

COMPETITIVE COPING STRATEGIES IN THE AMERICAN LEGAL ACADEMY: AN EMPIRICAL STUDY

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Many casual observers of the American legal academy are aware of the substantial falloff in both the number and the conventional qualifications of applicants to law school that began after 2010. But few appreciate how widespread and serious its effects have been. For the vast majority of law schools, those effects have been somewhere between significant and devastating.

From academic years 2010–11 through 2016–17, the number of unique applicants to accredited law schools fell 36 percent, and the number of applications fell 44 percent, while students with the best conventional qualifications disproportionately stayed away. The effects on the academy have been profound, and sectors of the academy distinguished by their relative overall reputation for quality have reacted differently. Beyond the strongest law schools, many shrank their entering classes by between a third and a half, and dropped 15 LSAT percentiles at the median. We estimate that aggregate annual tuition revenue for all accredited American law schools fell over \$1.5 billion from its inflation-adjusted peak in 2011–12.

Generally we found, as might be expected, that the weaker a law school's relative reputation for overall quality ("Reputation"), the more difficulty it had attracting students with the credentials it sought, so that as Reputation decreased, entering-class credentials ("Profile"), entering-class Size, and average tuition actually paid ("Net Tuition") also decreased. But this general and unsurprising finding came with some surprising variations and exceptions. These results lead to four observations with important implications for the legal academy:

First, Reputationally Stronger law schools generally chose to preserve entering-class Profile, even when they had to shrink class Size or discount tuition to do so. This strategic drive to keep Profile up at the expense of Size meant thousands of viable candidates remained available to other law schools, effectively preventing the closing of as many as twenty Reputationally Weaker schools.

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Second, by shrinking class Size and reducing Net Tuition to keep up their entering-class Profile, many law schools sacrificed millions of dollars of Tuition Revenue. As a practical matter, then, law schools “invested” in Profile rather than in expanding their faculties, their facilities, or their access to clinical and experiential education. We encourage discussion of the implications of this investment choice.

Third, some Reputationally Weaker law schools perversely were able to maintain or raise their average Net Tuition, while many law schools with stronger Reputations found themselves forced to reduce average Net Tuition more aggressively. Because discounts at any specific law school, and more generally across all law schools, tend to flow to stronger students, the students with the least promising prospects for obtaining or making any economically sustainable use of their law degrees are paying the highest prices to obtain them. These inequalities expanded significantly after 2010.

Fourth and finally, because both Tuition Revenue and Profile decreased at many law schools, the distance between student needs and school resources has widened—millions of dollars in forgone Tuition Revenue are unavailable to meet the needs of students who at many law schools are significantly less prepared and qualified than their predecessors. The decreases in Bar Examination performance nationwide from 2014 to 2016 are a likely consequence of this growing incongruity.

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INTRODUCTION

Many casual observers of the American legal academy are aware of the substantial falloff in both the number and the conventional qualifications of applicants to law school that began after 2010. But few appreciate how widespread and serious its effects have been, and there have been no studies, or at least no public studies, reporting either the overall nature and extent of those

effects or how law schools have coped with the shock. This Article tries to fill that gap, analyzing the legal academy as a competitive market for legal education, with law schools as sellers and prospective law students as buyers.

Part I examines and quantifies the shock to the market for legal education that began after 2010, and its effects on accredited law schools. From academic years 2010–11 through 2016–17 (the “Comparison Period”), the number of unique applicants to accredited law schools fell 36 percent, and the number of applications fell a little less than 44 percent.¹ In addition, the conventional metrics by which most admissions decisions are made—Law School Admissions Test (“LSAT”) scores and undergraduate grade-point average (“UGPA”)—declined even more, as more highly credentialed applicants disproportionately stayed away. For example, while the number of applicants overall fell 36 percent, the number of applicants with LSAT scores greater than 160 (roughly the 80th percentile of all test-takers) fell 46 percent, while those with scores under 150 (roughly the 44th percentile) fell only 27 percent.²

The effects on the academy have been profound. By 2016–17, the average American law school had an entering class that was nearly one-third smaller and had a median LSAT score seven percentiles lower than in 2010–11. And while Base Tuition (a school’s published “sticker price”) had risen 15 percent, the average tuition discount had doubled, causing the average tuition paid per student net of discounts (“Net Tuition”) to *fall* over 6 percent in constant dollars over the Comparison Period.³

Nor were these effects distributed evenly across the academy. Instead, sectors of the academy distinguished by their relative overall reputation for quality (“Reputation”) were affected quite differently. Among the private law schools that were part of this study, those in the top third Reputationally (the “Reputationally Stronger” schools) saw average entering-class Size decline by only 13 percent while their average median LSAT percentile fell three points. By contrast, among the bottom two-thirds of law schools Reputationally, average entering-class Size shrank by over a third and nearly a half, respectively, while average median LSAT fell 15 and 14 percentiles, respectively. Effects on the gross amounts of tuition collected (“Tuition Revenue”) were also pronounced. Reputationally Stronger law schools lost an average of \$5.9 million per school in annual Tuition Revenue, while the bottom two-thirds of law schools Reputationally lost on average \$11.6 million and \$12.2 million annually per school, respectively in constant 2018 dollars.⁴ We estimate that aggregate annual Tui-

¹ See *infra* Figure 1.1, Appendix II.

² See *infra* Figure 1.2.

³ See *infra* Section I.B.

⁴ See *infra* Section I.B, Table 1.1. These effects describe the 110 accredited private law schools in the sample that is the basis for this study which, based on the statistical testing we have been able to do with the data available, appears representative of all accredited law schools during the Comparison Period. See *infra* Section II.C, Appendix II.

tion Revenue for all accredited American law schools fell *over \$1.5 billion* in current dollars between its inflation-adjusted peak in 2011–12 and 2016–17.⁵

In Part II, we discuss our data and methods, including how we define and measure the three “Performance Variables” that describe an individual law school’s relative performance as a seller in the market for legal education over the Comparison Period. Those variables are the change in the entering-class’s LSAT scores and UGPA over the six-year period (“ Δ Profile”); the change in the size of the entering class (“ Δ Size”); and the change in the average discounted tuition (after accounting for scholarships) paid per student (“ Δ Net Tuition”).⁶

These three variables reflect three ways that law schools coped with the sudden and drastic fall in demand to which they were subjected.⁷ Faced with fewer and less qualified prospective students, law schools had to make hard choices among the Performance Variables in selecting each new class of first-year students. A law school could try to preserve entering-class Profile by sacrificing Size (taking fewer students, which makes it easier to maintain or minimize decrease in Profile) and/or by sacrificing Net Tuition (trying to get stronger students by selectively offering them lower tuition); or it could preserve entering-class Size by sacrificing Profile (taking a larger class of weaker students) and/or Net Tuition (effectively obtaining more buyers by lowering price); or it might try to hold Net Tuition higher by sacrificing Size (recognizing that fewer students are likely to pay the higher price) and/or Profile (recognizing that stronger students will likely get better tuition deals elsewhere). Given that Size and Net Tuition combine to generate Tuition Revenue, to some extent these decisions balance Profile against Revenue.

We then measure correlations between each Performance Variable and law schools’ Reputations. Part III discusses what we expected to find, and what was actually there.⁸ We expected that each Performance Variable would be correlated with Reputation. In other words, we expected to see that the weaker a law school’s relative Reputation for quality, the more difficulty it would have attracting students with the credentials it sought, so that as Reputation decreased,

⁵ See *infra* Section I.B. This effect is extrapolated from our sample to all accredited law schools. See *supra* Section II.C, Appendix II.

⁶ The Greek letter Δ (delta) is used in its traditional sense of referring to change. *Delta*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003).

⁷ One variable we do *not* address is each school’s access to operating funds other than tuition, such as central university support, “rainy-day” funds, endowment, fundraising, and tuition from non-JD programs. Obviously, alternative sources of funding affect the conditions and incentives for discounting tuition, but available data allow us to estimate only law schools’ degree of tuition discounting. See *infra* note 84 and accompanying text.

⁸ Because available data made estimating average Net Tuition at public law schools impossible, we worked with a sample of 110 private law schools, which we tested as best we could with available data to ensure it was representative of the entire population of accredited schools as a whole. See *infra* Section II.C, Appendix II.

Profile, Size and Net Tuition would also decrease.⁹ This hypothesis proved generally true, but with some (at least to us) surprising and enlightening exceptions.

When we explored the relation between Performance Variable changes and Reputational strength, change in entering-class Size over the Comparison Period was, as expected, correlated with Reputation over the whole population tested. But when we divided our sample into three subgroups by relative Reputation and tested the correlation within each subgroup, the three subgroups performed differently. In the top and bottom thirds Reputationally, change in Size was correlated with Reputation, but in the middle third it was not. We ascribe this anomaly to a phenomenon we call “Tradeoff Variability”: Schools in the middle third Reputationally (“Reputationally Middle”) were under substantial pressure to adjust to the sudden fall in demand, and at a competitive disadvantage relative to Reputationally Stronger schools. In adjusting, each law school chose to compromise on the three different Performance Variables in its own way, depending on its circumstances. In varying degrees, some chose to give up more on Size; others more on Profile; yet others more on Net Tuition. Because each law school “chose its poison”—or rather its mix of poisons—in different proportions, competitive pressures were spread across the Performance Variables sufficiently unequally from school to school that none of the Performance Variables was meaningfully correlated with Reputation in this subgroup.¹⁰

When we examined the relationship between Reputation and change over the Comparison Period in entering-class Profile, we again saw, as expected, that change in Profile was correlated with Reputation over the whole population tested. But when we isolated subgroups by relative Reputation and tested each separately, the correlation was statistically significant only in the Reputationally Stronger set of schools. For the reasons just discussed, we believe Tradeoff Variability explains the lack of correlation among Reputationally Middle schools. As for the bottom third Reputationally (“Reputationally Weaker” schools), it appears Regulatory Constraints affected performance. The Reputationally Weaker law schools were willing to sacrifice Profile but were unable to reduce their already-low entering-class Profile by as much as they otherwise might have because accreditation standards require schools to accept only students who appear able to graduate and pass a bar exam.¹¹

Finally, when we looked at the relationship between Reputation and change in average scholarship-discounted Net Tuition per student over the Comparison Period, surprisingly there was no statistically significant correlation over the whole population. The reason becomes clearer when we look at the Reputational subgroups: Reputationally Stronger schools did see a correla-

⁹ See *infra* Section III.A.

¹⁰ See *infra* Section III.B.1, Table 3.2.

¹¹ See *infra* Section III.B.2, Table 3.3.

tion between Reputation and Net Tuition, which shows that among Reputationally stronger law schools, the stronger the Reputation, the easier it is for the school to hold its price (Net Tuition) and still keep getting the number and quality of students it prefers. Reputationally Middle schools did not see any meaningful correlation, again because of Tradeoff Variability. But among Reputationally Weaker schools, to our surprise Reputation was *negatively* correlated to a statistically significant degree with Net Tuition. In other words, some of the Reputationally Weaker schools were able to give up *less* in tuition discounts than some schools with stronger Reputations, and in some cases were actually able to *raise* their average Net Tuition and Tuition Revenue over the course of the Comparison Period.

On its face, this seems quite odd; typically a product widely believed to be of inferior quality commands an inferior price. We believe this anomaly is explained by what we call the Limited Options Effect: That is, the weakest students who are admitted to the Reputationally Weaker law schools have few options from which to choose. Those Reputationally Weaker law schools willing to admit the weakest students decline to negotiate tuition discounts with them because they don't have to—these students have no or very limited alternatives if they wish to go to law school. In addition, this result may reflect a different weighting of the risks and potential rewards of being a weaker student at a weaker law school among the socioeconomically disadvantaged applicants who are disproportionately represented in this cohort as compared with applicants with broader options. As a result, some of these law schools can concede, on average, less in tuition than law schools that are better regarded, and in that sense, more in demand.¹²

Similar factors lead to similar results when we examine the relationship between Reputation and change in total Tuition Revenue per school. The correlations between Reputation and Tuition Revenue also reveal that Reputationally Stronger schools tend to preserve Profile over Size or Net Tuition, and in fact effectively forgo millions of dollars annually in Tuition Revenue to do so.¹³

These findings point to several important observations with implications for the current state and probable future of the legal academy, which we discuss in Part IV. Four strike us as particularly salient:

First, the Reputationally Stronger law schools chose to preserve entering-class Profile at the expense of Size (and Net Tuition). In other words, they pursued students with credentials at or near the levels they maintained before the shock and were willing to accept smaller entering classes (and more highly discounted tuition) to get them. In the aggregate, this left thousands of viable candidates for less prestigious law schools. The difference amounts to about sixty students per class in Reputationally bottom-half institutions, or the aggregate entering class of about twenty such law schools. In short, elite and highly re-

¹² See *infra* Section III.B.3, Table 3.4.

¹³ See *infra* Section III.B.4, Table 3.5.

garded law schools' drive to keep their Profiles up effectively prevented the closing of as many as twenty weaker law schools.¹⁴

Second, by 2016, many law schools had sacrificed millions of dollars in Tuition Revenue per year to try to maintain their Profiles. As a practical matter, then, some of the best-regarded law schools in the country made a choice to "invest" in trying to maintain Profile rather than generating revenue that might have allowed them to expand their faculty, facilities, or access to clinical and experiential education. We express no view on whether this was a wise investment choice and concede the possibility that it might have been necessary to preserve the quality that these law schools already enjoyed given the prevailing competitive environment. But surely the issue is worth discussing.¹⁵

Third, while Base Tuition increased 10 to 15 percent in constant dollars over the course of the Comparison Period, average Net Tuition per student actually *decreased*—at many schools by double digits. As a result, the *range* of prices students paid for a legal education increased significantly over the Comparison Period. And because almost all scholarships at almost all law schools are "merit-" (that is, predominantly Profile-) based, overwhelmingly the weakest students paid the highest Net Tuition. In short, generally those students with the least promising prospects for obtaining or making any economically sustainable use of their law degrees are paying the highest prices to obtain them, and these inequalities grew considerably over the course of the Comparison Period.¹⁶

Fourth and finally, both Tuition Revenue and Profile decreased at many law schools during the Comparison Period, in some cases substantially. As a result, many law schools are welcoming the least-credentialed and least-academically-prepared classes they have ever encountered, with more students than ever in need of new or supplemental teaching and learning resources. Yet those schools face those student needs with unprecedentedly depleted resources because of the Net-Tuition and entering-class-Size reductions they have made. Even more ironically, the weakest students, who typically pay the highest Net Tuition, are seeing their disproportionate financial contributions allocated to educational resources other than the ones that they typically need more than their classmates do. In short, the discrepancy between student needs and law school resources has widened considerably since 2010—on the order of \$1.5 billion per year less in Tuition Revenue to meet the needs of students that at many law schools are on average 15 LSAT percentiles less prepared and qualified.¹⁷ And the needs of the students who pay the most in tuition are being attended to least. We are already seeing decreases in bar-passage statistics na-

¹⁴ See *infra* Section IV.A.

¹⁵ See *infra* Section IV.B.

¹⁶ See *infra* Section IV.C.

¹⁷ We acknowledge that the LSAT is an imperfect measure of anything that matters, but it has been shown to be at least a somewhat useful indicator of whatever constellation of preparation, drive, and innate abilities lead to success in law school. See *infra* note 35.

tionwide, to which these trends cannot be irrelevant. The needs and prospects of these underserved students deserve to be seriously considered.¹⁸

I. BACKGROUND AND CONTEXT: THE MARKET FOR LEGAL EDUCATION, AND THE 2010 MARKET SHOCK

A. *The US Market for Legal Education*

By appointment of the United States Department of Education, law-school programs in the United States terminating in the Juris Doctor (“JD”) degree are accredited and regulated by the American Bar Association Section of Legal Education and Admission to the Bar and its governing Council (the “ABA”).¹⁹

¹⁸ See *infra* Section IV.D.

¹⁹ See 20 U.S.C. § 1099b (2012) (listing the requirements for recognition by the Department of Education); 34 C.F.R. § 602.1 (2018) (discussing the purpose of accrediting agencies); 34 C.F.R. § 602.2 (2018) (discussing the Department of Education’s online published list of accredited agencies); *Accreditation in the United States*, U.S. DEP’T EDUC. (Jan. 28, 2019), https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html#law [<https://perma.cc/L3SW-ZD4K>] (listing the American Bar Association as the only accredited agency for legal education in the United States). We will refer to these accrediting authorities for convenience as the “ABA,” though for accreditation purposes the Section of Legal Education and Admission to the Bar and its governing Council by law must be, and to all appearances are, “separate and independent” from the American Bar Association itself. See 20 U.S.C. § 1099b(b); 34 C.F.R. § 602.14(b) (2018).

This study focuses exclusively on accredited JD programs. Accreditation is important because a JD degree from an accredited American law school will allow an aspiring lawyer to sit for the Bar Examination in any American State or the District of Columbia, and passing a Bar Examination is almost always a prerequisite for a license to practice law in the administering jurisdiction. (A few states and the District of Columbia will allow an individual to apply for licensure based on bar-passage and licensure in a sister state; and states that rely on the Uniform Bar Examination (“UBE”)—currently about twenty-five—will typically allow applicants to rely on their UBE scores wherever the exam was taken, though the passing UBE score varies from state to state.) A few states allow individuals to take their bar exams if they have graduated from a non-ABA-accredited law school approved by the state or have qualified by other means (such as independent study of the law under the supervision of a licensed lawyer), but these alternative routes to licensure are relatively rare, and rarely successful. See *generally* NAT’L CONF. OF BAR EXAMINERS & AM. BAR. ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS* 2018 1–11 (Judith A. Gundersen & Claire J. Guback eds., 2018).

Many law schools also offer non-JD postgraduate legal education programs, including LLM and JSD degrees subsequent to the JD, as well as a proliferating number of postgraduate non-JD programs, typically of a year’s (or two years’ part-time) duration, terminating in a degree often referred to as a Master’s Degree in Legal Science (MLS) or Juridical Science (MJS). The latter programs usually focus on legally-oriented functions in various arms of commerce that are not always performed by licensed lawyers. They are much smaller than the flagship JD programs, but have been growing in size and number as demand for the JD degree has fallen. See Derek T. Muller, *One in Ten Law School Enrollees is Not a Part of a JD Program*, EXCESS DEMOCRACY (Jan. 22, 2016), <http://excessofdemocracy.com/blog/2016/1/one-in-ten-law-school-enrollees-is-not-a-part-of-a-jd-program> [<https://perma.cc/L29G-2Z7C>]. Non-JD postgraduate programs are not accredited by the ABA, though the ABA retains authority to permit accredited institutions offering JDs to offer the non-JD programs along-

During the time period this Article explores—academic years 2010–11 through 2016–17, the reasons for which will become clear shortly and to which we refer as the “Comparison Period”—nearly 200 law schools in the United States offered fully-accredited JD programs.²⁰

Because a JD from an ABA-accredited law school is required in the vast majority of states to sit for the bar exam, most people considering a career as a lawyer seek admission to an ABA-accredited law school. By far the two most influential criteria in admissions decisions are applicants’ scores on the Law School Admission Test (“LSAT”), and their undergraduate grade-point averages (“UGPA”).²¹ Law schools vary considerably in their selectivity with respect to these criteria, to which we refer as student “Profile.”²² Higher levels of both

side. For a list maintained by the ABA of the dozens of non-JD programs conducted by accredited law schools, see *LL.M. and Post-J.D. Degrees by School*, ABA, https://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_school.html [<https://perma.cc/7VYF-N4TJ>] (last visited Feb. 14, 2019). Our study does not take any non-JD students into account.

²⁰ See *infra* Section II.B for discussion on the Comparison Period. See *infra* Section II.C for discussion on the number of accredited schools during the Comparison Period and the composition of the sample group we used in this study.

²¹ See *The LSAT*, LAW SCH. ADMISSIONS COUNCIL, <https://www.lsac.org/jd/lsat/about-the-lsat> [<https://perma.cc/HF76-XN3N>] (last visited Feb. 14, 2019); Derek T. Muller, *Solving Law School Admissions; Or, How U.S. News Distorts Student Quality*, EXCESS DEMOCRACY (Aug. 27, 2013), <http://excessofdemocracy.com/blog/2013/8/solving-law-school-admissions-or-how-us-news-distorts-student-quality> [<https://perma.cc/RB5K-Y359>] [hereinafter Muller, *Law School Admissions*]. An increasing number of law schools today are accepting scores on the Graduate Record Exam (“GRE”) in lieu of LSAT scores, provided that the school can demonstrate to the ABA that the GRE predicts success at its law school as reliably as the LSAT. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS. 2018–2019, 33 (AM. BAR ASS’N 2018) [hereinafter ABA STANDARDS]; Kathryn Rubino, *25 Percent of Law Schools Say They Plan to Accept the GRE*, ABOVE LAW (Sept. 18, 2017, 9:40 AM), <https://abovethelaw.com/2017/09/25-percent-of-law-schools-say-they-plan-to-accept-the-gre/> [<https://perma.cc/EA4T-T3SS>]; Stephanie Francis Ward, *After Withdrawal of Law School Admissions Test Rule Revision, Will Fewer Schools Accept the GRE?*, ABA JOURNAL (Aug. 9, 2018, 6:10 AM), http://www.abajournal.com/news/article/following_withdrawl_of_admissions_test_rule_revision_will_fewer_schools_acc [<https://perma.cc/LL7Y-W538>]. The ABA House of Delegates recently tabled a resolution to broaden the tests available to law schools to include in their admissions process if they wished, see Ward, *supra*, but ABA Standard 503 still requires “a valid and reliable admission test,” see ABA STANDARDS, *supra*, at 33, and thus some psychometrically standardized test score is part of almost every application to almost every law school. During the Comparison Period, no law school accepted the GRE as an alternative to the LSAT—the first, the University of Arizona, did not even start to try until 2016. Paul Caron, *Arizona Is First Law School to Admit Students Based on GRE Instead of LSAT*, TAXPROF BLOG (Feb. 11, 2016), https://taxprof.typepad.com/taxprof_blog/2016/02/arizona-is-first-law-school-to-admit-students-based-on-gre-instead-of-lsat.html [<https://perma.cc/8RDU-HQ45>]. Accordingly, our quantitative study uses LSAT scores (along with UGPA) exclusively to describe students’ conventional qualifications.

²² For an explanation of the quantitative measure of a law-school’s overall student Profile developed and used in this study, see *infra* Section II.D.1. For data on selectivity, including numbers of applications, acceptances, and matriculants by school, see the ABA Required Disclosures webpage. *Standard 509 Disclosure*, ABA, <http://www.abarequireddisclosures.or>

are consistently associated with law schools that enjoy stronger Reputations for overall quality, in part because these criteria tend to select stronger students who are in greater demand among more lucrative and prestigious employers,²³ and in part because LSAT and UGPA together account for 22.5 percent of the law-school rankings published annually in *U.S. News and World Report*, which is (for better or worse) an influential and widely relied-upon measure of relative reputation for overall quality.²⁴

Most students also are selective in choosing the law schools to which they apply and matriculate. While individual preferences can vary, applicants generally decide to attend the law school with the best general Reputation for overall quality—balanced against the lowest cost of attendance and geographical familiarity and convenience—that their credentials can bring them. As a result, the scholarships and other cost discounts that a law school may be willing to offer become a significant factor in many students' decisions.²⁵

Law schools are required to publish a Base Tuition or “sticker price,”²⁶ but many applicants' actual tuition is less than sticker price because of the scholarships law schools offer. Law schools also are required to publish the number of students across the entire student body who have received grants or scholarships, which can give prospective students some idea of their own chances for

[g/Disclosure509.aspx \[https://perma.cc/2RKR-VDA7\]](#) (last visited Feb. 14, 2019) (select the year and the First-Year Class Section from the “Compilation—All Schools” box on the lower right).

²³ See *infra* note 59 and accompanying text.

²⁴ See Robert Morse & Kenneth Hines, *Methodology: 2019 Best Law School Rankings*, U.S. NEWS (Mar. 19, 2018, 9:30 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [<https://perma.cc/3ML4-Q4SB>]. Despite their many shortcomings and deep unpopularity in the academy, the *U.S. News* rankings are quite explicitly relied upon by most prospective law students in setting their priorities and making their choices in law school applications and matriculation. See *infra* note 80; see also Muller, *Law School Admissions*, *supra* note 21. Thus, whether or not they accurately reflect some measurable underlying reality, see *infra* Section II.F, they are a good measure of law schools' relative Reputation for overall quality.

²⁵ See Jerome M. Organ, *Net Tuition Trends by LSAT Category from 2010 to 2014 with Thoughts on Variable Return on Investment*, 67 J. LEGAL EDUC. 51, 74 (2017) (discussing the relative importance tuition discounts may have for students with different qualifications) [hereinafter Organ, *Net Tuition*]. See generally, GALLUP & ASS'N OF AM. LAW SCHS., BEFORE THE JD: UNDERGRADUATE VIEWS ON LAW SCHOOL 54 fig.8.1 (2018) (noting that among over 2700 first-year law students from over eighty law schools, location, reputation and financial support offered were three of the five most important criteria in selecting law school (along with employment outcomes and quality of faculty)); Christopher J. Ryan, *Analyzing Law School Choice* 20 tbl.4 (Working Paper No. 186, 2019) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3309815 [<https://perma.cc/BH3U-C8GN>] (noting that among students at four different types of law schools, two of the most significant factors that influenced choice of law school were reputation and financial aid (along with job placement)).

²⁶ See *infra* note 44 and accompanying text. The term “sticker price” is in widespread use in law-school admissions circles, and reflects the strong analogies between Base Tuition and automobile sticker price—namely that both are published nominal prices from which many prospective purchasers negotiate downward.

scholarship aid.²⁷ At the vast majority of law schools, scholarships are based on “merit” rather than student need, with schools competing for the “best” students as measured principally by LSAT and UGPA.²⁸

In short, these facts describe a market in which law schools are sellers, and law students are buyers, of a specific service: legal education intended to eventuate in a JD degree. It is a somewhat unusual market: In general, sellers are indifferent to the characteristics of their buyers (other than ability to pay), but law-school sellers care deeply about the characteristics of their prospective student buyers. Law schools will negotiate price (that is, discount tuition) for accepted applicants with certain measurable characteristics, namely LSAT and UGPA credentials that are above the actual or aspirational median for that law school.²⁹ Nonetheless, it also is an economic market in which buyers care deeply about price and perceived value. The next section will describe a recent shock to this market—the significant decline in demand during the period following 2010—and will explore how that shock affected the market and its participants.

B. *The Market Shock of 2010*

From the 1970s until 2008, with a brief dip in the early 2000s, the entry-level job market for new law graduates grew steadily. The number of law-school applicants and matriculants grew comparably, with some ebbs and flows.³⁰ Figure 1.1 on the following page illustrates these trends.

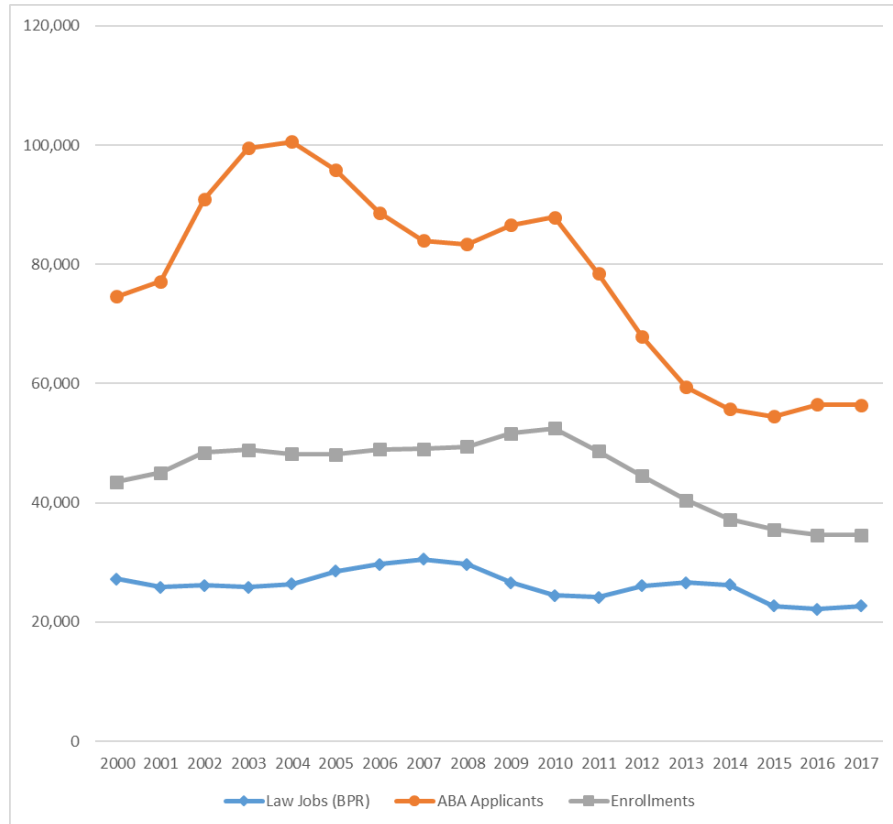
²⁷ See *infra* notes 44, 47, 65, and accompanying text.

²⁸ See Jerome Organ, *How Scholarship Programs Impact Students and the Culture of Law School*, 61 J. LEGAL EDUC. 173, 183 n.15 (2011) (noting that for the 160 law schools on which information was available only seven offered need-based scholarships) [hereinafter Organ, *Scholarship Programs*]; *LSSSE Annual Results 2016: Types of Scholarship Awards (Part 1)*, LSSSE (Apr. 10, 2017), <http://lssse.indiana.edu/blog/lssse-annual-results-2016-types-of-scholarship-awards-part-1/> [<https://perma.cc/P629-YMDU>] (noting that 79 percent of scholarships awarded were merit-based that year).

²⁹ See Organ, *Scholarship Programs*, *supra* note 28, at 183–85 (discussing use of conditional scholarship programs to attract the highest possible entering class profile); Organ, *Net Tuition*, *supra* note 25, at 55–64 (describing pricing pressures particularly on law schools with LSAT medians of 150–59, which saw net tuition decline over 10 percent between 2010 and 2014); Muller, *Law School Admissions*, *supra* note 21 (describing admission process in which law schools refrain from admitting students whose LSAT and GPA indicators are just below the schools’ reported medians, opting to admit students with one indicator above the median even if the other indicator is further below the median).

³⁰ Figure 1.1 tracks “Law Jobs,” defined as full-time, long-term jobs requiring a law license and excluding solo practice and positions funded by the graduate’s law school. The reasons underlying this definition are presented in Bernard A. Burk, *What’s New About the New Normal: The Evolving Market for New Lawyers in the 21st Century*, 41 FLA. ST. U. L. REV. 541, 547–50, 555–63 (2014) [hereinafter Burk, *New Normal*]. The source for the Law Jobs information is the employment outcomes data self-reported by accredited law schools and gathered by the National Association for Law Placement (“NALP”) and the ABA since the 1970s, selecting Law Jobs by the methodology described in Burk, *New Normal*, *supra*, at 550. The source for the applicant and matriculant data is also data self-reported by accredited

FIGURE 1.1: NUMBER OF LAW JOBS, LAW-SCHOOL APPLICANTS, AND LAW-SCHOOL MATRICULANTS 2000–17



As Figure 1.1 also illustrates, following the onset of the Great Recession in 2008, entry-level legal hiring dropped precipitously.³¹ The number of appli-

law schools and gathered by NALP and the ABA, as well as data gathered and reported by the Law School Admissions Council (“LSAC”).

³¹ See Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 27–39 (2011) [hereinafter Burk & McGowan, *Big but Brittle*]. The reasons for these reductions was only in part attributable to the cyclical effects of the Great Recession. Structural pressures on the way that complex legal services were staffed and priced that had begun to build years previously took hold as hard times forced more clients to rethink their legal costs. See Burk, *New Normal*, *supra* note 30, at 581–99. Though the Great Recession has been over for quite some time and unemployment generally is at historic lows, the number of Law Jobs is still down 26 percent from 2007, and with the structural forces exerting downward pressure on the hiring of new lawyers ever more firmly taking hold, there is no good reason to believe that the Law Job market will grow any faster than Gross Domestic Product for the foreseeable future. See Bernard A. Burk, *The New Normal Ten Years In: The Job Market for New Lawyers Today and What It Means for the Legal Academy Tomorrow*, 12 FLA. INT’L L. REV. (forthcoming 2019).

cants to law school increased in 2009 and 2010, resulting in the largest aggregate entering class in American history in the fall of 2010 with roughly 52,500 first-year students.³² By 2010, large firms' layoffs of thousands of junior associates and cutbacks in new hiring were front-page news and had become apparent to college seniors and recent graduates considering law school.³³ As a result, both law-school applications and entering-class sizes began to drop steeply. Between 2010 and 2015, the number of unique applicants to law school per year fell 36 percent, and the total number of applications dropped 44 percent.³⁴

Not only did the number of applicants to law school decrease, so did their conventional qualifications. Stronger students with higher test scores, who probably had the most varied and attractive alternatives to law school, disproportionately stayed away compared to weaker applicants.³⁵ Figure 1.2 illustrates these trends, focusing on applicants in three LSAT categories.

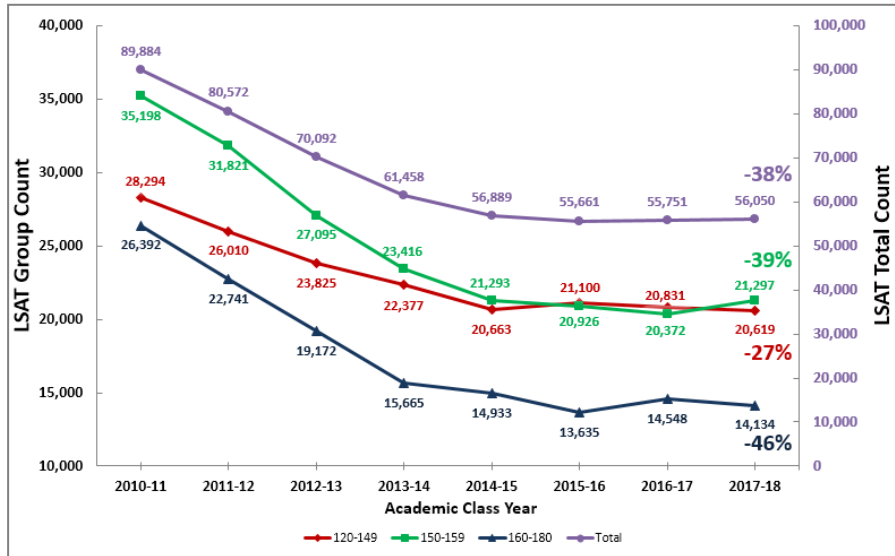
³² Am. Bar. Ass'n Section of Legal Educ. and Admissions to the Bar, *Enrollment and Degrees Awarded 1963–2012*, ABA, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.pdf [<https://perma.cc/YSA8-XSMD>] (last visited Feb. 15, 2019). This small surge was typical of the response following all recessions from the 1970s on as graduating college seniors sought graduate and professional school as a shelter from an inhospitable employment market. See Burk, *New Normal*, *supra* note 30, at 565 figs. 2.1–2.2.

³³ See Burk & McGowan, *Big but Brittle*, *supra* note 31, at 28–36 and authorities cited.

³⁴ Applicants and applications dropped precipitously year-over-year in 2011, 2012, and 2013 (-10.7%/-11.4%; -13.5%/-12.3%; -12.4%/-17.8%). See Appendix II. Both continued to fall less drastically in 2014 and 2015 (-6.3%/-8.0%; -2.2%/-4.2%). *Id.* By 2016, applicants and applications, as well as new matriculants, had finally levelled out—they actually rose slightly in 2016, although 2016 might have reflected a “false positive” as LSAC started reporting full-year applicant volume rather than fall applicant volume. *Admission Trends: ABA Applicants, Admitted Applicants, and Applications*, LSAC, <https://www.lsac.org/lscresource/s/data/aba-coy> [<https://perma.cc/2T5M-VRQR>] (last visited Jan. 26, 2019). Applicants and applications were up by about 7.6 percent for fall 2018, *id.*, a phenomenon that an LSAT test-preparation organization's survey suggests was prompted by a sudden increase in graduating college students' interest in involving themselves in the political events of the day rather than any sense that employment opportunities might be expanding (and that any additional law students therefore might be able to achieve their ambitions for full-time political engagement in the law when they graduate). See Jodi Teti, *Are More Students Going to Law School as a Reaction to Trump?*, LSAT BLOG (Aug. 29, 2017, 4:00 AM), <http://blueprintlsat.com/lsatblog/law-school-2/students-going-law-school-reaction-trump/> [<https://perma.cc/KVZ6-28LA>].

³⁵ We will throughout this Article refer generally to “stronger” or “weaker” applicants and students. This is a shorthand intended only for convenience to refer to students with higher (or lower) LSAT scores and UGPAs. We use this shorthand both because it corresponds to the measurable data we have, and because during this period most law-school admissions committees relied heavily on these data to the near-exclusion of almost anything else. We in no way intend to imply that LSAT and UGPA are all that is needed to predict whether an applicant is capable of completing a JD at any particular institution or of passing any state's Bar Examination, let alone functioning as a practicing lawyer in any particular realm of practice. We believe that the ability to succeed in law school, or bar testing, or the legal profession calls upon a range of attributes, such as academic preparation in writing, numeracy and critical reasoning; acculturation; work ethic (sometimes thought of as drive or “grit”); and

FIGURE 1.2: HIGHEST LSAT SCORE CATEGORIES OF ABA APPLICANTS (COUNT) 2010–2011 THROUGH 2017–18³⁶



By the time the size of the applicant pool had leveled out, the landscape had changed profoundly. As shown in the data presented in Appendix I, by the 2016–17 academic year, the average private American law school (based on the 110 law schools in our sample and weighted for class size) had:

- A median entering-class LSAT of 156, down from 158 in 2010, a drop equivalent to 7 percentiles of the tested population;³⁷

emotional and general innate intelligence, all in combination and in balance. See, e.g., Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQUIRY 620, 630 (2011) (identifying twenty-six effectiveness factors that are indicative of successful lawyers); *Phase One: Survey & Results*, IAALS, <http://iaals.du.edu/projects/foundations-practice/phase-one-survey-results> [https://perma.cc/J6CY-ZBS3] (last visited Feb. 17, 2019) (highlighting characteristics, competencies and skills identified by lawyers as being essential for recent law school graduates to be successful). LSAT and UGPA appear to reflect at least a few of these things, at least to some degree, but are primarily predictive of success in the first year of law school. See, e.g., LISA C. ANTHONY ET AL., PREDICTIVE VALIDITY OF THE LSAT: A NATIONAL SUMMARY OF THE 2013 AND 2014 LSAT CORRELATION STUDIES 1 (2016).

³⁶ Paul Caron, *Updated LSAC Data on the Quantity and Quality of Law School Applicants*, TAXPROF BLOG (Feb. 26, 2018), http://taxprof.typepad.com/taxprof_blog/2018/02/updated-lsac-data-on-the-quantity-and-quality-of-law-school-applicants.html [https://perma.cc/8ALY-T678].

³⁷ See *infra* Appendix I. As discussed *infra* note 60 and accompanying text, the LSAT's point-scoring scale does not translate to performance relative to other test-takers in linear terms. In other words, the normalized scale corresponds to different proportions of the tested population at different points on the scale. The one-point difference between 170 and 171 (or 130 and 131) on the LSAT's 120-to-180 normalized point scale amounts to less than one percentile; the difference between 150 and 151 amounts to nearly four percentiles. This ex-

- An entering-class Size that was nearly one-third (31 percent) smaller than in 2010, reduced by an average of ninety-two students per entering class per school;
- Average actual tuition paid per student (“Net Tuition”) that was 6.4 percent *less* than it had been in 2010 (down from \$35,251 in 2010 to \$32,985 in 2016, measured in constant 2018 dollars). While weighted average Base Tuition “sticker price” rose 15 percent during the same period (from \$42,434 in 2010 to \$49,007 in 2016, measured in 2018 dollars), the average scholarship discount per student had doubled (rising from 16.9 percent of Base Tuition in 2010 to 32.7 percent in 2016, again in real 2018 dollars), and the number of students receiving scholarships had also increased by more than 10 percent.

As a result, from its inflation-adjusted peak in 2011–12 until 2016–17, overall average Tuition Revenue fell over one-third (-35 percent). In constant 2018 dollars, we estimate that annual Tuition Revenue for all accredited law schools in 2016–17 was *over \$1.5 billion* less than it had been in 2011–12—an average decrease of over \$9 million in annual Tuition Revenue per law school.³⁸

Needless to say, these hardships were not distributed evenly across all law schools.

plains the widely varying percentile differences for what might appear to be similar scaled-point differences here and *infra* Table 1.1.

³⁸ As shown *infra* Appendix I, Tuition Revenue in constant dollars peaked in 2011–12 (without inflation adjustment, it was slightly higher in 2012–13). Both discounting and class contractions started somewhat gradually while Base Tuition generally continued to rise about 4 percent per year in nominal dollars (a common figure across higher education). All these figures are based on the sample used in this study of 110 accredited schools, described *infra* Section II.C. For the reasons discussed there, we believe this sample is representative of all accredited schools despite important gaps in our pricing data for the remaining eighty or so schools. The Tuition Revenue-loss estimate for all accredited law schools offered in the text is extrapolated from our sample group.

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COMPETITIVE COPING STRATEGIES

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TABLE 1.1: PERFORMANCE CHANGES OVER THE COMPARISON PERIOD IN REPUTATIONALLY STRONGER VS. WEAKER PRIVATE LAW SCHOOLS³⁹

Metric	Reputation Group ⁴⁰	2010–11 ⁴¹	2016–17	Change
Median 1L LSAT	Stronger	166	164	-2 points = -3 percentiles
	Middle	156	152	-4 points = -15 percentiles
	Weaker	151	147	-4 points = -14 percentiles
	Stronger	11,133	9,689	-13% = -39 students/entering class
1L Class Size	Middle	10,523	6,865	-35% = -102 students/entering class
	Weaker	10,885	5,833	-46% = -136 students/entering class
Base Tuition [°]	Stronger	49,225	56,595	+15%
	Middle	41,400	45,492	+10%
	Weaker	35,580	39,817	+12%
Avg. Net Tuition [°]	Stronger	39,787	37,772	-5%
	Middle	34,252	28,914	-16%
	Weaker	30,974	29,231	-6%
Avg. Discount [°]	Stronger	9,438	18,823	+99%
	Middle	7,148	16,577	+132%
	Weaker	4,606	10,585	+130%
Tuition Revenue (millions) [°]	Stronger	1,349	1,129	-16% = -\$5.9 million/school
	Middle	970	554	-43% = -\$11.6 million/school
	Weaker	958	507	-47% = -\$12.2 million/school

As Table 1.1 shows, the Reputationally Stronger law schools generally suffered least, while on many metrics Reputationally Middle law schools suffered most (though the Reputationally Weaker law schools often suffered almost as badly, or worse). For example, over the course of the Comparison Period, Reputationally Middle and Weaker law schools lost on average twice as many LSAT points, and about five times as many LSAT percentiles, as the Reputationally Stronger ones. Reputationally Middle law schools shrank their entering-class Size on average more than twice as much as Reputationally Stronger ones, while Reputationally Weaker law schools shrank theirs on average more than three times as much. Financially, while almost all law schools consistently raised their Base Tuition in excess of inflation year after year, average Net Tuition paid per student actually *fell* 5 to 6 percent in real dollars over the Comparison Period at both the Stronger and Weaker schools Reputationally, with a much greater average decrease of 16 percent among Reputationally Middle law

³⁹ The data from which these findings are derived and set out *infra* Appendix I.

⁴⁰ The third of the sample with the highest (Stronger), Middle, or lowest (Weaker) Reputation Score. See *infra* Section II.E.

⁴¹ Tuition Revenue is for the 2011–12 academic year because that is the year Tuition Revenue peaked. See *supra* note 38.

[°] Dollar figures in constant 2018 dollars.

schools.⁴² And while Base Tuition rose, even the Reputationally Stronger law schools on average doubled their average tuition discounts over the course of the Comparison Period, while Reputationally Middle and Weaker law schools increased their discounting on average by even more—about 130 percent. As a result, Tuition-Revenue losses per school between 2011 and 2016 were twice as great for the Reputationally Middle and Weaker law schools (-\$11.6 and -\$12.2 million per year per school, respectively, measured in constant 2018 dollars) than they were for the Reputationally Stronger (-\$5.9 million per year per school, measured in constant 2018 dollars). All in six short years.⁴³

It would be no exaggeration to call these changes sudden, enormous, and drastic.

These rapid and dramatic changes in demand, their substantial practical and economic effects on law schools, and their varying effects across the acad-

⁴² As discussed in more detail below, the most surprising result to emerge from our examination of the legal academy in Reputational sectors is that, during a time when the number of applicants to law school fell dramatically, a number of the least-well-reputed law schools in the country managed to discount only modestly, maintain, or even *raise* the average Net Tuition their students actually paid, while many better-regarded law schools were forced to discount tuition substantially. *See supra* Table 1.1; *infra* Section III.B.3.

⁴³ Notably, the downturn has affected the number of law schools that remain in operation, even though some of the closures occurred after 2016. The Hamline University School of Law merged with the William Mitchell College of Law in 2015 to form Mitchell Hamline School of Law. *See* Josh Verges, *William Mitchell, Hamline Law School Merger OK'd*, TWIN CITIES PIONEER PRESS (Dec. 17, 2015, 5:13 PM), <https://www.twincities.com/2015/12/08/william-mitchell-hamline-law-school-merger-okd/> [https://perma.cc/K3R7-SLPJ]. We thus excluded both from our sample given that we did not have data to analyze through 2016 for each law school. In addition, although the Charlotte School of Law did not announce its closure until August 2017, because grant and scholarship data is reported on a one-year delay, we didn't have grant and scholarship information for Charlotte for 2016 (it did not report such data in December 2017 since it had closed) and therefore excluded Charlotte from our sample as well. *See* Elizabeth Olson, *For-Profit Charlotte School of Law Closes*, N.Y. TIMES (Aug. 15, 2017), <https://www.nytimes.com/2017/08/15/business/dealbook/for-profit-charlotte-school-of-law-closes.html> [https://perma.cc/3G4T-CNYR]. But more recently, three other law schools that were part of the Reputationally Weaker set of law schools within our sample are now closed or closing, including Whittier (April 2017), *see* Elizabeth Olson, *Whittier Law School Says It Will Shut Down*, N.Y. TIMES (Apr. 19, 2017), <https://www.nytimes.com/2017/04/19/business/dealbook/whittier-law-school-to-close.html> [https://perma.cc/SGN7-Y4NU]; Valparaiso (October 2018), *see* Emma Whitford, *Another Law School Will Close*, INSIDE HIGHER ED (Oct. 31, 2018), <https://www.insidehighered.com/news/2018/10/31/valparaiso-law-school-will-close-following-unsuccessful-attempt-transfer-middle> [https://perma.cc/W9V6-ZPQ3]; and Arizona Summit (October 2018), *see* Anne Ryman, *Arizona Summit Law School Details Plans to Eventually Close Its Doors*, AZCENTRAL (Oct. 25, 2018, 4:04 PM), <https://www.azcentral.com/story/news/local/arizona-education/2018/10/25/arizona-summit-law-school-details-plans-close-its-doors/1763964002/> [https://perma.cc/W3YH-2KV5]. In addition, one school, Indiana Tech, that was not in our database because it never received full accreditation, also announced in October 2016 that it was closing. *See* Fatima Hussein, *Indiana Tech Will Shut Down Law School*, INDYSTAR (Nov. 1, 2016, 12:32 PM), <https://www.indystar.com/story/news/education/2016/10/31/indiana-tech-shut-down-law-school/93063296/> [https://perma.cc/4NGE-748Q].

emy together raise the question whether we can identify groups of law schools whose characteristics predict the nature or extent of their reaction to the market shock. As we will see, the answer is that we can, and that some of those trends turn out to be surprising. The next Part discusses the data and methods we used to discern those trends.

II. DATA AND METHODS

A. *The American Bar Association's Disclosure Requirements for Accredited Law Schools*

Among the Standards and Rules of Procedure for Approval of Law Schools the ABA has promulgated (the “ABA Standards”) are a number requiring each accredited American law school to self-report annually to the ABA and to the public a range of information concerning its program, students, and educational outcomes, as well as students’ employment outcomes during the ten months after their graduation.⁴⁴

Law schools have been required since before 2010 to disclose annually their numbers of applicants, numbers of matriculants, and matriculants’ median, 25th-, and 75th-percentile LSAT scores and UGPA for each entering class, both full-time and part-time.⁴⁵ While Base Tuition is reported in the current

⁴⁴ ABA Standard 509(b) currently requires each accredited law school to publicly disclose on its website . . . : (1) admissions data; (2) tuition and fees, living costs, and financial aid; (3) conditional scholarships; (4) enrollment data, including academic, transfer, and other attrition; (5) numbers of full-time and part-time faculty, professional librarians, and administrators; (6) class sizes for first-year and upper-class courses; number of seminar, clinical and co-curricular offerings; (7) employment outcomes; and (8) bar passage data.

ABA STANDARDS, *supra* note 21, at 35–36. The scope and detail of demographic, operational, and employment-outcome information that the ABA has required law schools to disclose has evolved over time, and has expanded considerably since 2009, especially as to conditional scholarships (that is, scholarships whose continuation after the first year is conditioned on something in addition to academic good standing) and employment outcomes. For discussion of use and reporting of conditional scholarships, see generally Jerome M. Organ, Better Understanding the Scope of Conditional Scholarship Programs Among American Law Schools (Sep. 27, 2013), <https://ssrn.com/abstract=2288915> [<https://perma.cc/ELJ2-CAVZ>]. For a history of law-school disclosure requirements regarding employment outcomes, see Burk, *New Normal*, *supra* note 30, at 550–53. For more specific details about what data disclosures are currently required, see *Questionnaires & Applications*, ABA, https://www.americanbar.org/groups/legal_education/resources/questionnaire.html [<https://perma.cc/YWE4-DU72>] (last visited Feb. 18, 2019) [hereinafter 2017–18 ABA Questionnaire]. The actual data disclosed as required by Standard 509, by school, for each year beginning 2010–11 may be found at *Standard 509 Disclosure*, *supra* note 22.

⁴⁵ ABA STANDARDS, *supra* note 21, at 35–36 (referencing admissions data and enrollment data). Our 2010 application and admissions data were obtained from the hardcopy 2012 ABA-LSAC Official Guide (which was published in the summer of 2011 based on information reported in the Annual Questionnaire from the fall of 2010). See generally LAW SCH. ADMISSIONS COUNCIL & AM. BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS, 2012 EDITION (2012) [hereinafter 2012 ABA-LSAC OFFICIAL GUIDE]. Our 2011–2016 data was obtained from the

year, law schools report grants and scholarships one-year delayed, and are required to report grant and scholarship data only across all enrolled students, not class-by-class (though grant and scholarship disclosures do distinguish between full-time and part-time students as separate groups).⁴⁶

We have been forced to estimate the amounts of discounting from Base Tuition by grants and scholarships at each law school because law schools are required to report grants and scholarships only in intervals. Specifically (and separately for full-time and part-time students as groups), the ABA since 2011 requires disclosure of only the total number of students receiving a grant or scholarship in any amount, the number of students receiving less than 50 percent of Base Tuition, the number receiving between 50 percent and 100 percent of Base Tuition, and the number of students receiving 100 percent or more of Base Tuition; as well as the 25th-, 50th-, and 75th-percentile grant amounts.⁴⁷ Accordingly, we calculate each school's estimated average "Net Tuition" (that is, its average grant-adjusted tuition) per student each year based on the school's entire student body.⁴⁸

information on the ABA's Standard 509 Required Disclosures website. *Standard 509 Disclosure*, *supra* note 22.

⁴⁶ See 2017–18 ABA Questionnaire, *supra* note 44 (found in Part I, Part IV questionnaires). All data of interest are disclosed separately for full-time and part-time students. As a result, we were able to carry out our analysis on full-time and part-time students combined. In most cases, the changes in Profile, Size and Net Tuition, *see infra* Section II.D, during the Comparison Period were broadly similar whether we used the combined data, or just data on full-time students. We were particularly concerned about Net Tuition, because part-time tuition is typically less per year than full-time tuition, though part-time students often pay more in total for the degree because they must enroll for four rather than three years. A school that increased its part-time enrollment relative to full-time over the course of the Comparison Period would appear to have reduced its average Net Tuition per student simply because part-time students pay less per year, even though the law school had enrolled more students, and was realizing more Tuition Revenue. However, the correlations relied on in this study, *see discussion infra* Part III, did not materially change when we used only full-time students or when we equalized part-time Net Tuition to account for the fact that it is spread over four rather than three years. Thus, any material distortion resulting from lower annual part-time tuition does not appear to present itself in this dataset. Accordingly, we use the combined full-time and part-time data without normalizing the part-time data in any way because they are used both by the ABA for accreditation purposes and by publications such as *U.S. News* for ranking purposes, and also to avoid any possible opportunistic classification by a reporting school.

⁴⁷ See 2017–18 ABA Questionnaire, *supra* note 44 (found in Part IV questionnaire). Before 2011, schools were required to disclose even less—only Base Tuition, median grant amounts, and the total number of students with and without grants. *See infra* note 66.

⁴⁸ See *infra* Section II.D.3 for the estimation formula we have used. As with our admissions and matriculation data, our 2010 tuition data were obtained from the hardcopy 2012 ABA-LSAC OFFICIAL GUIDE, *supra* note 45, and our 2011–16 tuition data were obtained from the Required Disclosure Information on the ABA's Standard 509 Required Disclosures website, *Standard 509 Disclosure*, *supra* note 22. The grants and scholarship information were obtained from the 2011 to 2017 Required Disclosure Information as they are reported on a one-year delayed basis. *Id.*

B. *The Comparison Period*

Our Comparison Period begins with the 2010–11 academic year, which for most accredited American law schools represents an historical high-water mark for law-school admissions in terms of the Size and Profile of the entering class. That year also marks the beginning of the market shock in legal education resulting from the collapse of the job market for new law graduates a couple of years earlier.⁴⁹

The Comparison Period ends with the 2016–17 academic year, by which time the market shock and its effects had for the most part stabilized, and schools generally had adjusted to a “new normal” in demand.⁵⁰

C. *The Law Schools Comprising Our Dataset*

The law schools on whose data we rely in this study comprise 110 private law schools that were fully accredited continuously during the Comparison Period.⁵¹ We very much would have liked to have included all law schools, both public and private, that were fully accredited throughout the Comparison Period. Unfortunately, public law schools charge different levels of Base Tuition to in-state and out-of-state residents, but are not required to (and typically do not) disclose how many students of each category attend the school in any given year.⁵² Moreover, we have no confidence that public law schools in different

⁴⁹ See *supra* Sections I.A, I.B, and Figure 1.1; see also *infra* Appendix I.

⁵⁰ See *supra* Section I.A, Figure 1.1; see also *infra* Appendix I. We acknowledge that the number of law-school applicants increased by about 8 percent in 2018–19, with first-year enrollment increasing about 3 percent to roughly 38,400. See Am. Bar Ass’n Section of Legal Educ. and Admissions to the Bar, *New Data Confirm Boost in Law School Attendance*, <https://www.americanbar.org/news/abanews/aba-news-archives/2018/12/new-data-confirms-boost-law-school/> [<https://perma.cc/A6GF-DDX7>] (last visited on Feb. 18, 2019); see also, Jerry Organ, *Analyzing Enrollment and Profile Patterns Across Different Tiers of Law Schools for Fall 2018*, TAXPROF BLOG (Jan. 2, 2019), https://taxprof.typepad.com/taxprof_blog/2019/01/analyzing-enrollment-and-profile-patterns-across-different-tiers-of-law-schools-for-fall-2018.html [<https://perma.cc/ZU6N-N3DK>]. But the number of entry-level law jobs has remained flat, and shows no indication it will return to the levels prevailing ten or even twenty years ago for many years. See *supra* note 31 (expressing doubt whether the entry-level employment market would be able to accommodate a larger graduating class). We concur with the National Association for Law Placement in questioning the wisdom of admissions policies that expand entering classes without regard to the availability of Law Jobs for the additional graduates that will result. See Karen Sloan, *Job Market for Law Grads ‘Surprisingly Strong,’ NALP Finds*, LAW.COM (Aug. 1, 2018, 6:00 PM), <https://www.law.com/2018/08/01/job-market-for-law-grads-surprisingly-strong-nalp-finds/> [<https://perma.cc/N2BT-G2KK>].

⁵¹ The sample excludes programs that existed or were accredited for only part of the Comparison Period, or that merged with another law school during the Comparison Period making continuous quantitative comparison impossible, see *supra* note 43, but includes law schools that changed name or ownership only. It also excludes three law schools located in Puerto Rico, as they serve a different market.

⁵² This omission is further complicated by the fact that some states make it relatively easy for out-of-state students to qualify for in-state Base Tuition by their second year, while oth-

states and with different Reputations for quality have similar proportions of in-state and out-of-state students, or even that a given public law school would have the same proportion of in-state and out-of-state students over time.⁵³ It therefore is impossible to determine average tuition per student (either at Base Tuition or grant-adjusted Net Tuition) reliably at a public law school. Because, as we will see, a law school's decisions on Net Tuition are a critical factor in quantifying its market performance, and we were unable to reliably estimate average Net Tuition per student at public law schools, we regretfully and regrettably were forced to omit all public law schools from our analysis.⁵⁴

We do, however, have good reason to believe that our sample is representative. The sample size is quite substantial—110 law schools all over the country and including institutions across the entire range of Reputation for quality. As noted in Appendix II, matriculants at private law schools represent just less than two-thirds of the total at all accredited law schools, with this ratio remaining relatively stable throughout the Comparison Period. The same is broadly true of the total number of JD students (all classes), and the total number of applications for law schools in our sample as compared with all accredited law schools.⁵⁵ Moreover, the size and direction of the aggregate *changes* in entering-class Size and Profile for the law schools in our sample group during the Comparison Period are well correlated with those for all accredited law schools as a whole.⁵⁶ Thus, while the data currently available do not allow us to *prove* that changes in actual average Net Tuition per student at our sample law schools are well correlated with such changes in all accredited law schools over the Comparison Period, the sample's comparable performance over all other relevant variables suggests that they are.

ers make it quite difficult, so students can change residency status year-to-year in ways that are not generalizable across all public law schools.

⁵³ What little information is available publicly suggests that there is significant variability, with resident percentages ranging from as low as 20 percent to as high as 78 percent in a sample of five public law schools with published residency information. Michigan (20 percent), *Class Statistics*, MICH. LAW, <https://www.law.umich.edu/prospectivestudents/Pages/classstatistics.aspx> [<https://perma.cc/SQT2-5W55>] (last visited Feb. 18, 2019); UCLA (58 percent), *UCLA Law Incoming Class Profile*, UCLA LAW, <https://law.ucla.edu/admissions/class-profile/> [<https://perma.cc/35TP-QDUL>] (last visited Feb. 18, 2019); Kansas (64 percent), *2018 Entering Class Profile*, KU SCH. LAW, <https://law.ku.edu/profile> [<https://perma.cc/THG3-ZPET>] (last visited Feb. 18, 2019); Memphis (72 percent), *Memphis Law Entering Class Profile: Class of 2021*, UNIV. MEMPHIS, https://www.memphis.edu/law/documents/factsheet_2018_19_web.pdf [<https://perma.cc/RH8K-48G8>] (last visited Feb. 18, 2019); Florida (78 percent), *Entering Class Profile*, LEVIN C. LAW, <https://www.law.ufl.edu/admissions/apply/entering-class-profile> [<https://perma.cc/VM88-5WPW>] (last visited Feb. 18, 2019).

⁵⁴ Our dataset also excludes Brigham Young University because, consistent with its religious mission, it offers different Base Tuition to Mormon and non-Mormon students, but does not reveal the proportion of students allocated each Base Tuition amount. *Tuition*, BYU, <https://finserve.byu.edu/content/tuition-and-general-fees> [<https://perma.cc/ZWX7-R3YR>] (last visited Feb. 18, 2019).

⁵⁵ See *infra* Appendix II.

⁵⁶ See *infra* Appendix II.

D. The Variables that Describe a Law School's Performance as a Seller in the Market for Legal Education

While, as we will show, overall general Reputation for quality is an important factor driving outcomes in the market for legal education, it does not directly describe an individual school's *performance* in the market. We assume that, all else being equal, on a year-over-year basis, the typical law school would like to maintain (or increase) both its gross Tuition Revenue and its student-qualification metrics ("Profile"). But with application numbers and average applicant Profiles falling after 2010, most law schools had to make hard decisions: Law schools could attempt to maintain Profile at the cost of entering-class Size and/or average Net Tuition, thus sacrificing Revenue. Or they could attempt to maintain Revenue by maintaining class Size and average Net Tuition, but enrolling weaker students and giving up Profile. Or they could do some combination of both, giving up some Revenue (by shrinking entering-class Size and/or discounting average Net Tuition), and also giving up some on Profile, while trying to minimize erosion on both parameters as much as possible.⁵⁷

We thus isolated three "Performance Variables":

1. Profile

A law school's student Profile (that is, the aggregate credentials of its entering class) is of great importance to applicants and law schools alike because both assume (largely correctly) that higher-Profile schools have better Reputations for overall quality, and tend to have both better bar passage rates and better job prospects after graduation.⁵⁸ As discussed above, LSAT and UGPA comprise 22.5 percent of a school's *U.S. News* ranking—a widely used proxy for Reputation on which most prospective law students rely in choosing among the schools that have accepted them.⁵⁹ It is not difficult to infer from these facts that law schools seek out applicants with strong credentials not only because they believe those credentials provide some predictive value for academic and

⁵⁷ See *infra* Section III.A.

⁵⁸ See Organ, *Net Tuition*, *supra* note 25, at 58–59; Aaron N. Taylor, *Diversity as a Law School Survival Strategy*, 59 ST. LOUIS U. L.J. 321, 332–33 (2015); Bill Henderson, *How the "Cravath System" Created the Bi-Modal Distribution*, EMPIRICAL LEGAL STUDIES (July 18, 2008, 2:14 AM), https://www.elsblog.org/the_empirical_legal_studi/2008/07/how-the-cravath.html [<https://perma.cc/Z86P-E3BN>]; see also Ilana Kowarski, *Why Big Law Firms Care About Which Law School You Attend*, U.S. NEWS (Aug. 1, 2018, 10:39 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2018-08-01/why-big-law-firms-care-about-which-law-school-you-attend> [<https://perma.cc/27WA-2EG2>].

⁵⁹ As discussed below, see *infra* notes 74, 80, and accompanying text, our reliance on *U.S. News* rankings reflects our understanding not that they are methodologically sound or accurately reflect some underlying objective reality, but simply that they both reflect and reinforce a widespread *understanding* of (that is, Reputation for) quality and desirability in the relevant market among actual buyers in that market-prospective law students.

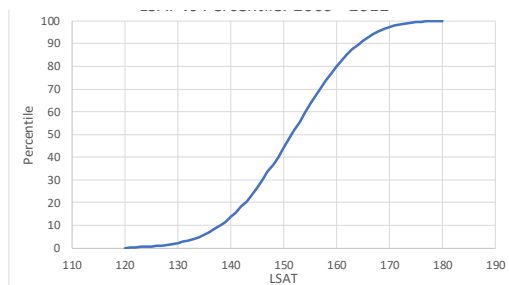
bar exam performance as well as future practice success, but because they strengthen the law school's Reputation and attract other stronger students in a virtuous cycle.

We measured Profile by creating a normalized score combining LSAT and UGPA for each sample law school's entering class in a given year. Specifically, we first converted each school's median scores (on the 120-to-180-point scale on which LSAC reports them) to their percentile equivalent ("P-LSAT"), using data provided by LSAC and based on all test takers over rolling three-year periods.⁶⁰ For UGPA, there are no equivalent percentile measures, so we simply normalized median percentile UGPA scores to a 100-point scale ("N-UGPA"). For purposes of comparing changes in Profile over the Comparison Period, we then combined these LSAT and UGPA scores into a single overall Profile score for each year that weighted P-LSAT 55 percent and N-UGPA 45 percent.⁶¹ Thus we calculate each school's Profile in each year as follows:

$$\text{Profile}^{62} = 0.45(\text{median N-UGPA}) + 0.55(\text{median P-LSAT})$$

⁶⁰ The conversion of LSAT scores to a percentile of the tested population is intended to make the LSAT's nonlinear scoring scale linear and expose the true relative magnitude of many of the changes that occurred. Cambridge LSAT reports conversions of LSAT-scaled scores to percentiles on a rolling three-year basis. *LSAT Percentiles Table*, CAMBRIDGE LSAT, <https://www.cambridgesat.com/resources/data/lSAT-percentiles-table/> [<https://perma.cc/F2XU-BDPZ>] (last visited Feb. 18, 2019). The graph below shows the conversion in 2009–12. Graphs for subsequent three-year windows are almost identical, although there was a very small decline in average test scores across all candidates between 2009–12 and 2012–15. For example, a test taker scoring 156 during 2009–12 was in the 66.7th percentile, while the same score for 2012–15 was in the 67.0th percentile. Data on scaled-to-percentile conversions that include 2016 test takers are not yet publicly available.

FIGURE 2.1: LSAT VS PERCENTILE: 2009–12



⁶¹ This weighting reflects the relative weight we believe that admissions officers place on these metrics because of the relative weight accorded these factors in the *U.S. News* rankings. We also carried out all of our analysis using various alternative measures of Profile, trying weightings of 25th-, median, and 75th-percentile LSAT scores, Percentile-LSATs and UGPAs. None of these differences had any significant effect on our quantitative results, and thus do not affect the qualitative discussion.

⁶² We used this formula separately on full-time and part-time enrolled students, and then calculated composite Profile as a weighted average of full time and part time Profiles (with the weights being the number of entering students in the full-time vs. part-time programs at each school).

The focus of this study is to quantify and compare the *change* in each of the Performance Variables over the course of the Comparison Period (2010–16) in response to the market shock of 2010. A particular law school's percentage change in Profile over the Comparison Period (“ Δ Profile”) is then simply:

$$\Delta\text{Profile} = (2016 \text{ Profile} / 2010 \text{ Profile}) - 1$$

Where we discuss the status of or changes in the legal academy overall, each law school's entering-class composite LSATs and UGPAs, respectively, are combined in a weighted average for each year. Using a weighted average more closely approximates the overall pool of matriculants because a linear average would give law schools with smaller enrollments the same weight as law schools with larger enrollments. In other words, without a weighted average, smaller schools' students would each be accorded greater relative weight than larger law schools' in the overall average.

For example, the weighted average (“WA”) Median LSAT (“MedLSAT”) for all schools in our sample in a given year would be calculated as:

$$\text{WA MedLSAT} = \sum_i (\text{MedLSAT}_i \times \text{Size}_i) / \sum_i (\text{Size}_i), \text{ across all schools } i$$

*Where Size_i = size of the matriculating class at school *i**⁶³

2. Size

Size is simply the total number of both full-time and part-time students in a school's entering first-year class in a given year. As demand (as measured by the number of applicants) fell, it became more difficult for many law schools to maintain the entering-class Size to which they were accustomed with the level of Profile to which they were accustomed; there were no longer enough applicants with each school's customary LSAT and UGPA to go around. Many law schools were forced to consider trading off Size against Net Tuition and/or Profile—that is, to accept students with weaker-than-customary Profile in order to maintain entering-class Size, or to “buy” students with stronger Profile by discounting tuition; or to accept a smaller entering-class Size in order to hold off deterioration in Profile or Net Tuition. Thus changes in Size were one way that individual schools coped with the sudden reduction in demand.⁶⁴

We calculate percentage change in matriculating-class Size for each law school over the course of the Comparison Period (“ Δ Size”) as:

$$\Delta\text{Size} = (2016 \text{ Size} / 2010 \text{ Size}) - 1$$

⁶³ Accordingly, *infra* Appendix I includes weighted average LSAT scores and percentiles for each year in the Comparison Period. Table 1.1 uses weighted averages for the data it presents. *See supra* Table 1.1.

⁶⁴ *Infra* Appendix I contains aggregate entering-class Size for the academy as a whole, and for sectors divided by stronger, middle, or weaker Reputation for quality, during the Comparison Period.

3. *Net Tuition*

Unlike applicant, matriculant, and Profile measures (which law schools are required to report for each matriculating class) law schools report tuition, scholarships, and grants only across *all* enrolled students each year. Thus our analysis of changes in Net Tuition is necessarily provided on a rolling basis covering the entire student body.⁶⁵

Schools report both Base Tuition and median grants and scholarships, as well as the total number of students receiving no scholarship aid, grants of less than 50 percent of tuition, grants of between 50 percent and 100 percent of tuition, and receiving 100 percent or more (a few students at some schools receive assistance towards living expenses as well as a free ride on tuition).⁶⁶ However, both the numbers of students receiving grants and the size of the grants themselves as a percentage of Base Tuition changed between 2010 and 2016,⁶⁷ making Base Tuition figures useless, if not misleading, as an approximation of the

⁶⁵ Fortunately, our use of data from the entire student body at each school to estimate average actual Net Tuition paid per student each year may result in a more accurate estimate of average Net Tuition and related metrics than would Net Tuition data from the entering class alone. That is because these figures may change significantly for a particular student after the first year given the conditional scholarship programs implemented at a number of law schools during the Comparison Period. Using tuition and discount data for all students attending a school each year also allows the average Net Tuition estimate to reflect the actual tuition paid by students transferring into the school after the first year (and eliminates the effect of any scholarship recipient who transferred out) as well as accounting for any changes (up or down) in the amount of financial aid students may receive after the first year.

⁶⁶ In 2011, schools started reporting 25th- and 75th-percentile grant amounts in addition to the median. Because these breakdowns were not reported in 2010, we use only median grants to estimate average Net Tuition in both 2010 and 2016 to maintain consistency. As a check, we also separately estimated each school's 2016 average Net Tuition based on 25th- and 75th-percentile grants, and compared them to the 2016 average Net Tuition estimated from median grants. The two series are very highly correlated ($\rho = 96$ percent), with an average difference of less than \$2,000, suggesting that the true distribution of tuition grants likely is reasonably symmetric at most schools.

Schools are also required to disclose an estimated cost of living while attending school. *See* ABA STANDARDS, *supra* note 21, at 35 (requiring these disclosures in Standard 509(b)(2)). Although cost of living obviously varies at different law schools in our sample, we elected not to include these cost-of-living figures in our comparisons of the estimated cost of attendance. We did so for two reasons: First, the cost-of-living estimates the schools supply are unreliable. Schools in the same urban metropolitan area differ in their estimates in a manner that could skew the trends we are attempting to discern and describe. For example, cost of living among law schools in Philadelphia in 2016 ranged from roughly \$22,500 to more than \$25,500, and in New York, from roughly \$20,000 to more than \$27,000. *See Standard 509 Disclosure, supra* note 22. In addition, many applicants limit their applications locally or regionally. GALLUP & ASS'N OF AM. LAW SCHS., *supra* note 25, at 55 fig.8.2. (showing that location of the law school was the top factor in considering where to apply to law school across all first-year law students participating in the survey with LSATs less than 165). These self-imposed limitations often result in many students with more than one acceptance choosing among schools with comparable cost of living, making any differences less likely to influence buying choices.

⁶⁷ *See supra* Table 1.1, text accompanying notes 39–43.

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actual Net Tuition students are paying. Indeed, candidates with offers of acceptance from multiple law schools often negotiate tuition discounts by putting law schools in competition with one other on the basis of grant amount.⁶⁸ We therefore analyze changes in average Net Tuition—the estimated amount the average student actually paid—from 2010 to 2016.

To estimate average Net Tuition per student for each law school in a given year, we multiply the law school's median grant by the percentage of enrolled students receiving a grant, and subtract this from the Base Tuition ("BT"). Thus:

$$\text{Net Tuition}^{69} = \text{BT} - \text{MedG} \times \%G \text{ where}$$

BT = Base Tuition;
MedG = median grant (\$); and
%G = percentage of enrolled students who received grants

Accordingly, we can estimate the percentage change in average Net Tuition per student for a particular law school over the course of the Comparison Period ("ΔNet Tuition") as:

$$\Delta\text{Net Tuition} = (\text{2016 Net Tuition} / \text{2010 Net Tuition}) - 1$$

We also calculate weighted average ("WA") Net Tuition across all law schools in the sample in a given year, where the weights are the total numbers of enrolled students at each school:

$$\text{WA Net Tuition} = \sum_i (\text{Net Tuition}_i \times \text{Census}_i) / \sum_i (\text{Census}_i), \text{ across all law schools } i, \text{ where}$$

Census_i = number of enrolled students at each law school *i* in the sample

The calculation for weighted average Base Tuition across all law schools in a given year is, equivalently,

$$\text{WA BT} = \sum_i (\text{BT}_i \times \text{Census}_i) / \sum_i (\text{Census}_i), \text{ across all law schools } i, \text{ where}$$

Census_i = number of enrolled students at each law school *i* in the sample

Appendix I shows that weighted average Net Tuition across the entire legal academy actually rose gradually early in the Comparison Period. This occurred because, even in an environment of falling demand, most law schools still increased their Base Tuition each year by 4 percent in nominal dollars (with the

⁶⁸ See, e.g., Christen Morgan, *Ahead of the Curve: The Power of Negotiation: When Should I Negotiate My Law School Scholarship Offer?*, LAW SCHOOL TOOLBOX (Mar. 31, 2017), <https://lawschooltoolbox.com/ahead-of-the-curve-the-power-of-negotiation-when-should-i-negotiate-my-law-school-scholarship-offer/> [https://perma.cc/R6Y4-6MT2].

⁶⁹ As with Profile, see *supra* note 62, we used this formula separately for full-time and part-time students, and then calculated composite Net Tuition as a weighted average of full time and part time Net Tuition (with the weights being the number of enrolled students in the full-time vs. part-time programs). As discussed *supra* note 46, we combined full-time and part-time Net Tuition data without adjustment despite the fact that part-time tuition is generally a lower amount per year paid for four rather than three years, because no material distortion resulted from our doing so in this dataset.

exception of 2015, when the weighted average increase was 3 percent nominally).⁷⁰ The average annual increase in the median grant, however, was much larger, and the number of students receiving grants increased as well.⁷¹ With considerable variation in discounting across law schools, many law schools were charging average Net Tuition lower than in prior years by early in the Comparison Period. By 2014, nominal weighted average Net Tuition began to go down overall (even before adjusting for inflation; in real terms the decline began in 2013), despite consistent yearly increases in Base Tuition.⁷²

E. Using Net Tuition to Estimate Tuition Revenue

We also estimate law schools' total Tuition Revenue each academic year by multiplying each law school's estimated average Net Tuition per student by the total number of enrolled students. We then estimate the total Tuition Revenue ("TR") across all law schools as the sum of the individual law schools' totals:

$$\text{All Law Schools' TR} = \sum_i (\text{Net Tuition}_i \times \text{Census}_i) \text{ where}$$

Census_{*i*} = number of enrolled students at each law school *i* in the sample

As might be expected, year-on-year changes in Tuition Revenue follow a trajectory similar to changes in average Net Tuition, especially in years for which total enrollments remain somewhat stable. Declining enrollment and increasing discounting generate the first nominal Tuition Revenue decline in 2013–14, with the decline in real terms beginning in 2012–13. The most significant percentage drop in Tuition Revenue occurs in 2014–15, which is the first year in which weighted average Net Tuition across all law schools is lower than in the previous year.⁷³

⁷⁰ See *infra* Appendix I.

⁷¹ See *infra* Appendix I.

⁷² See *infra* Appendix I.

⁷³ See *infra* Appendix I. Tuition Revenue is, for most schools, the most significant source of operating income, but it is by no means the only one. Frank H. Wu, *Where Law Schools Get Their Money*, ABOVE LAW (Oct. 3, 2013, 3:56 PM), <https://abovethelaw.com/2013/10/where-law-schools-get-their-money/> [<https://perma.cc/3KMN-YVXR>]. "Rainy Day" funds accumulated during better times, subsidies from the greater University of which the law school is a part (or in the case of public institutions, from the state), fundraising, and endowment can all be sources of operating funds, and we imagine (and are anecdotally informed) that quite a few law schools depended on them more and more as the renewable resource of student tuition became scarcer. See *id.* In addition, the number of law schools offering alternative degrees and the number of students enrolled in alternative degree programs has increased during this period. Muller, *supra* note 19. The degree to which these sources are sustainable, or conversely the degree to which increasing reliance on some of them undermines the economic sustainability of many of these institutions, is a question of quite literally existential importance.

F. *The Use and Measurement of Relative Reputation for Overall Quality in this Study*

In describing law schools' performance in the market for legal education, we must begin by stressing that we were not seeking to develop, nor do we offer our model as, a *ranking* system. Existing law-school ranking systems tend to aggregate and weight different variables into an overall ordinal list designed to evaluate relative general overall quality or, more accurately, relative *reputation* for overall quality, in the sense that an interested observer would say in general terms that one school is "better" than another.⁷⁴ We refer to this notion as "Reputation."

However, Reputation as just defined plays a critical role in this study: We have found that a law school's relative Reputational strength has a very significant effect on the school's performance on various different metrics in the legal education market. We hypothesize, quantify, and demonstrate those relationships below.⁷⁵ But we pause here to examine the concept of Reputation and describe how we measure it for purposes of this study.

Reputation is quite important in many contexts, in essence because it can often be used as a loose proxy for assessing the actual underlying attribute that

⁷⁴ Ironically, the annual *U.S. News* rankings are published under the title "Best Law Schools," though the publication ranks three-quarters of them ordinally (listing the remainder with the notation "Rank Not Published"), and includes virtually every accredited law school in the country. See Morse & Hines, *supra* note 24. Although it has varied over the years, *U.S. News* generally combines scores derived from each school's entering-class median LSAT (and after the Comparison Period ended, GRE) scores (12.5 percent), median UGPA (10 percent), and Acceptance Rate (2.5 percent); a "Peer Assessment Score" based on a survey of legal academics (25 percent), a separate assessment score based on a survey of lawyers and judges (15 percent); a Placement Success score (20 percent, including employment at graduation (4 percent), employment at ten months (14 percent) and Bar Passage Rate score (2 percent)); and a Faculty Resources score that assesses expenditures per student (11.25 percent), the student-faculty ratio (3 percent), and Library Resources (0.75 percent). *Id.* Other rankings systems combine similar or additional variables in similar or different ways. See, e.g., Alfred L. Brophy, *Ranking Law Schools with LSATs, Employment Outcomes, and Law Review Citations*, 91 IND. L.J. SUPPLEMENT 55, 56–57 (2015); *Methodology*, ABOVE LAW, <https://abovethelaw.com/law-school-rankings/top-law-schools/#methodology> [<https://perma.cc/TTP2-P2JS>] (last visited Feb. 18, 2019) (explaining the industry website *Above the Law's* ranking system, which weights Employment (30 percent) "Quality Jobs" (30 percent); Education Cost (15 percent); Debt per Job (10 percent); the school's graduates as a percentage of Supreme Court and other federal court judges (5 percent each); and an alumni survey (5 percent)). A recently proposed ranking system focuses solely on entering-class LSAT and UGPA on the theory that the "best" students will predictably choose the "best" schools. Christopher J. Ryan, Jr. & Brian L. Frye, *A Revealed-Preferences Ranking of Law Schools*, 69 ALA. L. REV. 495, 498–99 (2017). As noted in this article, however, that apparent "choice" is colored both by the Size of the entering class at a given law school and by the Net Tuition the law school charges, which is why our analysis focuses on all three performance variables. See *supra* notes 57–72 and accompanying text.

⁷⁵ See *infra* Part III.

is the subject of the reputation.⁷⁶ If potential trading partners, or product or service sellers, have good reputations for quality or integrity, others may feel more comfortable dealing with them, and actually may be willing to make economic concessions to do so because the underlying attribute reputed has economic value.⁷⁷ That can be particularly important in consumer markets: Where gathering information about an intended purchase is economically inefficient or requires expertise beyond the buyer's abilities (both of which are true in many consumer markets, and emphatically true as to legal education), reputation provides some kind of substitute for direct personal knowledge, and may be the only quality assessment available as a practical matter.⁷⁸

Of course, reputation is always an imperfect substitute for direct knowledge of the underlying attribute for all kinds of reasons. For example, the truth can be concealed. Reputation can be manipulated, or based on information that is incomplete or obsolete.⁷⁹

⁷⁶ This discussion would not be complete without the obligatory reference to Iago's deeply calculating invocation of "good name" as "the immediate jewel of [our] souls," far more valuable than mere pecuniary riches. WILLIAM SHAKESPEARE, *OTHELLO* act 3, sc. 3. For a more contemporary assessment, see, for example, Omri Ben-Shahar, *Consumer Protection Without Law*, REGISTER, Summer 2010, at 26–27, 29–30; William P. Rogerson, *Reputation and Product Quality*, 14 BELL J. ECON. 508, 508–09 (1983).

⁷⁷ See, e.g., Paul N. Wilson & Ana M. Kennedy, *Trustworthiness as an Economic Asset*, 2 INT'L FOOD & AGRIBUSINESS MGMT. REV. 179, 181 (1999).

⁷⁸ See Yonathan A. Arbel, *Reputation Failure: Market Discipline and Its Limits* 13 (Univ. Ala. Legal Studies Working Paper Series, Res. Paper No. 3239995, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3239995 [<https://perma.cc/56BH-FADS>]; see also Oren Bar-Gill, *The Behavioral Economics of Consumer Contracts*, 92 MINN. L. REV. 749, 756 (2008). To analogize, these are some of the reasons our rules of evidence allow evidence of Reputation to be used as proof of the underlying attribute in some circumstances (but not others). See FED. R. EVID. 404; FED. R. EVID. 405(a); FED. R. EVID. 608(a).

⁷⁹ Consider, for example, in recent years, Bill Cosby, Lance Armstrong, Theranos, and countless others great and small whose reputations were based on incomplete or misleading information. Or as Iago himself put it, "Reputation is an idle and most false imposition, oft got without merit and lost without deserving." WILLIAM SHAKESPEARE, *OTHELLO* act 2, sc. 3. For a detailed and deeply insightful inquiry into how and why reputation can and not infrequently does diverge from underlying realities, see Arbel, *supra* note 78, at 25–32. Indeed, law schools sometimes try to manipulate their entering-class Profiles because of their prominent role in determining *U.S. News* ranking, trading Profile for Size and/or Net Tuition, and adding incremental students to the class in ways that do not degrade the Profile distributions reported median and 25th percentile. See Muller, *Law School Admissions*, *supra* note 21. That is one reason why we ground our analysis in *three* Performance Variables.

Several years ago, two law schools, Illinois and Villanova, went further in their efforts to manipulate their entering-class Profiles, falsifying admissions data that resulted in sanctions by the ABA. See COUNCIL OF THE SECTION OF LEGAL EDUC. AND ADMISSIONS TO BAR OF THE AM. BAR ASS'N, UNIVERSITY OF ILLINOIS COLLEGE OF LAW CENSURE JUNE 2012 1 (2012), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2012_june_u_illinois_public_censure.pdf [<https://perma.cc/56MK-MV4T>]; Martha Neil, *ABA Raps Villanova re Inaccurate Admission Data, Says Law School Must Post Censure Online*, ABA JOURNAL (Aug. 15, 2011, 8:23 PM), http://www.abajournal.com/news/article/abas_legal_ed_section_sanctions_villanova/ [<https://p>

As just discussed, here our concern is with individual law schools' relative overall general reputation for quality, in the sense that an interested observer might say, without elaboration, that one school was "better" than another. A more acute observer could suggest with considerable reason that talking about a law school's general overall quality might not make much sense. The concept would appear to invoke only an imaginary abstraction of questionable utility. After all, the underlying attribute—general overall quality—must draw on many decidedly distinct, independent, and legitimately significant attributes, evaluation of most of which likely varies a good deal from observer to observer in nature and importance. Among others, these include quality of classroom instruction; quality and quantity of faculty scholarship; various qualities of the students; quality of student life while attending; quality, variety, and specificity of skills and clinical programs and instruction; quality and identity of concentration or certification programs; quality of the school's placement function; and so on. Just as importantly, different legitimately interested constituencies (prospective law students; actual law students; law-school faculty and administrators at other schools; practitioners, judges, and prospective clients in the communities where graduates practice; etc.) will have different priorities and

erma.cc/97HN-G88Z]. The ABA and LSAC agreed to a process which began in 2012 by which LSAC would certify entering class credentials for law schools. See Letter from Susan L. Krinsky, Chair, & Daniel O. Bernstine, President, Law School Admissions Council, to Deans of LSAC Member Schools (Aug. 2, 2016), available at <http://pdfserver.amlaw.com/ca/LSACMatriculantServiceDeans.pdf> [<https://perma.cc/4VCH-GNZZ>].

One law school simply proposed its own ranking system. Elie Mystal, *Latest Cooley Law School Rankings Achieve New Heights of Intellectual Dishonesty*, ABOVE LAW (Feb. 8, 2011, 6:23 PM), <https://abovethelaw.com/2011/02/latest-cooley-law-school-rankings-achieve-new-heights-of-intellectual-dishonesty/> [<http://perma.cc/EZH9-DHSX>] [hereinafter Mystal, *Latest Cooley Rankings*]. In 1996, Thomas M. Cooley Law School (now Western Michigan University Thomas M. Cooley Law School) first proposed its own multifactor quality-ranking system. *Other Rankings*, USLEGAL, <https://lawschool.uslegal.com/law-school-rankings/other-rankings/> [<https://perma.cc/FAX2-ET4N>] (last visited Feb. 20, 2019). By 2009, it used that system to tout itself as the twelfth-best law school in America. Elie Mystal, *Cooley Law School Develops More Useless Than Normal Law School Rankings*, ABOVE LAW (Feb. 5, 2009, 11:08 AM), <https://abovethelaw.com/2009/02/cooley-law-school-develops-more-useless-than-normal-law-school-rankings/> [<https://perma.cc/Z4Z9-8QKG>] [hereinafter Mystal, *Cooley Develops Rankings*]. By 2011, Thomas Cooley had ascended in its own ranking system to No. 2 nationally, behind only Harvard. Paul L. Caron, *Size Matters: Thomas Cooley's 2011 Law School Rankings*, TAXPROF BLOG (Feb. 9, 2011), https://taxprof.typepad.com/taxprof_blog/2011/02/size-matters-.html [<https://perma.cc/9D6S-EE5C>]; Mystal, *Latest Cooley Rankings*, *supra*. Thomas Cooley—which achieved the lowest 2010 Reputation Score in our sample using the methodology detailed in Section II.F—currently has one of the weakest entering-class Profiles in the country among accredited law schools and an “ultimate” bar passage rate (within two years of graduation) as reported to the ABA in 2017 among the ten worst among accredited law schools, Staci Zaretsky, *The Law Schools with the Worst ‘Ultimate’ Bar Pass Rates*, ABOVE LAW (Apr. 10, 2018, 12:44 PM), <https://abovethelaw.com/2018/04/the-law-schools-with-the-worst-ultimate-bar-pass-rates/> [<https://perma.cc/MJU5-XM25>]. Cooley's self-ranking system was the subject of pointed criticism, see, e.g., Caron, *supra*; Mystal, *Latest Cooley Rankings*, *supra*, and appears to have largely disappeared from the school's marketing.

interests bearing on what makes for “quality” in a law school, and possibly different perspectives on the same priorities and interests, at any given time. So you might forgive (or even praise) that more acute observer for asking, “Quality in *what*, and according to *whose* needs and preferences?”

All that said, however, the simple fact is that during the Comparison Period at issue in our study there was continuous and widespread discourse among prospective law students about different schools’ relative Reputations for general overall quality. And overwhelmingly, students reported that they relied on perceived relative Reputation for quality in making choices about where they applied and eventually matriculated.⁸⁰

Our study explores the relationship between relative Reputational strength and performance in the legal education market as measured by the three Performance Variables we have identified. We thus must define a measure of rela-

⁸⁰ The *U.S. News* rankings offer themselves as a relative ranking of general overall law-school quality. And 40 percent of the resulting ranking is directly based on a reputational survey among legal academics and administrators (25 percent) and lawyers and judges (15 percent). See Morse & Hines, *supra* note 24. A survey of prospective LSAT takers by the Kaplan test preparation organization in 2016 found that for 73 percent, *U.S. News* rankings would “be an important factor in their decision[s] . . . where to apply and enroll.” See *Kaplan Test Prep Survey: Pre-Law Students Put Heavy Emphasis on U.S. News & World Report’s Rankings, but Most Law School Admissions Officers Want Them Gone*, KAPLAN TEST PREP (Mar. 15, 2016), <https://www.kaptest.com/blog/press/2016/03/15/kaplan-test-prep-survey-pre-law-students-put-heavy-emphasis-on-u-s-news-world-reports-rankings-but-most-law-school-admissions-officers-want-them-gone/> [<https://perma.cc/8M3H-QL6P>]. The Before the JD Study shows similar results, particularly among those students with LSATs of 165 or higher, for whom “General reputation/school ranking” was the most significant factor in their decision of where to apply to law school. See GALLUP & ASS’N OF AM. LAW SCHS., *supra* note 25, at 54 fig.8.1. This high degree of influence in prospective law-student decision-making prevailed throughout the Comparison Period. See *Kaplan Test Prep Survey: Aspiring Law School Students Place Rankings Above All Else*, BUSINESS WIRE (Nov. 16, 2010, 8:30 AM), <http://www.businesswire.com/news/home/20101116005536/en/Kaplan-Test-Prep-Survey-Aspiring-Law-School> [<https://perma.cc/H4A5-M2PJ>] (stating that 86 percent of prospective LSAT takers surveyed in 2010 considered a law school’s ranking “very” or “somewhat important” in choosing a law school). There are multiple commercial websites at which interested persons share views about the relative merits of American law schools. See, e.g., TOP LAW SCHOOLS, <http://www.top-law-schools.com> [<https://perma.cc/J4G8-D28A>] (last visited Feb. 20, 2019); LAW SCHOOL NUMBERS, <http://www.lawschoolnumbers.com> [<https://perma.cc/3FBN-WGXL>] (last visited Feb. 20, 2019).

Of course, the *U.S. News* rankings have long been widely and justifiably criticized for their methodology and reliability, as well as the perverse incentives they create for ranked schools. See, e.g., Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 IND. L.J. 791, 812, 833 (2008); Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn’t Want to Be Compared to Time and Newsweek—or The New Yorker*, 60 OHIO ST. L.J. 1097, 1098–99 (1999); Brian Leiter, *The U.S. News Law School Rankings: A Guide for the Perplexed*, BRIAN LEITER’S LAW SCHOOL RANKINGS (May 2003), <http://www.leiterrankings.com/usnews/guide.shtml> [<https://perma.cc/6VXL-4UYQ>]. We do not defend them. We note only that, wisely or not, prospective law-school applicants have broadly relied on them to determine their application priorities and choices, and continue to do so.

tive Reputational strength. The *U.S. News* rankings, though broadly relied on (and, ironically, at the same time highly disparaged), do not furnish a relative ranking for the Reputationally weakest accredited American law schools, including 37 of the 110 schools in our sample.⁸¹ To avoid this distortion, we rely instead on the insight that, all other things being equal, schools compete for the students with the strongest conventional qualifications, and thus create a Reputation metric based on schools' 2010 entering-student Profile.⁸²

For the sake of consistency, we measure Reputation in the same way as Profile. We use 2010 entering-class Profile as our "base" year, as the 2010 Profiles reflect the ability to attract particular levels of applicant strength immediately prior to the multi-year reduction in applications and applicant quality that is the focus of this study. Each school's Reputation Score in 2010 ("R") thus is simply:⁸³

$$R = 2010 \text{ Profile} = (55\% \times \text{Med P-LSAT}) + (45\% \times \text{Med N-UGPA}) \text{ where}$$

Med P-LSAT = median percentile entering-class LSAT in 2010
Med N-UGPA = median entering-class UGPA in 2010, normalized on a 100-point scale

G. Methodology: Comparing Relative Reputational Strength with the Changes in Each Performance Variable

Our goal is to compare law schools' responses to the dramatic reduction in the number and quality of law-school applicants between 2010 and 2016, and to determine whether particular identifiable differences among law schools correspond with different responses. To do so, we determined for each law school in our sample the percentage change in its Performance Variables over the

⁸¹ Paul Caron, *2019 U.S. News Law School Peer Reputation Rankings (And Overall Rankings)*, TAXPROF BLOG (Mar. 20, 2018), https://taxprof.typepad.com/taxprof_blog/2018/03/2019-us-news-law-school-peer-reputation-rankings-and-overall-rankings.html. In addition, the *U.S. News* rankings, where available, are on a smooth scale of successive integers that may not reflect compression or dilation at different ranges of the scale. See Derek Muller, *Visualizing the 2018 U.S. News Law School Rankings—The Way They Should be Represented*, EXCESS DEMOCRACY (Mar. 14, 2017), <http://excessofdemocracy.com/blog/2017/3/visualizing-the-2018-us-news-law-school-rankings-the-way-they-should-be-presented> [https://perma.cc/FV9Y-DKFG]. And while reliance on the academic and professional reputation scores that are factors in the *U.S. News* rankings, see *supra* note 74, do not present either of these difficulties, they are only a portion of the overall ranking, are suspect both in their methodology and poor response rate, and are surveys of populations other than the one we care about here—namely the prospective law students who are making decisions about whether and where to purchase a legal education. That said, the *U.S. News* rankings where available are very strongly correlated with the Profile-based measure we adopted. Thus use of a *U.S. News*-based Reputation metric would apparently produce no material difference in the correlations discussed *infra* Part III.B.2.

⁸² See *supra* notes 57–62 and accompanying text.

⁸³ The highest 2010 Reputation Score (Yale) was 98.38; the lowest (Thomas Cooley) was 50.18 (spreadsheet with calculations on file with the authors).

course of the Comparison Period—as defined above, Δ Profile, Δ Size, and Δ Net Tuition.

We determined the degree of correlation between each school’s relative Reputational strength and the change in each of its Performance Variables to see whether Reputational strength can predict relative changes in a school’s Performance Variables. We performed this analysis for the sample as a whole; and for the sample divided into thirds according to Reputational strength as measured by each school’s Reputational Score. The next Part details our findings.

III. FINDINGS: COMPETITIVE COPING STRATEGIES AND BEHAVIORS THE DATA ILLUSTRATE

Our goal is to determine whether we can identify patterns in law schools’ competitive performance and behaviors in response to the dramatic reduction in the number and credentials of law school applicants between academic years 2010–11 and 2016–17. In this Part, we identify some of our working hypotheses, and test them against the empirical data.

A. *Our Working Hypotheses*

Because the market for legal education is competitive, a sudden fall in demand imposes competitive pressures on and forces reactions from sellers (that is, law schools). Because schools compete for students (buyers) with respect to quality (or perceived quality), relative market strength in this market ought to be measurable by relative Reputational strength. Considering these forces in the context of the Performance Variables we identified describing market performance (Δ Profile, Δ Size, and Δ Net Tuition)—which we stress represent the *change* in these variables for each school across the six-year Comparison Period in which the market adjusted to the 2010 market shock—we would expect to see that, the lower a school’s Reputational strength, the more that school will find itself forced to give up across all Performance Variables.

At the same time, we predicted that the Performance Variables would not move in perfect concert. Any given school can to some degree trade these variables off against one another: As discussed above, a school might choose any of the following, singly or in combination:

- to give up class Size in order to preserve Profile, taking a smaller class of more highly credentialed students (because more of such students would have been admitted to, and have matriculated at, Reputationally Stronger schools trying to fill their own shortfall from the reduced number of applicants); or
- to give up Profile in order to preserve class Size, taking a larger class of less-well-credentialed students; or
- to make concessions on Net Tuition by discounting tuition to “buy” higher-Profile matriculants, thus attempting to maintain Size and Profile.

The rate of tradeoff among these variables, we hypothesized, would be determined by the particular tactical choices and practical circumstances of each law school, including not only its competitive (Reputational) and geographic position, but its access to sources of revenue other than tuition, which could make Net Tuition easier or harder to compromise.⁸⁴

Nevertheless, we expected a statistically significant correlation between Reputation and each individual Performance Variable. That is, we expected that the weaker a school's Reputation, the more concessions that school would have to make on the overall combination of Performance Variables. And though a particular school might choose for any number of reasons to make more concessions on one variable than another, we expected that overall each variable would tend to show a greater negative change in rough proportion to the decrease in Reputation, resulting in correlations between Reputation and each Performance Variable across the entire sample.

As foreshadowed earlier, the data generally bear out these hypotheses, but with some (at least to us) surprising and enlightening exceptions.

B. Change in Individual Performance Variables Over the Comparison Period, and the Relationship Between that Change and a Law School's Reputational Strength

In this Section, we examine correlations between law schools' Reputation Scores and the changes in their Performance Variables and in Δ Revenue—that is, how much each variable moved in concert with Reputation over the Comparison Period. We test the correlation with Reputation Score for each Performance Variable and Δ Revenue over the full sample of 110 private schools, as well as in three subgroups of our sample: the top, middle, and bottom third Reputationally. We show all our results here in Table 3.1, and then reproduce relevant lines of the table in the sections discussing those findings.

⁸⁴ Such alternative sources of revenue could include central university support, "Rainy Day" funds, endowment, fundraising, and tuition from non-JD programs. At the public institutions we were not able to include in our sample, *see supra* Section II.C, it also includes subsidies from the state the institution is located in and serves.

TABLE 3.1: CORRELATIONS BETWEEN REPUTATION AND PERFORMANCE VARIABLES⁸⁵

	Full Sample (110 Schools)	Reputationally Stronger Third	Reputationally Middle Third	Reputationally Weaker Third
Δ Size	<i>71%</i> (0.00)	<i>70%</i> (0.00)	13% (0.43)	<i>41%</i> (0.00)
Δ Profile	<i>49%</i> (0.00)	<i>62%</i> (0.00)	-15% (0.40)	-4% (0.87)
Δ Net Tuition	6% (0.51)	<i>66%</i> (0.00)	32% (0.06)	-33% (0.04)
Δ Revenue	<i>49%</i> (0.00)	<i>75%</i> (0.00)	21% (0.23)	-2% (0.91)

1. *Relationship Between Reputational Strength and Change in Entering-Class Size over the Comparison Period (Δ Size)*

TABLE 3.2: CORRELATIONS BETWEEN REPUTATION AND CHANGE IN ENTERING-CLASS SIZE (Δ SIZE)

	Full Sample (110 Schools)	Reputationally Stronger Third	Reputationally Middle Third	Reputationally Weaker Third
Δ Size	<i>71%</i> (0.00)	<i>70%</i> (0.00)	13% (0.43)	<i>41%</i> (0.00)

We find that the strongest and most consistent correlations exist between change in Reputational strength and entering-class Size over the Comparison Period, but with much weaker and non-statistically-significant correlation for Reputationally Middle law schools.

Across all law schools in our sample, changes (almost universally reductions) in a law school's entering-class Size over the course of the Comparison Period are correlated with the school's Reputational strength ($\rho = 71$ percent). As we saw in Part I, the average law school reduced entering-class Size by nearly a third (31 percent) during the Comparison Period; in fact, only four schools in our 110-school sample actually increased in Size, while only two more remained the same. This statistical result accords with common sense: The weaker a law school's Reputation, the more difficulty it would have attracting students with the Profile that the school would prefer because of com-

⁸⁵ The findings in the Table are calculated from the data gathered in Appendix I. The data in Appendix I are gathered or derived as described in Part II, and ultimately come from the information gathered from accredited law schools and reported by the ABA. Correlation is a way of measuring the tendency of two sets of data to move generally in the same direction and proportions. The top value in each cell, represented as a percentage, is the correlation coefficient (ρ) for the schools in that portion of the sample between percentage change in that Variable over the Comparison Period and Reputation Score. The number beneath it in parentheses is the p value for that correlation, which represents the probability that the correlation could have occurred merely by chance. A p value reported as "0.00" means that the p value for that correlation is less than .01. p values less than 0.05 are generally viewed as statistically significant. Statistically significant correlations in Tables 3.1–3.5 are in italics.

petition with Reputationally Stronger schools, and the less such a school would be able to maintain entering-class Size during a time when applications per school fell on average over 40 percent.⁸⁶

However, the correlation strength varies within different portions of the sample. As shown in Table 3.2, the correlation between Reputation and change in entering-class Size is strong across the whole sample as well as within the Reputationally Stronger and Weaker thirds of the sample, with the correlation being weaker in the Reputationally Weaker third but still statistically significant. These variances can be explained by the practical circumstances in which the legal academy found itself during the Comparison Period.

Reputationally Stronger schools consistently preferred to give up Size and Net Tuition rather than compromise Profile.⁸⁷ This finding aligns with the insight that Profile is generally seen in the market as a proxy for Reputational prestige.

Among Reputationally Middle schools, change in entering-class Size has a lower correlation with Reputation that is not statistically significant (that is, not reliably different from no correlation at all). This difference is likely explained by the fact that, for law schools in the middle of the sample, increasing competition for students and varying circumstances resulted in more variability among schools as to *which* Performance Variables (Δ Size, Δ Profile, and/or Δ Net Tuition) to sacrifice, and in what relative measure. Because the tradeoffs vary at each school, no one Performance Variable is well correlated with Reputation in this portion of the sample; some schools will choose to “spend” their Reputational strength predominantly on one Variable, while other schools will focus on others. We refer to this phenomenon as “Tradeoff Variability,” and we see it in all of the Performance Variables in the Reputationally Middle portion of the sample.⁸⁸

Reputationally Weaker schools bump up against a Regulatory Constraint: ABA Standard 501 requires a school to admit only “applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.”⁸⁹ The competitively weakest schools, for which Reputational

⁸⁶ See *infra* Appendix I. The four schools that increased entering class Size are consistent with our hypotheses. They are Yale, Vanderbilt, University of Southern California, and Notre Dame, whose entering-class Sizes increased between 2 and 9 percent. Stanford and Harvard were unchanged (spreadsheets with compiled data on file with the authors).

⁸⁷ See *supra* Section I.B; *infra* Section III.B.4.

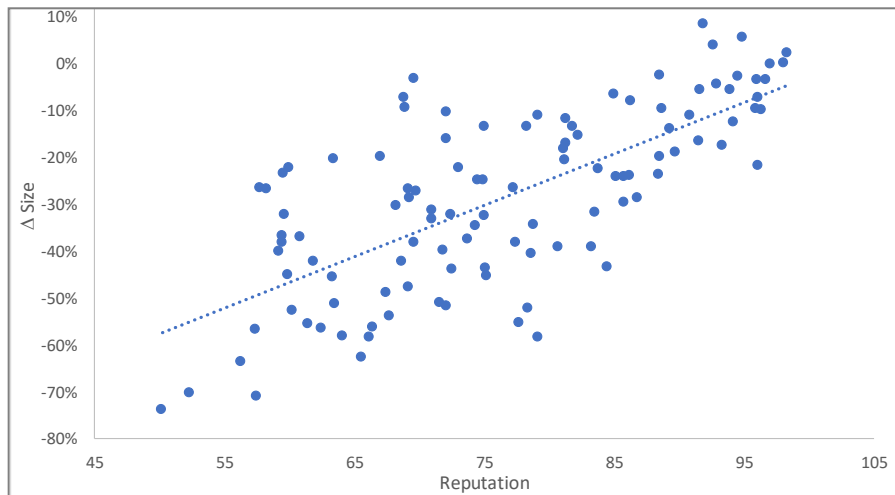
⁸⁸ See *supra* Sections III.B.2–III.B.4.

⁸⁹ ABA STANDARDS, *supra* note 21, at 31. Standard 501(b) thus sets a generalized standard for anticipated student performance rather than a bright-line rule with specific numeric Profile requirements. This imprecision, which may have other advantages (such as admitting for the possibility that some schools can achieve greater success with weaker students than others), leaves room for schools to guess (whether honestly or opportunistically) about the relationship between future performance and Profile levels that are lower than the school may be accustomed to. While this may allow what amounts to gambling with weaker students’ tuition dollars, it also allows some room for schools to learn how to manage and accommodate demographic change in their student bodies. Nevertheless, there appears to be some degree

prestige is largely out of reach, appear to have compromised Profile as far as they could to raise Revenue, but simply couldn't find enough students who meet the constraint of Standard 501 to fill their classrooms.⁹⁰ Accordingly, Size shrank the most in this portion of the sample as Reputation fell, but not as consistently relative to Reputation as among the Reputationally Stronger schools.

Figure 3.1 is a scatterplot of Reputational Score against change in entering-class Size (the data summarized above in Table 3.2). It shows that while most of the Reputationally Stronger schools saw class Sizes fall by 25 percent or less, the Reputationally Middle and Reputationally Weaker schools had a broader distribution of Size changes (represented by a wider scatter on the left side of the graph).

FIGURE 3.1: CORRELATION BETWEEN 2010 REPUTATION VS CHANGE IN ENTERING CLASS SIZE FROM 2010–16



of consensus that, at any given school, there is a bottom limit *somewhere* for LSAT and UGPA beneath which it does not generally appear students are capable of making it. *See, e.g.,* David Frakt, *The ABA and the LSAT: How Low is Too Low?*, FACULTY LOUNGE (Nov. 18, 2017), <http://www.thefacultyounge.org/2017/11/how-low-is-too-low.html> [<https://perma.cc/G77D-GMMR>].

⁹⁰ Some of the Reputationally Weaker schools apparently went too far in this regard. Record-low entering class Profile, rising attrition rates and falling bar-passage rates have prompted the ABA to impose sanctions on several law schools ranging from notices of non-compliance to complete withdrawal of accreditation. *See Accreditation Archives*, ABA https://www.americanbar.org/groups/legal_education/accreditation/accreditation_archives/ [<https://perma.cc/AW6Y-JQ3V>] (last visited Feb. 20, 2019); Kristen Rasmussen, *10 Law Schools Sanctioned by ABA for Lax Admissions*, LAW.COM (Nov. 21, 2017, 4:21 PM), <https://www.law.com/sites/almstaff/2017/11/21/10-law-schools-sanctioned-by-aba-for-lax-admissions-outcomes/> [<https://perma.cc/T4RN-QSZF>].

2. *Relationship Between Reputational Strength and Change in Entering-Class LSAT and UGPA over the Comparison Period (Δ Profile)*

TABLE 3.3: CORRELATIONS BETWEEN REPUTATION AND CHANGE IN ENTERING-CLASS PROFILE (Δ PROFILE)

	Full Sample (110 Schools)	Reputationally Stronger Third	Reputationally Middle Third	Reputationally Weaker Third
Δ Profile	49% (0.00)	62% (0.00)	-15% (0.40)	-4% (0.87)

We find that change in entering-class Profile over the Comparison Period is correlated with relative school Reputation, but predominantly among the Reputationally Stronger schools.

Across all law schools in our sample, changes in entering-class Profile over the course of the Comparison Period (again almost universally reductions) are correlated with the school's Reputational strength ($\rho = 49$ percent). But the correlation is concentrated among Reputationally Stronger schools, which when considered separately show a statistically significant correlation ($\rho = 62$ percent). This statistical finding makes practical sense in that the Reputationally Stronger schools have continued their historical focus on attracting the highest-Profile students, and have proved willing to sacrifice Size and Net Tuition to do so.⁹¹

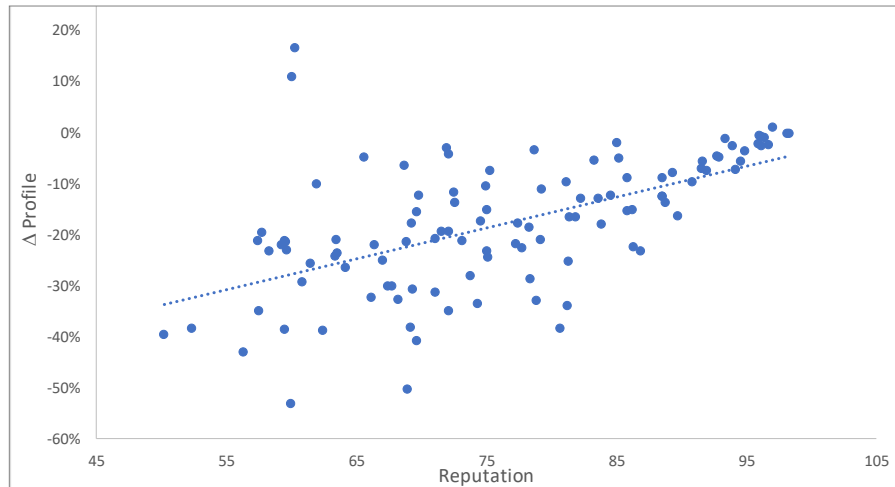
Considered as separate populations, the Reputationally Middle and Reputationally Weaker schools show no meaningful correlation between Reputation and Profile. For the Reputationally Middle third, Tradeoff Variability is again the likely explanation—Reputationally Middle schools chose a wider range of different tradeoffs among Size, Profile, and Net Tuition, resulting in no statistically-significant correlation between Δ Profile and Reputation within this group. Among the Reputationally Weaker schools, there also may be much less consistent attention to Profile, given that rankings gains for these schools often are not a high priority. Regulatory Constraints, namely Standard 501, probably also explain the lack of correlation among Reputationally Weaker schools: some Reputationally Weaker schools were already close to bottom Profile limits imposed as a practical matter by Standard 501, and thus could not reduce their

⁹¹ See *supra* Section III.B.1. Only three schools in our sample were able to maintain or increase their entering-class Profile between 2010 and 2016. Those schools are Stanford, Liberty, and Detroit Mercy; Harvard and Yale maintained Profile at 2010 levels. Stanford, Harvard, and Yale are consistent with our hypothesis, in that their leading Reputations accorded them the market power to maintain Profile. The other two schools lie among the Reputationally Weaker portion of our sample, but have distinctive situations that likely explain their unusual, and unusually successful, emphasis on improving Profile. See *infra* Section III.B.3 (discussing pricing advantages some Reputationally Weaker schools appear to have exploited).

Profile much further, or as much as they might have been willing to absent the constraint.⁹²

Figure 3.2 is a scatterplot of Reputational Score against change in entering-class Profile (the data summarized above in Table 3.3), with a best-fit curve. The widening scatter of Δ Profile as Reputation falls (toward the left of the graph) is even more visible in this distribution than in Figure 3.1 (charting Δ Size), and is probably explained by the factors just discussed.⁹³

FIGURE 3.2: CORRELATION BETWEEN 2010 REPUTATION VS CHANGE IN PROFILE FROM 2010–16



3. Relationship Between Reputational Strength and Change in Average Actual Tuition Per Student over the Comparison Period (Δ Net Tuition)

TABLE 3.4: CORRELATIONS BETWEEN REPUTATION AND CHANGE IN AVERAGE ACTUAL TUITION PER STUDENT (Δ NET TUITION)

	Full Sample (110 Schools)	Reputationally Strongest Third	Reputationally Middle Third	Reputationally Weakest Third
Δ Net Tuition	6% (0.51)	66% (0.00)	32% (0.06)	-33% (0.04)

⁹² See *supra* notes 89–90 and accompanying text. Some of these Reputationally Weaker schools also appear to have surrendered a great deal of Size in an effort to maintain Profile compliant with the minimum requirements of Standard 501(b). Thomas Cooley and Appalachian shrank over the Comparison Period by more than 70 percent, and Florida Coastal by more than 60 percent. All three still ended up subjected to ABA sanctions of one kind or another. See Frakt, *supra* note 89.

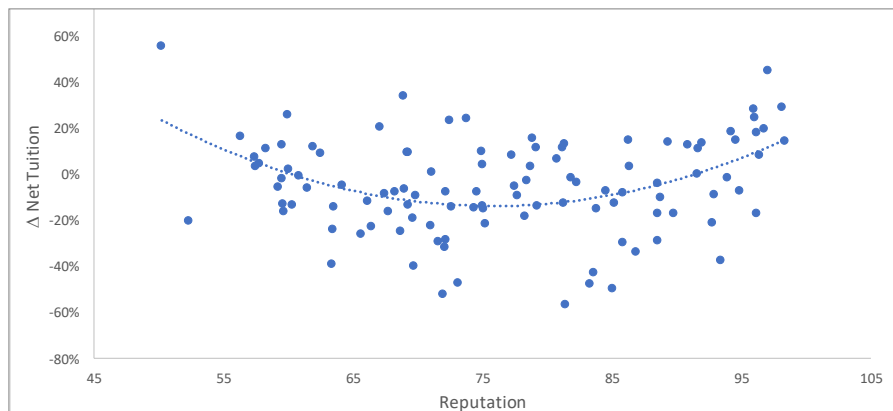
⁹³ The two significant outliers in the upper left quadrant, with unexpectedly strong Profile improvements, are Liberty and Detroit Mercy, both of which are discussed *supra* note 91. But even if we take out these two schools, the correlation between Reputation and Δ Profile is far lower, and the scatter much greater, on the Reputationally Weaker (left) side of the distribution.

We find that change in average Net Tuition per student over the Comparison Period is not correlated with relative school Reputation generally ($\rho = 6$ percent), but is well correlated among the Reputationally Stronger law schools and, surprisingly, *negatively* correlated among the Reputationally Weaker schools ($\rho = -33$ percent).

This result seems counterintuitive: We would have expected that, like Δ Size and Δ Profile, as the number of applications fell, and competitive pressures increased, the Reputationally Stronger schools would have been most able to maintain Net Tuition, and the Reputationally Weaker schools least able to do so. This result would have been consistent with the fact that, generally, consumers will insist on paying lower prices for substitutes perceived to be of lower quality. And in fact, that correlation appears strongly among the Reputationally Stronger schools ($\rho = 66$ percent). But considered as separate populations, the Reputationally Middle schools show a weaker (and non-statistically significant) correlation, and the Reputationally Weaker schools show a *negative* correlation to a statistically significant degree. In other words, some of the weakest schools Reputationally were able to discount tuition *less* over the course of the Comparison Period than many of their stronger competitors.

These initially puzzling results become easier to appreciate when viewed as a scatterplot of Reputational Score against change in average Net Tuition per student (again, the data summarized above in Table 3.4):

FIGURE 3.3: CORRELATION BETWEEN 2010 REPUTATION AND CHANGE IN NET TUITION FROM 2010–16



The quadratic (smile) shape of the best-fit curve suggests some practical explanations: the Reputationally Stronger schools were able to maintain or increase average Net Tuition per student. Many law schools in this group do negotiate Net Tuition (scholarships); the stronger the school's Reputation, however, the better its bargaining position and ability to maintain Net Tuition without losing candidates. Reputationally Middle schools, consistent with our theory of Tradeoff Variability, found themselves making a range of different

choices among Size, Profile, and Net Tuition depending on their circumstances, resulting in no statistically significant correlation between Reputation and Net Tuition among this cohort. While the degree of discounting varied, however, these Reputationally Middle schools generally suffered in the competition for students in a declining market, seeing the largest average percentage decline in Net Tuition of the three subgroups (-16 percent, as compared with -6 percent for the Reputationally Weaker third).⁹⁴

As for why some of the Reputationally Weaker schools would, apparently perversely, be able to maintain or even raise their average Net Tuition in the face of a competitive shock, we offer the Limited Options Effect. It has two components: first, circumstances particular to some Reputationally Weaker schools may blunt pricing pressures on those schools. Many of the weakest applicants admitted to Reputationally Weaker law schools likely have been admitted *only* to Reputationally Weaker schools and, we would guess, not infrequently to only one.⁹⁵ These schools are much less focused on pursuing Profile to enhance their rankings and Reputation, so they have little incentive to offer scholarships to attract stronger students. And they would be particularly disinclined to negotiate on Net Tuition with weaker applicants because those students have only very limited options available to them if they wish to try to become lawyers.⁹⁶

Second, there is a social status dynamic that also may be at work. For students from lower socioeconomic strata (who because of reduced access to educational and social opportunities during their formative years are disproportionately represented among weaker students at Reputationally Weaker schools),⁹⁷ entry into a learned profession is still viewed as a traditional path of upward mobility and an attractive social status enhancement. These values may sup-

⁹⁴ See *supra* Table 1.1.

⁹⁵ LSAC has data indicating that those applying to one or only a few law schools tend to have a lower mean LSAT, suggesting that students on the low end of the LSAT distribution may truly have limited options, either self-imposed (by applying only to one or two or three law schools) or by circumstance (getting admitted to only one law school). See RICHARD STROUS-ROONEY & KIMBERLY DUSTMAN, NATIONAL APPLICANT TRENDS—2017, at 4 (LSAC), https://www.lsac.org/system/files/inline-files/National%20Applicant%20Trends_2017.pdf [<https://perma.cc/68AH-HKGV>].

⁹⁶ The economically-minded reader might suggest that, in a market with multiple Reputationally Weaker schools admitting students unlikely to be admitted elsewhere, there still should have been price competition (that is, competitive discounting of tuition) among those schools willing to admit the weakest students. But weaker students apparently tend to limit their applications or matriculation geographically—they tend to apply only to schools near home, or at least hold a strong geographic preference to attend a school that doesn't require them to move, which of course offers significant financial savings relative to a comparable-quality but geographically distant school. See *supra* notes 66, 95.

⁹⁷ See Chad Christensen, LSSSE Project Manager, and Jerry Organ, Professor of Law and Co-Director of the Holloran Center for Ethical Leadership in the Professions, University of St. Thomas School of Law, Scholarships and Access to the Legal Profession for Minorities and Low-Income Students at AccessLex Institute Research Symposium (Nov. 9, 2017) (presentation on file with author).

plement economic concerns in a student's career-choice calculus so that even when the risk-discounted return on investment in a law degree is questionable (given the lower bar passage rates and worse employment outcomes at some of these Reputationally Weaker law schools, especially for their weaker students), the student may feel more inclined to take the risk.⁹⁸ With almost unlimited amounts of student loan money available, the student succumbs to optimism bias and hyperbolic discounting (the tendency to underweight the significance of payments that do not have to be made until several years in the future), and accepts the undiscounted tuition demand of the Limited Option school rather than forgo law school altogether.

4. *Relationship Between Reputational Strength and Change in Total Tuition Revenue Per Year over the Comparison Period (Δ Revenue)*

TABLE 3.5: CORRELATIONS BETWEEN REPUTATION AND CHANGE IN TOTAL TUITION REVENUE PER YEAR

	Full Sample (110 Schools)	Reputationally Strongest Third	Reputationally Middle Third	Reputationally Weakest Third
Δ Revenue	49% (0.00)	75% (0.00)	21% (0.23)	-2% (0.91)

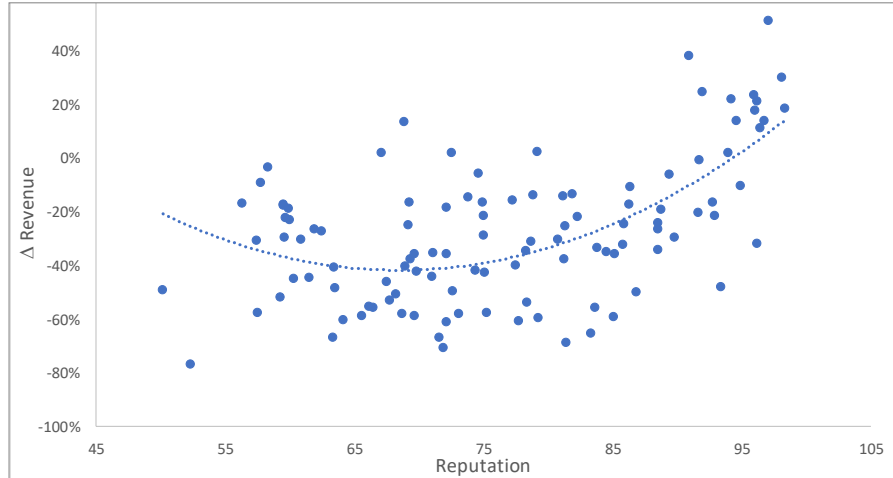
We find that change in Tuition Revenue per school over the Comparison Period is correlated with relative school Reputation generally ($\rho = 49$ percent). Considering the sample in separate Reputational subgroups, Reputation and Δ Revenue are strongly correlated among the Reputationally Stronger law schools, but not statistically significantly correlated in either of the bottom two subgroups.⁹⁹

Figure 3.4 on the next page provides a scatterplot of Reputational Score against change in total Tuition Revenue.

⁹⁸ See Milan Markovic & Gabriele Plickert, *The Paradox of Minority Attorney Satisfaction* 16–21 (Jan. 31, 2019) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3205344 [<https://perma.cc/SM3M-7HQP>] (suggesting that minority attorneys may find status and satisfaction that compensates for some economic concerns in service to and corresponding recognition among their communities); Jerry Organ, *Understanding Trends in Demographics of Law Students—Part Three*, LEGAL WHITEBOARD (Nov. 24, 2013), <http://lawprofessors.typepad.com/legalwhiteboard/2013/11/understanding-trends-in-demographics-of-law-students-part-three.html> [<https://perma.cc/9GRR-QLA9>].

⁹⁹ To reiterate our category definitions, Revenue is *not* strictly an arithmetic function of Net Tuition and Size. Size counts the entering class *only*, while Revenue is calculated on the basis of Net Tuition paid by *all* JD students enrolled in the entire JD program in any given academic year. Revenue, thus, takes into account student transfers and changes in scholarships after the first year. See *supra* note 65.

FIGURE 3.4: CORRELATION BETWEEN 2010 REPUTATION VS CHANGE IN TUITION REVENUE FROM 2010–16



The relationship between Reputation and change in Tuition Revenue over the Comparison Period appears to be explained by the same phenomena we suggest have influenced the Performance Variables. The Reputationally Stronger schools have the easiest time holding overall student census and Net Tuition at customary levels. As this power sinks across this population, Revenue changes to a greater degree. For Reputationally Middle law schools, Tradeoff Variability leaves no one Performance Variable consistently correlated with Reputation.¹⁰⁰

For Reputationally Weaker law schools, the Limited Options Effect allows some of the Reputationally Weaker schools to maintain or raise their average Net Tuition per student.¹⁰¹ But at the same time, these law schools feel the effects of Regulatory Constraints—they tend to have a harder time maintaining Size because there are not enough Standard-501-compliant students available to do so.¹⁰² Thus for Reputationally Weaker law schools, the two factors that combine to produce total Tuition Revenue (Net Tuition per student and total number of students) don't always move in tandem, with the result that Net Tuition may hold or go up,¹⁰³ but Revenue may go up less, or fall. Over the whole sample, then, Revenue and Reputation are correlated, but as the best-fit curve in Figure 3.4 illustrates, because of pricing advantages conferred by the Limited Options Effect, some Reputationally Weaker institutions also had an easier time maintaining Tuition Revenue than many better-regarded schools.

¹⁰⁰ See *supra* note 79 and accompanying text.

¹⁰¹ See *supra* notes 89–90 and accompanying text.

¹⁰² See *supra* notes 89–90 and accompanying text.

¹⁰³ See *supra* Figure 3.3.

The correlations between Reputation and Revenue also show another important pattern: Reputationally Stronger schools tend to hold on to Profile at the expense of Size and/or Net Tuition. We can infer this tendency from the fact that the Reputationally Stronger law schools have the most power to preserve Revenue; Revenue is statistically significantly correlated with Reputation across the entire sample, and strongly correlated among the Reputationally Stronger law schools.¹⁰⁴ Strong correlations between Reputation and both Size and Net Tuition (both significant components of Revenue) also prevail among the Reputationally Stronger schools.¹⁰⁵ Yet the average Reputationally Stronger law school gave up substantial Revenue over the Comparison Period—on average about \$5.9 million annually per school.¹⁰⁶ Given the choice between Profile and either Size or Net Tuition (which together make up most of what determines Revenue), these schools chose Profile.

Put a little differently, the Reputationally Stronger schools gave up some entering-class Size that they didn't have to—more applicants would have accepted their offers of enrollment had these Stronger schools been willing to dip deeper into the applicant pool and accept some students with lower-than-accustomed Profile. But the Reputationally Stronger schools chose to lower their Profile standards only modestly (or not at all), and accepted reductions in Size (and to some degree Net Tuition) in an effort to preserve Profile as much as possible relative to peer institutions. This decision effectively left more applicants (with somewhat weaker Profiles) available to Reputationally Middle and Weaker schools.

IV. OBSERVATIONS AND IMPLICATIONS

The findings just discussed have important implications for the current state, and probable future, of the American legal academy. We discuss those implications here.

A. Reputationally Stronger Schools' Drive to Preserve Profile at the Expense of Size Likely Prevented as Many as Twenty Weaker Schools from Being Forced to Close

As just discussed, the Reputationally Stronger law schools sought to preserve Profile at the expense of Size and Net Tuition, taking smaller classes of students in an effort to minimize erosion of LSATs and UGPAs rather than welcoming larger classes of weaker students.¹⁰⁷ The reason is not hard to infer: Profile is a 22.5 percent factor in a school's *U.S. News* ranking, which is a measure of Reputation for relative general quality widely relied on by prospec-

¹⁰⁴ See *supra* Table 3.5.

¹⁰⁵ See *supra* Table 3.1; see also Taylor, *supra* note 58, at 333–36.

¹⁰⁶ See *supra* Table 1.1.

¹⁰⁷ See *supra* Section III.B.1, Table 1.1, Figure 3.1.

tive law students in choosing a school.¹⁰⁸ In contrast, neither entering-class Size nor Net Tuition (per se) has a direct effect on rankings.¹⁰⁹ And even though Reputationally Stronger schools gave up Size over Profile, their relative Reputational Strength still allowed them to decrease in Size much less than Reputationally Middle or Reputationally Weaker law schools. As a result, the top third of our sample Reputationally shrank its entering-class Size on average by 13 percent during the Comparison Period, while the bottom third shrank its entering-class Size on average by 46 percent.¹¹⁰

These choices on the part of Reputationally Stronger law schools have important implications for the Reputationally Middle and Reputationally Weaker law schools. Suppose that the law schools in the top half of our sample had chosen to keep entering-class Sizes the same, and had made the necessary sacrifices in Profile and Price to do so.¹¹¹ This would have pulled roughly 3,300 prospective students who ended up enrolling at bottom-half schools into schools in the top half, resulting in an average of 102 students per entering class in bottom-half schools in our sample as opposed to the 164 students per class that those schools actually matriculated. That shortfall of over 3,300 entering students for the bottom-half schools in our sample of 110 law schools amounts to the entire average entering class of at least 20 such law schools!¹¹² While it's impossible to know how many weaker schools would have downsized further and tried to soldier on, and how many would have been forced to close outright, we can safely say that stronger law schools' focus on preserving entering-class Profile prevented widespread devastation among Reputationally Middle and Weaker schools, and almost certainly forestalled numerous failures.

B. Many Law Schools Gave Up Millions of Dollars in Tuition to Preserve Their General Reputation for Quality Rather than Improve Their Programs

As shown above, the average law school shrank its entering-class Size by nearly a third (31 percent), while the actual average Net Tuition paid per student across our sample generally fell modestly in real terms.¹¹³ At the same time, as just discussed, Reputationally Stronger schools tended to preserve Profile at the expense of Size as a means of preserving Reputation. Enrolling fewer students at a lower Net Tuition has an easily predictable effect on Tuition Revenue—at most schools in our sample, it fell. On average, 2016 Tuition Revenue

¹⁰⁸ See *supra* note 74 and accompanying text.

¹⁰⁹ Size is a factor in overall JD student census, and expenditures per student and student-faculty ratios are factors in a school's *U.S. News* ranking. See Morse & Hines, *supra* note 24. So Size does have *some* indirect effect on *U.S. News* rankings, all other things being equal.

¹¹⁰ See *supra* Table 1.1.

¹¹¹ The authors thank Brett Scharffs of Brigham Young University J. Reuben Clark Law School for sharing this perspective with Professor Organ in September 2014.

¹¹² Calculations on file with the authors.

¹¹³ See *supra* note 99 and accompanying text, Table. 1.1.

was about \$5.9 million lower than in 2010 for Reputationally Stronger schools.¹¹⁴

As a practical matter, this implies that many Reputationally Stronger law schools chose to sacrifice millions of dollars in Tuition Revenue per year in order to preserve Profile as a means of maintaining their Reputation for relative quality. Theoretically these millions could have been collected by restructuring first-year admissions criteria to maintain more Size with some sacrifice in Profile. That additional Tuition Revenue could then have been spent on faculty, facilities, curricular innovations, and labor-intensive teaching and student support, including clinical and skills instruction, and academic success and career services support. Or it could have been used to reduce the cost of a legal education (and resulting debt load) for those lacking personal or family resources.

It is worth asking whether the investment choice that most law schools made in this regard was a wise one. We suggest no answer to the question here, and concede the possibility that these sacrifices might have been necessary to preserve the quality these law schools already enjoyed in the prevailing competitive environment. But as a practical matter, the best-regarded law schools in the country decided to buy students with higher LSATs and UGPAs rather than expand their faculties, facilities, or access to clinical and experiential education. And the issue has not even been widely discussed.

C. The Cost of Legal Education Has Been Imposed More and More Disproportionately on Those Least Likely to Be Able to Bear It

As shown above, over the course of the Comparison Period actual average Net Tuition per student fell modestly, while Base or “sticker price” Tuition increased on average 15 percent. Because some students do pay full freight, the *range* of prices students paid for a legal education has increased significantly over that time. And because almost all scholarship aid at almost all law schools is “merit-” (that is, predominantly Profile-) based, overwhelmingly the weakest students receive the least aid, and pay the highest Net Tuition.¹¹⁵ Worse, the weakest students, especially at Reputationally Weaker schools, are most at risk of not obtaining a law-related job, or of obtaining a law job that pays less than other law graduates.¹¹⁶

Several conclusions are inevitable: Those students who pay the most for a legal education generally are least likely to be able to make any direct use of the education they have paid for. And even if they do find a law job, they are

¹¹⁴ See *supra* note 99 and accompanying text, Table. 1.1.

¹¹⁵ See Organ, *Net Tuition*, *supra* note 25, at 74; Karen Sloan, *Minority Law Students Subsidize Scholarships, Study Finds*, NAT'L L.J. (Feb. 9, 2017, 2:09 PM), <https://www.law.com/nationallawjournal/almID/1202778852592/minority-law-students-subsidize-scholarships-study-finds/> [https://perma.cc/Y3DN-KVR3]; see also Aaron N. Taylor, *Making State Merit Scholarship Programs More Equitable and Less Vulnerable*, 37 U. HAW. L. REV. 155, 167–70 (2015) (discussing the phenomenon in higher education generally).

¹¹⁶ See Organ, *Net Tuition*, *supra* note 25, at 66–70.

least likely to find a job that economically justifies and supports the amounts they paid. Moreover, both of these inequalities have increased significantly over the Comparison Period.¹¹⁷

D. The Discrepancy Between Student Needs and Law-School Resources Has Widened

As discussed above, Tuition Revenue fell substantially at most law schools during the Comparison Period because of tuition discounting and class-size reductions. Beyond the Reputationally Stronger law schools, Tuition Revenue fell over 40 percent on average, costing most schools \$11 million to \$12 million *per year*.¹¹⁸ At the same time, Profile fell noticeably at most law schools, and substantially at many. Again, beyond the Reputationally Stronger schools, median LSAT scores dropped 14–15 percentiles.¹¹⁹ Profile attempts to, and to some degree does, measure readiness for law school (at least as currently configured) by reflecting some combination of academic talent, skills, preparation, and acculturation of entering students.

In short, the demographics of many schools are changing, and there are unprecedented numbers of students who would appear to need different or better teaching and curriculum, and in many cases extra-academic support, to succeed. Yet at the same time, schools have unprecedentedly depleted levels of resources available to meet these needs. Redoubling the irony inherent in current tuition-discounting strategies, it is the weakest students who are not only generally paying the most for law degrees from which they will realize questionable value, but whose disproportionate financial contributions are often being allocated to educational resources other than the ones that they are more likely to need to succeed.¹²⁰ We are likely seeing the effects of this widening gap in the deteriorating bar exam results being reported across the country from 2014 through 2016 and, after brief improvement, in 2018.¹²¹

¹¹⁷ *Id.* at 65–71. And because most of these students have, to cover these costs, incurred large student loans that are not dischargeable in bankruptcy other than in very rare and extreme circumstances, *see* 11 U.S.C. § 523(a)(8) (2012), many are effectively financially ruined for life.

¹¹⁸ *See supra* Table 1.1.

¹¹⁹ *See supra* Table 1.1.

¹²⁰ *See supra* Section IV.C.

¹²¹ *See* David Frakt, *Recent Bar Pass Rates—A Cautionary Tale*, FACULTY LOUNGE (Nov. 5, 2018, 7:07 PM), <https://www.thefacultylounge.org/2018/11/recent-bar-pass-rates-a-cautionary-tale.html> [<https://perma.cc/T8RW-TVGU>]; Derek T. Muller, *February 2018 MBE Bar Scores Collapse to All-Time Record Low in Test History*, EXCESS DEMOCRACY (Apr. 19, 2018), <http://excessofdemocracy.com/blog/2018/4/february-2018-mbe-bar-scores-collapse-to-all-time-record-low-in-test-history> [<https://perma.cc/F4E3-Y8J9>]; Karen Sloan, *Multistate Bar Exam Scores Sink to 34-Year Low, Pass Rates Sag*, LAW.COM (Sept. 17, 2018, 2:50 PM), <https://www.law.com/2018/09/17/multistate-bar-exam-scores-sink-to-34-year-low-pass-rates-sag/> [<https://perma.cc/D2ZF-9XZJ>].

CONCLUSION

The substantial contraction in the job market for new law graduates that began after 2007 has worked a sea-change on the number and qualifications of those considering law school. These changes have in turn transformed the demographics and economics of most American law schools. Driven by its particular combination of financial, practical, and market strengths and weaknesses, each law school has responded to this sudden and drastic reduction in demand with a package of fiscal and demographic adjustments that can be quantified in three Performance Variables: entering-class qualifications (“Profile”), entering-class Size, and pricing variation in the form of selective tuition-discounting by scholarship (“Net Tuition”).

While a handful of super-elite institutions have remained largely unaffected, for the vast majority of law schools the effects have been somewhere between significant and devastating. Numerous law schools have tried to reduce costs by attrition, buyouts, or outright layoffs of faculty or staff.¹²² A number of law schools have failed;¹²³ several more are struggling;¹²⁴ large numbers of

¹²² See, e.g., Paul Caron, *Law Schools Have Shed 986 Full-Time Faculty (11%) Since 2010*, TAXPROF BLOG (Dec. 19, 2014), http://taxprof.typepad.com/taxprof_blog/2014/12/law-schools-have-shed.html [<https://perma.cc/YSH7-HX3R>]; Elizabeth Crisp, *LSU Law Center Offers Buyouts to 7 Professors as Interest in Law Schools Dwindles Nationally*, ADVOCATE (Jan. 22, 2015, 7:06 AM), <http://theadvocate.com/news/11137666-123/law-center-plans-buyouts> [<https://perma.cc/M6ZC-ZQ97>]; Katy Savage, *Vermont Law School Restructuring Faculty*, VTDIGGER (June 25, 2018), <https://vtdigger.org/2018/06/25/vermont-law-school-restructuring-faculty/> [<https://perma.cc/5Q67-HDUG>]; Staci Zaretsky, *Law School Offers Buyouts to Tenured Faculty Thanks to Sharp Decline in Enrollment*, ABOVE LAW (Feb. 29, 2016, 1:01 PM), <http://abovethelaw.com/2016/02/law-school-offers-buyouts-to-tenured-faculty-thanks-to-sharp-decline-in-enrollment/> [<https://perma.cc/XSP5-LGYD>]; Staci Zaretsky, *Large-Scale Layoffs Come to Cooley Law School*, ABOVE LAW (Aug. 15, 2014, 10:07 AM), <http://abovethelaw.com/2014/08/large-scale-layoffs-come-to-cooley-law-school/> [<https://perma.cc/EB6P-PZF9>]. These adjustments have by no means been limited to Reputationally Middle or Reputationally Weaker law schools. Northwestern, 2017 *US News* rank eleven, and holder of the sixth-highest 2010 Reputation Score in our sample, recently announced faculty and staff cutbacks. Karen Sloan, *Northwestern Law Dean Cites School's 'Difficult Time' as Reason for Faculty Cuts*, LAW.COM (Nov. 5, 2018, 5:10 PM), <https://www.law.com/2018/11/05/northwestern-law-dean-cites-schools-difficult-time-as-reason-for-faculty-cuts/> [<https://perma.cc/RXP3-4EHK>]. As the preceding discussion shows, however, the greater a law school's Reputational strength, generally the less it is likely to have been affected by the demand shock. Reputationally Stronger schools likewise tend to have an easier time raising money among alumni and other interested constituencies to help make up tuition shortfalls. See Karen Sloan, *Northwestern Law is Paring Back Amid Budget Woes. Are Other Elite Schools Next?*, LAW.COM (Nov. 8, 2018, 2:44 PM), <https://www.law.com/2018/11/08/northwestern-law-is-paring-back-amid-budget-woes-are-other-elite-schools-next/> [<https://perma.cc/95JK-BQXY>].

¹²³ See, e.g., Karen Sloan, *Valparaiso Is Latest to Join the Crowd of Defunct Law Schools*, LAW.COM (Oct. 31, 2018, 1:21 PM), <https://www.law.com/2018/10/31/valparaiso-is-latest-to-join-the-crowd-of-defunct-law-schools/> [<https://perma.cc/3PZE-DD4D>]; Karen Sloan, *Whittier Law School's Collapse Won't Be the Last: Experts*, LAW.COM (Apr. 20, 2017, 3:36 PM), <http://www.law.com/sites/almstaff/2017/04/20/whittier-law-schools-collapse-wont-be-t>

others no longer appear to be self-sustaining,¹²⁵ and even many highly-regarded institutions find themselves fighting to maintain their customary levels of student and educational quality.

Some administrators and faculty have faced these challenges with courage and creativity, and there are innovations scattered about the academy that deserve note and emulation.¹²⁶ But far more appear to be either in denial or so absorbed in staving off the impact of changing circumstances year to year that they have not even tried to develop tactics or strategy for a sustainable longer term. Faculty at many institutions are compounding the problem by abusing the beneficial traditions of tenure and shared governance to blindly resist any change that would require them to share any part of the burden.

We need to be blunt: change is hard, and never costless. But there is no more time to pretend that this demographic and economic transformation is just some transient episode that can simply be waited out.¹²⁷ Most law schools that are losing money, or seeing their graduation, bar-passage, or employment rates fall to embarrassing levels, are encountering growing impatience from key constituencies including federal and state policymakers, regulators, university administrators, prospective and current students, and alumni. The choice for most law schools is rapidly simplifying to one between developing organically in ways devised and driven from within, and suffering what will likely be painful and ill-tailored modifications imposed from outside.

Our purpose in this Article has been to describe and quantify the differences between the environment and conditions of legal education today compared with several short years ago. Understanding the nature and extent of the challenges the academy faces would seem to be a necessary first step in ad-

he-last-experts/ [https://perma.cc/7RN7-ZL6D]; Staci Zaretsky, *Charlotte Law Finally Gets Around to Telling Students the School Is Closing*, ABOVE LAW (Aug. 24, 2017, 2:31 PM), <http://abovethelaw.com/2017/08/charlotte-law-finally-gets-around-to-telling-students-the-school-is-closing/> [https://perma.cc/8NBY-WYJS].

¹²⁴ See *supra* note 90 (discussing law schools sanctioned by the ABA).

¹²⁵ Many law schools that, in better times had contributed surpluses to their universities, now depend on university subsidies to operate. For example, the University of Minnesota Law School, a highly ranked and nationally respected institution, has received millions of dollars in subsidies from the University of Minnesota in recent years as its first-year enrollment has declined. Maura Lerner, *University of Minnesota Law School Seeks Subsidies to Maintain Top Ranking*, STAR TRIBUNE (May 28, 2018, 10:30 AM), <http://www.startribune.com/university-of-minnesota-law-school-seeks-subsidies-to-maintain-top-ranking/483829781/> [https://perma.cc/N3S5-VS63]. See generally Paul Campos, *80% to 85% of ABA Law Schools Are Currently Losing Money*, LAWYERS, GUNS, & MONEY (Nov. 12, 2013, 9:42 AM), <http://www.lawyersgunsandmoneyblog.com/2013/11/80-to-85-of-aba-law-schools-are-currently-losing-money> [https://perma.cc/PX6E-E2CM].

¹²⁶ For a survey of some recent efforts at innovation, see generally Christine Cimini et al., *Creative Initiatives at U.S. Law Schools: Report of the Working Group on Creative Initiatives*, 7 ELON L. REV. 57 (2015).

¹²⁷ As discussed above, we note the increase in applicants in the 2018–19 admissions cycle, but view it as unsustainable in light of the unrelenting constraints in the new-graduate job market. See *supra* note 50.

dress them, and we hope this helps. We have no reason to believe that there is anything remotely resembling a universal solution. Beyond long-overdue tactical improvements in the efficiency and utility of the education law schools deliver, there are essential strategic inquiries that we believe are being widely ignored or poorly thought through. These inquiries require difficult introspection toward a meaningful sense of institutional purpose and mission, and a thoughtful and realistic identification of the students and communities that each law school predominantly serves.¹²⁸ Given the differing strengths, resources, and needs each institution brings to the field of play, we suspect that meaningful adjustment will be piecemeal, incremental, cumulative, and broadly experimental, with unpredictable pressures and incentives from outside the legal academy itself.

But the one thing we feel sure of is that, for most American law schools, the only thing worse than changing will be not changing. So let's get busy.

¹²⁸ For one thoughtful perspective on the identity and business-model choices available as a practical matter, see Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y. L. SCH. L. REV. 465, 467, 504 (2004) (suggesting that, other than a handful of law schools that can depend on either their very high prestige or their very low cost to distinguish them, the challenge for the great majority is to rethink their models to provide students value commensurate with their cost); see also Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN ST. L. REV. 1119, 1123–43 (2012) (discussing how law schools' needs for change often depend on their circumstances).

APPENDIX I: YEAR-BY-YEAR WEIGHTED AVERAGES DURING THE COMPARISON PERIOD OF COMPONENTS OF PERFORMANCE
VARIABLES ACROSS ENTIRE SAMPLE AND IN THIRDS BY REPUTATION (TUITION FIGURES BOTH AS DISCLOSED AND IN
CONSTANT 2018 DOLLARS)

TABLE A.I.1: COMPOSITE (FULL TIME & PART TIME) MATRICULATING CLASS IN EACH YEAR, ACROSS PRIVATE LAW SCHOOLS (N = 110)

	2010	2011	2012	2013	2014	2015	2016
Total Applications	336,451	299,578	263,262	218,240	204,809	199,752	199,243
<i>Annual % change</i>		-11%	-12%	-17%	-6%	-4%	2%
<i>Cumulative % change</i>		-11%	-22%	-35%	-39%	-42%	-41%
Total Matriculants	32,541	29,691	26,900	24,451	23,264	22,353	22,387
<i>Annual % change</i>		-9%	-9%	-9%	-5%	-4%	0%
<i>Cumulative % change</i>		-9%	-17%	-25%	-29%	-31%	-31%
Weighted average median LSAT ^o	158	157	157	156	156	156	156
Weighted average median percentile LSAT ¹²⁹	74	70	70	67	67	67	67
Weighted average median GPA ^o	3.38	3.37	3.36	3.35	3.36	3.36	3.39
Weighted average 75th centile LSAT	160	160	160	159	159	158	159
Weighted average 75th centile LSAT (percentiles) ^o	80	80	80	77	77	74	77
Weighted average 75th centile GPA	3.59	3.58	3.57	3.56	3.57	3.57	3.59
Weighted average 25th centile LSAT	155	154	154	153	153	153	153
Weighted average 25th centile LSAT (percentiles)	63	60	60	56	56	56	56
Weighted average 25th centile GPA	3.11	3.10	3.09	3.08	3.09	3.09	3.11

^o Calculated as follows: each school's median LSAT is multiplied by its number of matriculating students; the sum of these is then divided by total number of matriculants from all schools. The same method is used for weighted average scores on 25th and 75th percentiles, as well as for all three GPA metrics.

¹²⁹ Scaled LSAT scores were converted to percentile ranks utilizing data from *LSAT Percentiles Table, supra* note 60. The scale-to-percentile conversion varies very slightly over the 6-year period; in particular, some scaled scores convert to a slightly higher percentile in later years, reflecting an overall reduction in the average test scores from 2010 to 2016. We adjusted our scaled-to-percentile conversions to reflect these changes.

TABLE A.I.2: STATISTICS FOR COMPOSITE ENROLLED STUDENTS IN EACH ACADEMIC YEAR, ACROSS ALL PRIVATE LAW SCHOOLS

	2010	2011	2012	2013	2014	2015	2016
Total number of enrolled students	90,639	92,634	91,323	86,076	72,721	68,440	66,408
<i>Annual % change</i>		2%	-1%	-6%	-16%	-6%	-3%
<i>Cumulative % change</i>		2%	1%	-5%	-20%	-24%	-27%
Total number of students receiving grants	42,805	45,502	44,322	45,326	45,762	46,569	47,279
<i>Annual % change</i>		6%	-3%	2%	1%	2%	2%
Weighted Average Sticker Price ¹³⁰	37,388	39,042	40,440	42,233	43,762	45,041	46,883
<i>Annual % change</i>		4%	4%	4%	4%	3%	4%
<i>Cumulate % change</i>		4%	8%	13%	17%	20%	25%
Weighted Average “Net Price” ¹³¹	31,060	32,008	33,138	33,960	32,445	31,625	31,555
<i>Annual % change</i>		3%	4%	2%	-4%	-3%	0%
<i>Cumulative % change</i>		3%	7%	9%	4%	2%	2%
Discount on Tuition (Sticker Price - Net Price)	6,329	7,034	7,302	8,273	11,318	13,417	15,328
<i>Annual % change</i>		11%	4%	13%	37%	19%	14%
Total Revenue across all schools (\$ Millions)	2,815	2,965	3,026	2,923	2,359	2,164	2,096
<i>Annual % change</i>		5%	2%	-3%	-19%	-8%	-3%
<i>Cumulative % change</i>		5%	7%	4%	-16%	-23%	-26%

¹³⁰ WA Sticker Price = $\sum_i(\text{Net Price}_i * \# \text{ enrolled}_i) / \sum_i(\# \text{ enrolled})$ for all schools i .

¹³¹ “Net Price” for each school is calculated as Quoted Price less the Median Grant multiplied by percentage of enrolled students receiving grants.

Equivalently: Net Price = Sticker Price - (Median Grant * # getting grants / # enrolled).

Weighted Average Net Price is calculated as follows: each school’s Net Price is multiplied by its # enrolled students; the sum of all of these is then divided by total # of enrolled students.

Equivalently: WA Net Price = $\sum_i(\text{Net Price}_i * \# \text{ enrolled}_i) / \sum_i(\# \text{ enrolled})$ for all schools i .

TABLE A.I.3: TUITION RELATED STATISTICS FOR COMPOSITE ENROLLED STUDENTS IN EACH ACADEMIC YEAR, ACROSS ALL PRIVATE LAW SCHOOLS, REPORTED IN 2018 DOLLARS¹³²

	2010	2011	2012	2013	2014	2015	2016
Weighted Average Sticker Price ¹³³	42,434	43,154	43,546	44,817	45,749	47,119	49,007
<i>Annual % change</i>		2%	1%	3%	2%	3%	4%
<i>Cumulative % change</i>		2%	3%	6%	8%	11%	15%
Weighted Average "Net Price" ¹³⁴	35,251	35,379	35,683	36,037	33,918	33,084	32,985
<i>Annual % change</i>		0%	1%	1%	-6%	-2%	0%
<i>Cumulative % change</i>		0%	1%	2%	-4%	-6%	-6%
Discount on Tuition (Sticker Price - Net Price)	7,183	7,775	7,863	8,779	11,831	14,036	16,022
<i>Annual % change</i>		8%	1%	12%	35%	19%	14%
Total Revenue across all schools (\$ Millions)	3,195	3,277	3,259	3,102	2,467	2,264	2,190
<i>Annual % change</i>		3%	-1%	-5%	-20%	-8%	-3%
<i>Cumulative % change</i>		3%	2%	-3%	-23%	-29%	-31%

¹³² Adjusted for inflation using CPI data. See Robert Shiller, *Online Data*, YALE U., <http://www.econ.yale.edu/~shiller/data.htm> [<https://perma.cc/5TFB-NBVA>] (last visited Feb. 21, 2019).

¹³³ See *supra* note 130.

¹³⁴ See *supra* note 131.

TABLE A.I.4: COMPOSITE MATRICULATING CLASS IN EACH YEAR, ACROSS PRIVATE LAW SCHOOLS: TOP 37 SCHOOLS

	2010	2011	2012	2013	2014	2015	2016
Total Applications	188,918	165,305	146,966	131,488	130,725	124,720	130,978
<i>Annual % change</i>		-12%	-11%	-11%	-1%	-5%	5%
<i>5- & 6-year % change from 2010</i>						-34%	-31%
Total Matriculants	11,101	10,508	9,915	9,604	9,699	9,353	9,633
<i>Annual % change</i>		-5%	-6%	-3%	1%	-4%	3%
<i>5- & 6-year % change from 2010</i>						-16%	-13%
Weighted average median LSAT	166	166	165	164	164	163	163
Weighted average median percentile LSAT	93	93	91	90	90	87	87
Weighted average median GPA	3.64	3.64	3.63	3.63	3.62	3.63	3.64
Weighted average 75th centile LSAT	168	167	167	166	166	166	166
Weighted average 75th centile LSAT (percentiles)	96	94	94	93	93	93	93
Weighted average 75th centile GPA	3.77	3.77	3.75	3.75	3.75	3.76	3.77
Weighted average 25th centile LSAT	163	162	162	161	160	160	160
Weighted average 25th centile LSAT (percentiles)	87	85	85	83	80	80	80
Weighted average 25th centile GPA	3.41	3.41	3.39	3.39	3.39	3.39	3.40

TABLE A.I.6: TUITION RELATED STATISTICS FOR COMPOSITE ENROLLED STUDENTS IN EACH ACADEMIC YEAR, REPORTED IN 2018 DOLLARS¹³⁵:
TOP 37 SCHOOLS

	2010	2011	2012	2013	2014	2015	2016
Weighted Average Sticker Price	49,225	49,905	50,352	51,821	53,032	54,599	56,595
<i>Annual % change</i>		1%	1%	3%	2%	3%	4%
<i>6-year % change, 2010–16</i>							15%
Weighted Average “Net Price”	39,787	39,672	40,020	40,495	38,460	38,079	37,772
<i>Annual % change</i>		0%	1%	1%	-5%	-1%	-1%
<i>6-year % change, 2010–16</i>							-5%
Weighted Average Discount on Tuition	9,438	10,233	10,332	11,327	14,572	16,520	18,823
<i>Annual % change</i>		8%	1%	10%	29%	13%	14%
<i>6-year % change, 2010–16</i>							99%
Total Revenue across all schools (\$ Millions)	1,333	1,349	1,346	1,326	1,169	1,138	1,129
<i>Annual % change</i>		1%	0%	-2%	-12%	-3%	-1%
<i>6-year % change, 2010–16</i>							-15%

¹³⁵ Adjusted for inflation using CPI data. See Shiller, *supra* note 132.

TABLE A.I.7: COMPOSITE MATRICULATING CLASS IN EACH YEAR, ACROSS PRIVATE LAW SCHOOLS: MIDDLE 36 SCHOOLS

	2010	2011	2012	2013	2014	2015	2016
Total Applications	85,824	78,307	67,457	50,886	43,026	42,674	41,099
<i>Annual % change</i>		-9%	-14%	-25%	-15%	-1%	-4%
<i>5- & 6-year % change from 2010</i>						-50%	-52%
Total Matriculants	9,683	8,756	7,875	6,853	6,488	6,498	6,581
<i>Annual % change</i>		-10%	-10%	-13%	-5%	0%	1%
<i>5- & 6-year % change from 2010</i>						-33%	-32%
Weighted average median LSAT	157	156	155	154	153	153	153
Weighted average median percentile LSAT	70	67	63	60	56	56	56
Weighted average median GPA	3.37	3.35	3.32	3.30	3.30	3.29	3.31
Weighted average 75th centile LSAT	159	159	158	157	156	156	156
Weighted average 75th centile LSAT (percentiles)	77	77	74	70	67	67	67
Weighted average 75th centile GPA	3.59	3.56	3.56	3.53	3.53	3.52	3.55
Weighted average 25th centile LSAT	154	153	152	151	150	150	150
Weighted average 25th centile LSAT (percentiles)	60	56	52	48	44	44	44
Weighted average 25th centile GPA	3.09	3.08	3.05	3.02	3.02	3.01	3.02

TABLE A.I.9: TUITION RELATED STATISTICS FOR COMPOSITE ENROLLED STUDENTS IN EACH ACADEMIC YEAR, REPORTED IN 2018 DOLLARS¹³⁶:
MIDDLE 36 SCHOOLS

	2010	2011	2012	2013	2014	2015	2016
Weighted Average Sticker Price	41,400	42,226	42,532	43,073	43,109	44,115	45,492
<i>Annual % change</i>		2%	1%	1%	0%	2%	3%
<i>6-year % change, 2010–16</i>							10%
Weighted Average “Net Price”	34,252	34,249	34,690	34,096	31,353	29,258	28,914
<i>Annual % change</i>		0%	1%	-2%	-8%	-7%	-1%
<i>6-year % change, 2010–16</i>							-16%
Weighted Average Discount on Tuition	7,148	7,977	7,843	8,977	11,756	14,857	16,577
<i>Annual % change</i>		12%	-2%	14%	31%	26%	12%
<i>6-year % change, 2010–16</i>							132%
Total Revenue across all schools (\$ Millions)	965	970	961	872	656	575	554
<i>Annual % change</i>		1%	-1%	-9%	-25%	-12%	-4%
<i>6-year % change, 2010–16</i>							-43%

¹³⁶ Adjusted for inflation using CPI data. See Shiller, *supra* note 132.

TABLE A.I.10: COMPOSITE MATRICULATING CLASS IN EACH YEAR, ACROSS PRIVATE LAW SCHOOLS: BOTTOM 37 SCHOOLS

	2010	2011	2012	2013	2014	2015	2016
Total Applications	61,709	55,964	48,839	35,867	31,057	28,358	27,166
<i>Annual % change</i>		-9%	-13%	-27%	-13%	-9%	-4%
<i>5- & 6-year % change from 2010</i>						-54%	-56%
Total Matriculants	11,757	10,427	9,110	7,994	7,077	6,502	6,173
<i>Annual % change</i>		-11%	-13%	-12%	-11%	-8%	-5%
<i>5- & 6-year % change from 2010</i>						-45%	-47%
Weighted average median LSAT	151	150	149	148	147	147	147
Weighted average median percentile LSAT	48	44	40	37	34	34	34
Weighted average median GPA	3.13	3.12	3.10	3.07	3.05	3.04	3.07
Weighted average 75th centile LSAT	154	153	153	152	151	151	151
Weighted average 75th centile LSAT (percentiles)	60	56	56	52	48	48	48
Weighted average 75th centile GPA	3.42	3.40	3.39	3.36	3.35	3.35	3.35
Weighted average 25th centile LSAT	148	148	146	145	145	145	145
Weighted average 25th centile LSAT (percentiles)	37	37	30	27	27	27	27
Weighted average 25th centile GPA	2.84	2.82	2.80	2.77	2.75	2.73	2.76

TABLE A.I.12: TUITION RELATED STATISTICS FOR COMPOSITE ENROLLED STUDENTS IN EACH ACADEMIC YEAR, REPORTED IN 2018
DOLLARS¹³⁷: BOTTOM 37 SCHOOLS

	2010	2011	2012	2013	2014	2015	2016
Weighted Average Sticker Price	35,580	36,450	36,846	38,166	37,990	38,414	39,817
<i>Annual % change</i>		2%	1%	4%	0%	1%	4%
<i>6-year % change, 2010–16</i>							12%
Weighted Average “Net Price”	30,974	31,620	31,734	32,572	29,976	29,159	29,231
<i>Annual % change</i>		2%	0%	3%	-8%	-3%	0%
<i>6-year % change, 2010–16</i>							-6%
Weighted Average Discount on Tuition	4,606	4,829	5,112	5,594	8,014	9,256	10,585
<i>Annual % change</i>		5%	6%	9%	43%	15%	14%
<i>6-year % change, 2010–16</i>							130%
Total Revenue across all schools (\$ Millions)	897	958	952	904	642	551	507
<i>Annual % change</i>		7%	-1%	-5%	-29%	-14%	8%
<i>6-year % change, 2010–16</i>							-43%

¹³⁷ Adjusted for inflation using CPI data. See Shiller, *supra* note 132.

APPENDIX II: COMPARISON OF SAMPLE WITH ALL ACCREDITED LAW SCHOOLS

TABLE A.II.1: COMPARISON BETWEEN ALL PUBLIC & PRIVATE LAW SCHOOLS (N = 188) AND PRIVATE ONLY LAW SCHOOLS (N = 110)

	2010	2011	2012	2013	2014	2015	2016
Total Applications—all schools	593,862	524,430	458,342	375,485	344,657	329,543	335,485
<i>Annual % change</i>		-12%	-13%	-18%	-8%	-4%	2%
<i>Ratio: private schools vs all schools</i>	57%	57%	57%	58%	59%	59%	59%
Total Matriculants—all schools	48,323	44,418	40,479	37,219	35,504	34,621	34,631
<i>Annual % change</i>		-8%	-9%	-8%	-5%	-2%	0%
<i>Ratio: private schools vs all schools</i>	67%	67%	66%	66%	66%	65%	65%
Weighted average median LSAT—all school	158	158	157	157	156	156	157
Weighted average median percentile LSAT—all schools	74	70	70	67	67	67	67
Weighted average median GPA—all schools	3.42	3.41	3.40	3.39	3.39	3.39	3.42
Weighted average median LSAT—private schools	158	157	157	156	156	156	156
Weighted average median percentile LSAT—private schools	74	70	70	67	67	67	67
Weighted average median GPA—private schools	3.38	3.37	3.36	3.35	3.36	3.36	3.39

TABLE A.II.2: COMPARISON BETWEEN ALL PUBLIC & PRIVATE LAW SCHOOLS (N = 188) AND PRIVATE ONLY LAW SCHOOLS (N = 110)

	2010	2011	2012	2013	2014	2015	2016
Total number of enrolled students	137,274	140,282	137,548	130,400	119,178	111,339	106,170
<i>Annual % change</i>		2%	-2%	-5%	-9%	-7%	-5%
<i>Ratio of private schools to all schools</i>	66%	66%	66%	66%	61%	61%	63%