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## Dawn of the Discipline-Based Law Faculty

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# Dawn of the Discipline-Based Law Faculty

Lynn M. LoPucki

## I. Introduction

American law schools began hiring Ph.D.s no later than the early 1960s.<sup>1</sup> In 1975, the proportion was not yet large enough for Donna Fossum to include Ph.D.s as a category in her landmark study of law professor hiring.<sup>2</sup> But by 1988, the proportion of Ph.D.s on law faculties had reached 5%.<sup>3</sup> In this Article, I report that 21% of tenure-track, entry-level hires by American law schools during the period 2011 through 2015 were J.D.-Ph.D.s.<sup>4</sup>

Ph.D.s are even more prevalent on higher-ranked faculties. Table 1 summarizes the findings of the four studies to date on Ph.D. hiring by, or Ph.D. prevalence on, top-ranked American law faculties. In the two most recent years—2014 and 2015—twenty-two of the thirty-three entry-level hires at the top twenty-six law schools (67%) held Ph.D.s.

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1. No Ph.D. hires from that era were present in my 2010 faculty sample. *See infra* Table 1. A few were, however, present in McCrary et al.'s 2011 universe. Justin McCrary, Joy Milligan, & James Phillips, *The Ph.D. Rises in American Law Schools, 1960-2011: What Does it Mean for Legal Education?*, 65 J. LEGAL EDUC. 543, 557-58 (2016).
2. Fossum merely noted that “[t]here is some evidence to suggest that . . . those in the more recent cohorts began acquiring advanced degrees in fields other than law (*i.e.*, the Ph.D. degree).” Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 5 AM. BAR FOUND. RESEARCH J. 501, 531 (1980).
3. Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 213 (1991) (“A smaller percentage of the sampled professors, 5%, had obtained a Ph.D. in an area outside the law.”).
4. *See infra* Table 2.

**Table 1. Studies of the Prevalence of Ph.D.s on or Hired by Top Law School Faculties**

	Period	Percent Ph.D.	N	Sample Type
LoPucki	2011-15	48%	100	Universe, new hires at 26 schools
McCrary, et al.*	2011	28%	1,923	Universe, all faculty at 34 schools
Hersch & Viscusi†	2010	27%	1,317	Universe, all faculty at 26 schools
LoPucki	2010	24%	155	Sample, all faculty at 26 schools
Redding‡	1996- 2000	13%	105	Sample, new hires at 25 schools
<p>Hersch &amp; Viscusi used <i>U.S. News</i> overall rankings from 2011.</p> <p>LoPucki used <i>U.S. News</i> academic rankings from 2012.</p> <p>Redding used <i>U.S. News</i> overall rankings from 1999.</p> <p>* McCrary et al., <i>supra</i> note 1, at 553, 575</p> <p>† See Joni Hersch &amp; Kip Viscusi, <i>Law and Economics as a Pillar of Legal Education</i>, 8 REV. L. &amp; ECON. 487, 489 (2011) (“The percentage of faculty with a Ph.D. is 27% overall. . .”).</p> <p>‡ Richard E. Redding, “Where Did You Go to Law School?” <i>Gatekeeping for the Professorate and Its Implications for Legal Education</i>, 53 J. LEGAL EDUC. 594, 600 (2003).</p>				

Even if the past two years prove to have been aberrational, the overall trend remains unmistakable. Ph.D. hiring is increasing rapidly. The “discipline-based law faculty” envisioned by Dean David Van Zandt—one on which nearly every professor has a Ph.D.—is now imminent.<sup>5</sup>

This Article reports the findings of an empirical study of the 2010 faculties of the top twenty-six schools and the 2011-15 entry-level hires of all AALS-member law schools. The study is based principally on data from the *AALS Directory of Law Teachers* (hereinafter the “*AALS Directory*”) and the *PrawfsBlawg Entry Level Hiring Reports* (hereinafter the “*PrawfsBlawg Reports*”). I supplemented those data with information from law school websites and faculty resumes. The purpose of the study was to assess the extent and impact of Ph.D. hiring.

Advocates of Ph.D. hiring frequently rely on the assumption that the J.D.-Ph.D.s hired are just like the J.D.s, but with Ph.D. training added.<sup>6</sup>

The attractiveness of J.D./Ph.D.s (in any field) to law faculties is not hard to understand. Why hire someone with only a J.D. when you can have someone from a top school who not only has the J.D. but also many years of additional training? Furthermore, that additional training is in how to produce scholarship—something law schools do not train their J.D. candidates to do.<sup>7</sup>

5. David E. Van Zandt, *Discipline-Based Faculty*, 53 J. LEGAL EDUC. 332 (2003).
6. *E.g.*, *id.* at 335 (asserting that “almost every [J.D.-Ph.D. on the discipline-based faculty] would have a J.D. degree and some experience in law practice, whether through judicial clerking, nonprofit or government service, or private practice.”).
7. Jeffrey J. Rachlinski, *Evidence-Based Law*, 96 CORNELL L. REV. 901, 908 (2011).

The detractors challenge that assumption by describing J.D.-Ph.D. hiring as a tradeoff and asserting that J.D.-Ph.D.s spend more time preparing for their careers.<sup>8</sup> According to Goldsmith and Vermule, “[l]egal scholars who spend years studying econometrics and statistics and generating datasets are legal scholars who have foregone training in clerkships and law firms and who enter teaching and scholarship at an older age, having read fewer law cases.”<sup>9</sup>

I found that recently hired J.D.-Ph.D.s have foregone training in clerkships and law firms, but are not spending more time preparing for their law teaching careers. J.D.-Ph.D. hiring has created two rapidly separating tracks for entry-level hiring at top twenty-six law schools. Those hired on the J.D.-only track are increasingly likely to have legal experience<sup>10</sup> (defined as law practice or clerking) and likely to have more of it,<sup>11</sup> while those hired on the J.D.-Ph.D. track are decreasingly likely to have legal experience<sup>12</sup> and likely to have less of it.<sup>13</sup>

The separate tracks were already evident in the 2010 faculty data. From the 2010 faculty to the 2011-15 hires, the credentials gap between J.D.-Ph.D.s and J.D.-only professors widened in every category I measured. As a result, the J.D.-only professors hired from 2011 through 2015 were twice as likely as the J.D.-Ph.D.s to have practiced law (86%, as compared with 43%) and practiced an average of four times as long (3.6 years, as compared with 0.9 years). Seventy-seven percent of the J.D.-only professors clerked, as compared with only 50% of the J.D.-Ph.D.s, and the J.D.-only professors clerked an average of 1.2 years, as compared with 0.7 years for the J.D.-Ph.D.s.

The gap with respect to elite clerkships also widened. Among the 2011-15 hires, 29% of the J.D.-only professors clerked for the United States Supreme Court, as compared with only 2% of the J.D.-Ph.D.s.<sup>14</sup> 77% of the J.D.-only professors clerked for United States Courts of Appeals, as compared with only 44% of the J.D.-Ph.D.s.<sup>15</sup>

8. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 58 (2011) (“Years of additional schooling in other fields pull [Ph.D. holders on law faculties] away from legal knowledge and legal practices, the kind of information their students expect to acquire in law schools.”); Erwin Chemerinsky, *Why Not Clinical Education?*, 16 *CLINICAL L. REV.* 35, 39 (2009) (“The emphasis on inter-disciplinary study, which I applaud, means more law professors with a Ph.D. as well as a law degree, but with no practice experience.”).
9. Jack Goldsmith & Adrian Vermeule, *Empirical Methodology and Legal Scholarship*, 69 *U. CHI. L. REV.* 153, 165-66 (2002).
10. *Infra* Table 12.
11. *Infra* Table 13.
12. *Infra* Table 12.
13. *Infra* Table 13.
14. *Infra* Table 11.
15. *Infra* Table 10.

The conventional wisdom holds that J.D.-Ph.D.s spend longer than J.D.-only professors preparing for their careers in law teaching.<sup>16</sup> That was true for those on the 2010 faculty. The time elapsed from bachelor's degree to first tenure-track position averaged 12.9 years for J.D.-Ph.D.s, as compared with 10.9 years for the J.D.-only professors. But among the 2011-15 hires, the two groups had reversed positions. J.D.-Ph.D.s spent six-tenths of a year *less* than the J.D.-only professors in preparation (12.1 years compared with 12.7 years).<sup>17</sup>

The decline in preparation time for J.D.-Ph.D.s is attributable largely to J.D.-Ph.D.s reversing the order in which they obtained their degrees. Preparation time is longer for J.D.-Ph.D.s who obtain their Ph.D. before their J.D. From the 2010 faculty to the 2011-15 hires, the proportion doing so fell from 41% to 15%.<sup>18</sup> Put more concretely, recently hired J.D.-Ph.D.s are less likely to have begun their careers in the discipline of their Ph.D. and then decided to switch to law. The Ph.D. is now a credential acquired in lieu of legal experience to qualify for a career in law teaching.

The increasing levels of legal experience and preparation time of the J.D.-only hires are more difficult to explain. It is possible that the top schools appreciate the importance of legal experience and hire J.D.-only professors with more experience to offset their hiring of J.D.-Ph.D.s with less experience. But the data provide no support for that possibility.

If the schools were competing for legal experience in making J.D.-only hires, J.D.s with more legal experience would tend to be hired by higher-ranked schools. Instead, the correlation between the legal experience of the J.D. hires and the ranks of the schools hiring them is very slightly negative.<sup>19</sup> I take that to mean that even with respect to their J.D.-only hires, the top twenty-six schools do not prefer candidates with more legal experience.

The correlation between preparation time and the ranks of the schools hiring the J.D.-only professors is negative and marginally significant ( $p=.053$ ) in my 2011-15 hiring data.<sup>20</sup> Among J.D.-only professors, jobs at higher-ranked schools tend to go to those who have spent less time preparing for them. The explanation may be that the top schools do not value preparation time. They hire the top candidates as soon as those candidates have met the hiring school's criteria.<sup>21</sup> The remaining candidates continue their searches and eventually settle for less prestigious jobs. The delay incidentally increases preparation

16. *E.g.*, *supra* note 6 and accompanying text.

17. *Infra* Table 14.

18. *Infra* Table 15.

19. Ordinary least squares regression ( $p=.813$ ). Although my data showed very little relationship between practice duration and school rank within the top twenty-six schools, Redding's 1996-2000 data showed that top twenty-five school hires had substantially less practice experience (an average of 1.4 years) than all other schools (an average of 3.8 years). Redding, *supra* Table 1 note ‡, at 601.

20. Ordinary least squares regression.

21. My data are insufficient to determine what those criteria are.

time and legal experience for those jobs. Further research is necessary to evaluate that possible explanation.

Although J.D.-Ph.D.s constitute 67% of professors added to top-twenty-six faculties in the past two years, they constitute only about 29% of the professors currently on those faculties.<sup>22</sup> Attrition from tenure-track jobs on the faculties of the top twenty-six schools is minimal for approximately the first thirty years after hiring,<sup>23</sup> and entry-level hiring declined over the past five years.<sup>24</sup> Even if entry-level hiring returns to prior levels, it will take a considerable time for the proportion of J.D.-Ph.D.s on law faculties to match the rate at which J.D.-Ph.D.s are hired.

Nevertheless, the transition to the discipline-based law school may already be past the point of no return. The most important concentration levels of voting blocs on law faculties are 33%—the vote needed to block hires at many schools<sup>25</sup>—and 50%—the vote needed for dominance of the hiring process. Using a model that assumes that J.D.-Ph.D.-hiring rates will continue to increase at their historical rate of 2.3% per year and the top twenty-six law faculties stabilize at their 2010 size, I estimate that the proportion of Ph.D.s on the top-twenty-six faculties will exceed 33% in 2019 and 50% in 2028.<sup>26</sup>

The aggregate levels of legal experience on top-twenty-six law faculties are already in decline.<sup>27</sup> The increasing legal experience of those hired on the J.D.-only track largely offsets the declining legal experience of those hired on the J.D.-Ph.D. track, making the present net decline gradual. But as the proportion of J.D.-only professors on those top faculties declines, the decline in aggregate legal experience will accelerate.

The resulting transformation of law faculties will not be confined to the top schools. The hiring of J.D.-Ph.D.s already extends to the fourth quartile of law schools and is rising across all quartiles.<sup>28</sup> Table 2 compares the proportions of J.D.-Ph.D.s found in four all-school studies over twenty-seven years. Although the all-school proportions of J.D.-Ph.D.s are smaller than the top-school

22. Lynn LoPucki, Excel Spreadsheet Compiling Ph.D. Projections at W62, *available at*, [http://webshare.law.ucla.edu/ERG/Lopucki-PhD\\_Hiring\\_Study.zip](http://webshare.law.ucla.edu/ERG/Lopucki-PhD_Hiring_Study.zip) (last visited Nov. 14, 2015).

23. *E.g.*, *infra* Figure 1.

24. *See infra* Table 5.

25. Based on my experience as a member of four faculties and discussions with members of other faculties, deans at many schools have the discretion not to make an offer to a candidate who won a majority of votes but also had “substantial opposition.” As a practical matter, one-third of the votes cast is generally considered to be substantial opposition.

26. *Infra* Part V. By adding Hersch and Viscusi’s numbers of J.D.s and Ph.D.s to the 2011-15 hiring data for each of the top ten schools, I estimated that the proportion of Ph.D.s on six of those ten faculties already exceeds one-third. *See* Hersch & Viscusi, *supra* Table 1 note †, at 509.

27. *Infra* Part IV.D.

28. *Infra* Table 16.

proportions, the all-school rates of increase in J.D.-Ph.D.s are even greater than the top-school rates of increase.

**Table 2. Studies of the Prevalence of Ph.D.s on AALS Member-School Faculties**

	Period	Percent Ph.D.	N	Sample Type
LoPucki	2011-15	21%	513	Universe, new hires
Newton*	2000-09	19%	n/a	Sample, new hires
Redding†	1996-2000	11%	338	Sample, new hires
Borthwick & Schau‡	1988	5%	872	Sample, all faculty
* Brent E. Newton, <i>Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy</i> , 62 S.C. L. REV. 105 (2010).				
† Redding, <i>supra</i> note ‡ in Table 1.				
‡ Borthwick & Schau, <i>supra</i> note 3.				

The pace of this transformation has accelerated sharply over the past few years. It is occurring without meaningful debate over the merits of discipline-based law faculties or efforts to reconcile their ascendancy with the demands of law students and the bar that the law schools better prepare the students for the practice of law.

Part II of this Article describes the methodology and findings of the 2010 Faculty Study. It estimates the Ph.D. prevalence on the 2010 faculties of the top twenty-six schools at 24%, compares that estimate with the findings of Hersch and Viscusi, projects rough estimates of past Ph.D.-hiring rates from the 2010 data, and describes the Ph.D.s' relationships with non-law departments. Part III describes the methodology and findings of the 2011-15 Entry Level Hiring Study. It reports the aggregate top-school rate of J.D.-Ph.D. hiring as 48% for the 2011-15 period and describes the increase that occurred within that period.

Part IV compares the J.D.-Ph.D.s with the J.D.-only professors with respect to their practice experience, clerkship experience, legal experience, and preparation time. It also presents all-school hiring data for the 2011-15 period, including data on J.D.-Ph.D.s and clerkships. Last, it reports the fields in which the Ph.D.s earned their degrees.

Part V describes the model I used to project the increasing proportions of J.D.-Ph.D.s on top-twenty-six law faculties. That part justifies the model's assumptions and reports its results. Part VI concludes that the projected shift to hiring J.D.-Ph.D.s almost exclusively would surrender control over the future direction of legal scholarship to the disciplines and reduce the schools' capacity to prepare students to practice law.

## II. The 2010 Faculty Study

This Part describes the methodology and findings of the 2010 Faculty Study. It estimates the Ph.D. presence on the 2010 faculties of the top twenty-six schools at 24%, compares that estimate with the findings of Hersch and Viscusi, projects rough estimates of past Ph.D. hiring rates from the 2010 data, and describes the Ph.D.s' relationships with non-law departments.

### A. Methodology

My 2010 Faculty Study is based on a random sample of 218 professors holding tenure-track positions at the top twenty-six law schools.<sup>29</sup> I limited the study to the top twenty-six law schools because Ph.D. hiring is concentrated in those schools.<sup>30</sup> To extend the study to all schools would have required a larger sample in which a small portion of the professors would have held Ph.D. degrees.

I confined the sample to tenure-track faculty because they are of greater institutional importance than the nascent “general” faculty.<sup>31</sup> Until recently, many schools had rules and practices that effectively prevented non-tenure-track careers in law teaching.<sup>32</sup> Non-tenure-track careers are increasingly common,<sup>33</sup> but tenure-track positions remain more desirable because tenure-track faculty members enjoy more job security, greater autonomy, greater visibility, higher pay, more resources, higher status, and more influence in faculty governance. Prior researchers all made the same choice.<sup>34</sup>

We drew the random sample from the 2010-2011 *AALS Directory*.<sup>35</sup> The directory contains separate lists of the “law teachers” at each of the twenty-

29. I initially set out to study the top twenty-five schools, but switched to twenty-six when I discovered that U.S. NEWS & WORLD REPORT reported a five-way tie for twenty-second in academic rank. U.S. NEWS & WORLD REPORT, BEST GRADUATE SCHOOLS 69 (2012 ed.).

30. See *infra* Table 16.

31. No single term is used to describe the full-time career faculty who are not tenure track. “General” is the term in use at the University of Virginia.

32. Fossum, *supra* note 2, at 504 (noting that “only teachers occupying [tenure-track] positions . . . were in a position to . . . make official careers of law teaching.”).

33. Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1, 10 (2000) (“Since the primary growth in law school hiring is in non-tenure-track positions, the women’s ghetto that was predicted in 1988 is growing. There is reason to believe that non-tenure-track contract status may become the norm for new law school teachers.”).

34. *E.g., id.* at 503-04; Hersch & Viscusi, *supra* Table 1 note †, at 488 (“We include tenured and tenure-track faculty.”); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 206 (1997) (“We chose tenure-track law professors as the subject of our study because those faculty members hold influential posts, shaping both the next generation of lawyers and the development of legal doctrine.”).

35. “We,” as used in this Article, refers to myself and research assistants working under my direction.



six schools.<sup>36</sup> We made copies of the relevant pages and numbered the 3032 persons on those lists. I obtained lists of random numbers from 1 to 3032 from a website<sup>37</sup> and determined the names of the faculty members who corresponded to those random numbers.

We coded information from the biographies of those faculty members. If a member did not have a biographical listing in the *AALS Directory* that contained the information we sought, we added information from law school websites, posted resumes, and other sources.<sup>38</sup>

Determining which faculty members are tenure track from publicly available information is difficult. Although tenure track is the most important distinction among law faculty, most law schools do not publicly divulge which faculty members have that status. Researchers must infer it from other circumstances. To do so, I applied the following tests:

1. I included only persons designated as a “prof.” or “professor” on the list. The effect was to eliminate many persons holding only administrative titles such as “Assistant Dean,” “Director of Career Services,” “Lecturer,” or “Instructor.”

2. I omitted professors if they were listed as emeritus, visiting, clinical, research and writing, advocacy skills, or adjunct professors, because those positions are non-tenure-track positions at most law schools. I included professors who taught clinical courses if they taught primarily non-clinical courses and were not formally designated “clinical” professors.<sup>39</sup>

3. I omitted professors who held administrative positions of types that are generally considered full time, such as Chancellor, Provost, or Dean (but not Associate Dean).

4. I omitted professors who held tenure-track positions in other departments of the university and only courtesy appointments in the law schools. The requirement resulted in the exclusion of six professors holding Ph.D.s but not J.D.s,<sup>40</sup> and one professor holding both a Ph.D. and a J.D.<sup>41</sup>

As we disqualified members of the random sample, we replaced them with new members randomly drawn in random order. Ultimately, the application

36. ASS'N OF AM. LAW SCH., THE AALS DIRECTORY OF LAW TEACHERS 2010-2011, Table of Contents [unpaged] (2011-2012) (“List of Law Teachers by School at Member Schools.”).

37. RESEARCH RANDOMIZER, <https://www.randomizer.org> (last visited Nov. 14, 2015).

38. See Tracey E. George, *An Empirical Study of Empirical Legal Scholarship: The Top Law Schools*, 81 IND. L.J. 141, 152 n.49 (2006) (describing a similar method of supplementing the *AALS Directory*).

39. I considered a professor “clinical” if (1) the professor’s title contained the word “clinical,” for example, “Assistant Clinical Professor of Law” or if (2) the professor taught only clinical courses.

40. Paul Diehl, Frederick Hoxie, Bart A. Kosko, Leslie J. Reagan, James F. Ross, and Daniel Spulber.

41. Anthony M. Bertelli.

of these protocols disqualified 57% of the persons randomly drawn.<sup>42</sup> I closed the sample size at two hundred eighteen. The sample consisted of 200 J.D.s and eighteen non-J.D.s.

That sample includes one hundred fifty-five J.D.s whose first tenure-track jobs were at top twenty-six schools and forty-five J.D.s whose first tenure-track jobs were not. I have used only the former group for comparison to the 2011-15 hires.

The study focused on the relative sizes of three categories: (1) professors holding law degrees but not Ph.D.s, (2) professors holding both law degrees and Ph.D.s, and (3) professors holding Ph.D.s but not law degrees. In counting the degrees held, I considered an LL.B. to be the equivalent of a J.D. I did not consider an S.J.D. or a D. Phil. to be the equivalent of a Ph.D. I included holders of S.J.D. degrees in the J.D.-only category, whether or not they also held J.D. degrees.

### *B. Findings and Analysis*

#### 1. The Prevalence of Ph.D.s

Table 3 shows the distribution of Ph.D. and J.D. degrees among the 218 law professors in the sample. 74% held a J.D. degree, but no Ph.D. degree. 17% held both a J.D. degree and a Ph.D. degree. 7% held a Ph.D. degree, but no J.D. degree. 1% held neither a Ph.D. nor a J.D. degree. Thus, by 2010, Ph.D.s already constituted 24% of top law school faculties.

**Table 3. Top-Twenty-Six-School Law Professors in June 2010, by Degree Types**

<b>Degree Type</b>	<b>LoPucki Random Sample*</b>	<b>Hersch-Viscusi Universe**</b>
J.D. but no Ph.D.	162 (74%)	965 (73%)
J.D. and Ph.D.	38 (17%)	286 (22%)
Ph.D. but no J.D.	16 (7%)	66 (5%)
Neither	2 (1%)	0 (0%)
<b>Total</b>	<b>218 (100%)</b>	<b>1317 (100%)</b>
* Top twenty-six law schools selected by <i>U.S. News</i> academic rank; S.J.D.s and D.Phil.s not considered Ph.D.s; courtesy appointments not considered faculty.		
* * Top twenty-six law schools selected by <i>U.S. News</i> overall rank; treatment of S.J.D.s, D. Phil.s, and courtesy appointments not reported.		

Table 3 compares the roughly corresponding results of a study by Hersch and Viscusi of the universe of law professors on the faculties of the top twenty-

42. Several professors were randomly drawn multiple times but included only once in the sample.

six law schools in June 2010.<sup>43</sup> They found that 27% of the 2010 faculty held Ph.D.s. The 3% difference in our findings may be attributable to chance in the draw of my sample, differences in our methodologies,<sup>44</sup> or errors in either study.<sup>45</sup> The literature also contains numerous reports of the proportions of particular law faculties that held Ph.D.s,<sup>46</sup> and some more general reports.<sup>47</sup> The methodologies by which the reports were compiled and percentages reported varied widely, making it difficult to generalize from them.

The Ph.D. count yields two insights. First, the prevalence of Ph.D.s on law faculties in 2010 was lower than suggested by non-systemic reports in the literature. Second, the precise prevalence of Ph.D.s on law faculties can vary considerably with the definitions employed.

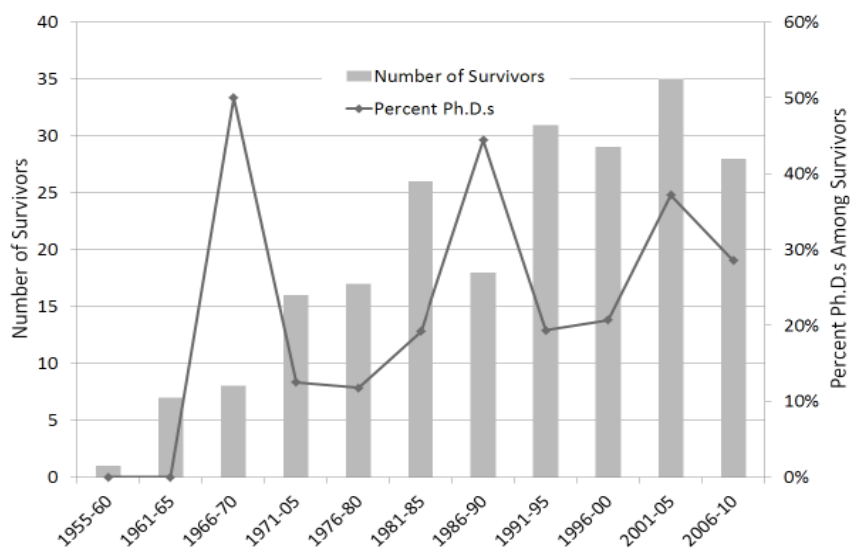
43. Hersch & Viscusi, *supra* Table 1 note †.
44. At least three differences in methodology may have affected our results. First, Hersch and Viscusi used *U.S. News* overall rankings to determine the top twenty-six schools. *Id.* at 488 n.3. As a result, their study included Boston University, Indiana, Notre Dame, and UC Davis, but omitted Emory, Iowa, North Carolina, and Wisconsin. Second, Hersch and Viscusi did not expressly indicate whether they counted J.S.D., S.J.D., or D. Phil. degrees as Ph.D.s; I considered none of them to be Ph.D.s. Third, I did not count seven Ph.D. holders with only courtesy appointments in the law schools. Hersch and Viscusi worked principally from the *AALS Directory*, which does not indicate which appointments are courtesy and so may have included them.
45. Hersch and Viscusi reported no faculty member with neither a Ph.D. nor a J.D. Hersch & Viscusi, *supra* Table 1 note †, at 489, 509 (showing 965 J.D.-only, 286 J.D.-Ph.D., and 66 Ph.D.-only for a total of 1317 faculty members). That report incorrectly omits two faculty members drawn in my sample. Neither Alan A. Stone nor Antony Duff had a J.D. or a Ph.D. degree. Stone's degrees appear in the *AALS Directory*, Duff's do not. Both qualified for inclusion in Hersch and Viscusi's study. *Faculty Profiles: Antony Duff*, UNIV. MINN. LAW SCH., <http://www.law.umn.edu/facultyprofiles/duffa.html> (last visited Nov. 14, 2015) ("Professor Duff completed a B.A. in 1967, followed by postgraduate study at Oxford University. He was a visiting lecturer in philosophy at the University of Washington, Seattle, in 1968-69 and joined Stirling's Department of Philosophy in 1970."); email from Antony Duff, Professor, Univ. Minn. Law Sch., to author (Jan. 6, 2014) (on file with author) (confirming that Antony Duff does not have a Ph.D. degree). If the prevalence of neither-degree holders was the same on the 2010 faculty as in my sample, Hersch and Viscusi should have found 12 such holders. McCrary et al. report that only 92% of law professors hold a J.D. degree. McCrary, et al., *supra* note 1, at 554 (Table 2). Their figure may be low because they included some Ph.D.-only courtesy appointments in their study. *Id.* at 551 ("[W]e may have included some faculty with only courtesy appointments in the law schools.").
46. *E.g.*, Thomas S. Ulen, *The Impending Train Wreck in Current Legal Education: How We Might Teach Law as the Scientific Study of Social Governance*, 6 ST. THOMAS L.J. 302, 328 (2009) (showing that more than one-third of the University of Illinois law faculty—thirteen of thirty-six—had Ph.D.s).
47. *E.g.*, George, *supra* note 38, at 152 (table showing the top ten law schools by percentages of social science Ph.D.s on the faculty, with percentages ranging from 33% at Berkeley to 15% at Columbia and Illinois); Edward Rubin, *Should Law Schools Support Faculty Research?*, 17 J. CONTEMP. LEGAL ISSUES 139, 160 (2008) (claiming that "more than half the entry-level faculty members hired by the thirty top-ranked law schools in the last few years have had Ph.D.s in addition to, or occasionally instead of, the J.D. degree" but providing no support).

## 2. Changes in Ph.D. Hiring Over Time

The gray bars on Figure 1 (below) indicate the numbers of 2010 faculty who were hired in each period indicated. The numbers are greater in recent years because the sizes of law faculties generally increased over this period and because faculty hired in earlier years were more likely to have retired, resigned, or died.

The line on Figure 1 shows changes in the proportions of Ph.D.s among the members hired in each period and still on a top-twenty-six faculty. The proportion generally increases over time, reflecting increases in the proportion of Ph.D. hiring. The proportion spikes in the late 1960s, the late 1980s, and the early 2000s. From the line I infer that Ph.D. hiring extends at least back to the late 1960s and, ignoring the spikes, has increased since then.<sup>48</sup>

**Figure 1. Ph.D.s As a Percent of the 2010 Survivors, by Hiring Year**



These results are consistent with the hiring cohort findings of McCrary et al. in a study of the universe of 2011 survivors.<sup>49</sup> Their trend line is much smoother. Their ratio of Ph.D.s for the 1960-64 hiring cohort is about 9% and

48. Figure 1 shows the proportion of Ph.D.s in the 2010 faculty sample by the year of their first tenure-track appointment at any law school. The total numbers of faculty members hired per period increases with the hiring year. This pattern reflects the fact that persons hired in earlier years are more likely to have left the faculty by 2010 than were persons hired in later years. It also probably reflects growth in the size of top-twenty-six law faculties in the fifty-five-year period from 1955 to 2010. *E.g.*, TAMANAHA, *supra* note 9, at 62 (reporting increases from 7421 law faculty in 1991 to 10,965 in 2009). Growth would have required increasing levels of annual hiring. The importance of the increasing denominators is that the proportions of Ph.D.s hired in higher-denominator years are more reliable indicators of the overall trend.

49. McCrary et al., *supra* note 1, at 558 (Figure 1).

their proportion for the 2010 hiring cohort is about 37%. Each of the three spikes on Figure 1 corresponds to an above-the-trend line ratio for the closest cohort on the McCrary et al. graph.

### 3. Joint Appointments

Some argue that many of the Ph.D.s hired on law school faculties are of lower quality than the Ph.D.s hired by the non-law departments.<sup>50</sup> The prevalence of joint appointments bears on that issue. A joint appointment is the appointment of a professor to membership in two or more schools or departments of the same university.

In a true joint appointment, each department pays some portion of the professor's salary. Because both departments are paying, the professor generally must meet the standards for appointment in both. That a professor has been appointed by a non-law department is reasonably clear evidence that the professor met the quality standard for such an appointment.

If one of the schools or departments is paying the entire salary, the other school or department's appointment is referred to as "zero percent" or "courtesy." The standards for a zero percent appointment are not rigorous. Some schools use the terms "secondary appointments" or "affiliated faculty" to refer to what are essentially zero percent appointments.<sup>51</sup>

The two kinds of joint appointments can be difficult to distinguish based on publicly available information. Although some professors, schools, and departments expressly list appointments as "courtesy," and others have adopted less explicit expressions of the distinction, the best evidence—pay records—are rarely public.<sup>52</sup> The issue is complicated by law school efforts to promote a public impression of interdisciplinarity.<sup>53</sup> Some do so by listing

50. For example, Judge Harry T. Edwards wrote:

[I]f lawyers are no different from economists or political scientists, then why do they need J.D.s rather than M.A.s or Ph.D.s? And why should law professors be writing books and articles that, *ex hypothesi*, could be better written by economists or political scientists? On Priest's assumption, the law school becomes a haven for would-be theorists too mediocre to earn tenure in the graduate schools.

*Proceedings of the Fifty-Third Judicial Conference of the District of Columbia Circuit*, 145 F.R.D. 149, 206 (1993).

51. *E.g.*, GUIDELINES FOR SECONDARY APPOINTMENTS ACROSS DEPARTMENTS AT VANDERBILT UNIVERSITY, VANDERBILT UNIV. SCH. ENG'G (last updated Apr. 30, 2010), <http://engineering.vanderbilt.edu/docs/policies/PolicyA6.pdf>. ("These appointments are made in support of an individual's substantial and ongoing academic and/or research collaboration beyond routine collegial interactions.").

52. *But see Salary Supplement*, MICH. DAILY, [http://data.michigandaily.com/tmdsal?dept=&fte\\_op=%3E%3D&fte%5Bvalue%5D=&fte%5Bmin%5D=&fte%5Bmax%5D=&title=&campus=All&Year%5B%5D=2010&fname=bruce&lname=frier](http://data.michigandaily.com/tmdsal?dept=&fte_op=%3E%3D&fte%5Bvalue%5D=&fte%5Bmin%5D=&fte%5Bmax%5D=&title=&campus=All&Year%5B%5D=2010&fname=bruce&lname=frier) (last visited July 16, 2015) (showing that in 2010 half of Michigan Professor Bruce Frier's salary came from the Law School and half from the Department of Classical Studies).

53. For example, McCrary et al. note that faculty members with primary appointments in other departments are sometimes listed on law school websites as law school faculty members,

professors with courtesy appointments in the law school as members of the law school faculty. I treated undifferentiated claims of multiple appointments as joint appointments, so my data may overstate the level of joint appointments.<sup>54</sup>

**Table 4. Appointments of 2010 Faculty Holding Ph.D. Degrees, by Degree Types**

	Law only	Joint	Total
J.D.-Ph.D.	29 (76%)	9 (24%)	38 (100%)
Ph.D. only	6 (38%)	10 (63%)	16 (100%)
Total	35 (65%)	19 (35%)	54 (100%)
Fisher's exact, $p=.012$ .			
Based on a random sample of law professors at top twenty-six schools in June 2010.			
Includes non-courtesy appointments only.			

Table 4 shows that only nine of thirty-eight J.D.-Ph.D.s (24%) held true joint appointments, as compared with ten of sixteen Ph.D.-only professors (63%). Law faculty with only Ph.D.s were significantly more likely to hold joint appointments than were law faculty with J.D.s and Ph.D.s ( $p=.012$ ).

From the Table 4 data, I conclude that at least some of the J.D.-Ph.D.s hired in top twenty-six law schools qualified for appointments in their Ph.D. departments. But, for the most part, these data are inconclusive on the quality issue.

### III. The 2011-15 Entry-Level Hiring Study

I also conducted a study of Ph.D. hiring by law schools for the five-year period from 2011 through 2015. The study's purposes were to update the 2010 Faculty Study and to discover the pace and nature of more recent changes.

#### A. Methodology

I culled the 2011-15 hiring data from the *PrawfsBlawg Reports*.<sup>55</sup> PrawfsBlawg is a blog edited by several law professors. PrawfsBlawg obtained the data by

leading to overinclusion in counting faculty members with Ph.D.s. McCrary et al., *supra* note 1, at 574.

54. In a similar study, McCrary et al. made essentially the same choice. McCrary et al., *supra* note 1, at 551 ("We included those with cross-appointments, and erred toward over-inclusion given the lack of information on the nature of the appointment (for example, we may have included some faculty with only courtesy appointments in the law schools).").
55. *Spring Self-Reported Entry Level Hiring Report 2015*, PRAWFSBLAWG (May 19, 2015, 11:40 AM), <http://prawfsblawg.blogs.com/prawfsblawg/entry-level-hiring-report/>; *Spring Self-Reported Entry Level Hiring Report 2014*, PRAWFSBLAWG (May 2, 2014, 2:57 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2014/05/spring-self-reported-entry-level-hiring-report-2014.html>; *Spring Self-Reported Entry Level Hiring Report 2013*, PRAWFSBLAWG, (May 27, 2013, 3:10 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2013/05/spring-self-reported-entry-level-hiring-report-2013.html>; *Spring Self-Reported Entry Level Hiring Report 2012: Data Summary*, PRAWFSBLAWG

issuing a “Call for Information” each year.<sup>56</sup> The call differed only slightly from year to year.<sup>57</sup> PrawfsBlawg received the information by posting or email, entered it into a spreadsheet, analyzed the data, and prepared a *PrawfsBlawg Report* for each year. PrawfsBlawg also posted both the data and the report on its website.<sup>58</sup>

The *PrawfsBlawg Report* data include hiring information for all law schools for which that information was submitted. I applied my own definitions of tenure-track faculty, J.D.s, and Ph.D.s to the U.S. law school portion of the *PrawfsBlawg Report* data to yield a universe of 515 tenure-track professors hired by U.S. law schools. Of those, 100 had been hired by top twenty-six law schools.

We collected resumes and biographical information for each reported top-twenty-six law school hire. I used the resumes and biographical information to conform the *PrawfsBlawg Report* data to my 2010 Faculty Study protocols, to fill in missing data, and to supplement both sets of top-twenty-six school data by adding these fields: (1) year of undergraduate degree, (2) years of practice (including government practice), (3) years of clerking, (4) U.S. Court of Appeals (Circuit) clerkships, and (5) Supreme Court clerkships. As a result, all three datasets conform to the same protocols.<sup>59</sup>

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(May 24, 2012, 1:30 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2012/05/spring-self-reported-entry-level-hiring-report-2012-data-summary.html>; *Entry Level Hiring: Final Summary*, PRAWFSBLAWG (May 20, 2011, 9:14 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2011/05/entry-level-hiring-final-summary.html>.

56. *E.g.*, *Entry Level Hiring: The 2013 Report Call for Information*, PRAWFSBLAWG (Feb. 27, 2013, 3:24 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2013/02/entry-level-hiring-the-2013-report-call-for-information.html>.

57. In 2013, it requested this information with respect to American law school entry-level hiring:  
 Basic Information: Name, Hiring School, J.D. Institution, J.D. Year of Graduation  
 Other Degrees: Type of Degree, Degree Granting Institution, Degree Subject  
 Fellowship, VAP, or Visiting Professorship: Institution and Type (*e.g.*, VAP, name of fellowship, etc.)  
 Clerkship: Court (*e.g.*, 9th Circuit, Texas Supreme Court, etc.)  
 Areas of Specialty (up to four) (if you are a clinical or LRW hire, please list this as your first Area of Specialty)  
 Type of Position: Tenure Track or Non-Tenure Track (if you are clinical or LRW and also tenure-track, please indicate this)

The call specifically requested reports of no entry-level hiring, and some such reports were reported for the years 2011-13. *See Spring Self-Reported Entry Level Hiring Report 2013*, *supra* note 55 (showing Wisconsin reporting no entry-level hiring); *Spring Self-Reported Entry Level Hiring Report 2012: Data Summary*, *supra* note 55 (showing no top-twenty-six school reporting no entry-level hiring); *Entry Level Hiring: Final Summary*, *supra* note 55 (showing George Washington and Penn reporting no entry-level hiring).

58. In 2011, PrawfsBlawg’s call received a response from twenty of the top twenty-six schools (77%). In 2012, it received a response from seventeen (65%) and in 2013, it received a response from eleven (42%). PrawfsBlawg reported no data for 2014 and 2015 regarding its response rate.

59. Data Collection Protocols for the 2010 Faculty and PhD Hiring Studies, *available at* <http://lopucki.law.ucla.edu/disciplining/DataProtocols2010Faculty> and [PhDHiring.pdf](http://lopucki.law.ucla.edu/disciplining/PhDHiring.pdf) [disciplining/](http://lopucki.law.ucla.edu/disciplining/).

*B. Findings and Analysis*

Of the 100 entry-level hires during the period 2011-15 period, forty-eight (48%) were J.D.-Ph.D.s and fifty-two (52%) were J.D.-only. None was Ph.D.-only. Sixteen of the 218 professors in the 2010 Faculty Study were Ph.D.-only, but all were lateral hires from tenure-track non-law school positions. Together, the two sets of data suggest that all or substantially all Ph.D.-only hiring at top law schools is lateral.<sup>60</sup>

To render the 2010 Faculty Study data comparable to the 2011-15 Entry-Level Hiring Study data, I made two adjustments to it. First, I removed the eighteen professors not holding law degrees. The 200 2010 faculty remaining all held J.D. or equivalent degrees. Second, I removed forty-five professors who were first hired in tenure-track positions at schools outside the top twenty-six, and then hired laterally by top twenty-six schools. The 155 2010 faculty remaining were all hired at entry level by top twenty-six schools and so each met a top-twenty-six school's entry-level hiring standard.

Table 5 shows that the proportion of J.D.-Ph.D.s hired in the period 2011-15 (48%) far exceeded the proportion of J.D.-Ph.D.s hired into and remaining on the 2010 faculty (21%). The difference between 2010 faculty and the 2011-15 hires is statistically significant ( $p < .001$ ). So is the trend within the 2011-15 hires ( $p = .025$ ).<sup>61</sup>

**Table 5. J.D.-Ph.D. Proportions**

	(1) J.D.-only	(2) J.D. and Ph.D.	(3) Total
2010 faculty	123 (79%)	32 (21%)	155 (100%)
2011 hires	16 (55%)	13 (45%)	29 (100%)
2012 hires	18 (75%)	6 (25%)	24 (100%)
2013 hires	7 (50%)	7 (50%)	14 (100%)
2014 hires	5 (31%)	11 (69%)	16 (100%)
2015 hires	6 (35%)	11 (65%)	17 (100%)
2011-15 hires	52 (52%)	48 (48%)	100 (100%)
The difference between the 2010 faculty and the 2011-15 hires is statistically significant ( $p < .001$ ), Fisher's exact test. The trend from 2011 through 2015 is statistically significant ( $p = .025$ ), ordinary least squares regression.			

Figure 2 (below) is a graph of the percentages shown in column (2) of Table 5. It shows that the entry-level J.D.-Ph.D.-hiring rates at the top twenty-

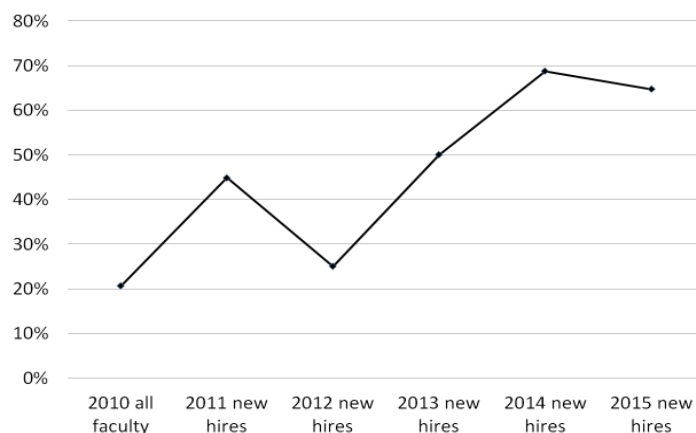
60. Two of the 415 hires at lower-ranked schools (Michigan State and Brooklyn) were Ph.D.-only. Some top law schools are soliciting entry-level applications from the holders of J.D.s *or* Ph.D.s, suggesting that entry-level Ph.D.-only hiring will soon be occurring at top schools. Legal Scholarship Network, Professional Announcements and Job Openings, Aug. 19, 2015 (ads placed by University of California, Berkeley, School of Law and University of California Davis, School of Law) (on file with the author).

61. Ordinary least squares regression.



six schools were 69% in 2014 and 65% in 2015. Ph.D. hiring appears to have become the norm in top-twenty-six law school hiring.

**Figure 2. Percent Ph.D.s by Hiring Cohort**



#### IV. The Impact of Ph.D. Hiring

I found that J.D.-only professors had significantly and substantially more legal experience than J.D.-Ph.D. professors at the time of hiring. Legal experience is experience in the practice of law or judicial clerkships, measured in years.

Ph.D.-only professors had no legal experience at all by the definitions employed here because they could not practice law or serve as law clerks. This part reports only the differences in legal experience between J.D.-only professors and J.D.-Ph.D.s. Had the comparisons been between all Ph.D. holders and all non-Ph.D. holders on law faculties, the differences in legal experience would have been even more extreme.

##### *A. Practice Experience*

Practice Experience is defined here as having practiced law after law school graduation and before the law professor's first tenure-track position in a U.S. law school. Thus, it excludes summer positions with law firms prior to graduation. It includes time spent as government or corporate counsel, but not time spent in government or business positions for which a law degree would not ordinarily be required.

A higher proportion of J.D.-only professors than J.D.-Ph.D.s had Practice Experience prior to their first tenure-track job on a law faculty. As shown in Table 6, this difference was statistically significant within the 2010 faculty sample ( $p=.005$ ) and within the 2011-15 hiring universe ( $p<.001$ ).

**Table 6. Whether Law Professors Have Practice Experience, by Hiring Cohort and Degree Type**

Hiring Cohort	Degree Type	No Practice Experience	Practice Experience	Total
2010 faculty p=.007	(1) J.D.-only	27 (22%)	96 (78%)	123 (100%)
	(2) J.D.-Ph.D.	15 (47%)	17 (53%)	32 (100%)
	(3) Total	42 (27%)	113 (73%)	155 (100%)
2011-15 hires p<.001	(4) J.D.-only	7 (14%)	44 (86%)	51 (100%)
	(5) J.D.-Ph.D.	27 (57%)	20 (43%)	47 (100%)
	(6) Total	34 (35%)	64 (65%)	98 (100%)

P-values are from Fisher's exact tests, two-tailed.  
 The difference between the 2010 faculty (73% Practice Experience) and the 2011-15 hires (65% Practice Experience) is not statistically significant (p=.199).  
 The 2010 faculty is a random sample of law professors at top twenty-six schools in June 2010.  
 The 2011-15 hires is the universe of law professors hired at entry level in top twenty-six schools during the academic years ending 2011-15.

In both the 2010 faculty sample and the 2011-15 hiring universe, the difference was large. In the 2010 faculty sample, the proportion of J.D.-Ph.D.s who began their first tenure-track teaching job without Practice Experience was more than double that for J.D.-only professors (47%, as compared with 22% for J.D.-only professors). In the 2011-15 hiring universe, the proportion of J.D.-Ph.D.s who began teaching without Practice Experience was more than four times that for J.D.-only professors (57%, as compared with 14% for J.D.-only professors).<sup>62</sup>

J.D.-only professors were not only more likely to have Practice Experience, but were also likely to have more practice experience than J.D.-Ph.D.s. Practice Duration is defined here as the number of years the professor practiced law prior to the teacher's first tenure-track law teaching position. Table 7 shows that in the 2010 faculty sample, Practice Duration for J.D.-only professors averaged 3.7 years, as compared with 1.6 years for J.D.-Ph.D.s. The difference is statistically significant (p=.001). For J.D.-only professors, median Practice Duration was three years, as compared with one year for J.D.-Ph.D.s.

That gap in Practice Duration widened among the 2011-15 hires. J.D.-only professors' Practice Duration averaged 3.6 years,<sup>63</sup> as compared with average J.D.-Ph.D. Practice Duration of only 0.9 years. The difference is statistically

62. Redding reported that only 15% of newly hired law professors at top twenty-five schools had no practice experience during the period 1996-2000. Redding, *supra* Table 1 note ‡, at 601.

63. This average is sharply higher than the 1.4 years reported by Redding for new hires with practice experience at top-twenty-six law schools during the period 1996-2000, *id.* at 601, and sharply higher than the 1.79 years reported by Newton for new hires with practice experience at top fifty law schools during the period 2000-09. Newton, *supra* Table 2 note \*, at 130 (“[F] or the schools in tier one, the median was only 1 year and the mean was 1.79 years.”).

significant ( $p < .001$ ). For J.D.-only professors, median Practice Duration was three years, as compared with a median of zero for J.D.-Ph.D.s.

**Table 7. Practice Duration, by Hiring Cohort and Degree Type**

	2010 Faculty			2011-15 Hires		
	Number	Mean years	Median years	Number	Mean years	Median years
J.D.-only	123	3.7	3	50	3.6	3
J.D.-Ph.D.	32	1.6	1	45	0.9	0
Total	155	3.2	2	95	2.3	2

The difference in means between J.D.-only (3.7) and J.D.-Ph.D. (1.6) in the 2010 faculty is statistically significant ( $p = .015$ ), ordinary least squares regression.

The difference in means between J.D.-only (3.6) and J.D.-Ph.D. (0.9) in the 2011-15 hires is statistically significant.  $p < .000$ , t-test, two-tailed.

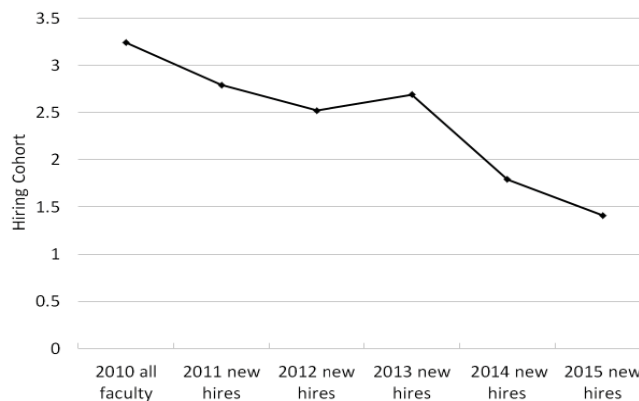
The difference in means between the 2010 faculty (3.2) and the 2011-15 hires (2.3) is marginally statistically significant ( $p = .057$ , t-test, two-tailed).

The 2010 faculty cohort is a random sample of law professors hired at top twenty-six schools and remaining at top twenty-six schools in June 2010.

The 2011-15 hires are the universe of law professors hired at entry level at top twenty-six schools during the academic years ending 2011-15.

Figure 3 (below) shows the decline in mean Practice Duration from the 2010 faculty to the 2011 hires and from the 2011 hires through the 2015 hires. Practice Duration on top-twenty-six law faculties is in decline.

**Figure 3. Mean Years of Practice, by Hiring Cohort**



The graph should be interpreted with caution because the 2010 faculty data are for professors hired over an extended period of time. The decline in Practice Duration from the 2010 faculty to the 2011-15 hires is statistically significant ( $p = .001$ ), and so is the decline from 2011 through 2015 ( $p = .037$ ).

Nearly all of the decline results from the increasing proportion of J.D.-Ph.D.s among those hired.

Within the top twenty-six schools, Practice Duration was negatively correlated with the rank of the hiring school. The correlation was marginally significant only when the 2010 faculty and the 2011-15 hires were considered together ( $p=.056$ ).<sup>64</sup> Candidates with more practice experience tend to be hired by lower-ranked schools. That finding is in accord with prior research.<sup>65</sup>

### *B. Clerkship Experience*

Clerkship Experience is defined here as having served as a law clerk to a judge after graduation from law school. Such experience is relevant to legal scholarship and teaching because clerkship provides a window into legal practice as well as direct involvement in the judicial decision-making process. The most prestigious clerkships—those on the Supreme Court and the United States Courts of Appeals—are relevant for a different reason. They may provide information about the relative abilities and interests of J.D.-Ph.D.s and J.D.-only professors.

Most clerkships are for a period of one year. In the absence of information regarding the duration of a particular clerkship, I assumed that the clerkship was for one year.

**Table 8. Whether Law Professors Have Clerkship Experience, by Hiring Cohort and Degree Type**

Hiring Cohort	Degree Type	No Clerkship Experience	Clerkship Experience	Total
2010 faculty $p=.112$	(1) J.D.-only	46 (37%)	77 (63%)	123 (100%)
	(2) J.D.-Ph.D.	17 (53%)	15 (47%)	32 (100%)
	(3) Total	63 (41%)	92 (59%)	155 (100%)
2011-15 hires $p=.007$	(4) J.D.-only	12 (23%)	40 (77%)	52 (100%)
	(5) J.D.-Ph.D.	24 (50%)	24 (50%)	48 (100%)
	(6) Total	36 (36%)	64 (64%)	100 (100%)

P-values are from Fisher's exact tests.  
 The difference between the 2010 faculty (59%) and the 2011-15 hires (64%) is not statistically significant ( $p=.511$ ).  
 Law professors holding Ph.D. degrees but not J.D. degrees have been omitted.  
 The 2010 faculty is a random sample of law professors at top twenty-six schools in June 2010.  
 The 2011-15 hires are the universe of law professors hired at entry level during the academic years ending 2011-15.

64. Ordinary least squares regression.

65. Redding, *supra* Table 1 note †, at 605 (“[T]he number of years of legal practice experience . . . [was] negatively correlated, significantly but modestly, with the quality of the hiring school, with those having . . . more years of practice less likely to be hired at a highly ranked school.”).

In the 2010 faculty sample, the proportion of J.D.-Ph.D.s with Clerkship Experience (47%) was lower than the proportion of J.D.-only professors with Clerkship Experience (63%). The difference was not statistically significant ( $p=.112$ ). But among the 2011-15 hires, the proportion of J.D.-Ph.D.s with Clerkship Experience (50%) was significantly lower than the proportion of J.D.-only professors with Clerkship Experience (77%) ( $p=.007$ ). The proportion of J.D.-only professors with Clerkship Experience was already slightly higher than the proportion of J.D.-Ph.D.s with Clerkship Experience in 2010, and since that time it has risen significantly.

The combined rate of Clerkship Experience for the 2010 faculty was 59% (92 of 155). The corresponding rate for the 2011-15 hires was 64% (64 of 100). The difference is not statistically significant ( $p=.511$ ). The recent hires have slightly more Clerkship Experience than the 2010 faculty, but most of that increase is attributable to the increase in the clerkship rate among the J.D.-only hires.

Clerkship Duration is the number of years the professor served as a law clerk. Table 9 shows that in the 2010 faculty sample, average Clerkship Duration was 0.8 years for J.D.-only professors, as compared with average Clerkship Duration of 0.6 years for J.D.-Ph.D.s. The difference is marginally statistically significant ( $p=.088$ ). For J.D.-only professors, median Clerkship Duration was one year, as compared with zero years for J.D.-Ph.D.s.

**Table 9. Years of Clerkship Experience, by Hiring Cohort and Degree Type**

	2010 Faculty			2011-15 Hires		
	Number	Mean years	Median years	Number	Mean years	Median years
J.D.-only	123	0.9	1	52	1.2	1
J.D.-Ph.D.	32	0.6	0	48	0.7	.5
Total	155	0.8	1	100	1.0	1
The difference in means between J.D.-only (0.9) and J.D.-Ph.D. (0.6) in the 2010 faculty is marginally statistically significant ( $p=.035$ ), t-test, two-tailed.						
The difference in means between J.D.-only (1.2) and J.D.-Ph.D. (0.7) in the 2011-15 hires is statistically significant ( $p=.007$ ), t-test, two-tailed.						
The difference in means between the 2010 faculty (0.8) and the 2011-15 hires (1.0) is not statistically significant ( $p=.146$ ), t-test, two-tailed.						
The 2010 faculty is a random sample of law professors at top twenty-six schools in June 2010. The 2011-15 hires are the universe of law professors hired at entry level during the academic years ending 2011-15.						

As with Practice Experience, Practice Duration, and Clerkship Experience, the gap in Clerkship Duration widens from the 2010 faculty to the 2011-15 hires. Among the 2011-15 hires, Clerkship Duration averaged 1.2 years for J.D.-only professors, but only 0.7 years for J.D.-Ph.D.s. The difference is statistically

significant ( $p=.007$ ). For J.D.-only professors, median Clerkship Duration was one year, as compared with half a year for J.D.-Ph.D.s.

Average Clerkship Duration for the 2010 faculty was 0.8 years, as compared with one year for the 2011-15 hires. The increase is small, but statistically significant ( $p=.035$ ). Average Clerkship Duration on top-twenty-six law school faculties is increasing, but the increase is small and attributable mostly to the J.D.-only hires.

### *C. Elite Clerkship Experience*

For purposes of this Article, elite clerkships are of two types: clerkships with the United States Supreme Court (Supreme Court clerkships) and clerkships with a United States Court of Appeals (circuit clerkships). Elite clerkships play a different role than clerkships generally in my argument. All clerkships provide essentially the same level of exposure to the operation of the legal system. They serve as a measure of legal experience. Elite clerkships differ in that they also serve as a measure of candidate quality in the academic hiring process. Judges hire clerks on the basis of personal strengths and records. Although the judges may to some degree seek different qualities in candidates, the law schools rely on the judges' decisions as indicative of qualities relevant to law teaching.

Supreme Court clerkships are at the top of the clerkship hierarchy, far above other clerkships.<sup>66</sup> The process for obtaining one begins with a circuit court clerkship.<sup>67</sup>

The norm [of having prior clerkship experience before obtaining a Supreme Court clerkship] has become near law in the Roberts Court: through the 2013 Term, only two clerks did not first gain experience in one of the twelve regional circuits of the federal courts of appeals, although both had served clerkships in the federal judiciary—one in the Federal Circuit and one in the D.C. District Court.<sup>68</sup>

A larger proportion of J.D.-only professors than J.D.-Ph.D.s had circuit clerkships. As shown in Table 10, the magnitudes of the differences were modest.

66. Harvey Gee, *Judicial Perspective and Mentorship at the Supreme Court: A Review Essay on In Chambers: Stories of Supreme Court Law Clerks and Their Justices*, 51 DUQ. L. REV. 217, 218-19 (2013) ("At the top of the hierarchy is the United States Supreme Court clerkship."); Alex Kozinski, *Conduct Unbecoming*, 108 YALE L.J. 835, 835 (1999) (reviewing EDWARD P. LAZARUS, *CLOSED CHAMBERS: THE FIRST EYEWITNESS ACCOUNT OF THE EPIC STRUGGLES INSIDE THE SUPREME COURT* (1999)) ("Being a Supreme Court clerk is the most prestigious job to which a law school graduate can aspire.");
67. Richard A. Posner, Christopher Avery, Christine Jolls, & Alvin E. Roth, *The Market for Federal Judicial Law Clerks*, 68 U. CHI. L. REV. 793, 795 (2001) ("Every year top students from elite law schools compete for positions with judges who can help them to land Supreme Court clerkships.");
68. Christopher D. Kromphardt, *Fielding an Excellent Team: Law Clerk Selection and Chambers Structure at the U.S. Supreme Court*, 98 MARQ. L. REV. 289, 296-97 (2014).

**Table 10. Whether Law Professors Have United States Court of Appeals Clerkship Experience, by Hiring Cohort and Degree Type**

	Degree Type	No Circuit Clerkship Experience	Circuit Clerkship Experience	Total
2010 faculty p=.426	(1) J.D.-only	65 (53%)	58 (47%)	123 (100%)
	(2) J.D.-Ph.D.	20 (63%)	12 (37%)	32 (100%)
	(3) Total	85 (55%)	70 (45%)	155 (100%)
2011-15 hires p=.026	(4) J.D.-only	17 (33%)	35 (67%)	52 (100%)
	(5) J.D.-Ph.D.	27 (56%)	21 (44%)	48 (100%)
	(6) Total	44 (44%)	56 (56%)	100 (100%)
The difference between the 2010 faculty Totals and the 2011-15 hires Totals is marginally statistically significant. $p = .097$ .				
Law professors holding Ph.D. degrees but not J.D. degrees have been omitted.				
P-values are from Fisher's exact tests.				
The 2010 faculty is a random sample of law professors at top twenty-six schools in June 2010.				
The 2011-15 hires are the universe of law professors hired at entry level during the academic years ending 2011-15.				

In the 2010 faculty sample, fifty-eight of 123 J.D.-only professors (47%) had circuit clerkships, as compared with twelve of the thirty-two J.D.-Ph.D.s (37%). The difference was not statistically significant ( $p=.426$ ). Among the 2011-15 hires, thirty-five of fifty-two J.D.-only professors had circuit clerkships (67%), as compared with twenty-one of forty-eight J.D.-Ph.D.s (44%). The difference was statistically significant ( $p=.026$ ). The proportion of J.D.-only professors on the 2010 faculties with circuit clerkships was slightly higher than the proportion of J.D.-Ph.D.s with circuit clerkships, and the gap widened among the 2011-15 hires. The overall level of circuit clerkship increased from 45% on the 2010 faculty to 56% among the 2011-15 hires ( $p=.097$ ).

With respect to United States Supreme Court clerkships, the magnitudes of the differences were large. As shown in Table 11, twenty-seven of 123 J.D.-only professors (22%) in the 2010 faculty sample were Supreme Court clerks, as compared with three of thirty-two J.D.-Ph.D.s (9%). Because the numbers are small, this large difference in magnitudes is not statistically significant ( $p=.135$ ). In the 2011-15 hires universe, fifteen of fifty-two J.D.-only professors were Supreme Court clerks (29%), as compared with one of forty-eight J.D.-Ph.D.s (2%). This difference is statistically significant ( $p<.001$ ).

**Table 11. Whether Law Professors have United States Supreme Court Clerkship Experience, by Hiring Cohort and Degree Type**

Hiring Cohort	Degree Type	No Supreme Court Clerkship	Supreme Court Clerkship	Total
2010 faculty p=.135	J.D.-only	96 (78%)	27 (22%)	123 (100%)
	J.D.-Ph.D.	29 (91%)	3 (9%)	32 (100%)
	Total	125 (81%)	30 (19%)	155 (100%)
2011-15 hires p<.001	J.D.-only	37 (71%)	15 (29%)	52 (100%)
	J.D.-Ph.D.	47 (98%)	1 (2%)	48 (100%)
	Total	84 (84%)	16 (16%)	100 (100%)

The difference between the 2010 faculty Totals and the 2011-15 hires Totals is not statistically significant (p = .617).  
Law professors holding Ph.D. degrees but not J.D. degrees have been omitted.  
P-values are from Fisher's exact tests.  
The 2010 faculty group is a random sample of law professors at top twenty-six schools in June 2010.  
The 2011-15 hires group is the universe of law professors hired at entry level during the academic years ending 2011-15.

Here again, the gap between the J.D.-only professors and the J.D.-Ph.D.s widened substantially from the 2010 faculty to the 2011-15 hires. The rate of Supreme Court clerkships among J.D.-only professors hired at top twenty-six laws schools increased while the rate among J.D.-Ph.D.s hired at those schools declined.

The higher proportion of J.D.-only professors than J.D.-Ph.D.s with Supreme Court clerkships suggests that, at least in the top echelons, J.D.-only professors have stronger records. It is possible that J.D.-Ph.D. candidates lack elite clerkships for reasons unrelated to the strengths of their records. J.D.-Ph.D.s may not compete for elite clerkships because they regard their Ph.D.s as sufficient credentials, because they regard their Ph.D.s and the elite clerkships as duplicative credentials, or because they have spent all the time they can in preparation for a tenure-track job.

I find none of the three explanations persuasive with respect to Supreme Court clerkships. Substantial numbers of J.D.-Ph.D.s obtain circuit clerkships, and the large majority do not yet have their Ph.D.s when they do so. The process of applying for Supreme Court clerkships is not onerous. Obtaining one confers a substantial advantage in the competition for tenure-track positions. The sensible strategy for any J.D. with an interest in teaching and a circuit clerkship would be to apply for a Supreme Court clerkship and take the clerkship if it is offered. Nor does it seem likely that the J.D.-Ph.D.s were less able than the J.D.-only professors to spend the additional year required for



the Supreme Court clerkships. In the 2011-15 hiring cohort, preparation time for J.D.-Ph.D.s was six-tenths of a year shorter than for J.D.-only professors. The more likely explanation is that the J.D.-only professors were the stronger applicants.

#### *D. Legal Experience*

Legal Experience is defined here as experience in law practice or clerkship. Legal Experience is positive if Practice Experience or Clerkship Experience is positive. Legal Experience measures whether the law professor did legal work before beginning to prepare students to do it.

Tables 6 and 8 showed that larger proportions of J.D.-only professors than J.D.-Ph.D.s had each of the two kinds of legal experience. Not surprisingly, Legal Experience shows an even greater disparity between the two groups.

As shown in Table 12, a larger proportion of J.D.-only professors than J.D.-Ph.D.s had at least some Legal Experience prior to their first tenure-track job on a law faculty. The differences were substantial in magnitude, statistically significant, and more pronounced in the 2011-15 hires.

In the 2010 faculty sample, 117 of 123 J.D.-only professors (95%) had Legal Experience, as compared with twenty-five of thirty-two J.D.-Ph.D.s (78%). That difference is statistically significant ( $p=.006$ ). Among the 2011-15 hires, fifty-one of fifty-two J.D.-only professors (98%) had Legal Experience, as compared with thirty-two of forty-eight J.D.-Ph.D.s (67%). That difference was also statistically significant ( $p<.001$ ). Thus, from the 2010 faculty to the 2011-15 hires, the proportion of J.D.-only professors with Legal Experience rose while the proportion of J.D.-Ph.D. with Legal Experience fell.

**Table 12. Whether Law Professors Have Legal Experience, by Hiring Cohort and Degree Type**

Hiring Cohort	Degree Type	No Legal Experience	Legal Experience	Total
2010 faculty p=.006	(1) J.D.-only	6 (5%)	117 (95%)	123 (100%)
	(2) J.D.-Ph.D.	7 (22%)	25 (78%)	32 (100%)
	(3) Total	13 (8%)	142 (92%)	155 (100%)
2011-15 hires p<.001	(4) J.D.-only	1 (2%)	51 (98%)	52 (100%)
	(5) J.D.-Ph.D.	16 (33%)	32 (67%)	48 (100%)
	(6) Total	17 (17%)	83 (83%)	100 (100%)

The difference between the 2010 faculty (92%) and the 2011-15 hires (83%) is statistically significant (p = .046).  
 Law professors holding Ph.D. degrees but not J.D. degrees have been omitted.  
 P-values are from Fisher's exact tests.  
 The 2010 faculty is a random sample of law professors at top twenty-six schools in June 2010.  
 The 2011-15 hires are the universe of law professors hired at entry level during the academic years ending 2011-15.

The proportion of all professors with Legal Experience declined from 92% on the 2010 faculty to 83% among the 2011-15 hires. That decline was statistically significant (p=.046). Fewer of the 2011-15 hires had Legal Experience than did their predecessors.

Legal Duration is defined as Practice Duration plus Clerkship Duration and is measured in years. In addition to being more likely to have any Legal Experience at all, J.D.-only professors had greater Legal Duration than J.D.-Ph.D.s. That was true in both the 2010 faculty sample and among the 2011-15 hires. Table 13 shows that among the 123 J.D.-only professors in the 2010 faculty sample, Legal Duration averaged 4.6 years, as compared with 2.2 years for the thirty-two J.D.-Ph.D.s in that sample. The difference was statistically significant (p=.004). For J.D.-only professors, median Legal Duration was four years, as compared with one year for J.D.-Ph.D.s.

Among the 2011-15 hires, the gap in Legal Duration between J.D.-only professors and J.D.-Ph.D.s is wider. The fifty J.D.-only professors had average Legal Duration of 4.8 years, as compared with 1.7 years for the forty-five J.D.-Ph.D.s. The difference was statistically significant (p<.001). For J.D.-only professors, median Legal Duration was four years, as compared with two for J.D.-Ph.D.s. Thus, from the 2010 faculty to the 2011-15 hires, the average legal experience of J.D.-only professors rose while the average legal experience of J.D.-Ph.D.s fell.

**Table 13. Legal Duration (Practice Duration plus Clerkship Duration), by Hiring Cohort and Degree Type**

	2010 Faculty			2011-15 Hires		
	Number	Mean years	Median years	Number	Mean years	Median years
J.D.-only	123	4.6	4	50	4.8	4
J.D.-Ph.D.	32	2.2	1	45	1.7	2
Total	155	4.1	3	95	3.3	3
<p>The difference in means between J.D.-only (4.6) and J.D.-Ph.D. (2.2) in the 2010 faculty is statistically significant (<math>p=.004</math>), t-test, two-tailed.</p> <p>The difference in means between J.D.-only (4.8) and J.D.-Ph.D. (1.7) in the 2011-15 hires is statistically significant (<math>p&lt;.001</math>, t-test, two-tailed).</p> <p>The difference in means between the 2010 faculty (4.1) and the 2011-15 hires (3.3) is not statistically significant (<math>p=.119</math>), t-test, two-tailed.</p> <p>The 2010 faculty is a random sample of law professors at top twenty-six schools in June 2010.</p> <p>The 2011-15 hires are the universe of law professors hired at entry level during the academic years ending 2011-15.</p>						

Considering J.D.-Ph.D.s and J.D.-only professors together, the data show a decline in mean Legal Duration from 4.1 years on the 2010 faculty to 3.3 years among the 2011-15 hires. That decline is not statistically significant ( $p=.119$ ). The median was three years for both groups. Thus the overall pattern is that increases in Legal Duration from hiring J.D.-only professors are offsetting declines in Legal Duration from hiring J.D.-Ph.D.s. The result is a moderate decline in Legal Duration on top-twenty-six law faculties.

#### *E. Preparation Time*

To be competitive for faculty positions at the top twenty-six law schools, candidates must spend substantial portions of their careers in preparation. Preparation Time is defined here as the time from the candidate's first bachelor's or equivalent degree to the candidate's first tenure-track faculty position in an American law school. During this period, the candidates obtain J.D. and Ph.D. degrees, practice law, clerk, write, and hold a variety of non-tenure-track teaching and research positions in law schools and other departments. Preparation Time is a rough measure of the amount of experience a faculty member will bring to the job.

**Table 14. Preparation Years (from Bachelor's Degree to First Tenure-Track Position), by Hiring Cohort and Degree Type**

	2010 Faculty			2011-15 Hires		
	Number	Mean years	Median years	Number	Mean years	Median years
J.D.-only	123	10.9	10	51	12.7	12
J.D.-Ph.D.	32	12.9	11	47	12.1	12
Total	155	11.3	10	98	12.4	12

The difference in means between J.D.-only (10.9) and J.D.-Ph.D. (12.9) in the 2010 faculty is marginally statistically significant ( $p=.099$ , t-test, two-tailed).

The difference in means between J.D.-only (12.7) and J.D.-Ph.D. (12.1) in the 2011-15 hires is not statistically significant ( $p=.471$ , t-test, two-tailed).

The difference in means between the 2010 faculty (11.3) and the 2011-15 hires (12.4) is not statistically significant ( $p=.108$ , t-test, two-tailed).

The 2010 faculty is a random sample of law professors at top twenty-six schools in June 2010.

The 2011-15 hires are the universe of law professors hired at entry level during the academic years ending 2011-15.

Table 14 shows that in the 2010 faculty sample, average Preparation Time was marginally significantly longer for J.D.-Ph.D.s (12.9 years) than for J.D.-only professors (10.9 years) ( $p=.099$ ). But among the 2011-15 hires, the positions are reversed. Average Preparation time was a little shorter for J.D.-Ph.D.s (12.1 years) than for J.D.-only professors (12.7 years). Thus, Preparation Time has shortened for J.D.-Ph.D.s at the same time that it has lengthened for J.D.-only professors.

The decline in Preparation Time for J.D.-Ph.D.s results in part from a decline in the proportion of J.D.-Ph.D.s who obtained their Ph.D.s first. As shown in Table 15, 41% of the J.D.-Ph.D. 2010 faculty hires obtained their Ph.D.s first, but only 15% of the 2011-15 hires did so. The difference is statistically significant ( $p=.017$ ). The proportion of J.D.-Ph.D.s who obtain their Ph.D.s first has declined.

**Table 15. Sequence of Ph.D. and J.D. Degrees, by Hiring Cohort**

	Ph.D. not before J.D.	Ph.D. before J.D.	Total
2010 faculty	19 (59%)	13 (41%)	32 (100%)
2011-15 hires	39 (85%)	7 (15%)	46 (100%)
Total	58 (74%)	20 (26%)	78 (100%)

The difference between the 2010 faculty and the 2011-15 hires is statistically significant.  $p = .017$ , Fisher's exact two-tailed.

"Ph.D. not before J.D." includes professors who obtained a Ph.D. and a J.D. in the same year.

Obtaining the J.D. degree before or at the same time as the Ph.D. (hereafter “J.D.-Ph.D. inversion”) rarely changes the steps candidates must take to get both degrees. But it does shorten the time in which candidates take those steps. Preparation Time for the thirteen J.D.-Ph.D.s in the 2010 faculty sample who obtained their Ph.D.s first averaged 15.8 years, as compared with 10.9 years for the nineteen who did not. The difference was statistically significant.<sup>69</sup>

J.D.-Ph.D. inversion appears to cause the shortening. Preparation Time for the seven J.D.-Ph.D.s among the 2011-15 hires who obtained their Ph.D.s first averaged 14.9 years, as compared with 11.5 years for the thirty-nine who did not. That difference was also statistically significant.<sup>70</sup> Thus, in both time periods, J.D.-Ph.D. Preparation Times for those who obtained their Ph.D.s first remained well above J.D.-Ph.D. Preparation Times for those who did not. I conclude that Preparation Time as a whole declined at least in part because the proportions of J.D.-Ph.D.s obtaining their Ph.D.s first declined.

Another indicator of the importance of degree order is that Preparation Time for the nine J.D.-Ph.D.s who obtained both degrees in the same year averaged 9.4 years, as compared with 12.9 years for all other J.D.-Ph.D.s together. The difference is statistically significant.<sup>71</sup> Obtaining J.D. and Ph.D. degrees simultaneously appears to be the quickest route to a tenure-track job at a top-twenty-six law school.<sup>72</sup>

To explain the relationship between degree order and Preparation Time we need only assume that candidates first seek a degree in the field in which they intend to make their careers. Those who first seek careers in Ph.D. fields must change their minds to end up in law schools. Those who first seek careers in law need not. For the latter, Ph.D.s are not efforts to test career paths other than law teaching, but merely acquisitions of credentials for law teaching careers.

Average Preparation Time is not significantly different for J.D.-Ph.D.s and J.D.-only professors (12.1 years and 12.7 years, respectively).<sup>73</sup> When law schools choose between the two, they are choosing between types of preparation, not levels of preparation. Hiring J.D.-Ph.D.s is choosing additional academic preparation over legal experience.

Although average Preparation Time did not increase statistically significantly from the 2010 faculty (11.3 years) to the 2011-15 hires (12.4 years)<sup>74</sup>, Figure 4 (below) shows that the averages conceal a substantial increase in Preparation

69.  $p=.047$ , t-test.

70.  $p=.004$ , t-test.

71.  $p=.050$ , t-test.

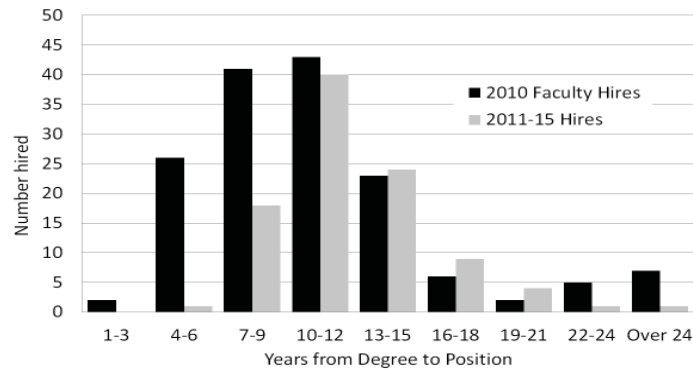
72. The hiring school's rank was slightly higher for the simultaneous degree holders, 4.3, as compared with 4.2 for the non-simultaneous degree holders. The difference was not statistically significant ( $p=.451$ , t-test).

73.  $p=.471$ , t-test.

74.  $p=.108$ , t-test.

Time for the large bulk of 2011-15 hires. That increase is offset in calculation of the averages by the near disappearance in 2011-15 of outliers present at the high end of the 2010 faculty distribution. The large bulk of recent hires are expending more Preparation Time than the large bulk of 2010 faculty did.

**Figure 4. Years from Bachelor's Degree to First Tenure-Track Law School Position, by Hiring Cohort**



Preparation Time is marginally significantly and inversely correlated to the rank of the hiring school ( $p=.006$ ).<sup>75</sup> That is, within the top twenty-six schools, at least, Preparation Time was longer for faculty hired at lower-ranked schools. Causation might run either way. Greater Preparation Time might reduce candidates' appeal, either because they have lower proportions of their productive careers ahead of them<sup>76</sup> or because their potential as academics is considered to have been stunted by too much law practice.<sup>77</sup> Alternatively, top schools may hire the best candidates early in the preparation process, leaving the rest to continue preparing and ultimately be hired at less prestigious schools.

75. Ordinary least squares regression.

76. Merritt & Reskin, *supra* note 34, at 276 ("Among candidates who possessed top academic credentials and work experiences, faculties significantly preferred younger candidates to older ones.").

77. *Proceedings of the Fifty-Third Judicial Conference of the District of Columbia Circuit*, *supra* note 50, at 202. ("You will hear in the law school world that those who spend too much time practicing law, or who practiced law before they came to the academy, corrupt their vision to the point where they cannot examine effectively what is going on in American political life.") (statement of Robert Pitofsky). Candidates' numbers of practice years have long been understood to be negatively correlated with the prestige of the hiring school. *E.g.*, Redding, *supra* Table 1 note 3, at 612 ("The number of years of practice experience was negatively predictive, with those having more years of experience less likely to be hired at a higher-ranked law school.").

### F. Hiring School Rank

Prior research has demonstrated a positive correlation between Ph.D. hiring and the rank of the hiring school. In their study of top-twenty-six faculties, Hersch and Viscusi found a strong correlation between Ph.D.s in economics and hiring school rank and a weaker correlation between Ph.D.s in other fields and hiring school rank.<sup>78</sup> In a study of the law school hiring market generally, George and Yoon found that Ph.D.s did not improve the odds of hiring but did improve the odds that the hiring offer would come from a top school.<sup>79</sup> Similarly, Merritt and Reskin found that “possession of a doctoral degree in a field other than law . . . significantly increased the likelihood that a professor would teach at an elite law school.”<sup>80</sup>

Using a separate set of *PrawfsBlawg Report* data for all U.S. law schools during the period 2011-15, I found Ph.D. hiring to be positively and statistically significantly correlated with school rank.<sup>81</sup> Table 16 shows the magnitude of the difference. Of hires in the top quartile, 42% were Ph.D.s, as compared with 17% in the second quartile, 13% in the third quartile, and 11% in the fourth quartile. Ph.D. hiring is heavily skewed toward the top schools, but extends across the entire spectrum of law schools.

78. Hersch and Viscusi report:

The correlation between the rank of a law school and the proportion of faculty with doctoral degrees shows a strong relation between rank and the share of faculty with a Ph.D. in economics and a weaker relation between rank and the share of faculty with a Ph.D. in other disciplines.

Hersch & Viscusi, *supra* Table 1 note †, at 491.

79. Tracey E. George & Albert H. Yoon, *The Labor Market for New Law Professors*, 11 J. EMPIRICAL LEGAL STUD. 1, 7 (2014) (“A doctorate in the social sciences or STEM . . . increases the odds of any offer [to join a law faculty] coming from a higher ranked school.”).

80. Merritt & Reskin, *supra* note 34, at 240.

81. Ordinary Least Squares regression,  $p < .001$ , adjusted R-squared = .106. This correlation also exists within the top twenty-six schools,  $p = .040$ , ordinary least squares regression.

**Table 16. Entry-Level Hiring, by School Rank Quartiles, 2011-15 (Percentages Are of All Hiring by Schools in the Quartile)**

	(1) J.D.-Ph.D.s	(2) Supreme Court Clerks	(3) U.S. Circuit Court Clerks	(4) All Court Clerks
First quartile (top)	55 (42%)	20 (15%)	71 (54%)	82 (62%)
Second quartile	21 (17%)	7 (6%)	59 (47%)	70 (56%)
Third quartile	18 (13%)	4 (3%)	58 (41%)	87 (61%)
Fourth quartile	12 (11%)	1 (1%)	33 (29%)	58 (51%)
All schools	106 (21%)	32 (6%)	221 (43%)	297 (58%)
The differences among quartiles are statistically significant for J.D.-Ph.D. hiring ( $p < .001$ ), Supreme Court clerks ( $p < .001$ ), and U.S. circuit court clerks ( $p = .001$ ), but not for all court clerks ( $p = .273$ ).				
P-values are from Fisher's exact tests.				
The sample consists of all entry-level tenure-track hiring by American law schools reported to PrawfsBlawg.				

Table 16 also shows the prevalence of three kinds of clerkship credentials across the four quartiles of law schools. Like Ph.D. hiring, Supreme Court and circuit clerkships are skewed toward the top quartile. But with respect to each of the four credentials, hiring in the category extends all the way to the bottom quartile.

The differences among quartiles are statistically significant for J.D.-Ph.D. hiring ( $p < .001$ ), Supreme Court clerks ( $p < .001$ ), and U.S. circuit court clerks ( $p = .001$ ), but not for all court clerks ( $p = .273$ ). The rates of Ph.D. hiring, Supreme Court clerk hiring, and circuit court clerk hiring are inversely correlated with school rank.

The parallel developments of Ph.D. hiring and clerk hiring over time suggests that Ph.D. hiring will eventually be ubiquitous across the entire spectrum of law schools. In their early years, clerkships were an elite credential.<sup>82</sup> As shown in Column (4) of Table 16, they have spread across the rank spectrum and are no longer significantly correlated with it.

Ph.D. hiring appears to be on the same course. It remains correlated with school rank, but increasingly is spread across all ranks.<sup>83</sup>

Theoretically, the cause of this correlation might be either that lower-ranked schools are unable to attract Ph.D.s or that lower-ranked schools don't want

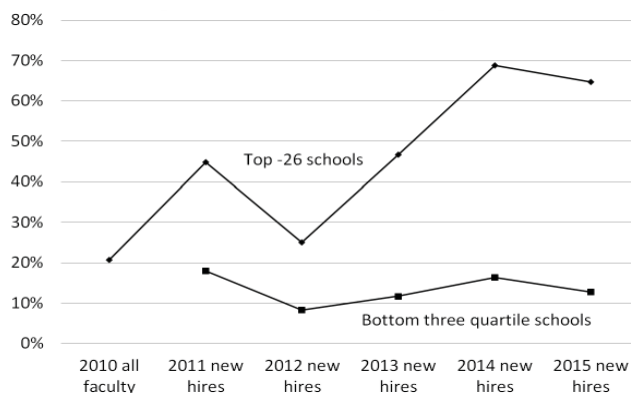
82. Fossum, *supra* note 2, at 518-19 (showing a correlation between clerkship and the status of the hiring law school).

83. *Supra* Tables 1 and 2.



them.<sup>84</sup> The degree to which Ph.D.s will spread will depend in part on which explanation is correct.

**Figure 5. Percent Ph.D.s by Hiring Cohort**



That the lower-ranked schools are less able to attract Ph.D.s seems more plausible. First, the proportions of Ph.D.s at lower-ranked school are too high to have developed without intention. Second, as shown in Figure 5 (above), Ph.D. hiring in the bottom three quartiles closely mimicked Ph.D. hiring in the top twenty-six schools over the period from 2011-15. That mimicking suggests they share a common cause.

I could find no prior research on the mechanism by which practices such as Ph.D. hiring spread down the hierarchy of law schools. Prior research has, however, shown that the law schools are operating under tight discipline imposed by *U.S. NEWS* Rankings.<sup>85</sup> Although Ph.D. hiring is not directly a factor in those rankings, the pressure of rankings may nevertheless explain its downward spread. Schools are aware that the factors used in ranking can and do change frequently. Any factor that is correlated with perceived quality—including the prevalence of Ph.D.s on faculties—is potentially a basis for ranking. Ambitious schools do not want to be different from competitors ranked above them. The effect may be a tendency for practices to spread down

84. See, e.g., George & Yoon, *supra* note 79, at 41 (finding that the odds of being hired with a Ph.D. at second-, third-, and fourth-tier laws schools is higher without a Ph.D. than with a Ph.D.). That finding justifies George & Yoon’s conclusion that “the attributes schools are seeking in candidates may differ depending on the relative prestige of the school.” *Id.* at 43. But it is not inconsistent with the lower-tier schools placing a substantial, positive value on Ph.D.s. The coefficients for “Social Science/STEM” Ph.D.s were positive in four out of five of George and Yoon’s regression models for receiving a tenure-track offer.

85. Michael Sauder & Wendy Nelson Espeland, *The Discipline of Rankings: Tight Coupling and Organizational Change*, 74 *AM. SOC. REV.* 63, 79 (2009) (“The vast majority of [law] schools, however, have implemented policies to manage the rankings as best they can, and many schools devote extensive resources to manipulating rankings in the face of intense competition with peers. Almost all schools are extremely attentive to how others generate their numbers.”).

the law school hierarchy regardless of their suitability at any particular level of the hierarchy.

*G. Ph.D. Fields*

Law schools hire Ph.D.s in part to promote empirical research.<sup>86</sup> That goal is reflected in the fields of Ph.D. study represented on law faculties. Table 17 lists those fields of study in two groups—fields in which Statistics is likely required as part of the Ph.D. program and fields in which it is not. The table shows that 62% of Ph.D. holders on top-twenty-six law school faculties have their Ph.D.s in fields where Statistics is likely required.<sup>87</sup> By hiring Ph.D.s, the law schools are, in large part, hiring statisticians.

**Table 17. Law Professors' Fields of Ph.D. Study, by Whether Statistics is Likely Required**

Statistics Likely Required in Field	Number of Ph.D.s	Percent of Ph.D.s	Statistics Likely Not Required in Field	Number of Ph.D.s	Percent of Ph.D.s
Economics	29	28%	History	11	11%
Political Science	16	16%	Philosophy	10	10%
Sociology	5	5%	Law	3	3%
Psychology	5	5%	Anthropology	3	3%
Biology	1	1%	American Culture	2	2%
Finance	1	1%	English	2	2%
Genetics	1	1%	Chemistry	2	2%
Mathematics	1	1%	Political Theory	1	2%
International Relations	1	1%	Chemical Engineering	1	2%
Ethics & Health Policy	1	1%	Classics	1	2%
Botany	1	1%	Divinity	1	2%
Physics	1	1%	Germanic Studies	1	2%
			Linguistics	1	2%
Total	63	62%	Total	39	38%

Note: Data include all Ph.D.s in the 2010 faculty sample and 2011-15 hires universe.

86. Lynn M. LoPucki, *Disciplining Legal Scholarship*, 90 TULANE L. REV. 1 (citing sources so advocating).

87. If I was in doubt about whether Ph.D. programs in a field required statistics, I examined two or three programs in the field.

I have explained elsewhere why hiring Ph.D.s in tenure-track positions is not an effective way to promote legal empiricism.<sup>88</sup> It will produce only limited amounts of highly sophisticated empiricism. By contrast, the hiring of Ph.D.s in non-tenure-track positions has tended to produce pervasive legal empiricism.<sup>89</sup>

Table 18 compares my findings with those of McCrary et al. and Hersch and Viscusi with respect to the four fields that dominate.<sup>90</sup> None of the differences between Hersch and Viscusi's and my 2010 faculty data is statistically significant.

The table shows that the fields of study have broadened from the 2010 faculty to the 2011-15 hires. Economics, Political Science and Philosophy have lost ground without making any other fields dominant.

**Table 18. Comparison of Findings, Law Professors' Fields of Ph.D. Study**

	Hersch- Viscusi 2010 Faculty*	LoPucki 2010 Faculty†	McCrary et al. 2011 Faculty‡	LoPucki 2011-15 HiresΔ
Economics	92 (26%)	17 (31%)	120 (23%)	12 (25%)
Political Science	60 (17%)	10 (19%)	89 (17%)	6 (13%)
History	49 (14%)	3 (6%)	82 (16%)	8 (17%)
Philosophy	43 (12%)	7 (13%)	67 (13%)	3 (6%)
All other	108 (31%)	17 (31%)	168 (32%)	19 (40%)
Total	352 (100%)	54 (100%)	526 (100%)	48 (100%)
* 2010 universe, top-twenty-six law faculties ( <i>U.S. News</i> , overall rank)				
† 2010 faculty sample, top-twenty-six law faculties ( <i>U.S. News</i> , academic rank)				
‡ universe, top-thirty-four law faculties ( <i>U.S. News</i> , overall rank)				
Δ 2011-15 hires, top-twenty-six law faculties ( <i>U.S. News</i> , academic rank)				

## V. The Future Prevalence of Ph.D.s

This Article reported a large increase in the rate of Ph.D. hiring. Because the new hires each year constitute only a small portion of a law faculty, even a large change in hiring will take a long time to change the faculty's overall composition. It is that change in faculty composition that matters, because the faculty's composition at any given time determines the institution's nature.

To determine how fast the change to a discipline-based faculty will occur in the top twenty-six schools, I constructed a spreadsheet model. Using the

88. LoPucki, *supra* note 86.

89. *Id.*

90. Hersch & Viscusi, *supra* Table 1 note †, at 489.

composition of the 2010 faculty as the starting point, I added the 2011-15 hires and then applied a set of assumptions to calculate the additional changes. Those assumptions are that J.D.-Ph.D. hiring will continue to increase at its historical rate of 2.3% of faculty hired per year,<sup>91</sup> the numbers of faculty hired will increase from the 2015 level in equal increments to the amount necessary to restore the top-twenty-six law faculties to their 2010 size by 2028 (3.2% per year),<sup>92</sup> that lateral hiring will occur in the same proportions as entry-level hiring,<sup>93</sup> that attrition will be zero for faculty in their first thirty years,<sup>94</sup> and attrition will increase by 5% for each year after thirty years.<sup>95</sup>

Based on the model, I calculate that the proportion of Ph.D.s on the top-twenty-six faculties will exceed 33% in 2019 and 50% in 2028. The relevance of those levels is that 33% of the faculty can block hires at many schools and 50% is the threshold for affirmatively making hires at others. Once the proportion of J.D.-Ph.D.s on the top law faculties exceeds 50%, J.D.-Ph.D.s will control tenure-track hiring decisions. Law faculties hire in their own image,<sup>96</sup> and the prevailing image will be that of the J.D.-Ph.D.

For readers interested, the spreadsheet is publicly available at [http://webshare.law.ucla.edu/ERG/Lopucki-PhD\\_Hiring\\_Study.zip](http://webshare.law.ucla.edu/ERG/Lopucki-PhD_Hiring_Study.zip). Readers can modify the assumptions to create their own projections.

## VI. Conclusions

Top-twenty-six law schools are rapidly increasing their hiring of J.D.-Ph.D.s. Each year, those faculties contain larger proportions of J.D.-Ph.D.s. If current trends continue, the proportion of J.D.-Ph.D.s on those faculties will reach one-third by 2019 and one-half by 2028.<sup>97</sup>

91. Redding found that Ph.D.s constituted 13% of entry-level hires at top-twenty-five law schools in 1996-2000. *Supra* Table 1. I found that Ph.D.s constituted 48% of entry-level hires at top-twenty-six law schools in 2011-15. *Id.* The 35% increase from Redding's finding to mine occurred over fifteen years, which is a rate of 2.3% per year.
92. I assumed an equal percentage increase in the hiring rate from 2015, and then adjusted the rate to yield a faculty of approximately 1317 in 2028.
93. Lateral hires from one school within the top twenty-six schools to another are a wash. I found that 22.5% of the lateral hires at top-twenty-six schools in my 2010 sample were from schools below the top twenty-six. 13% of those hires were J.D.-Ph.D.s, as compared with 21% for those initially hired by top-twenty-six schools. The difference would have a minimal effect on the model.
94. This is certainly an underestimation, but not by much. *See supra* Figure 1.
95. This is an approximation based on Figure 1, *supra*.
96. *E.g.*, McCrary, et al., *supra* note 1, at 544 n.7 (“[S]ince current faculty control the future composition of legal academia, they may favor those with similar credentials to their own, rendering the process endogenous.”); Tracey E. George & Albert H. Yoon, *supra* note 79, at 1 (“We find that law schools appear open to nontraditional candidates in the early phases of the hiring process but when it comes to the ultimate decision—hiring—they focus on candidates who look like current law professors.”).
97. *Supra* Part V.

J.D.-Ph.D. and J.D.-only professors are now hired on separate tracks with different qualifications. The J.D.-Ph.D. track is shorter than the J.D.-only track and, for the past two years, the number of jobs on that track has been twice as large.<sup>98</sup> The candidate pool is probably already adjusting.

The J.D.-Ph.D.s hired on that track have little or no legal experience. The amount they do have is declining.<sup>99</sup> In recent years, reductions in aggregate faculty legal experience from hiring J.D.-Ph.D.s have largely been offset by increases from hiring J.D.-only professors.<sup>100</sup> As a result, the overall level of legal experience on top-twenty-six law school faculties is not yet in free fall.<sup>101</sup>

At the new, higher levels of Ph.D. hiring, that will change. Even if the J.D.-only hires continue arriving with high levels of legal experience, there will be fewer of them. J.D.-Ph.D.s with little or no legal experience will increasingly replace J.D.-only professors with high levels of legal experience and the aggregate level of legal experience *will* go into free fall.

Individual faculty members have long grappled with the difficulties of preparing students to practice a profession they have not themselves practiced. They have done so with the benefit of colleagues who have practiced. But as the decline in legal experience on law faculties accelerates, the discipline-based law faculty members will be increasingly on their own.

As the system currently operates, J.D.-Ph.D.s gain knowledge of the law and the legal system's operation in their J.D. programs. But in the discipline-based law school, the J.D. programs will be taught by J.D.-Ph.D.s. Whatever knowledge of practice exists within the system will be recycled until it becomes obsolete. The law schools will have cut themselves off from the source of legal scholarship's vitality—legal practice.

Recognizing the problem, Van Zandt wrote of the discipline-based faculty that "almost every one of them would have a J.D. degree and some experience in law practice, whether through judicial clerking, nonprofit or government service, or private practice."<sup>102</sup> That is not, however, the pattern actually developing in the top twenty-six schools. Twenty-two percent of the J.D.-Ph.D.s on the 2010 faculty had no legal experience. Among the 2011-15 hires that proportion had increased to 33%.<sup>103</sup> Because the law school hiring process does not value legal experience, further increases are likely.<sup>104</sup>

J.D.-Ph.D. hiring may be succeeding so dramatically because it shifts the expense of training legal scholars from the law schools to the scholars

98. *Supra* Table 5.

99. *Supra* Tables 12 and 13.

100. *Id.*

101. *Id.*

102. Van Zandt, *supra* note 5, at 335.

103. *Supra* Table 12.

104. *See supra* note 65 and accompanying text.

themselves. Traditionally, law schools hired unpublished entry-level faculty. With the help of faculty volunteers, the new hires learned legal scholarship during the pre-tenure period. But for the past few decades, the top faculties have required that candidates prove themselves by publishing prior to hiring. Some schools offer scholarship training in the form of fellowships, visiting assistant professorships, and other temporary paid positions. The cost of the training delivered through those programs remains on the schools operating the programs. The schools have been willing to bear those costs because the programs enabled their faculty members to shape the training of, and the schools to put their trademarks on, the fledgling scholars.

Requiring candidates to acquire Ph.D.s prior to hiring effectively outsources the training, converts the training process into a tournament, and shifts the training's costs to the candidates. That may reduce the number of economically disadvantaged candidates who can afford to seek a career in legal academia.<sup>105</sup> A second disadvantage of such outsourcing is that the disciplines will control the training. By controlling the training, they will control the scholarly agendas of discipline-based law faculties.<sup>106</sup>

105. A secondary effect may be to reduce racial and gender diversity. McCrary et al., *supra* note 1, at 571 (“[A]n increased demand for particular types of formal credentials, especially costly ones like Ph.Ds, may mean that gender and racial diversity suffers.”).

106. LoPucki, *supra* note 86.