

MEMORANDUM

To: ABA Questionnaire Committee
From: Kyle P. McEntee, Executive Director of Law School Transparency¹
Re: Reviewing and revising the reporting of placement data by law schools

December 13, 2010

Revising the ABA Questionnaire to Restore Confidence in the Legal Profession

This Memorandum is a response to the ABA Questionnaire Committee's request for comments regarding the need to review and revise the reporting of placement data by law schools. This Memorandum suggests that the Questionnaire Committee adapt their questions about post-graduation employment outcomes. This Memorandum also suggests that the Questionnaire Committee evaluate their new standard with a veil of ignorance. Whatever the outcome of the Questionnaire Committee's investigation, the answers to the questions they ask should (1) disaggregate the current information, (2) demonstrate the economic value of a school's J.D, and (3) operate on a different schedule than the rest of the annual questionnaire.

Background

Each year, nearly 50,000 law students begin investing in their legal education expecting to derive value from both the educational experience and the J.D. itself. Job opportunities are often the primary motivator when deciding to attend law school, so employment information is often necessary for those seeking to make an informed decision about whether, and where, to attend law school. The ability to *make* an informed decision directly relates to prospective law students' ability to *access* quality information. Unfortunately, the available resources are inadequate for prospectives who strive to take a detailed, holistic look at the diverse employment opportunities at different law schools. In response to this problem, Law School Transparency ("LST") has aimed to improve employment information by calling for the reform of existing reporting standards.

Law schools report employment data and information to three primary organizations: the ABA, NALP, and the *U.S. News & World Report* ("*U.S. News*"). The ABA and *U.S. News* each publish the reported information in their respective publications. NALP does not publish the

¹ Law School Transparency ("LST") is a Tennessee non-profit founded in July 2009 by Kyle P. McEntee, Executive Director, and Patrick J. Lynch, Policy Director. LST is dedicated to encouraging and facilitating the transparent flow of law school employment information. We are a small but dedicated staff and Advisory Board made up of recent law school graduates and current law students.

employment data that schools report; rather, NALP publishes data and information that aggregates school-specific employment outcomes. Additionally, schools report employment information on their websites and recruiting materials according to their own procedures.

Unfortunately, the information available from these sources lacks the requisite quality to answer important questions meaningfully. The current ABA and *U.S. News* employment reporting standards are both seriously limited by their form and substance. These standards aggregate employment outcomes, overemphasize certain portions of the class (usually top performers), and make it difficult for prospectives to understand the various employment opportunities for new J.D.'s. Quite differently from problems with the standards, schools' individualized reporting policies often package information in ways that are not only difficult to compare, but oftentimes misleading.

As a result, prospective law students rarely make informed decisions about whether, and where, to attend law school. Because prospectives usually do not have enough information about employment outcomes to make an informed decision, they often look to other resources to facilitate comparisons among schools. Most famously, *U.S. News* provides a yearly law school ranking that prospectives often use as a proxy for schools' job placement opportunities.

While the *U.S. News* ranking drives down transaction costs for prospectives seeking to acquire and explain information, it also causes prospectives to make decisions based on minute, arguably arbitrary rankings disparities. Prospectives often do not realize that there are serious problems with these rankings, nor do they understand the serious problems concerning the quality of available information. Where they do realize that problems exist, they discount the importance with optimism bias and a misunderstanding of their abilities relative to their also-highly qualified peers. Schools are well aware of the idealism and optimism that prospective law students exhibit, and this awareness may very well have led to the adoption of reporting policies that hide gaps in employment information and make it even more difficult for prospectives to see the whole picture. The result is the perpetual flow of low quality employment information to the unassuming, unprotected consumer.

These problems have existed for quite some time, and are divorced from schools' current struggle to help their graduates find gainful employment. That said, the economic climate is creating ever-larger implications for the legal profession. Law school in the U.S. is now an extremely costly proposition in terms of both positive attendance costs and opportunity costs. Tuition continues to rise, debt is not dischargeable in bankruptcy, and the expected value of all outcomes is less than it was just a few years ago. The result is more graduates for whom uninformed decisions will adversely affect their well-being. *Caveat emptor* may be an attractive quip when consumers choose to buy inherently dangerous goods, but it is not applicable when

even the most informed prospectives really have no idea what kind of return follows from investing in a particular J.D.

I. Problems with the current information

(1) The ABA

Law schools must report “basic consumer information” about their programs to the ABA, including information about the employment outcomes of their graduates. Currently, the ABA requires that schools report employment rates nine months after graduation, as well as basic bar passage statistics. The annual questionnaire requires that schools report these placement rates for the second-most-recent class, roughly 16 months after most of the graduates earned their degree. It takes about 2 years for the ABA to publish the information for public consumption.

These employment rates include the employment status of all graduates, as well as the type of employer, type of job, and geographic location of all employed graduates. For all of these categories, “a job is a job.” The employment status includes five exhaustive categories: employed, unemployed—seeking, unemployed—not seeking, pursuing an advanced degree, and unknown. Although exhaustive, the total number of graduates in each category inexplicably does not always add up to the total number of graduates. As one of many examples in the most recent Official Guide, New York Law School does not account for eight graduates while reporting according to these exhaustive categories. The ABA disclaims any warranty as to the accuracy of the information submitted by law schools, so it is unlikely that anybody will correct even basic errors.

The employer type rate only considers what business the employer engages in, rather than the type of job the graduate works for that employer. Accordingly, the percentage of graduates “employed in law firms” includes lawyers, paralegals, and administrative assistants. Likewise, “employed in business and industry” includes everyone from an in-house lawyer to a short-order cook. The job-type rate aims to shed some light on these logical disconnects. NALP’s annual reports on the entry-level hiring market indicate that the disconnect is not merely theoretical, as a sizeable percentage of graduates take these non-law jobs at law firms and in business each year. That graduates take these jobs is not necessarily a problem. The problems are that it is unclear to readers that there exists a disconnect and that, once realized, readers cannot determine what types of non-law jobs these graduates take. Perhaps, originally, all that mattered was the bar-passage-required rate versus the not-required rate. But when a school advertises the versatility of a J.D., unassuming consumers are likely to think many of these graduates are doing something with their degree other than becoming a paralegal or short-order cook. The reality is that just about every graduate needs to find some way to earn money because most of them used student loans to pay for their education.

(2) The U.S. News Employment Summaries

Despite having no enforcement power, *U.S. News* collects considerably more information than the ABA. Each year the company surveys all ABA-approved law schools, requiring the same rates as the annual questionnaire. However, in addition to the nine-month rates, *U.S. News* also asks for rates at graduation. More importantly, *U.S. News* asks for starting salary information for graduates employed full-time in private sector jobs as reported to NALP. *U.S. News* also requests the median salary for graduates employed in full-time public service jobs, including any branch of government, judicial clerkships, academic posts, and non-profit organizations.

One of the most important questions that prospectives ask themselves when choosing to attend a law school is whether they will be able to repay the debt they accumulate. Among other factors, the answer is a function of opportunity cost, cost of attendance, expected salary, and job location.

While some schools provide more detailed salary breakdowns (still in the aggregate), most only provide the salary information submitted to *U.S. News*, which reflects salaries for those graduates reporting a salary for full-time employment in the private sector. For example, New York Law School reported the following quartiles to *U.S. News* for the Class of 2008:

\$71,250	\$160,000	\$160,000
25th percentile	Median	75th Percentile

These figures only represent at most 16.4% of the class.² Usually the term “median” refers to a middle point, and to uninformed consumers that might be exactly what they take the \$160,000 median figure to mean. Instead, about 8% – 9% of the class is known to have earned \$160,000, because 92.6% of graduates were employed at nine months, 66% of the employed graduates were employed at law firms or in business, and only 27% of those graduates reported salaries. This does not even account for the graduates for whom an employment status is unknown, the graduates pursuing full-time degrees, and the graduates who are unemployed and not seeking work.

(3) Other Resources

Taken together or separate, the two reporting standards promulgated by the ABA and *U.S. News* result in marginally useful information that is presented as if it provides the sort of information consumers need. Still, many prospectives look to a number of other resources to glean a better idea of where graduates work. These resources do not allow them to paint the whole picture, and

² For a detailed explanation of how LST arrived at this percentage, and a visualization of all derivable salary information, please visit <http://www.lawschooltransparency.com/clearinghouse/?school=newyork>.

oftentimes make an informed risk assessment even more difficult because of how they portray the entry level hiring market.

Some law firms list their first-year associates with school attended, journal status, and graduation year on their websites. Many firms also release hiring data to the National Law Journal (“NLJ”) in a survey each year. Meanwhile, many graduates voluntarily provide data points on websites like Martindale-Hubbell and LinkedIn, where they self-identify with their employer, school, and graduation year. Law Clerk Addict—via chambers, law school administrators, and anonymous tipsters—provides federal clerkship placement information about each Article III court, by school, though not by graduating class year. Other Article III clerkship placement information can also be found within the *U.S. News* employment summaries. Finally, anecdotes from school recruiting materials, graduates, friends or family, and media outlets provide data, either formally or informally, that prospectives use to supplement other acquired information.

Together, these anecdotes and aggregate employment outcomes often over-represent certain portions of the class. The NLJ list of placement at the 250 largest firms (“NLJ 250”), for example, is only relevant for applicants at the very top law schools; just nine law schools sent a majority of graduates to work for these firms in 2009, while only 30 schools sent even one fifth of their graduates.³ Resources like the NLJ 250 only serve a minority of applicants, while not paying enough attention to what the rest of the graduates do for work.

For a more thorough examination of the current reporting regime, please read LST’s white paper (Part I), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1528862.

II. Role and Responsibility

Schools have a professional responsibility, as the gateway to the legal profession, to prepare law students for a future in law. The preparatory obligation includes providing a meaningful education. This means creating an educational environment that prepares students for the successful practice of law, as well as teaching students what they can do to be productive and upstanding members of the profession and society. Beyond teaching the law (or how to think like a lawyer), schools should convey the imperative roles that ethics and trust play in the successful administration of justice. Students develop many habits and many impressions about how the profession regulates itself based on experiences in law school. When a school fails to do everything it realistically can do to provide a meaningful education about the law and profession, its graduates end up entering the legal profession less prepared for ethical practice.

³ *The Go to Schools*, NAT’L LAW J., <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202443758843>.

The preparatory obligation also includes creating a meaningful window into the profession for prospectives deciding whether to attend law school. This means informing these consumers about things like program offerings, cost of attendance, and the job outcomes their graduates achieve post-graduation. Doing so would provide every prospective a fair chance to decide whether a particular school is the best match for their educational and career objectives. Unfortunately, many smart and capable students begin a career from which they will draw no real satisfaction, for which they will be poorly suited, and in which they will perform marginally because the practice of law is different from what they expected. The reason for these problems is largely unsettled, and likely has many causes deserving blame, but the existence has rightfully caused schools and the ABA to think deeply about what is going wrong.

Currently, the trust relationship between schools and students is under attack. Some of it is totally out of schools' control. Graduates are angry with schools because of the economy, because they feel they have been misled, and for a host of other reasons. Some of it, however, is totally within the control of schools and those who regulate the profession. When ideals and actions do not match up, credibility is lost. This credibility matters to the legal profession. It is slowly built, but quickly destroyed. When schools advertise their services, they must set good examples. Schools have the ability to full these responsibilities, but many have failed to do so on their own.

Fortunately, the Section of Legal Education and Admission to the Bar can help schools fulfill these obligations through its accreditation role. In fact, the Section of Legal Education is the most appropriate body to ameliorate the problems caused by current reporting standards. At-large, the ABA has reentered the ongoing discussion about transparency in law schools, particularly with respect to historical post-graduation employment outcomes. This reentry is highly appropriate because the ABA exerts considerable regulatory power over law schools.

Through its regulatory power, the Section of Legal Education crafts both the standards schools must meet to maintain accreditation, and the questions they must answer about their programs each year. Through its authority, the Section of Legal Education inherits the same, aforementioned responsibilities that schools have to prospective law students and the legal profession.

The ABA Standards already recognize the importance of informed decisions by requiring that schools provide "basic consumer information" to prospective law students. Because the information is currently not even basic, the Section of Legal Education has a long way to go before it satisfies its obligation to the profession. The Questionnaire Committee, working in a partnership with the Standards Review Committee, can change this. They can aid prospectives who seek to make an enormous investment on an informed basis.

There are a few layers to prospectives making informed decisions.

- Making quality information available
- Accessing it
- Understanding it
- Acting rationally on it

One objective of the Questionnaire Committee should be making quality employment information available. Availability leads to better access, understanding, and, eventually, behavior. Even without a heightened standard from the Standards Review Committee, this Committee has the ability to reach beyond ABA Standard 509 with its questions to help prospectives become adequately informed.

However, broader and less-apparent consequences follow from the lack of quality employment information available for public consumption. Examining the NALP employment information is a great place to start. Law schools already collect and report a great deal of data about individual graduates from their most recent graduating class to NALP each February. NALP purports that these data from law schools, in the aggregate, provide a picture of the entry-level hiring market. It does this, though arguably homogenizes what is demonstrably an entry-level market subjugated to at least some horizontal inequity. Prestige and school location often dictate opportunities available to students, and the NALP reports do not show where these placement disparities occur. The data to show the uniqueness of school-by-school placement is already assembled, but schools have not shown a willingness to share it.

By schools keeping some or all of the NALP data to themselves, they are preventing the development and accumulation of knowledge—a fundamental mission of law schools that negatively impacts other fundamental missions. The transparent flow of data, if assembled for public consumption, would be one basis for how schools educate their students. These data have the ability to change how people think about lawyers and the jobs they do. School-by-school data matter because different schools have different missions, target communities, strengths, and weaknesses.

This is not to say that schools are consciously undermining the development of knowledge, but any school that withholds useful data impedes the development of legal education for the betterment of the profession. This traipses on law schools' responsibility to help their graduates succeed as they enter the profession. It obstructs schools from quickly understanding how law graduates are used and how lawyers add value to their clients and employers. It damages the trusting relationship that sound education requires between students and those that educate them as the distance between what law schools teach and what successful practice requires widens. In turn, this affects how, and what, schools teach their students.

This might seem a bit dramatic, and it is not as if a great deal of legal scholarship is not already devoted to the betterment of legal education. The Section on Legal Education has also recently explored the sometimes-controversial outcome-based reform. Unfortunately, the suggestions usually seem to miss how important post-graduation employment outcomes are to the objectives sought. It is akin to professors withholding legal scholarship from certain departments within their school, from other schools, or from others outside of the law school community. Law professors do not write papers solely for their law schools because they develop knowledge as a community.

In the same vein, this Committee should maximize the amount of data and information available to the extent that it does not undermine countervailing public policy or laws. Costs and privacy will accompany more transparent disclosure policies, and these are legitimate concerns. But these concerns are surmountable and must not be used as a cover for schools that fear that meaningful disclosure of important data will impact their ability to recruit prospectives.

III. Three critical features for the Questionnaire Committee's employment reporting standard

Whatever the standard the Questionnaire Committee adopts, the questions it asks about post-graduation employment outcomes need to elicit answers that:

(1) Disaggregate the current information

The most serious handicap of the current reporting standards is that the standards allow outcomes to be hidden in aggregate form. For prospectives seeking to make an informed decision, and law schools seeking to fulfill their educational responsibilities, the new standard must provide an accurate picture of the entry-level job market for each school. To do this, any new standard must characterize the jobs graduates obtain beyond "a job is a job." This includes the nature of the jobs graduates obtain, with whom the graduates are employed, and the locations of these jobs. Gaps in the information also must be clearly visible to limit prospectives from extrapolating from unrepresentative segments of the graduating class.

The best way to achieve this is by requiring graduate-level detail, just like NALP has been collecting for years. This allows prospective students to know the challenges they face for achieving their educational and career objectives, which will help them maximize the value of their time spent in law school. The granularity also respects school regionality and encourages schools to develop their placement niches. Whether this niche is in a particular region or city, a field of law, or a sector, this feature publicizes each school's unique placement ability. Displaying where all graduates go post-graduation can help match students to the right programs, minimizing the effect of national rankings on student decision-making. The choice then

becomes less about what a school ranks each year in *U.S. News* and more about how each school can help a student achieve her goals. If it is clearer where a school fits into the legal hiring market, schools will be encouraged to adapt and innovate, and may even be able to reduce costs.

(2) Demonstrate the economic value of a school's J.D.

While disaggregating the current information into graduate-level detail allows for rough estimates of economic value, the ABA does not currently consider salaries to be basic consumer information. It is time for the ABA to recognize the importance of starting salary for prospective law students as basic consumer information. Some prospectives come to law school straight from undergrad with low opportunity costs, and others change careers or work first, but almost all will pay an enormous amount of money for the privilege to earn a J.D. It is difficult to separate the question of “how much will I make?” from “how much will my monthly loan payments be right after I graduate?” Likewise, it is difficult to think about the salary a graduate earns separate from where that graduate lives and works.

It is clear that a graduate's starting salary is only a part of the economic value a graduate can derive from the degree, and that many graduates (notably solo practitioners) may see a sharp upward trend in their earning salary over the first five to ten years. However, entry-level salaries are a good place to start, and also the least costly time to assemble a comprehensive picture of a graduating class. The Bureau of Labor Statistics provides salary information for lawyers, but lawyers represent only a large chunk of law school graduates. The important question is the value of the law degree. Between 60% and 70% of all 2009 law school graduates had jobs, as of February 15, 2010, that required a J.D. Of those that did not, some will eventually find work as an attorney. Likewise, some of the graduates who work as lawyers after law school will soon leave the profession. Career trajectories are hard to predict, but they all necessarily include the first job.

(3) Operate on a different schedule than the rest of the annual questionnaire

The data and information reported on the questionnaire must be published in a timely manner. The 2009–2010 questionnaire was due October 31, 2010. This included employment information about the class of 2009, which was finalized on February 15, 2010, and will not be published anywhere until *after* the admissions cycle for the Prospective Class of 2014 has just about concluded. The Class of 2009 information will not appear in the Official Guide until after the Class of 2010 data has been assembled and reported to NALP. The ABA must publish this information sooner, along with other consumer information as it becomes available. This likely requires using separate surveys.

IV. Evaluating the new standard with a veil of ignorance

Imagine you do not know your role in the legal profession, *and* you are trying to develop a standard without knowing in advance what side of this conversation you will be on. You could be a prospective member of the profession, current law student, employer, or law school administrator. You do not know your credentials (law school, GPA, honors, journal, etc.), how successful you will be (job, salary, notoriety, etc.), or when you are entering or entered the profession. When the veil is lifted, can you live with the standard? The optimal standard considers the interests of law school administrators, employers, and students, and balances these concerns with legitimate consumer expectations.

Sample questions someone in each role might ask:

Prospective Law Student

What would I want to know when applying to law school?
Is the degree worth my time and money?

Law School Administrator

What do I want/need to know when designing my school's curriculum?
What do I want/need to know about my school's place in the entry-level hiring market?
Is my school charging fair tuition?

Current Law Student

What would I want to know for choosing my classes to maximize the value I add to my clients and employer after I graduate?
What jobs should I apply for with my grades in the location I want?
Should I quit before I sink more money into my education?

Employer

What schools have a strong track record for placing graduates in my field?
What schools provide the most prepared graduates?
Do I care if my hiring trends are public?
Is my alma mater doing its job?

V. The LST Standard meets these requirements and survives the veil of ignorance test

The LST Standard asks law schools to report data about its graduates on two separate lists:

JOB LIST

1. Employer Type
2. Employer Name
3. Position
4. Credentials
5. Full-Time / Part-Time
6. Office Location (City, State, Country)
7. Salary Source
8. Journal

SALARY LIST

1. Employer Type
2. Office Location (City, State, Country)
3. Full-Time / Part-Time
4. Salary

Each list contains as many rows as there are graduates in a given year. Each row must include data for every component, unless explicitly exempted by the LST Standard's guidelines, available at http://www.lawschooltransparency.com/2010_LST_Standard_Guidelines.pdf. If a school cannot collect data for every component for every student, schools are encouraged to report what they can collect and then state the reasons why other data are missing.

Most lawyers voluntarily make their information public, whether on employer websites, LinkedIn, Martindale-Hubbell, or Facebook. The LST Standard packages this already-public information and links it to the particular school that educated and trained the graduate.

For a thorough explanation of schools' criticisms of the LST Standard and LST's responses to these criticisms, please read LST's Initial Request Report, available at http://www.lawschooltransparency.com/electronic_reports/Initial_Request_Report.pdf.

• • •

I want to thank the Questionnaire Committee for the opportunity to submit this Memorandum and to present its core ideas at the Committee's hearing. I am happy to see this Committee take the first step towards solving a problem with far-reaching consequences. I am also excited to see the Committee see this project through to the end. As an organization that will follow these developments closely, Law School Transparency is committed to helping in any way possible.

Kyle P. McEntee
Law School Transparency
December 13, 2011