traditional boxes problem-solving,269 and leadership skills.270


266. See generally Neil W. Hamilton, Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism), 65 S.C. L. REV. 547 (2014) (examining competencies needed in changing legal services markets); Neil W. Hamilton, Law Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism, 11 U. St. Thomas L.J. 6 (2013) (analyzing existing data on the competencies shown by the most effective and successful lawyers in today’s environment).


270. See generally Rhode, supra note 46.
V. CONCLUSION

The rapid and confusing transformations occurring in the legal profession help explain but do not justify the negative commentary about the steady growth in so-called JD Advantage jobs for new law school graduates. Instead, researchers should examine that market far more deeply in order to understand what is happening there. This Article has started to undertake that examination and has shown that many of commentators’ negative assumptions about the JD Advantage job market prove unfounded. For example, in almost all employment sectors—namely, business, government, public interest, and education—full-time, long-term new graduate JD Advantage jobs pay more at the median, mean, and, often, 25th and 75th salary percentiles, than do comparable Bar Passage Required jobs. Only in the traditional law practice sector do JD Advantage jobs pay less, as would be expected given that this employment sector focuses on Bar Passage Required positions.

In addition, the evidence on job satisfaction in JD Advantage jobs remains murky, unreliable and complex. We know that graduates in most JD Advantage job sectors are more likely to report “still looking” for alternative employment, but these results may be caused by disparate data collection practices across traditional versus nontraditional job categories, as well as the continuing dearth of knowledge about how career progressions and expectations are structured in JD Advantage positions.271

What we do know is that JD Advantage jobs are likely to remain a career choice for new law graduates for foreseeable future. Along with many other changes in the structure of the legal profession, the emergence of JD Advantage employment as a named and claimed job market stands as a bellwether of creative destruction in the legal profession. Educators and commentators on the legal profession should come to understand this phenomenon more deeply, focusing on discovering what it is rather than simply making assertions about what they assume it to be.

271. See supra Part III.
VI. APPENDIX A: ADDITIONAL GRAPHIC INFORMATION

FIGURE A. COMPARISON OF TRENDS IN OTHER SMALLER JOB STATUS CATEGORIES VERSUS JD ADVANTAGE JOBS, 2001-2018
FIGURE B. DISTRIBUTION OF JD ADVANTAGE JOBS BY EMPLOYMENT SECTOR IN 2011

JD Advantage 2011 Distribution

- 46% Business
- 19% Private Practice
- 16% Academic
- 9% Government
- 10% Public Interest
FIGURE C. DISTRIBUTION OF JD ADVANTAGE JOBS BY EMPLOYMENT SECTOR IN 2018

The pie chart shows the distribution of JD Advantage jobs by employment sector in 2018. The pie chart is divided into the following sectors:

- Business: 48%
- Academic: 15%
- Private Practice: 22%
- Government: 8%
- Public Interest: 6%

The chart indicates that business jobs constitute the largest portion of JD Advantage jobs in 2018.
FIGURE D. COMPARISON OF 75TH PERCENTILE SALARIES IN THE BUSINESS SECTOR


75th Percentile Salary

$80,000 $85,000 $81,000 $85,000 $85,000 $84,100 $85,000 $80,000 $80,000 $85,000 $90,000 $92,000 $90,000


$100,000 $95,000 $90,000 $85,000 $85,000 $85,000 $85,000 $85,000 $85,000 $85,000 $85,000 $85,000

$80,000 $85,000 $87,000 $89,500 $90,000 $90,000 $95,000 $100,000

- Business - Bar
- Business - JD
FIGURE E. COMPARISON OF MEDIAN SALARIES IN THE BUSINESS SECTOR
FIGURE G. COMPARISON OF 75TH PERCENTILE SALARIES IN THE GOVERNMENT SECTOR

- $76,000
- $74,000
- $72,000
- $70,000
- $68,000
- $67,000
- $66,000
- $64,000
- $62,000
- $60,000

2011

$60,000

2012

$65,000

2013

$65,000

2014

$65,500

2015

$70,000

2016

$76,000

2017

$75,000

2018

$67,224

- Government - Bar
- Government - JD
**Figure H. Comparison of Median Salaries in the Government Sector**

[Graph showing median salaries in the government sector from 2011 to 2018, with a blue line for Government - Bar and an orange line for Government - JD.]
Figure I. Comparison of 25th Percentile Salaries in the Government Sector
FIGURE K. MEDIAN SALARIES FOR PUBLIC INTEREST SECTOR
Figure L. 25th Percentile Salaries for the Public Interest Sector

- 2011: $40,000
- 2012: $39,000
- 2013: $40,000
- 2014: $40,000
- 2015: $42,000
- 2016: $45,000
- 2017: $45,000
- 2018: $45,000

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FIGURE M. COMPARISON OF 75TH PERCENTILE SALARIES FOR ACADEMIC SECTOR
FIGURE O. COMPARISON OF 25TH PERCENTILE SALARIES FOR ACADEMIC SECTOR

- Academic - Bar
- Academic - JD

- $38,900
- $40,000
- $42,000
- $45,000
- $47,000

- 2011
- 2012
- 2013
- 2014
- 2015
- 2016
- 2017
- 2018

- $38,900
- $40,000
- $42,000
- $45,000
- $47,000

- 2011
- 2012
- 2013
- 2014
- 2015
- 2016
- 2017
- 2018
Figure P. Comparison of 75th Percentile Salaries for Private Law Practice Sector

The graph compares the 75th percentile salaries for private law practice sector over the years from 2011 to 2018. The salaries are measured in thousands of dollars and are shown for two categories: Private Practice - Bar and Private Practice - JD. The salaries range from $52,000 to $190,000, with a notable increase in the later years for Private Practice - JD.
FIGURE Q

Comparison of Median Salaries for Private Law Practice Sector

Private Practice - Bar

Private Practice - JD
FIGURE R. COMPARISON OF 25TH PERCENTILE SALARIES FOR PRIVATE LAW PRACTICE SECTOR
Figure S. Comparison of 75th Percentile Trends for Composite JD Advantage Jobs
Figure T. Comparison of Median Salary Trends for Composite JD Advantage Jobs
FIGURE U. COMPARISON OF 25TH PERCENTILE TRENDS FOR COMPOSITE JD ADVANTAGE JOBS
FIGURE V. PERCENT OF JD ADVANTAGE JOB HOLDERS SEEKING ALTERNATIVE EMPLOYMENT BY FIRM SIZE