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To: Art Gaudio, Dean and Professor of Law, Western New England School of Law and Chair of the ABA Questionnaire Committee

From: Brian D. Lewis, Assistant Dean for Career Services, University of North Carolina School of Law

Re: ABA Questionnaire and Employment Data

Jack Boger, Dean of the University of North Carolina School of Law, asked me to respond to your request for comments regarding the ABA questionnaire and employment data. I am happy to do so.

I am in favor of transparency. I believe that each law school should report employment statistics honestly and in a way that lets prospective students know how its most recent graduating class has done. There are things that can be done to help achieve that. But as the ABA considers the issues associated with this, I believe the tail may be wagging the dog.

Just as prospective students are ill-served by using *U.S. News* rankings alone in deciding not to attend a school ranked 35th in favor of one ranked 34th, students are ill-served in using employment statistics to assess the worth of a school's program. **Students applying to law school should not assume anything based on employment statistics provided by individual law schools.** Period. Not because the numbers are unreliable – though in some instances they may be – it's because *they're not predictive of any specific single outcome.*

- Just because a law school has placed a very high percentage of its students in jobs, **there is no guarantee** that any individual person will have similar success.
- Just because a law school's graduating class has a high reported median annual salary, **there is no guarantee** that any individual person will have similar success.

A student who graduates near the top of his or her class from a well-ranked law school may totally lack the social skills to succeed in interviews. Conversely, a student who did poorly at a low-ranked school may have the full complement of skills needed to interact with clients, charm judges and win over juries, and may be a hot commodity in the job market. These examples are extreme, but I have certainly seen variations of them in my experience with 23 graduating classes.

Salary Data

Much has been written in the legal press lately about problems related to reported salary figures. NALP has collected salary data since 1973, and despite their limitations, I believe the aggregated data they publish are useful – perhaps even more useful than any individual school's data. Those who have taken even a rudimentary statistics course know that precision improves as the sample size increases. Individual law school graduating classes constitute small samples, which, when taken alone, make extrapolation to individuals outside the sample more prone to error.

Compounding the problem is that salary information is not available for every graduate. Having tried to get this data for 23 years, I can tell you with absolute certainty that you will never get salary information directly from many, if not most, graduates. Most schools reporting salaries of graduates headed to large private firms get that information, with a reasonable degree of accuracy, from publicly-available NALP forms. True, some of these graduates are happy to give

you their salaries. However, many graduates headed to smaller firms, government agencies, and public interest organizations are reluctant to report salaries – and schools are less motivated to press them on it, because it lowers their averages to have those figures. In the spirit of transparency, I believe that schools should (and I do) include the “percentage of those reporting salary data” when listing salary information for a graduating class.

Salary data is too easily skewed by geographic factors to allow reasonable comparisons between or among schools. Schools in large urban areas like New York City, if the majority of their graduates stay in the city, will have higher average salaries – regardless of the relative quality of their school – than schools whose graduates are working in a more geographically diverse area or whose graduates are concentrated in an area with a lower cost of living and, hence, earning lower average salaries. This is one reason *U.S. News* has not used “median starting salary” in its calculations since 1996.

Employment at Graduation

Having reported yearly employment statistics since before there were even *U.S. News* rankings, it’s pretty clear to me that the least reliable set of data has become what *U.S. News* reports as “employment at graduation.” (Notably, the ABA does not ask schools for that, and while NALP does collect that information, it has never been a focus of their yearly reports.) NALP’s focus on “employment at nine months” is, in part, a recognition that a considerable number of students plan to enter jobs where a license to practice must be in hand before an offer of employment can be made (i.e., positions with prosecutors’ offices, public defenders’ offices, government agencies, legal aid offices, small firms, etc.). These students are extremely unlikely to be “employed at graduation,” and to expect otherwise is erroneous and ill-considered.

Several years ago, a group of career services officers strongly encouraged Bob Morse, who oversees the rankings for *U.S. News*, to eliminate that statistic from the rankings, since it unfairly favors schools whose graduates are more oriented to working in large, private firms – a group of employers who are far more apt to extend offers in advance of graduation. While not successful in getting him to eliminate the statistic altogether, they did get Mr. Morse to reduce its weight in the overall rankings formula.

I believe the “at-graduation” statistic has become the most-fudged component of the *U.S. News* formula – in part because the ABA does not ask schools to report that. For most of the employment data, *U.S. News* asks schools to report to them what they had reported to the ABA, but because the ABA does not ask for “at-graduation” numbers, schools can pretty much get away with reporting whatever they want to *U.S. News*. One might surmise that the answer to this problem is to have the ABA collect that information from schools as well.

However, if the ABA were to insist that schools report “at-graduation” figures, schools will have even more incentive to hire their own students. So-called “bridge to practice” programs – where schools provide stipends to otherwise unemployed graduates who volunteer in public interest positions or even private firms – are useful in that they enhance graduates’ skills, give them practical experience to add to their resumes, and get them out in the legal community where they can make valuable contacts. But counting them as “employed at graduation” – or worse, (still) “employed at nine months” – certainly sends a distorted message to prospective students, alumni, and anyone else who reads those figures in *U.S. News*. Worse yet, it penalizes schools who do not have the funds to provide such stipends.

I believe a more worthwhile endeavor would be to explore ways to curtail the reporting of “at-graduation” statistics altogether. Asking for “at-graduation” placement rates is like asking schools to report bar passage statistics on September 1 – a date when only a handful of states have announced results but the majority of states are still weeks or months away from doing so.

Type of Employment

Much has also been written regarding what constitutes “employment.” Both NALP and the ABA ask schools to report the percentage of jobs that are 1) JD-required, 2) JD-preferred, 3) Professional “other,” or 4) Non-Professional “other.” I submit that these categories are sensible and sufficient. The problem is that *U.S. News* and probably most law schools’

Web sites list only the percentage of those employed. In the spirit of transparency, perhaps the ABA should insist that schools' promotional materials report the type of employment along with the overall employment figures. That way, prospective students are free to compare the percentage of JD jobs to the percentage of non-professional "other" jobs and draw their own conclusions.

Buyer Beware

The tail that seems to be wagging the dog right now on these issues is a vocal minority of students and graduates who feel somehow "duped" by schools' claims of their graduates' success. Perhaps law schools should be required to post disclaimers like those some states require in advertisements by attorneys: "The decision of where to attend law school – or whether to attend law school at all – is a very important one. All prospective students should make their own evaluation based on a number of factors including, but not limited to..." Of course, despite the ubiquity of warnings, 21% of American adults smoke cigarettes.

The problem, in part, lies in prospective students' distorted view of their own success. In a recent survey of 330 prelaw students by Kaplan Test Prep, 52% felt "very confident" that they would land a legal job after graduation, although *only 16% felt confident that most of their fellow graduates would be as successful*. It is well known to those who have worked in law schools that approximately 90% of the incoming class thinks they'll graduate in the top 10% of their class. Despite the fact that law school career services offices regularly caution students that not everyone lands at the top of the grade curve or gets the plum post-graduate position, students routinely think "I'm different – I'll be the exception." By the time they matriculate, law students generally *have* been successful in most, if not all, of what they've attempted, and I think this renders them unable, or at least unwilling, to accept that they may be the one out of every two law students who will end up in the bottom half of the class.

Conclusions

I think the ABA needs to be very cautious in considering what they ask schools to do, carefully thinking through the consequences:

1. Mandating that schools report salaries for every graduate, as the Law School Transparency folks ask, is both impossible and an incentive to provide fake data.
2. Any additional focus on "at-graduation" data will encourage schools to "hire" their own graduates, further distorting the information available to prospective students.
3. Instituting a requirement that employment data should be audited will add yet another non-productive, administrative burden on career services staffs, further limiting the time they could spend helping students find jobs.

I think the ABA might consider mandating that schools which use employment data in their marketing should:

1. Refrain from posting salary information at all, or, if they do, require them to include a statement of the percentage of those reporting salaries.
2. Use the existing NALP Type of Employment categories, mentioned above, along with overall employment percentages.

In addition, the ABA might want to explore ways to prevent or discourage schools from providing "at-graduation" statistics to *U.S. News*.

Final Thoughts

I think it's important to keep in mind that attending law school and embarking on a legal career should not be equated with investing in a certificate of deposit and expecting a fixed rate of return. After all, the practice of law can provide more than just income. It can provide an opportunity to engage in a lifetime of work which is intellectually stimulating and helpful to others. You can't put a price on that.

The economy ebbs and flows, and I tell prospective law students not to base their decision to attend law school on the current state of the economy. In the four years between taking the LSAT and graduating from law school, the job market can change dramatically. Regardless of the economy, anyone who wants to do what lawyers do for a living will need a legal education and a license to practice. While not the sole route to such a career, law school continues to be a time-tested place to acquire the skills needed to be successful in it. Prospective students need think more about whether they want to engage in the day-to-day aspects of a legal career and whether they will find the work intrinsically rewarding than about how much money they will make.