

Appendix A – Summary of Comments

ABA Standards and Rules of Procedure

2018-19

The Council of the Section of Legal Education and Admissions to the Bar (the “Council”) solicited ideas and suggestions regarding issues related to the ABA Standards and Rules of Procedure for Approval of Law Schools that the Council might consider during the 2018-2019 year on September 27, 2018. Below is a summary of the comments received. The actual comments are attached.

Standard 205-Non-Discrimination and Equality of Opportunity, and Standard 206-Diversity and Inclusion. Tyler Lippert, PhD, JD submitted a comment recommending that veterans status be added to Standards 205 and 206.

Standard 206-Diversity and Inclusion. Robert Furnier, a member of the faculty at Northern Kentucky University College of Law, submitted a comment recommending that the Council re-examine Standard 206 and its relationship with Standards 301, 316, and 501, and strengthen its enforcement of Standard 206.

Standard 302-Learning Outcomes. The ABA Commission on Lawyer Assistance Programs, the National Taskforce on Lawyer Well-Being, and the ABA Law Student Division, submitted a comment recommending that well-being be included as part of learning outcomes. The request is to add a competency with the tools needed to promote personal and professional well-being.

Standard 303-Curriculum. The ABA Commission on Lawyer Assistance Programs, the National Taskforce on Lawyer Well-Being, and the ABA Law Student Division, submitted a comment recommending that mental health and substance abuse be added to the professional responsibility requirement.

Standard 308-Academic Standards. Wells O’Byrne submitted a comment proposing that a required grading system required of all ABA Law Schools. Specifically, he suggests that each law school create a group responsible for the creation of exams and assessment criteria and that two examiners be assigned to grade each exam or make an assessment.

Standard 316-Bar Passage. William Patton, Professor Emeritus at Whittier Law School submitted a comment recommending that the national mean MBE score be used as a proxy for determining if Law Schools are providing students with an education sufficient to enable them to pass the bar.

Standard 503-Admission Test. Keith Sutton submitted a comment recommending less reliance on the LSAT.

Standard 508-Student Support Services. The ABA Commission on Lawyer Assistance Programs, the National Taskforce on Lawyer Well-Being, and the ABA Law Student Division, submitted a comment recommending that mental health and substance abuse counseling be added to student support services.

Standard 509-Required Disclosures. Law School Transparency submitted a comment that does not request a change to a Standard but recommends the collection of more information on student debt, tuition, gender diversity, and racial/ethnic diversity.

Standard 509-Required Disclosures and Employment Outcomes. Scott Norberg, Professor, Florida International University College of Law, submitted a comment recommending the reporting of LSAT scores and UGPAs for students in a Law School's entering class and recommending the adoption of an employment outcomes standard.

Standard 509-Required Disclosures and Young Lawyer Representation on the Council. The Iowa State Bar Association (ISBA), submitted a comment recommending that law schools be required to provide every admitted law student with a copy of the 509 Report and the Employment Summary Report as part of the admissions offer. The ISBA also recommended simplifying the Employment Summary Report and simplifying and reorganizing the 509 Report.

The ISBA recommends that the Council require schools to report as part of the annual questionnaire, and for the Section and schools to provide on their websites, (1) disaggregated borrowing data, including subcategories by race and gender; (2) disaggregated data on the amount of tuition paid by class year (1L or upper-level), race/ethnicity, and gender; (3) data on applicants and scholarships by gender and, to the extent the Section does not do so already, by race/ethnicity; (4) data on J.D. program completion and bar passage success.

Finally, ISBA recommends that the Council designate two new lawyers as members of the Council.

Section of Legal Education and Admissions to the Bar
Council of the Section of Legal Education and Admissions to the Bar
Standards Review Subcommittee of the Council
American Bar Association
321 N. Clark St.
Chicago, IL 60654

29 October 2018

Dear Standards Review Subcommittee of the Council,

I would like to ask for your support to include veterans in the ABA Standards and Rules of Procedure for Approval of Law Schools. Presently, both Standard 205 (Non-Discrimination and Equality of Opportunity) and Standard 206 (Diversity and Inclusion) of ABA Chapter 2 on Organization and Administration fail to include veterans.

The failure to include veterans in these provisions has consequences which I have experienced first-hand, and is a notable problem within law schools and the legal industry. I recently submitted a complaint (attached) to Northwestern University 'Pritzker' School of Law to raise awareness of this issue.

Including veterans in Standards 205 & 206 can help to diminish this problem. I propose the following underlined language ***in bold*** be included:

Standard 205. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY

- (a) A law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age, ***veterans status***, or disability.
- (b) A law school shall foster and maintain equality of opportunity for students, faculty, and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age, ***veterans status***, or disability.
- (c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (1) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (2) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but may not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age, ***veterans status***, or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the

United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.

(d) Non-discrimination and equality of opportunity in legal education includes equal employment opportunity. A law school shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement services the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, religion, national origin, gender, sexual orientation, age, **veterans status**, and disability in regard to hiring, promotion, retention and conditions of employment.

Standard 206. DIVERSITY AND INCLUSION

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, **veterans status**, and ethnicity.

(b) Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by having a faculty and staff that are diverse with respect to gender, race, **veterans status**, and ethnicity.

Please let me know if I can be of any further assistance. Moreover, please let me know the outcome of this request.

Best Regards and Sincerely,

Tyler H. Lippert, PhD, JD

In response to the September 28, 2018 email from Jeffrey Lewis, Diane Bosse, and Barry Currier, I wish to thank the Council of the Section of Legal Education and Admissions to the Bar (the “Council”) for soliciting ideas about issues the Council might consider during the 2018-2019 bar year relating to the ABA Standards and Rules of Procedure for Approval of Law Schools (“the Standards”). I write in my individual capacity as an ABA member, although I have served as a member of the ABA Commission on Racial and Ethnic Diversity in the Profession the past two years and as a member of the ABA Law Practice Division Diversity and Inclusion the past five years, three of those as chair. Perhaps not surprisingly, because of my strong commitment to diversity and inclusion in the legal profession, I ask that the Council reexamine Standard 206 and its relationship to Standards 301, 316, and 501.

As you know, Standard 206 requires that law schools, “[c]onsistent with sound legal education policy and the Standards, demonstrate by concrete action a commitment to diversity and inclusion, by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities.” No doubt, sound legal education policy demands compliance with the Standards, particularly 301, 316, and 501. These standards ensure that law schools admit only students capable of graduating and passing the bar (Standard 501), maintain a rigorous program of legal education (Standard 301), and prepare their students to pass the bar (Standard 316). My fear, however, is that Standard 206 has become less relevant over the past two years as the Council has scrutinized law schools for compliance with Standards 301, 316, and 501, issuing noncompliance letters, placing schools on probation, or withdrawing their accreditation.

For example, in my review of publicly available information concerning the Council’s recent adverse actions, I have noticed that the law schools whose accreditation appears to be in the greatest jeopardy are those with heavy minority enrollments. I do not mean to suggest that the Council is targeting any school because of the racial or ethnic makeup of its student body. To the contrary, I worry that the Council is indifferent to a school’s diversity in enforcing the Standards, especially 301, 316, and 501. In my view, compliance with Standard 206 should be given the same weight as other standards when the Council considers whether a school is operating within sound legal education policy.

Indeed, I suspect that the Council rarely, if ever, has issued a noncompliance letter to a law school based upon Standard 206. Meanwhile, the legal profession lags far behind other professions, and society generally, in becoming truly diverse and inclusive. Consequently, I believe the Council should work with the ABA Goal III entities in the coming bar year to explore how to strengthen Standard 206 to make it more meaningful in the accreditation equation.

To that end, I would welcome the opportunity to open a dialogue between the Council, the Goal III entities, and other interested parties to generate ways that Standard 206 might be strengthened. I appreciate, though, that this process must not dilute the impact of other standards—like Standards 301, 316 and 501—that are critical to prepare law students for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession. Best Wishes, Bob Furnier

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The logo for the Northern Kentucky University Chase College of Law. It features the letters "NKU" in a large, bold, serif font, with "CHASE" in a smaller, bold, serif font to its right. Below "CHASE" is the text "COLLEGE OF LAW" in a smaller, all-caps, serif font.

Ms. Erika Nicole Joyce Lessane
375 East Chicago Avenue
Chicago, IL 60611

October 28, 2018

Mr. Fernando Mariduen
Council of the Section of Legal Education and Admissions to the Bar
321 N. Clark Street, 21st Floor
Chicago, IL 60654

Dear Mr. Mariduen,

My name is Erika Lessane and I am a 2L at Northwestern Pritzker School of Law and an executive member of the Law Students Division of the American Bar Association. As the National Delegate of Programming for the Law Student Division, with the support of the rest of the LSD council, I am writing to recommend an amendment to ABA accreditation standards to require that all ABA accredited institutions establish, implement, and publish a process for grade appeals at their institution.

Now, more than ever, our association has to invest into law students and address their needs if we are to increase student participation in our association. In order to prove ourselves to be a resource to law students and foster relationships, we must find ways to address the pressing issues in the lives of the law students of today. An issue across many institutions is the practice, or even the simple perception, of unfair or inconsistent grading. Although addressing all concerns about grading is a long-term project that would require the input of many individuals, we can at least ensure that students have the chance to voice their concerns through a grade appeal protocol required at their school. By implementing that all law schools implement “a process” for grade appeals, allowing the school’s flexibility for what the specific process will be, the ABA can at least lay the groundwork for addressing future needs in grading. Furthermore, since the creation of the standard would give students standing to present grade-related complaints to our association, we can give students a voice while simultaneously better monitoring practices across ABA institutions while we determine future solutions.

As I myself suffered the consequences of unfair grade without a place to voice my concerns, I can assure you that it is an experience that no student should have to endure. Last year, as a first year student, I was given a “D” in my constitutional law class on account of a purported time violation. Although I had proof that the professor of the course relayed the wrong time for the deadline, with written proof and witnesses, my school simply told me “grades are final.” As a result of the “D,” I not only lost career opportunities but I suffered crippling effects to my mental well-being. I not only had proof of the professor presenting contradicting instructions to students, but I also had proof that even with a time violation, a “D” was highly uncommon. Even with such clear proof of a professor’s mistake or mistreatment, I had no venue to present my concerns since my law school does not have a grade appeals process. Coming from a public institution for my undergraduate studies, I have already seen the immense value in a grade appeals process as a practice that proves beneficial by allowing students to voice their concern, even if their grade is not ultimately changed. As there are already many legal institutions with a

process, the schools needing to establish one could use these institutions as an example. No matter what is ultimately establishes, it would be imperative that schools have “a process” for appealing grades instead of simply relaying the “grades are final” narration that I repeatedly received.

Upon casually discussing my story with the rest of the Law Student Division at SOC, it became apparent that many students share my story across many schools. After partaking in discussion as a council, everyone had themselves suffered unfair or inconsistent grades or knew of someone that had. As a result, it became clear that this is an issue at many institutions that should be addressed by the ABA. Since grades play a heavy role into the mental well being of students, as they are a determining factor of career opportunities available, the standard would also address some of the mental health issues at many schools. Although there are many possibilities for ensuring consistent grades across our institutions for the future (pass/fail options, standardized grades for first years, finding ways to truly ensure anonymous grades, etc.), we should at least start by making sure that students have a place to voice their concerns of unfair or inconsistent grading and determine effective solutions for the future. If we establish a mandatory grade appeals standard at every institution by simply requiring “a process” and giving schools the opportunity to fashion their protocol to their institution, we at least give a voice to the students.

As the ABA, we need to prove that we have value to students if we are to increase student participation to ensure that our association lives on in the years to come. Not only would a standard for an appeals process be of value to students, but also it would show the legal community that the ABA listens and responds to the needs of our constituents. Furthermore, law students are entering the legal field, which is a field that requires them to be the voice for the voiceless members of our society. However, if we are to expect that our law students, as future attorneys, stand up and advocate for others, we have to at least ensure that they have the opportunity to speak up about their own concerns. Additionally, making a grade appeals standard would give students standing to file complaints with our association which will ensure we are aware of any egregious grading practices at institutions and give us the opportunity to address them in a preventative manner. Implementing a standard to require law schools to establish, implement, and publish “a process” for grade appeals will benefit the entire legal community. Therefore, as a fellow executive member of the ABA and simply as a law student, I ask that you make a change to the standards and effectively give our law students, the future leaders of America, a voice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erika N.J. Lessane', with a stylized, flowing script.

Erika N.J. Lessane

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October 24, 2018

Mr. Fernando Mariduena

Council of the Section of Legal Education and Admissions to the Bar
ABA Section of Legal Education and Admissions to the Bar
321 N. Clark Street, 21st Floor
Chicago, IL 60654

Via email: Fernando.mariduena@americanbar.org

Dear Mr. Mariduena,

On behalf of the ABA Commission on Lawyer Assistance Programs, The National Task Force on Lawyer Well-Being, and the ABA Law Student Division, we are jointly writing and requesting that the Council consider revisions to the ABA Standards on Legal Education.

Law students are experiencing significant challenges in the areas of substance use (including alcohol) and mental health. These needs were confirmed with the publication of *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns (the "Law Student Survey")* by Jerome Organ, David Jaffe and Kate Bender in the Journal of Legal Education (2016). In the same year, a separate study documented the challenges that attorneys, and particularly young attorneys, were confronting in the profession. *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys (the "Hazelden Study")* (P.R. Krill, R. Johnson, & L. Albert, 10 J. Addiction Med. 46 (2016). Throughout this time period, national media coverage of some high-profile deaths from suicide has continued to dramatize the urgent and compelling need for action.

In response to these serious and well-documented trends, a national task force of relevant stake-holders convened to discuss next steps. Those deliberations resulted in *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (August, 2017). This comprehensive report, available at lawyerwellbeing.net, outlines an ambitious agenda for institutional changes throughout the legal profession. The ABA House of Delegates, at the 2018 Midyear Meeting in Vancouver, adopted a resolution urging stakeholders to consider the recommendations of the report. These recommendations included the following proposals relating to law schools:

30. INCLUDE WELL-BEING TOPICS IN COURSES ON PROFESSIONAL RESPONSIBILITY.

Mental health and substance use should play a more prominent role in courses on professional responsibility, legal ethics, or professionalism. A minimum of one class session should be dedicated to the topic of substance use and mental health issues, during which bar examiners and professional responsibility professors or their designee (such as a lawyer assistance program representative) appear side-by-side to address the issues. Until students learn from those assessing them that seeking assistance will not hurt their bar admission prospects, they will not get the help they need.

31. COMMIT RESOURCES FOR ONSITE PROFESSIONAL COUNSELORS.

Law schools should have, at a minimum, a part-time, onsite professional counselor. An onsite counselor provides easier access to students in need and sends a symbolic message to the law school community that seeking help is supported and should not be stigmatized. Although the value of such a resource to students should justify the necessary budget, law schools also could explore inexpensive or no-cost assistance from lawyer assistance programs. Other possible resources may be available from the university or private sector.

We write to urge the Section on Legal Education to consider the following recommendations that recognize the importance of law student well-being in the ABA Standards. Our request includes:

- (1) articulating professional well-being as a fundamental learning outcome in Section 302;
- (2) urging by an Interpretation to Section 303 that one hour in the Professional Responsibility course be dedicated to education on substance use and mental health;
- (3) ensuring that law school student services as defined in Section 508 include the substance use and mental health counseling desperately needed on every campus in this era.

The Commission on Lawyer Assistance Programs works with state and local lawyer assistance programs around the country whose mission is to serve lawyers, judges, and law students who are struggling with alcoholism, substance and mental health challenges. Many LAPs around the country are already working closely with law schools to provide needed education and counseling. Many law schools are working closely with central University Counseling Centers to provide on-campus services, and in some instances have hired dedicated staff to provide on-site services. These revisions require that every law school have a plan to address these needs but would not require the expenditure of additional funds.

Task Force members, working with multiple sections of the American Bar Association and the Conference of Chief Justices, continue to advocate for institutional change on many fronts, including the bar admission process, continuing legal education requirements, law firm leave policies, and burdens faced by the judiciary. At a time when the entire profession is moving forward on this national agenda for Lawyer Well-Being, we urge the Council to take action on these proposed revisions.

Sincerely,

Bree Buchanan
ABA Commission on Lawyer Assistance Programs

Bree Buchanan, Chris Newbold, William Slease
National Task Force on Lawyer Wellbeing

Negeen Sadeghi-Movahed
ABA Law Student Division

Proposed Changes to the ABA Standards for Approval of Law Schools
Submitted on Behalf of the ABA Commission on Lawyer Assistance Programs, the National Task Force on
Lawyer Well-Being, and the ABA Law Student Division

Standard 302. LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession including the tools needed to promote personal and professional well-being.

Standard 303. CURRICULUM

- (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
 - (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
 - (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
 - (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement as defined in Standard 304.

Interpretation 303-5

Mental health and substance use should play a more prominent role in the required course on professional responsibility. A minimum of one class session should be dedicated to the topic of substance use and mental health issues, during which bar examiners and professional responsibility professors or their designee (such as a lawyer assistance program representative) appear side-by-side to address the issues.

Standard 508. STUDENT SUPPORT SERVICES

A law school shall provide all its students, regardless of enrollment or scheduling option, with basic student services, including maintenance of accurate student records, academic advising and counseling, financial aid and debt counseling, substance use and mental health counseling, and career counseling to assist students in making sound career choices and obtaining employment. If a law school does not provide these student services directly, it shall demonstrate that its students have reasonable access to such services from the university of which it is a part or from other sources.

Towards More Reasonably Just Grading Systems at American Bar Association (ABA) Accredited Law Schools

November 2018 ABA Section of Legal Education
and Admissions to the Bar Council meeting

Standards Review Sub-Committee

Re: *ABA Standards and Rules of
Procedure for Approval of Law Schools* ideas and
suggestions

Wells O'Byrne
wells.obyrne@gmail.com

October 29th, 2018

Current problem: Forced arbitrary grading curves at ABA accredited law schools lack basic elements of equity and reasonableness

- **Forced arbitrary grading curves at many ABA accredited law schools cause students attending these law schools to lack reasonable certainty that the students' grades will reasonably reflect the students' objective performance¹**
 - This can meaningfully deprive ABA accredited law schools' students and graduates of employment liberty, psychological stability (life), and potential future wages (property)
 - The students' and graduates' potential losses from law-school grading-system inequities can be especially grievous since law school often costs three precious years of young adulthood, over a hundred and fifty thousand dollars, and substantial opportunity costs of alternate career paths
 - Forced arbitrary grading curves at ABA accredited law schools arguably lack the due-process requirement of reasonableness
- **ABA accredited law schools' current potentially substantial deprivation of their students' and graduates' life, liberty and property through the schools' forced arbitrary grading curves is especially problematic given that more reasonably just and objective grading-system alternatives exist**
 - The Uniform Bar Examination and the California First-Year Law Students' Examination's standardized content and reasonably objective assessment methods offer potentially useful models for assessing student performance in ABA accredited law-school core-curriculum courses

¹ More information about law-school grading curves is at https://en.wikipedia.org/wiki/List_of_law_school_GPA_curves.

Current problem: Forced arbitrary grading curves at ABA accredited law schools lack basic elements of equity and reasonableness, cont.

- **Moreover, the forced average curves also disincentivize collaboration among law students that law schools hopefully aspire to encourage among their students and graduates**
 - Forced grade-average curves arguably promote zero-sum thinking and the associated anti-collaborative behavior among law-school students and hence potentially also law-school graduates¹
 - Such behavior can contribute to a negative modern view of lawyers by most Americans²
 - This is the opposite of the collaborative behavior that law schools should want to foster in their students and graduates, whom society has traditionally entrusted with upholding the foundations of peace and collaboration
 - Fostering collaboration among law students would help law schools produce graduates who not only know how to write and think about the law, but also represent clients, their alma maters, and the legal profession well
 - Such collaboration may be increasingly important to foster in the modern era given the recent rise of collaborative legal initiatives such as alternative dispute resolution and “virtual law firms” that work largely in the cloud³
- **Given that time-tested reasonably objective assessment core legal content assessment methods exist, it would be relatively straightforward for ABA accredited law schools to eliminate zero-sum thinking grading-system incentives that are arguably at least partially responsible for any anti-collaborative behavior in the formative years of law school**

¹ See, e.g., https://en.wikipedia.org/wiki/Zero-sum_thinking

² See, e.g., Leo J. Shapiro and Associates, “Public Perceptions of Lawyers: Consumer Research Findings,” prepared on behalf of American Bar Association Section of Litigation, April 2002, available at: http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/public_perception_of_lawyers_2002.auth_checkdam.pdf

³ See, e.g., https://en.wikipedia.org/wiki/Alternative_dispute_resolution; Robert W. Denney, “The Rise of Virtual Law Firms,” *Law Practice: The Business of Practicing Law* 35:7 (Nov/Dec 2009), p. 12, available at https://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_articles_v35_is7_pg12/

Proposed ABA Accredited Law School Grading System: Outline

- **To ensure consistent core-curriculum course content and grade reliability across years and course sections, each ABA accredited law school would establish a Curriculum and Examination Board that would set and approve exams, curriculum, and assessment criteria**
- **The two main proposed assessment models below would both bring ABA accredited law-school grading systems the much-needed elements of consistency, and transparency, and reasonable objectivity that the due-process requirement of reasonableness arguably requires**
- **In one potential assessment model, ABA accredited law schools would choose at least two examiners to grade each exam or other major course assessment according to the school's Curriculum and Examination Board approved assessment criteria**
 - For grade and curriculum comparability across schools, ABA accredited law schools would publish their core curriculum exams, course material, and assessment criteria annually
 - At least two examiners for exams or other major course assessments would help protect against the potential inherent bias of a single examiner
 - Examiners would likely consist of a course's professor and a colleague and/or other qualified volunteers such as alumni and/or community members
 - Such volunteer alumni and/or community examiners could help offset such a system's potential additional financial costs, as well as help ABA accredited law schools build alumni and community relations
 - Consistent with standardized assessment best practices, if the two examiners' grades resulted in more than a third of a difference in letter grades, a third examiner would score the exam and a grade reconciliation process would ensue
- **In a second potential assessment model, ABA accredited law schools could assess students in core-curriculum classes through an as-yet determined standardized test based on a widely accepted model such as the Uniform Bar Exam and/or the California First-Year Law Students' Examination**
 - ABA accredited law schools could be able to choose which core-curriculum assessment model(s) to implement

Proposed ABA Accredited Law School Grading System: Potential Benefits

- **Greater collaboration among ABA accredited law-school students and graduates**
 - Because ABA law-school students' attainment of good grades would not harm their classmates' abilities to also attain good grades under reasonably objective student assessment models such as those described above, students at these schools would have greater incentives to study more collaboratively than under the current forced grading curves
 - Such greater collaboration could elevate these law students' social skills, information retention, and examination performance¹
 - This improved student collaboration at ABA accredited law schools would also arguably foster greater collaboration among ABA accredited law-school graduates, thus contributing to changing the currently largely negative public view of American lawyers mentioned above
- **Improved equity in ABA accredited law-school grading systems and hence the market for law-school graduates**
 - By bringing the due-process reasonableness elements of consistency, transparency, and reasonable objectivity to current ABA accredited law-school grading systems, law-student assessment models such as those proposed above could substantially enhance ABA accredited law-school grading-system equity
 - Such improved grading-system equity could substantially reduce wrong hires in the market for graduates of ABA accredited law schools, thereby improving that market's efficiency
 - This greater market efficiency for graduates of ABA accredited law schools could meaningfully improve ABA accredited law-school graduates' abilities to lead rewarding personal lives as well as to deliver quality professional goods and services
 - This would arguably further contribute to enhancing the American public's view of lawyers

¹See, e.g., Marjan Laal and Seyed Mohammad Ghodsi, "Benefits of collaborative learning," *Procedia - Social and Behavioral Sciences* 31 (2012), pp. 486–90, available at https://ac.els-cdn.com/S1877042811030205/1-s2.0-S1877042811030205-main.pdf?_tid=b9f02bf1-cf79-4001-a4bb-fa46ee91aae9&acdnat=1540793727_998fb2d01727ae932b9b48e4aaf16872

Proposed ABA Accredited Law School Grading System: Potential Benefits, cont.

- **Enhanced trust in our nation's system of laws and government**
 - Because law schools often play formative roles in shaping their students' and graduates' conceptions of how the legal system works, grading-system fairness at ABA accredited law schools can arguably substantially influence these schools' students' and graduates' perceptions of the U.S. legal system's basic fairness
 - More reasonably just law-school grading systems such as those proposed above would therefore arguably promote greater trust in the justice and fairness of our nation's legal system among law-school students and graduates
 - Law-school students' and graduates' trust in the legal system's fairness can substantially influence the extent and nature of their collaboration in the legal services market¹
 - By improving law-school graduates' delivery of products and services, the increased collaboration and trust in the legal system's fairness among ABA accredited law-school students and graduates that would arguably result from the proposed grading system reforms described above could also contribute to improving broader public trust in the U.S. system of laws and government, which has been declining in recent years²

¹See, e.g., [https://en.wikipedia.org/wiki/Trust_\(emotion\)#cite_note-39](https://en.wikipedia.org/wiki/Trust_(emotion)#cite_note-39)

²More information about this trend is available at:

- Pew Research Center, "Public Trust in Government, 1958-2017," available at <http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017/> ;
- Ron Fauchaux, "By the Numbers: Americans Lack Confidence in the Legal System," *The Atlantic*, July 6, 2012, available at <https://www.theatlantic.com/national/archive/2012/07/by-the-numbers-americans-lack-confidence-in-the-legal-system/259458/> ; and,
- American Bar Association, "Building Public Trust in the American Justice System," including task force report, available at https://www.americanbar.org/groups/leadership/office_of_the_president/publictrust/.

Proposed ABA Accredited Law School Grading System: Prospective Implementation Timeline

Benchmark	Proposed timeline
Pilot program at select volunteer ABA accredited law school(s)	2019-2020
Review pilot program: ABA and volunteer school(s)' faculty input	Spring 2020
Expand pilot program	2020-2021
Full new grading system implementation	2021-2022

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***A Blueprint for a Fairer ABA Standard
for Judging Law Graduates' Competence:
How A Standard Based On Students' Scores in
Relation to the National Mean MBE Score
Properly Balances Consumer Safety
with Increased Diversity in the Bar***
William Wesley Patton*

ABSTRACT

Current and recently proposed American Bar Association (“ABA.”) standards regarding students’ bar passage rates have a significant disparate impact on states that have adopted difficult bar examination passage standards (the Multistate Bar Exam (“MBE” cut scores). Many scholars have demonstrated that the ABA. bar passage standards have a negative impact on diversity in the bar by discouraging law schools from enrolling large numbers of minority students, who have, traditionally, performed below state mean in passage rates on the exam. This study presents a new and supplemental standard for the ABA. to use in monitoring student outcome measures and law schools’ quality of instruction: a comparison of law schools’ mean MBE scores in relation to the national mean MBE score. This new metric levels the playing field among all law schools irrespective of state MBE cut scores, provides an incentive to increase diversity in the bar, and provides significant consumer protection.

INTRODUCTION

The American Bar Association (“ABA.”) Council of the Section of Legal Education and Admission to the Bar’s 2016–2017 proposed modification of ABA. Standard 316, or bar passage standard, was recently rejected by the ABA. House of Delegates after many opponents demonstrated the modification’s probable impact on diversity.¹ Many law schools with highly diverse student populations would have had great difficulty meeting the proposed 75% bar passage’s two-year

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¹ See Karen Sloan & Celia Ampel, *ABA Rejects Tougher Bar Passage Rule for Law Schools*, NAT’L L. J., Feb. 6, 2017, LEXIS (describing the effects of testimony given at the ABA’s midyear meeting by law school deans and diversity advocates opposing the proposed measure to modify ABA. Standard 316).

standard.² Several opponents have further demonstrated that the proposed bar passage standard would have a severe and disproportionate impact on law schools in states like California that have significantly higher bar passage standards that include Multistate Bar Examination (“MBE”), which cut scores higher than the national mean cut score.³

It is critical that the ABA. promulgate a way to measure student outcome that does not needlessly decrease diversity in the bar. For instance, according to the United States Census, the percentage of Hispanics in California increased from 32.4% in 2000 to 37.6% in 2010⁴ and comprised 38.9% of the California population in 2016.⁵ According to the California State Bar Association, Hispanics comprised 3% of California’s attorneys in 1991, 3.7% in 2001, and 3.8% in 2006.⁶ In 2011, the

² See *id.* (referring to the statistic that “minorities on average score lower on the Law School Admissions Test, which is often viewed as a predictor of future bar exam performance”); see, e.g., *Notice and Comment Archive*, ABA., https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/notice_comment_archive.html (last visited Oct. 15, 2017) [hereinafter *Notice and Comment Archive*] (providing access to many empirical analyses in opposition to proposed Standard 316) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

³ See Sloan, *supra* note 1 (noting that the overall bar pass rate in California has “plummeted” over the last three years, which puts law schools in California at risk of losing their ABA. accreditations).

⁴ SHARON R. ENNIS ET AL., U.S. DEPT OF COMMERCE, ECON. AND STATISTICS ADMIN., U.S. CENSUS BUREAU, *THE HISPANIC POPULATION: 2010* at 6 (2011) (citing U.S. CENSUS BUREAU, *CENSUS 2000 SUMMARY FILE 1* (2001); U.S. CENSUS BUREAU, *2010 CENSUS SUMMARY FILE 1* (2011)).

⁵ Race and Hispanic Origin Statistics for California, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/CA/RHI725216#viewtop> (last visited Oct. 15, 2017) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁶ See HERTZ RESEARCH, *FINAL REPORT OF RESULTS, MEMBER SERVICES SURVEY 12* (2006) (providing the demographic makeup of the California State Bar); see also RICHARD HERTZ CONSULTING, *FINAL REPORT, CALIFORNIA BAR JOURNAL SURVEY 4* (2001) (indicating that the growth in California State Bar membership among Hispanics from 1991 to 2001 was smaller than the growth rate among Asians).

most recent survey, Hispanics comprised only 4.2% of California attorneys.⁷ There are currently 189,187 attorneys licensed to practice law in California.⁸ But, based on the 2011 survey results, only 7,837, or 4.2%, are Hispanic attorneys despite the fact that there are approximately 14,013,719 Hispanics living in California.⁹ In 2003, Hispanics composed the largest group of individuals that were served by at least one form of low income access to justice programs in California, with 39% accessing these services.¹⁰

This Article presents several new empirical analyses demonstrating the fundamental unfairness of using the ABA's one-size-fits-all bar passage standard for accreditation and proposes the addition of a new and alternative standard that better balances the ABA's complimentary goals of consumer protection, quality legal education, and increased diversity in the bar:

At least 75% of a law school's graduates in a calendar year who sat for a bar examination must have either passed a bar examination

⁷ See HERTZ RESEARCH, SUMMARY RESULTS, SURVEY OF MEMBERS OF THE STATE BAR OF CALIFORNIA 8 (2011)[hereinafter Hertz Research] (indicating the percentage of California State Bar members amongst the 1,820 survey respondents that categorized their "ethnic or racial background" as "Latino/Hispanic"; *but see* HERTZ RESEARCH, SUMMARY RESULTS, SURVEY OF MEMBERS OF THE STATE BAR OF CALIFORNIA at 10 (explaining that "the margin of sampling error would be approximately plus or minus three percent, with a confidence level of 95 percent," and that "[t]he margin of sampling error for subgroups of respondents is higher than it is for the overall results").

⁸ See *Licensee Demographics*, THE STATE BAR OF CALIFORNIA, <https://members.calbar.ca.gov/search/demographics.aspx> (last visited Oct. 16, 2017) (providing the population of active attorneys that are licensed members of California bar) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁹ See ENNIS ET AL., *supra* note 4 (listing the Hispanic or Latino population for California as found in the 2010 census).

¹⁰ See CTR. FOR FAMILY, CHILDREN & THE COURTS, ADMIN. OFFICE OF THE COURTS, JUDICIAL COUNCIL OF CAL., EQUAL ACCESS FUND: A REPORT TO THE CALIFORNIA LEGISLATURE 54 (2005) (noting that Hispanics or Latinos are the largest group served by partnership projects, which are self-help centers staffed by attorneys "generally available to provide assistance to persons with limited or no reading and writing proficiency and to persons with limited or no English language proficiency").

administered within four years of their date of graduation,¹¹ *or the law school's mean MBE score must be within "X" standard deviations from the national mean MBE score for three out of the last five years.*¹²

The appropriate "X" standard deviation from the national MBE mean will be determined after the ABA compiles sufficient data on the annual MBE mean scores for each ABA law school in each state. Although some states, such as California, already compile MBE score data for all in-state law schools,¹³ as of February 2017, the National Conference of Bar Examiners (NCBE) will supply all ABA law schools with that MBE data.¹⁴ Setting the appropriate standard deviation is a policy issue based upon the ABA's decision regarding students' minimal acceptable mean MBE

¹¹ Although I do not agree with the ABA legal education council's 75% in two years rule and have written several empirical analyses that demonstrate how that standard will reduce diversity in bar in states with high MBE cut scores, I propose an alternative standard of 75% in four years rather than the current ABA Standard 316 of 75% in five years. *See Notice and Comment Archive, supra* note 2 (providing links to author's empirical research in opposition to the 75% in two year rule).

¹² *See 2015 Statistics*, THE BAR EXAMINER, 1, 39 (Mar. 2016), http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2016/BE-March2016-2015Statistics.pdf (using a shaded map of the United States to indicate which states use and do not use the MBE, showing that Louisiana is the only state that does not use the MBE) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); *see 2015 Statistics* at 25 (indicating the Louisiana bar passage right for first-time takers is 69%); *see also Managing Director's Guidance Memo*, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE B. 1 (Aug. 2016) (indicating that the score standard proposed conforms with ABA standard 316) (emphasis added).

¹³ *See Request for State Bar Records* from William Patton, Professor Emeritus, Whittier Law School; Assistant Vol Professor, UCLA David Geffen School of Medicine, Department of Psychiatry, to the Comm. of Bar Exam'r of the State Bar of Cal. (Jan. 6, 2017) (requesting information on California law schools' bar examination results from 2005-2015 contained in "Supplemental Statistics Report") (on file with the Washington & Lee Journal of Civil Rights & Social Justice); *see also Letter from the California State Bar to William Patton* (Jan. 17, 2016) (indicating agreement to provide the data for a cost of \$8.60) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹⁴ *See Letter from Erica Moeser*, President, National Conference of Bar Examiners, to Law School Deans (August 31, 2016) ("[W]e [NCBE] will be releasing information to the jurisdictions that will show the national percentile into which individual examinees fall in each of the seven MBE subjects . . . [and] the decision about whether to release this information to examinees belongs to the jurisdictions.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

scores as a proxy for attorney competency and the quality of law schools' program in legal education.¹⁵

Assume, for example, that in our hypothetical sample there are 10 law schools. School I has a mean 2017 MBE score of 160.0, School II 155.0, School III 152.5, school IV 148.5, school V 145.0, School VI 139.5, School VII 135.5, School VIII 134.0, School IX 133.0, and School X 132.0. The mean of all ten schools would be 143.5. A standard deviation from that 143.5 mean is 10.14. Therefore, under a "one standard deviation rule," any school with a mean 2017 MBE score below 133.36 would fail to meet the annual national mean MBE score. In this example, Schools IX and X scored below 133.36 and would be considered out of compliance for 2017. Since two out of the ten schools are out of compliance, there is a 20% failure rate under the proposed ABA standard. The ABA may determine that a much lower failure rate provides sufficient consumer protection.¹⁶ If so, the ABA could easily modify the standard deviation from that mean. For instance, if a standard

¹⁵ See generally, *Jurisdictions Administering the MBE*, NAT'L CONF. OF B. EXAMINERS, <http://www.ncbex.org/exams/mbe/> (last visited on Oct. 20, 2017).

¹⁶ In order to determine how many standard deviations from the mean the ABA. standard should employ we need to first obtain from the National Conference of Bar Examiners [NCBE] the annual MBE mean scores for each ABA. approved law school. With those numbers one can determine whether the curve is bell-shaped or non-bell shaped. If the curve is bell shaped, then under a "within 2 standard deviations from the national mean MBE score" it is expected that 95% of ABA. approved law schools will meet that standard annually, and if a "within 3 standard deviations from the national mean MBE score" is used then 99.7% of schools would meet the standard. However, there is a chance that individual ABA. schools' mean MBE scores will not fall on a bell-shaped curve. In that case, an alternative called the "Chebyshev's Rule or Theorem" would be used to determine the number of standard deviations from the norm to calculate the appropriate ABA. standard. Under the "Chebyshev's Rule it may require a modification of the standard deviation chosen. See generally B.G. AMIDAN ET AL., DATA OUTLIER PROTECTION USING THE CHEBYSHEV THEOREM (2005), https://www.researchgate.net/publication/224624985_Data_outlier_detection_using_the_Chebyshev_theorem (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

deviation of 1.1 were used (11.16), or a required mean score of 132.34, only School X would violate the standard and only 1 in 10 schools, or 10% would be out of compliance for 2017. Because under the proposed ABA standard a law school is only out of compliance if it fails to achieve the annual mean MBE score in three out of the last five years,¹⁷ none of the ten law schools in the sample would lose ABA accreditation based solely on its failure to meet the 2017 national mean MBE score.

Part I of this Paper discusses the benefits of including the national mean MBE score as a proxy for determining whether ABA accredited law schools are truly providing students with an education sufficient to enable them to pass the state bar examination. Part II presents an empirical analysis of four California ABA accredited law schools that admit a high percentage of minority law students and that have frequently scored in the bottom quarter of California ABA law schools on the California bar examination.¹⁸ The study demonstrates that those four law schools' students usually meet or exceed the national mean MBE score and meet, or exceed, state MBE bar examination cut scores needed to pass other states' bar examinations.¹⁹ Part III demonstrates the need to have a two-part student outcome model, as only using a standard deviation from the national mean will impact some

¹⁷ See *ABA Standards and Rules of Procedure for Approval of Law Schools 2016–2017*, 2016 ABA. SEC. L. EDUC. & ADMISSIONS TO B. 24 (2017), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf [hereinafter *ABA Standards and Rules of Procedure*] (stating that a law school's bar pass rate is sufficient when 75% students pass the bar in three out of five years) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹⁸ See *infra* Part II (demonstrating that California law schools admit a high percentage of minority law students and that those students generally score lower than other California law students on the bar).

¹⁹ *Id.*

law schools with very high minority/ethnic populations who score lower than the national mean MBE score,²⁰ but who nonetheless pass the bar examination. Part IV discusses new empirical evidence that demonstrates the current and the Council's rejected proposed bar passage standards disproportionately impact law schools that provide students with lower entering LSAT and GPA's a "value-added" education defined as performance that meets or exceeds the annual national mean MBE score. This new empirical study compares California ABA law schools with several New York law schools in terms of students' entering credentials and their bar passage rates. Part V presents several empirical studies that demonstrate the devastating impact on diversity in the legal profession if the ABA substantially increases its bar examination standards similarly to the Council's recent rejected proposal. Finally, Part VI presents a blueprint for obtaining the evidence needed to determine the appropriate standard deviation from the national mean MBE score that will protect the public by demonstrating law student competency, ensure that student consumers receive a quality legal education, and permit an increase in attorney diversity. In addition, prospective law student consumers will have sufficient information regarding each law schools' mean MBE score to determine whether attending a particular law school meets that student's goal of practicing in any particular state.²¹

²⁰ See *infra* Part III (showing that schools with high minority populations generally have a lower mean MBE score than other schools).

²¹ See *infra* Part VI (explaining how the purposed method will help law students choose their school). For instance:

I. *The Bar Examination Landscape Is Radically Changing, and a New Standard for Judging Law Students' Competency that Levels the Playing Field Among All ABA Law Schools Must Be Promulgated.*

Until recently, state bar examinations differed greatly in structure and in content.²² It was impossible for the ABA to promulgate a student competency outcome standard that compared all law schools using a single measure. The historical student competency proxy chosen by the ABA included law schools' bar passage rates, as that data was easily obtained and reported.²³ The problem, of course, was that bar examination passage rates were principally determined by the "cut scores" chosen by state supreme courts and state bar associations²⁴ rather than a comparative assessment of students to a national standardized examination like in Medical School accreditation.²⁵ The radical difference in states' bar examination

If state X has an MBE cut score of 138, but a school in that state the student is considering only has a mean MBE score of 135, the student may not choose to take the risk of passing that state's bar exam. However, under the identical hypothetical, if the student wants to practice in another state with an MBE cut score of 133, attending the school with a mean MBE of 135 would not provide a disincentive for the student to attend that law school.

Id.

²² See generally Roger M. Jarvis, *An Anecdotal History of the Bar Exam*, 9 GEO. J. LEGAL ETHICS 359 (1996) (providing a history of the bar examination in the United States); see also Michael K. McChrystal, *Legitimizing Realities: State-Based Bar Admission, National Standards, and Multistate Practice*, 3 GEO. J. LEGAL ETHICS 533 (1990) ("States differ in their application of criteria in that they sometimes apply the same criterion with differing rigor."); see also Dorothy E. Finnegan, *Raising and Leveling the Bar: Standards, Access, and the YMCA Evening Law Schools, 1890-1940*, 55 J. LEGAL EDUC. 208, 227 (2005) (explaining how prior to the ABA, gaining authority, some states permitted students "gain admittance to the bar by right of their graduation.").

²³ See *Publications and Research*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/publications/> (last visited Oct. 19, 2017) (providing various links to publications and statistics of past examinations) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

²⁴ See Gary S. Rosin, *Unpacking the Bar: Of Cut Scores and Competence*, 32 J. LEGAL PROF. 67, 68 (2008) ("[I]n the summer 2001 bar exams, minimum passing scores (cut scores) set by the states ranged from 119.2 in Puerto Rico to 150 in Nevada out of 200 . . .").

²⁵ See generally ASS'N AM. MED. C., <https://www.aamc.org/members/osr/committees/48814>

passage “cut scores” continues today, and according to the NCBE the current MBE cut scores range from 129 (Wisconsin) to 145 (Delaware), and the national mean cut score is 134.²⁶ State bar examination passing “cut scores” are sometimes promulgated without significant empirical analysis.²⁷ For instance, recently “responding in an Assembly Judiciary Committee hearing, [California] State Bar executive director Elizabeth Rindskopf Parker said there was “no good reason” for California's higher standard.”²⁸ As demonstrated throughout this Article, in Sections III, IV, and V, a one-size-fits all bar examination ABA passage rate unfairly places law schools in jurisdictions with very high cut scores at a serious disadvantage in relation to all other ABA law schools and provides an incentive for

/reports_lcm.html (last visited Oct. 19, 2017) (indicating the Liaison Committee of Medical Examiners is the sole body authorized by the U. S. Department of Education to accredit programs in the U. S. leading to the M.D. degree) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); *see generally* *Bulletin Information*, U.S. MED. LICENSING EXAMINATION, <http://www.usmle.org> (last visited Oct. 19, 2017) (describing that all medical students in the United States take the same objective Step 1 general board examination, and the United States Medical Licensing Examination score has a minimum passing score that is accepted by all state medical licensing organizations in the United States) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

²⁶ Erica Moeser & Claire J. Guback, *Comprehensive Guide to Bar Admission Requirements 2017*, ABA. SEC. L. EDUC. & ADMISSIONS TO B. COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 1, 30–31 (Erica Moeser & Claire J. Guback eds., 2017), <http://www.ncbex.org/pubs/bar-admissions-guide/2017/index.html#p=42> (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

²⁷ David Faigman, *Message from Dean Faigman: Bar Examination Pass Line*, UC HASTINGS COLLEGE OF THE LAW SAN FRANCISCO (Aug. 14, 2017), <http://www.uchastings.edu/news/articles/2017/08/bar-exam-pass-line.php> (“State bar examination passing ‘cut scores’ are sometimes promulgated without significant empirical analysis.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

²⁸ William Vogeler, *California Law School Deans Push Back at the Bar Exam*, FINDLAW (Feb. 23, 2017, 5:57 AM), http://blogs.findlaw.com/greedy_associates/2017/02/california-law-school-deans-push-back-at-the-bar-exam.html (on file with the Washington & Lee Journal of Civil Rights & Social Justice); *see also* Dennis Saccuzzo & Nancy Johnson, *Beyond the Cut Score: Piercing the Veil of the California Bar Exam’s Validity*, RECORDER (Feb. 28, 2017), <http://www.therecorder.com/printerfriendly/id=1202780183297> (providing context for Elizabeth Rindskopf Parker’s quote) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

those high cut score law schools to limit access to the bar for students, including many Black and Hispanic students, who have lower LSAT/GPA scores but who have a probability of passing a bar examination in almost every state. It is important to remember that the current ABA bar passage standard does not require a specific bar passage rate based on students' in-state bar examination passage rates, but permits schools to cumulate their students' bar passage rates from all state bar exams.²⁹

We are now in a transitional bar examination period.³⁰ Almost all states' bar examinations continue to become more similar.³¹ Today, twenty-five states have adopted the Uniform Bar Examination (UBE) and most of the other states have bar exams have an almost identical format, which includes: (1) the Multi-State Bar Exam (MBE), that includes 200 multiple-choice questions written by the NCBE; (2) an essay portion written by either the state bar or the NCBE; and (3) a performance section written either by the state bar or the NCBE.³² The MBE is the single

²⁹ See ABA Standards and Rules of Procedure, *supra* note 17 (articulating specific requirements in order to pass the bar). The standard states:

In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.

Id.

³⁰

³¹ See generally Erica Moeser, *President's Page*, 85 B. EXAMINER NO. 3, 4 (Sept. 2016) http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBarExaminer%2Farticles%2F2016%2FBPE-PresidentPage-850316.pdf (explaining the growth of states administering the same Uniform Bar Examination) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

³² See *id.* ("What seemed very unlikely, if not impossible, in 1995 has now flowered into reality, with 25 jurisdictions having adopted the UBE."); see also Dianne F. Bosse, *A Uniform Bar*

element of bar testing that is shared by all state bar examinations except Louisiana.³³ Unlike in the past, the United States now has objective tests to measure law students' competency, and virtually all law students attending all accredited law schools in the nation must take.³⁴ There is no longer the need to only use bar examination passage rates as the sole proxy for judging law students' competency and law schools' quality of instruction. Abandoning bar examination passage rates and only adopting a national mean MBE standard will detrimentally affect diversity in law schools, located in states with lower bar passage cut scores, such as Atlanta John Marshall whose students usually perform below the national mean MBE score,³⁵ but who pass the Georgia bar examination at very high rates and become productive members of the bar.³⁶ In order to level the playing field among law schools in different states, my proposal is to use the national mean MBE score, creating an ABA Standard that can be met either by demonstrating a particular bar passage rate or a successful mean MBE scoring pattern.

Examination: The Journey From Idea To Tipping Point, 85 B. EXAMINER NO. 3, at 19, 23 (Sept. 2016) http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBarExaminer%2Farticles%2F2016%2FBEBosse-850316.pdf (stating that 25 jurisdictions have adopted the UBE) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

³³ See *Louisiana Jurisdiction Information*, NAT'L CONF. B. EXAMINERS, <http://www.ncbex.org/jurisdiction-information/jurisdiction/la> (last visited Oct. 19, 2017) (showing Louisiana does not require the MBE) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

³⁴ See generally Moeser, *supra* note 31; see generally Bosse, *supra* note 32.

³⁵ See *Georgia Bar Admission Statistics*, GA. OFF. OF BAR ADMISSIONS, <https://www.gabaradmissions.org/georgia-bar-examination-statistics> (last visited Oct. 20, 2017) (detailing the MBE average scores and first time bar passage rates for Georgia law school students taking the Georgia Bar over the past ten years) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

³⁶ See *Alumni Awards and Honors*, ATLANTA'S JOHN MARSHALL L. SCH., <http://www.johnmarshall.edu/alumni-and-friends/alumni-awards-and-honors/> (last visited on Oct. 20, 2017) (listing various prestigious alumni who graduated from Atlanta's John Marshall Law School) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

Some may object to placing so much emphasis on MBE scores in formulating an ABA student bar examination outcome measure. They allege that the MBE is as biased against women and minorities as are similar multiple-choice examinations such as the MCAT and LSAT.³⁷ The NCBE has admitted that women and minorities perform worse on the MBE than white males.³⁸ Susan M. Case, one of the NCBE's psychometricians, found that "men outperform women on the MBE by about 5 points, which is about 1/3 of a standard deviation"³⁹ The NCBE's study of the 2005 and 2006 New York bar examination demonstrated a significant gender

³⁷ See Dwight Davis et. al., *Do Racial and Ethnic Group Differences in Performance on the MCAT Reflect Test Bias?*, 88 ACAD. MED. 593 (2013) (discussing bias and/or predictability of the MCAT); see generally Mohammadreza Hojat et. al., *Close But No Bananas: Predicting Performance*, 75 ACAD. MED. S28 (2000); see generally Clara A. Callahan et. al., *The Predictive Validity of Three Versions of the MCAT in Relation to Performance in Medical School, Residency, and Licensing Examinations: A Longitudinal Study of 36 Classes of Jefferson Medical College*, 85 ACAD. MED. 980 (2010); see generally Tyrone Donnon, *The Predictive Validity of the MCAT for Medical School Performance and Medical Board Licensing Examinations: A Meta-Analysis of the Published Research*, 82 ACAD. MED. 100 (2007); see Vernellia R. Randal, *The Misuse of the LSAT: Discrimination Against Blacks and Other Minorities in Law School Admissions*, 80 ST. JOHN'S L. REV. 107 (2006) (debating the bias and predictability of the LSAT); see also Alex M. Johnson, Jr., *Knots in the Pipeline For Prospective Lawyers of Color: The LSAT is Not the Problem and Affirmative Action Is Not the Answer*, 24 STAN. L. & POL'Y REV. 379 (2013) (looking at how the race of students sitting for the LSAT as well as other factors has created a need to increase the number of diverse and underrepresented individuals in law school) ; see also Scott Johns, *Testing the Testers: The National Conference of Bar Examiner's LSAT Claim and a Roller Coaster Bar Exam Ride*, 35 Miss. C. L. Rev. 436 (2017) (explaining how student's LSAT score corresponds with their bar exam score); see also Katherine L. Vaughns, *Towards Parity in Bar Passage Rates and Law School Performance: Exploring the Sources of Disparities Between Racial and Ethnic Groups*, 16 T. MARSHALL L. REV. 425, 431 (1991) (studying the low passage bar examination passage rates of minorities and whether intervention programs are effective); see also Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U. J. GENDER & L. 121 (1993) (discussing how "only through the exposure and disclosure of standardized tests that true eradication of bias can occur.").

³⁸ Susan M. Case, *Men and Women: Differences in Performance on the MBE*, 75 B. EXAMINER, no. 2 44 (May 2006) http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2006%2F750206-Testing.pdf ("[I]n this case, that men outperform women by about 1/3 of an SD.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

³⁹ *Id.*

difference on the MBE score results.⁴⁰ The MBE mean for men was 635.72 and 614.60 for women.⁴¹ The NCBE has also stated that Hispanic and Black test takers perform lower on the MBE, but the NCBE has determined that lower scores are predicted by objective non-biased factors such as minority students' lower LSAT and LGPA performance, indicating that "[m]inority performance on the MBE is not materially better or worse than it is on other portions of the bar examination."⁴² The NCBE found that in a study of repeat takers on the New York bar examination that Black test takers' MBE scores only increased an average of 4.8 points compared to the all takers repeater increase of 15 points.⁴³ Stephen P. Klein, a psychometrician who has worked with the NCBE and state bar associations for decades, concurs with the NCBE conclusion that the MBE is not racially biased, but

⁴⁰ MICHAEL KANE ET AL., NEW YORK BAR EXAMINATION PERFORMANCE IN FEBRUARY AND JULY 2006 FOR CANDIDATES FAILING FOR THE FIRST TIME IN JULY 2005 (2007) (examining and comparing the bar passage rates based on several factors, such as gender).

⁴¹ *Id.* at 44.

⁴² *Id.* at 5; see also Erica Moeser, *President's Page*, 85 B. EXAMINER, no. 2, at 4, 7 (June 2016) http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBarExaminer%2Farticles%2F2016%2F850216-BE-June2016-PresidentsPage.pdf (indicating that the NCBE has consistently stated that the MBE is "trustworthy" and that there is a "correlation between the performance on the Law School Admission Test (LSAT) and performance on the MBE" and a correlation between law school rank and the bar examination) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Mark A. Albanese, *The July 2014 MBE: Rogue Wave or Storm Surge?*, 84 B. EXAMINER, no. 2, at 35, 43 (June 2015) http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2015%2F840215-TestingColumn.pdf (discussing generally the relationship between LSAT and MBE scores) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Douglas R. Ripkey & Susan M. Case, *A National Look at MBE Performance Differences Among Ethnic Groups*, 76 B. EXAMINER, no. 3, at 21, 24–25 (Aug. 2007) http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2007%2F760307-ripkeyandcase.pdf (explaining how "[t]he performance patterns by ethnic group on the LSAT differed somewhat from those on the MBE.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁴³ Kane, *supra*, note 38, at 44.

rather reflects differences in students' LSAT and LGPA statistics.⁴⁴ Critics have argued that other data demonstrates that the NCBE and Klein conclusions regarding the correlation between LSAT, LGPA, and the MBE is erroneous and have demonstrated that increases in MBE scores and bar passage rates have occurred even when students' LSAT scores decreased.⁴⁵

⁴⁴ See Stephen P. Klein and Roger Bolus, *Are Bar Exam Scores Affected By Law School Admission Practices?*, GANSK & ASSOCIATES (Oct. 17, 1988) (stating the MBE does not promote racial bias); see also Stephen P. Klein, *An Evaluation of the Multistate Bar Examination: A Report Prepared for the National Conference of Bar Examiners*, GANSK & ASSOCIATES (Aug. 30, 1982) (concluding that no one part of the MBE is particularly easy or difficult for any particular racial group); see also Stephen P. Klein, *Factors Associated With the Differences in Passing Rate Between Anglo and Hispanic Applicants on the New Mexico Bar Examination*, PROJECT SEAPHE (Jan. 12, 1981), http://www.seaphe.org/pdf/past-barresearch/Factors_Associated_with_the_Difference_in_Passing_Rate.pdf (stating that “at most, only a very small amount of the difference in passing rates between Anglo and Hispanic applicants . . . is likely attributable to any” racial bias) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Stephen P. Klein & Roger Bolus, *Analysis of July 2004 Texas Bar Exam Results By Gender and Racial/Ethnic Group* (2004) <https://lesliebrodie.wordpress.com/2011/10/23/state-bar-of-texas-result-analyses-by-gender-and-race-white-85-asian-75-hispanic-60-black-40/> (stating that no section of the Texas bar exam is particularly easy or difficult for any racial group) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁴⁵ See Nicholas Georgakopoulos, *Bar Passage: GPA and LSAT, Not Bar Reviews*, 9–10 Robert H. McKinney School of Law Legal Studies Research Paper No. 2013-30, 2013 (finding that the LSAT is a weak indicator of bar passage and that LGPA is the best indicator, the “LSAT is overweighted compared to other, less univariate academic metrics such as a broad view of not only UGPA but college quality and college major”); see Alexia Brunet Marks & Scott A. Moss, *What Predicts Law Student Success: A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes*, 13 J. OF EMPIRICAL LEG. STUDIES 205, 256 (2016) (discussing how having a high LSAT score and a low undergraduate GPA might not be a significant predictor to high law school grades); see generally William C. Kidder, *The Bar Examination and the Dream Deferred: A Critical Analysis of the MBE, Social Closure, and Racial and Ethnic Stratification*, 29 L. & SOCIAL INQUIRY 547 (2004) (concluding that “the psychometric research sponsored by the National Conference of Bar Examiners consistently minimizes and obscures the disparate impact and unfairness of the bar exam for people of color”); see also Kathryn Rubino, *Surprise! Despite All Expectations To The Contrary, Bar Exam Scores Went Up This Year!*, ABOVE THE LAW (2016), <http://abovethelaw.com/2016/09/surprise-despite-all-expectations> (explaining that even though students' LSAT scores remained on a downward trend, the national mean MBE score increased from 139.9 in July 2015 to 140.3 in July 2016) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Paul Caron, *July 2016 Bar Exam Scores Rise, But Remain Near All-Time Low Amidst Declining LSAT Scores* (2016), taxprof.typepad.com/taxprof_blog/2016/09/merrittmbe-scores-rise-in-2016.html (stating that increased preparation by law schools is the most likely cause of rising MBE scores) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

Neither the NCBE nor Klein has discussed another inherent bias in the current bar examination. “Selection bias” is defined as when “persons receiving treatment . . . systemically differ in unmeasured but relevant ways from those who not receive that treatment . . . [and] [s]election bias exists only to the extent that variables that affect outcomes, or good proxies for them, are not included in a model.”⁴⁶ For instance, a particular testing mechanism, such as an oral examination, may assist to level the playing field for minority applicants, but that testing component may be rejected based on “feasibility” or “the degree to which the assessment method selected is affordable and efficient for the testing purpose”⁴⁷ In one study Klein found that Black student performance on the California bar examination was improved when an “oral task” section was added to the exam. On the “oral task” section “blacks earned about the same average score as Asians and Latinos”⁴⁸ Klein rejected the inclusion of an “oral task” section on the California bar due to costs, exam security, extended time for score reporting, and reliability.⁴⁹ Therefore, the California Bar Examination includes selection bias because it omits oral tasks as a testing method, that might close the scoring gap

⁴⁶ William C. Kidder & Richard O. Lempert, *The Mismatch Myth in American Higher Education: A Synthesis of Empirical Evidence at the Law School and Undergraduate Level* 6 (Univ. of Mich. Law Pub. Law & Legal Theory Research Paper Series, Working Paper No. 404, 2014).

⁴⁷ John J. Norcini & Danette W. McKinley, *Assessment Methods in Medical Education*, 23 TEACHING & TCHR EDUC. 239, 240 (2007).

⁴⁸ Stephen Klein & Roger Bolus, *Minority Group Performance On the California Bar Examination* at 8, PR-87-2 GANSK & ASSOCIATES (Dec. 3, 1987).

⁴⁹ See *id.* (outlining many ways in which oral tasks contribute to bias on the bar exam).

among different racial/ethnic groups, and which artificially depresses certain minorities comparative bar examination scores.⁵⁰

States' use of MBE scores may further lower minorities' bar examination scores through the bar scaling process.⁵¹ The NCBE states that since the MBE is consistently more reliable than the essay portion of the bar that the essay must be "scaled" to the MBE: "Scaling the written scores to the MBE takes advantage of the equating done to MBE scores so that MBE scores have a constant interpretation across test administrations."⁵² The problem is that even though scaling does not have an impact on the percentage of examinees who fail, the particular examinees that fail will be different from those who would fail strictly from the MBE alone.⁵³ Therefore, scaling together with a state's determination of the weight of the MBE on the grading process may impact which students fail the bar examination.⁵⁴

Other evidence demonstrates that students' increases in scaled mean essay scores increase more than their scaled mean MBE scores on repeat bar examinations.⁵⁵ In a study of Texas bar examination repeat test takers, Klein found

⁵⁰ See *id.* (stating that oral tasks are not permitted as a testing method on the California bar examination).

⁵¹ See Mark A. Albanese, *The Testing Column: Scaling: It's Not Just For Fish or Mountains*, 83 THE B. EXAMINER, Dec. 2014 (explaining how and why written portions of the MBE should be scaled).

⁵² *Id.* at 50.

⁵³ See *id.* at 55 ("The purpose of scaling raw multiple choice scores is to adjust these scores for possible variations in average questions difficulty from one exam to the next because most of the questions asked on one exam are not the same as those asked on a prior exam.").

⁵⁴ See *id.* ("While combining the scaled essay scores with the MBE scores will not have an impact on the percentage of examinees who fail, the particular examinees who fail will be different from those who would fail strictly from the MBE alone.").

⁵⁵ See Stephen P. Klein & Roger Bolus, *Initial and Eventual Passing Rates of July 2004 First Timers* at 3, GANSK & ASSOCIATES (June 9, 2006) (stating that the "mean total scores increased with each attempt [of the bar exam], but the magnitude of the increase varied between attempts; with the largest differences occurring between the last two tries").

a scaled mean essay score increase of 8.9 in students’ second bar exam but only a scaled mean increase of 6.2 on the MBE.⁵⁶ There is currently no discernable empirical evidence that studies the differential mean MBE and essay exam scores among law schools in individual states, and no evidence of whether the comparison of mean MBE and mean Essay scores are different for schools that admit a large percentage of minority students. The following study analyzes the relative MBE mean and Essay mean scores for five California ABA law schools that historically have admitted a high percentage of racial/ethnic students.

TABLE 1
A COMPARISON OF MEAN MBE AND MEAN ESSAY SCORES⁵⁷

<u>School</u>	<u>Exam Date</u>	<u>First Time Means</u>	
		<u>MBE</u>	<u>Essay</u>
Golden Gate	Feb. 2014	1396	1465
Whittier	Feb. 2014	1443	1475
Southwestern	Feb. 2014	1446	1479
Thomas Jefferson	Feb. 2014	1417	1463
La Verne	Feb. 2014	1543	1553
Western State	Feb. 2014	1512	1510
Golden Gate	July 2014	1414	1437
Whittier	July 2014	1405	1433
Southwestern	July 2014	1412	1456
Thomas Jefferson	July 2014	1416	1437
La Verne	July 2014	1506	1483
Western State	July 2014	1433	1417

⁵⁶ See *id.* (demonstrating that an increased mean essay score can increase more than a scaled MBE score).

⁵⁷ See Request for State Bar Records from William Patton, *supra* note 13 [hereinafter Table 1] (requesting information on California law schools’ bar examination results from 2005–2015 contained in “Supplemental Statistics Report”).

Golden Gate	Feb. 2015	1392	1409
Whittier	Feb. 2015	1409	1361
Southwestern	Feb. 2015	1405	1443
Thomas Jefferson	Feb. 2015	1386	1445
La Verne	Feb. 2015	1496	1469
Western State	Feb. 2015	1404	1411
<hr/>			
Golden Gate	July 2015	1394	1443
Whittier	July 2015	1390	1418
Southwestern	July 2015	1408	1445
Thomas Jefferson	July 2015	1404	1427
La Verne	July 2015	1473	1446
Western State	July 2015	1453	1480
<hr/>			

Table 1 demonstrates that the six California ABA law schools with the highest percentages of Hispanic and Black law students typically score a much higher mean on the Essay section of the California Bar Examination than on the MBE section. Although Table 1 includes only four administrations of the California Bar Examination, these six law schools scored higher means on the Essay than on the MBE on eighteen out of twenty-four, or 75%, of the administrations of the California bar examination. In addition, the examination results for La Verne are surprising, and inconsistent, with Klein's and the NCBE's research, finding that MBE scores are predicted by students' LSAT scores.⁵⁸ La

⁵⁸ See Stephen P. Klein, *An Analysis of Possible Variations in Pass/Fail Standards on the California Bar Examination* at 4, GANSK & ASSOCIATES (Jan. 15, 1981) (stating that there is "a strong correlation between [students'] MBE and essay scores . . ." and "the differences among racial/ethnic groups are just as large on the MBE . . . as they are on the essay and Performance sections . . .") [hereinafter *An Analysis of Possible Variations in Pass/Fail Standards*]; see also Stephen P. Klein, *An Evaluation of the Multistate Bar Examination*, GANSK & ASSOCIATES (Aug. 30, 1982) at 3 ("MBE scores correlate well with scores on state developed essay and multiple choice bar examination . . ."); see also Klein, *supra* note at 46 (stating that "the differences among racial/ethnic groups are just as large on the MBE . . . as they are on the essay and Performance sections . . ."); see generally William C. Kidder, *The Bar Examination and the Dream Deferred: A Critical Analysis of the MBE, Social Closure and Racial and Ethnic Stratification*, 29 LAW & SOC. INQUIRY 547 (2004)

Verne outscored the other five California ABA law schools on the MBE for every administration of the test.⁵⁹ As demonstrated in Table 2, the entering median LSAT scores for La Verne students were lower than those of Southwestern, Golden Gate, Whittier, and Western State, and only one point higher than those of Thomas Jefferson.⁶⁰ The La Verne MBE data adds to the growing research demonstrating that there may not be a direct or predictive relationship between the LSAT and MBE and bar passage.⁶¹ The La Verne MBE mean anomaly warrants further investigation to determine whether it has identified pedagogical methodologies that increase at risk students' bar examination performance.

Even in light of the MBE's potential differential impact on women and minorities there are three central reasons for selecting the national mean MBE score as an ABA standard for assessing law students' competency and the quality of law school pedagogy.⁶² First, all jurisdictions, except Louisiana, already use the MBE, and it is unlikely that the MBE will be abandoned as a part of bar testing.⁶³

(rebutting both Klein's and the NCBE's explanations of racial/ethnic disparities on bar examinations).

⁵⁹ See Table 1, *supra* note 55 (showing MBE scores from 2014–2015).

⁶⁰ See ABA Required Disclosures, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE B., <http://www.abarequireddisclosures.org> (last visited Oct. 19, 2017) (allowing one to search the database and find that the LSAT medians in 2013 were: Southwestern 152, Golden Gate 150, Whittier 149, Western State 150, Thomas Jefferson 146, and La Verne 147) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁶¹ See generally William C. Kidder, *The Bar Examination and the Dream Deferred: A Critical Analysis of the MBE, Social Closure and Racial and Ethnic Stratification*, 29 LAW & SOC. INQUIRY 547 (2004); see generally Deborah J. Merritt, Lowell L. Hargens, & Barbara F. Reskin, *Raising the Bar: A Social Science Critique of Recent Increases to Passing Scores on the Bar Exam*, 69 UNIV. CIN. L. REV. 929 (2001).

⁶²

⁶³ See *To The Legal Community and Interested Members of the Public: Request for Comment*, SUP. CT. AD HOC COMMITTEE ON THE UNIFORM B. EXAMINATION 1 (Oct. 28, 2015), <http://www.nj>

Further, the MBE is the only standard currently being used by almost every state for determining minimal attorney competence, the ultimate goal of attorney licensing testing.⁶⁴

Second, if the MBE is biased against women and minorities, the proposed ABA standard can correct for that bias by selecting the appropriate standard deviation from the national MBE mean score as an appropriate accreditation standard.⁶⁵ If it is recognized that inherent in the MBE is both selection bias and performance differential, one can peg the standard deviation from the national MBE mean sufficiently to effectively mediate for effects that could lead some law schools to lower admission rates for diverse student populations.⁶⁶

Third, although the MBE may detrimentally affect certain demographics of students on the bar examination, a national mean within “X” standard deviation accreditation standard will provide law schools in high MBE cut score states an incentive to increase diversity in the admission process.⁶⁷ As demonstrated, California ABA law schools that enroll a high percentage of minority students usually score near or above the national mean MBE score.⁶⁸ Thus, adding the

courts.gov/courts/assets/supreme/reports/2015/ube2015.pdf (“The MBE is a multiple choice test consisting of 200 questions covering a broad range of topics and is currently administered in all states except Louisiana.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁶⁴ See *id.* (“At this time, 17 jurisdictions have elected to adopt the UBE.”).

⁶⁵ See Espinoza, *supra* note 35 at 122–23 (stating that evidence of “biased, disturbing questions” published in the LSAT information book has been documented).

⁶⁶ See An Analysis of Possible Variations in Pass/Fail Standards, *supra* note 56 (discussing the possible reasons for disparities among different groups’ MBE scores).

⁶⁷ See *id.* (noting that the MBE may be biased against certain demographics).

⁶⁸ See generally Hertz Research, *supra* note 7 (discussing the racial and ethnic diversity members of the California bar).

national median MBE score as an accreditation standard may enhance diversity in the profession in many states without sacrificing consumer protection.

Opponents of this purposed national mean MBE standard will probably argue that it does not provide sufficient consumer protection for prospective law students because it does not require a specific minimum bar passage standard for graduates who take the bar examination in the law school's resident state.⁶⁹

Although the argument that a student should be able to pass the bar in the state where he/she attended law school has intuitive appeal, there are a number of reasons why such an ABA standard would lead to negative consequences.

First, the current ABA bar passage standard does not require a specific passage rate within the state where the law school is located, but rather permits law schools to meet the minimum bar passage rate by cumulating bar passage among all jurisdictions in which students take the bar examination.⁷⁰ Even the most serious law school critics, such as the group Law School Transparency, do not demand a specific in-state bar passage percentage. Instead, these credits require an education that will provide students the ability to pass a bar examination: "Provide a quality education that enables bar passage and the successful practice of law."⁷¹

⁶⁹ See ABA Standards and Rules of Procedure, *supra* note 17 at 3 (urging the ABA. to adopt more stringent requirements for law school accreditation).

⁷⁰ See *id.*, *supra* note 17 at 24 ("In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduate search year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.").

⁷¹ *Theory of Action*, LAW SCHOOL TRANSPARENCY, http://www.lawschooltransparency.com/who_we_are/theory_of_action/#accountability (last visited Oct. 19, 2017) (on file with the Washington & Lee Journal of Civil rights & Social Justice).

As Erica Moeser, President of the NCBE, noted, as more jurisdictions adopt the Uniform Bar Examination [UBE], “

[T]he opportunities for graduates to take the UBE and apply for admission in a jurisdiction that has a more benign pass/fail line—as jurisdictions are free to choose—will mean that many unsuccessful examinees may be able to find a practice home without retaking the bar examination.⁷²

In addition, this proposal requires each law school to submit its annual mean MBE scores to the ABA for publication in the ABA’s Standard 509 reports that currently provide prospective students information about admission statistics, bar passage rates, employment, and attrition.⁷³ Student consumers will thus have information to decide whether to attend a school where the student may not pass the in-state bar on the first attempt, but which will provide the student a quality education that enables bar passage in one the student’s other target states within which to practice law.⁷⁴ This Paper rejects opponents’ paternalistic argument that we simply cannot trust prospective law students to make good pedagogical decision even when armed

⁷² See Moeser, *supra* note 31 at 4, 6.

⁷³ See *2017–18 Standards and Rules of Procedure for Approval of Law Schools*, ABA. 35–36, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_standards_chapter5.authcheckdam.pdf (last visited Oct. 20, 2017) [hereinafter *2017–18 Standards and Rules of Procedure*] (demanding that all ABA. accredited law schools report certain admissions information in a 509 report and dictating what must specifically be included in that report) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁷⁴ See David Yellen, *Advancing Transparency in Law School Employment Data: The ABA’s New Standard 509*, THE B. EXAMINER 1, 6 (Dec. 2012) http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2012/810412beAbridged.pdf (“Recently, the American Bar Association’s Section of Legal Education and Admissions to the Bar . . . took a major step to ensure that prospective law students will have access to a great deal of detailed information about the employment outcomes of each law school’s graduates.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

with sufficient information about a law school's admission requirements, attrition rates, bar passage percentages, mean MBE scores, and employment data.

Second, the ABA like other national professional accreditors should apply a uniform standard to all diploma granting institutions, stating that “law should join every other profession in bringing uniformity to its testing for entry-level licensure while leaving the matter of actual licensing decisions to the states.”⁷⁵ The following example illustrates the absurdity of an ABA standard that is set to individual state licensing decisions.⁷⁶ In 2003, the Florida Supreme Court debated increasing its MBE pass/fail cut score.⁷⁷ After considering empirical evidence, the Florida Supreme Court increased Florida's 131 MBE cut score to 133 in July 2003 and to 136 in July 2004.⁷⁸ The empirical studies demonstrated that by raising the cut score from 131 to 136 that minority passage rates would decline by up to 14% compared to a decline of 11% by white examinees.⁷⁹

The Florida MBE example demonstrates both the dislocating effects of rapid state judicial changes in bar passage standards as well as the unfairness of using those state legislative measures as the litmus test for meeting ABA national

⁷⁵ See Moeser, *supra* note 31, at 4.

⁷⁶ See Ellen Y. Suni, *Admission and Discipline*, PROF. RESP. COURSE PAGE 2–9, http://www1.law.umkc.edu/suni/Professional_Responsibility/Materials/Older_Materials/CHAPTER%20III%202005%20revised%2011.pdf (last visited Oct. 19, 2017) (discussing the Supreme Court of Florida's decision on making amendments to the rules regarding admissions to the Florida bar.) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁷⁷ See *id.* at 7 (“Based upon the foregoing, we conclude that the Board's justifications for the proposed amendments are sound and adopt them as reflected in the appendix to this opinion.”).

⁷⁸ See *id.* (“The pass/fail line is increased to 133 effective July 1, 2003, and raised further to 136 on July 1, 2004.”).

⁷⁹ See *id.* at 8 (“The pass rate for blacks would have declined by 6 percent at a passing score of 133 and 14 percent at a passing score of 136, compared to a 4 percent decline at a score of 133 and a 11 percent decline at a score of 136 for white test-takers.”).

accreditation standards.⁸⁰ As the ABA uses a one-size-fits all 75% bar passage standard, schools like those in Florida could fall below that ABA threshold even though they made no changes in their admission criteria and no changes in their pedagogical programs.⁸¹ Law schools could be threatened with ABA dis-accreditation based upon a factor, state bar passage adjustments, totally outside the control of the law schools and unrelated to the quality of the legal education program offered.⁸² This proposal, which uses schools' mean MBE scores in relation to the national MBE median, solves this problem by using a uniform national standard that is not affected by state bar passage changes.

II. *A Longitudinal Study of California Law Schools' Mean MBE Scores in Relation to Their California State Bar Examination Passage Scores.*

This is the first study to investigate the historical relationship between a state's law schools' mean MBE scores as it relates to those students' bar passage rates on the state's bar examination. This analysis includes six California law schools that have traditionally scored in the bottom one-third on the California bar examination.⁸³ In addition, these six law schools (Golden Gate, Southwestern, Thomas Jefferson, the University of San Francisco, the University of La Verne, and Whittier) have consistently enrolled a very large percentage of minority law

⁸⁰ See generally *id.*

⁸¹ See Managing Director's Guidance Memo, *supra* note 12 at 1 (requiring that all accredited law schools attain a 75% bar passage rate every year for at least three of the last five calendar years).

⁸² See generally *id.*

⁸³ See Table 1, *supra* note 55.

students who often have lower LSAT and GPA scores.⁸⁴ It is hypothesized that these schools will consistently have both low California bar passage rates and low mean MBE scores as compared to the national mean MBE scores for each bar examination administration. If the data demonstrates that the hypothesis is untrue, then two conclusions can be drawn from that data: (1) those law schools are providing their students with a “value-added”⁸⁵ legal education, demonstrated by their MBE performance that exceeds statistical prediction; and, (2) the quality of those law school students’ performance on the MBE demonstrates their competence in regards to legal concepts at a sufficient level to pass the bar examination in a majority of states that have a bar examination MBE “cut score” well below California’s 144.⁸⁶

A. Golden Gate Law School Mean MBA Scores and California Bar Exam Passage Rates.

TABLE 2⁸⁷

GOLDEN GATE

⁸⁴ See generally Letter from the Cal. State Bar Ass’n to Professor William W. Patton (Jan. 17, 2016) (detailing non-public bar passage information of California law schools) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁸⁵ See *Assessment of Higher Education Learning Outcomes Feasibility Study Report*, ORG. FOR ECON. CO-OPERATION & DEV. 7 (2013), <http://www.oecd.org/edu/skills-beyond-school/AHELO%20FS%20Report%20Volume%201%20Executive%20Summary.pdf> (defining “value-added” as “the contribution of institutions to students’ outcomes after controlling for their incoming abilities”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also *Advantages of a Multivariate Longitudinal Approach to Educational Value-Added Assessment Without Imputation*, SAS INST. (July 2004), https://www.sas.com/content/dam/SAS/en_us/doc/whitepaper1/multivariate-longitudinal-approach-evas-1071571.pdf (discussing more extensively “value-added” educational methodology) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

⁸⁶ See Moeser & Guback, *supra* note 26 (showing that California’s cut off score for bar passage is 144).

⁸⁷ Letter from the Cal. State Bar Ass’n to Professor William W. Patton, *supra* note 72.

National Mean MBE	GG MBE 1 st Time	GG MBE All Taker	1 st /All Bar %	National Mean MBE	GG MBE 1 st Time	GGMBE All Taker	1 st /All Bar %
<u>FEB. 2007</u>				<u>JULY 2007</u>			
137.6	142.2	139.3	57%/54%	143.7	147.4	143.6	57%/54%
<u>FEB. 2008</u>				<u>JULY 2008</u>			
137.7	144.6	142.2	60%/46%	145.6	148.6	144.6	77%/60%
<u>FEB. 2009</u>				<u>JULY 2009</u>			
135.7	142.8	140.3	51%/40%	144.5	149.1	145.1	68%/53%
<u>FEB. 2010</u>				<u>JULY 2010</u>			
136.6	142.5	140.1	61%/41%	143.6	143.4	140.8	57%/48%
<u>FEB. 2011</u>				<u>JULY 2011</u>			
138.6	139.0	140.3	41%/40%	143.8	148.2	144.8	66%/55%
<u>FEB. 2012</u>				<u>JULY 2012</u>			
137.0	142.2	141.8	54%/51%	143.4	145.0	142.5	70%/57%
<u>FEB. 2013</u>				<u>JULY 2013</u>			
138.0	138.7	138.9	50%/39%	144.3	143.1	141.2	56%/48%
<u>FEB. 2014</u>				<u>JULY 2014</u>			
138.0	139.6	139.6	52%/50%	141.5	141.4	139.5	44%/37%
<u>FEB. 2015</u>				<u>JULY 2015</u>			
136.2	139.2	139.5	36%/42%	139.9	139.4	138.3	39%/32%

The Golden Gate mean MBE and bar passage rates from 2007–2015 demonstrate critical facts regarding the use of the bar percentage passage rate standard for law accreditation for law schools located in states with tremendously high MBE cut scores, like California (144).⁸⁸

First, Golden Gate, which enrolls a very high percentage of minority law students, either equaled or surpassed the National Mean MBE score on nine out of

⁸⁸ *Id.*

the nine in the February Administration of the California Bar Examination, which includes nine out of nine for first-time takers and nine out of nine for all-takers including repeaters, and five out of nine July test administrations for first-time takers.⁸⁹ Further, the four July first-time test-takers mean rates were barely below the national mean rates. The mean rates were merely .2 points below the July 2010 national mean, 1.2 below the July 2013 national mean, .1 points below the July 2014 national mean; and, .5 points below the July 2015 national MBE mean.⁹⁰

Second, if the Golden Gate 2007–2015 MBE mean scores were applied to each of the other state’s MBE “cut scores”, Golden Gate first-time bar examination test takers would have scored higher than the required state MBE cut scores in every state except:

Feb. 2007: Ca. and Del.	July 2007: met all states
Feb. 2008: met all states	July 2008: met all states
Feb. 2009: Ca. and Del.	July 2009: met all states
Feb. 2010: Ca. and Del.	July 2010: Ca. and Del.
Feb. 2011: Alaska, Ca., Del., Nev., N.C., Or., Va.	July 2011: met all states
Feb. 2012: Ca. and Del.	July 2012: met all states
Feb. 2013: Alaska, Ca., Del., Nev., N.C., Or., Va.	July 2013: Ca. and Del.
Feb. 2014: Alaska, Ca., Del., Nev., N.C., Or., Va.	July 2014: Ca. and Del.
Feb. 2015: Alaska, Ca., Del., Nev., N.C., Or., Va.	July 2015: Alaska, Ca., Del., Nev., N.C., Or., Va. ⁹¹

This evidence is astounding. It demonstrates that even in the years of the poorest bar examination performances by Golden State students, they would have met the

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

state MBE cut scores in 86% of states, forty-three out of fifty, and, in eighteen administrations of the California bar examination from 2007–2015, they would have met the state MBE cut scores in forty-eight out of fifty states in thirteen out of those eighteen tests. These test takers would only fail to meet state MBE cut scores in California and Delaware.⁹²

Third, this data demonstrates the absurdity of using an ABA accreditation standard based solely on law schools' bar examination passage rates rather than including schools' student outcome measures in relation to the national mean MBE scores.⁹³ Even though Golden Gate's students met or exceeded the national MBE mean through the administration of fourteen out of nineteen bar examinations from 2007–2015, and was very close to that national mean in the five other tests during that period, Golden Gate never had a first-time California bar passage rate of 75%. In twelve out of those eighteen tests, or in 67% of the administrations, Golden Gate had a bar passage rate below 60%. That percentage is the standard published by Law School Transparency as the minimum first-time bar passage standard necessary in order to have a cumulative 75% bar passage rate after four bar examination administrations.⁹⁴ A more nuanced analysis of the data in Table 2 demonstrates the lack of correspondence between meeting the national mean MBE

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*; cf. Letter from Kyle McEntee, Exec. Dir., Law Sch. Transparency's Nat'l Advisory Council, and David Frakt, Chair, Law Sch. Transparency's Nat'l Advisory Council, to the Council of the Am. Bar Ass'n Section on Legal Educ. & Admissions to the Bar (July 2016) ("Even using a very pessimistic scenario of a 50% drop in the pass rate . . . a school with a 60% initial pass rate would still be able to make the 75% rate within four exam administrations.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

score and successful California bar examination passage rates.⁹⁵ In February 2007, Golden Gate students beat the national mean by 5.2% but only scored a 57% for first-time passage rate on the California bar examination.⁹⁶ That pattern of scoring higher than the national mean MBE score, but scoring less than a 60% first-time California bar passage percentage occurred in July 2007, Feb. 2009, Feb. 2011, Feb. 2012, Feb. 2013, Feb. 2014, and Feb. 2015.⁹⁷ During those years, when Golden Gate Students almost met the national mean MBE score, they scored well below 60% on the California bar. (July 2010 a GG MBE score of only .2 less than the National mean resulted in a 57% passage rate; July 2014 a GG MBE score of only .1 less than the national mean resulted in a 44% passage rate; and in July 2015 a GG MBE score of only .5 less than the national mean resulted in a 39% California bar passage rate).⁹⁸

Something is terribly wrong when a national accreditation standard leads to the dis-accreditation of a law school, namely, Golden Gate, that almost always meets or exceeds the national mean MBE score and which would result in the school's students being able to meet forty-eight out of fifty states' bar examination MBE passage cut scores.⁹⁹ Instead of threats of dis-accreditation, schools like Golden Gate that admit many minority students with low predictive indices (LSAT

⁹⁵ See Letter from the Cal. State Bar Ass'n to Professor William W. Patton, *supra* note 72 (highlighting the difference between the median MBE score and bar passage).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

and GPA) who outperform their predictive scores on the MBE¹⁰⁰ should be congratulated for providing students an excellent value-added law school education and an opportunity to become members of the legal profession.

B. Southwestern Law School Mean MBA Scores and CA Bar Exam Passage Rates.

TABLE 3¹⁰¹
SOUTHWESTERN

National Mean MBE	SW MBE 1st Time	SW MBE All Taker	1st/all Bar %	National Mean MBE	SW MBE 1st Time	SW MBE All Taker	1st/All Bar %
<u>FEB. 2007</u>				<u>JULY 2007</u>			
137.6	144.3	142.8	60%/52%	143.7	145.2	144.5	56%/54%
<u>FEB. 2008</u>				<u>JULY 2008</u>			
137.7	139.3	142.0	59%/55%	145.6	147.0	145.8	72%/65%
<u>FEB. 2009</u>				<u>JULY 2009</u>			
135.7	138.0	137.9	53%/40%	144.5	145.7	143.6	63%/55%
<u>FEB. 2010</u>				<u>JULY 2010</u>			
136.6	141.1	141.1	56%/41%	143.6	145.2	144.2	59%/53%
<u>FEB. 2011</u>				<u>JULY 2011</u>			
138.6	140.9	143.2	56%/56%	143.8	145.0	143.9	64%/56%
<u>FEB. 2012</u>				<u>JULY 2012</u>			
137.0	144.6	143.4	58%/56%	143.4	145.2	143.9	64%/56%
<u>FEB. 2013</u>				<u>JULY 2013</u>			
138.0	144.3	143.1	68%/56%	144.3	147.7	145.7	74%/66%
<u>FEB. 2014</u>				<u>JULY 2014</u>			
138.0	144.6	144.5	64%/61%	141.5	141.2	140.1	54%/47%
<u>FEB. 2015</u>				<u>JULY 2015</u>			

¹⁰⁰ See *id.* (explaining that Golden Gate admits many minority students with low predictive indices, but outperform their predictive MBE scores).

¹⁰¹ *Id.*

136.2	140.5	140.3	51%/42%	139.9	140.8	140.3	51%/45
=====							

Southwestern Law School met or beat the national mean MBE score on seventeen out of eighteen California bar examinations from 2007–2015 on first-time takers and met that standard on sixteen out of eighteen all-taker examinations.¹⁰² Even with that stunning student outcome measure for one of the most diverse law schools in the country, Southwestern never met the ABA 75% bar passage standard on any of the eighteen California bar examinations.¹⁰³ Southwestern students’ first-time taker mean MBE scores met or exceeded other states’ MBE bar passage cut scores for almost all eighteen administrations of the California bar examination:

Feb. 2007: met all but Del.	July 2007: met all states
Feb. 2008: met all but Alaska, Ca., Del., Nev., N.C., Or., Va.	July 2008: met all states
Feb. 2009: met all but Alaska, Ca., Del, Nev., N.C., Or., Va.	July 2009: met all states
Feb. 2010: met all but Ca., Del., Or.	July 2010: met all states
Feb. 2011: met all but Ca., Del., Or.	July 2011: met all states
Feb. 2012: met all but Del.	July 2012: met all states
Feb. 2013: met all but Del.	July 2013: met all states
Feb. 2014: met all but Del. Del., Or.	July 2014: met all but Ca.,
Feb. 2015: met all but Ca., Del., Or. Del., Or. ¹⁰⁴	July 2015: met all but Ca.,

Even though Southwestern students’ performed well above the national mean MBE score on almost every exam and above almost all states’ MBE bar passage cut scores¹⁰⁵, according to Law School Transparency’s required 60% first-time passage

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

rate, Southwestern would have had a very difficult time meeting the ABA Council's rejected "75% passage rate in 2 years" proposal.¹⁰⁶ Southwestern students scored 60% or better on only 39% of the eighteen California bar examination administrations from 2007–2015, seven out of eighteen.¹⁰⁷ Again, an ABA standard based exclusively on a "one-size-fits-all" bar passage percentage punishes schools like Southwestern which enroll high numbers of students with lower GPA/LSAT scores, and who are provided a value-added education and who beat statistical MBE predictions.¹⁰⁸

C. Whittier Law School Mean MBA Scores and CA Bar Exam Passage Rates.

TABLE 4¹⁰⁹
WHITTIER

National Mean MBE	WH BE 1 st Time	WH MBE All Taker	1 st /All Bar %	National Mean MBE	WH MBE 1 st Time	WH MBE All Taker	1 st /All Bar %
<hr/>							
	<u>FEB. 2007</u>				<u>JULY 2007</u>		
137.6	139.9	137.6	35%/29%	143.7	142.9	140.1	54%/53%
<hr/>							
	<u>FEB. 2008</u>				<u>JULY 2008</u>		
137.7	140.8	137.6	56%/46%	145.6	149.3	144.4	84%/61%
<hr/>							
	<u>FEB. 2009</u>				<u>JULY 2009</u>		
135.7	138.3	137.3	44%/32%	144.5	143.5	140.6	61%/47%
<hr/>							
	<u>FEB. 2010</u>				<u>JULY 2010</u>		
136.6	133.6	136.9	13%/27%	143.6	141.3	140.2	53%/45%
<hr/>							
	<u>FEB. 2011</u>				<u>JULY 2011</u>		
138.6	143.1	140.6	55%/42%	143.8	142.3	139.2	56%/40%
<hr/>							

¹⁰⁶ See Patton, *supra* note 11 (showing the recently rejected bar passage rate for law school accreditation).

¹⁰⁷ Letter from the Cal. State Bar Ass'n to Professor William W. Patton, *supra* note 72.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

	<u>FEB. 2012</u>				<u>JULY 2012</u>		
137.0	142.5	140.4	46%/45%	143.4	146.4	144.0	70%/56%
<hr/>							
	<u>FEB. 2013</u>				<u>JULY 2013</u>		
138.0	146.1	140.4	60%/41%	144.3	145.3	143.4	65%/57%
<hr/>							
	<u>FEB. 2014</u>				<u>JULY 2014</u>		
138.0	144.3	142.5	76%/60%	141.5	140.5	139.7	43%/38%
<hr/>							
	<u>FEB. 2015</u>				<u>JULY 2015</u>		
136.2	140.9	140.1	30%/36%	139.9	139.0	137.8	38%/28
=====							

First-time taker students from Whittier Law School met or exceeded the national mean MBE score on eleven out of of eighteen California bar examination administrations, 61%, and scored within one point or less of the national mean on four examinations (July 2007; July 2009; July 2014; and July 2015).¹¹⁰ Even though Whittier students met or exceeded the national MBE mean on 61% of the examinations, Whittier's bar passage met the ABA 75% standard only twice, and scored 60% or higher on only six out of eighteen test administrations, 33.3%.¹¹¹

Even though Whittier's California bar passage rates seldom rose to 60%, Whittier graduates' first-time test takers mean MBE scores met or exceeded other states' MBE bar passage cut scores for almost all 18 administrations of the California bar examination:

Feb. 2007: met all but Alaska, Ca. Del.
 July 2007: met all but Ca. and Del. Nev., N.C., Or., Va.
 Feb. 2008: met all but Ca., Del., Or.
 July 2008: met all states
 Feb. 2009: met all but Alaska, Ca., Del.,

¹¹⁰ *Id.*

¹¹¹ *Id.*

July 2009: met all but Ca. and Del., Nev., N.C., Or., Va.
 Feb. 2010: met seventeen states' scores
 July 2010: met all but Ca. and Del.
 Feb. 2011: met all but Ca. and Del.
 July 2011: met all but Ca. and Del.
 Feb. 2012: met all but Ca. and Del.
 July 2012: met all states
 Feb. 2013: met all states
 July 2013: met all states
 Feb. 2014: met all but Del.
 July 2014: met all but Ca., Del., Or.
 Feb. 2015: met all but Ca., Del., Or.
 July 2015: met all but Alaska, Ca., Del., Nev., N.C., Or., Va.¹¹²

Even though Whittier's longitudinal bar passage data demonstrates that it would have likely lost accreditation under the Council's rejected 75% passage in 2-year standard¹¹³, Whittier students, including a very large percentage of minority graduates, demonstrated that they received an excellent education, as the outscored the national mean MBE and almost all other states' MBE cut scores regularly.¹¹⁴ Judging Whittier students on the current one-size-fits all bar passage standard rather than using a standard of the schools' mean MBE scores in relation to the national mean MBE scores would needlessly restrict access for countless minorities into the legal profession based solely on California's bar cut score.

D. Thomas Jefferson Law School Mean MBA Scores and CA Bar Exam Passage Rates.

TABLE 5¹¹⁵

THOMAS JEFFERSON

National	TJ MBE	TJ MBE	TJ	National	TJ MBE	TJ MBE	TJ
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¹¹² *Id.*

¹¹³ Patton, *supra* note 11.

¹¹⁴ Letter from the Cal. State Bar Ass'n to Professor William W. Patton, *supra* note 72.

¹¹⁵ *Id.*

Mean MBE	1 st Time	All Taker	Bar %	Mean MBE	1 st Time	All Taker	Bar %
<hr/>							
	<u>FEB. 2007</u>				<u>JULY 2007</u>		
137.6	140.2	137.1	61%/41%	143.7	143.8	139.8	60%/58%
<hr/>							
	<u>FEB. 2008</u>				<u>JULY 2008</u>		
137.7	143.8	139.0	61%/46%	145.6	148.7	145.5	76%/63%
<hr/>							
	<u>FEB. 2009</u>				<u>JULY 2009</u>		
135.7	138.0	137.9	53%/40%	144.5	139.8	136.5	46%/35%
<hr/>							
	<u>FEB. 2010</u>				<u>JULY 2010</u>		
136.6 58%/43%	139.3	138.2	52%/37%	143.6	143.1	139.9	
<hr/>							
	<u>FEB. 2011</u>				<u>JULY 2011</u>		
138.6 33%/25%	138.4	139.1	45%/41%	143.8	139.6	137.5	
<hr/>							
	<u>FEB. 2012</u>				<u>JULY 2012</u>		
137.0 52%/42%	142.6	141.4	59%/46%	143.4	141.3	139.3	
<hr/>							
	<u>FEB. 2013</u>				<u>JULY 2013</u>		
138.0 50%/42%	139.4	139.6	45%/40%	144.3	142.0	140.1	
<hr/>							
	<u>FEB. 2014</u>				<u>JULY 2014</u>		
138.0	141.7	141.2	50%/43%	141.5	141.6	139.4	45%/34%
<hr/>							
	<u>FEB. 2015</u>				<u>JULY 2015</u>		
136.2	138.6	139.1	45%/53%	139.9	140.4	137.7	51%/34%

=====

The effects of California's extremely high 144 MBE cut score are nowhere more apparent than in Thomas Jefferson students' California bar passage rates.¹¹⁶ Even though they met or exceeded the national mean MBE score in twelve of eighteen bar examination administrations, 67%, they scored 60% or higher on only

¹¹⁶ *Id.*

four of those eighteen California bar exams (22%).¹¹⁷ Thomas Jefferson enrolls a high number of minority students¹¹⁸ and students defined as high risk of failure by Law School Transparency.¹¹⁹ Even so, Thomas Jefferson usually beats the national mean MBE score.¹²⁰ An ABA standard based solely on bar percentage success would lead to a substantial decrease in the number of minority students enrolled in Thomas Jefferson in order for it to assure continuing ABA accreditation.

Based on Thomas Jefferson students' mean MBE scores they consistently met or exceeded other states' MBE bar examination passage rate cut scores:

Feb. 2007: met all but Ca., Del., Or.
 July 2007: met all but Ca., Del.
 Feb. 2008: met all but Ca., Del.
 July 2008: met all
 Feb. 2009: met all but Alaska, Ca., Del.,
 July 2009: met all but Alaska, Ca, Del., Nev., N.C., Or., Va.
 Feb. 2010: met all but Alaska, Ca., Del., Nev., N.C., Or., Va
 July 2010: met all but Alaska, Ca., Del., Nev., N.C. Or., Va..
 Feb. 2011: met all but Alaska, Ca., Del.
 July 2011: met all but Alaska, Ca, Del., Nev., N.C., Or., Va. .
 Feb. 2012: met all but Ca., Del.
 July 2012: met all but Ca., Del., Or.
 Feb. 2013: met all but Alaska, Ca., Del.
 July 2013: met all but Ca., Del., Nev., N.C., Or., Va.
 Feb. 2014: met all but Ca., Del., Or.
 July 2014: met all but Ca., Del., Or.
 Feb. 2015: met all but Alaska, Ca., Del.,

¹¹⁷ *Id.*

¹¹⁸ See *2016 Standard 509 Report 1*, THOMAS JEFFERSON SCH. OF LAW (2016) https://www.tjssl.edu/sites/default/files/std_509_info_report_final_12-14-2016_0.pdf (listing the demographic information of first-year law students at Thomas Jefferson School of Law) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹¹⁹ See *State of Legal Education: 2017 Update*, LAW SCH. TRANSPARENCY, <https://lawschooltransparency.com/reform/projects/investigations/2017/> (last visited Oct. 20, 2017) (explaining that high risk of failure students are individuals that score below a 150 on the LSAT) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹²⁰ Letter from the Cal. State Bar Ass'n to Professor William W. Patton, *supra* note 72.

July 2015: met all but Ca., Del., Or., Nev., N.C., Or., Va.¹²¹

Using the proposed accreditation model that includes a comparison of a law school students' mean MBE scores in relation to the national MBE mean will support diversity in states with high MBE cut scores and provide consumer protection by assuring that law schools are producing competent lawyers whose MBE scores demonstrate the capacity to pass the bar examination in almost every other state.

III. *Maintaining the Current ABA Standard on Bar Passage Is Important In Order Not to Disrupt Admissions in Some Traditionally Black Law Schools.*

The ABA must assure that any student outcome measure does not disproportionately affect schools that historically have had a large percentage of minority law students. Under current ABA Standard 316¹²² many of those high minority enrollment schools meet the bar passage standard, especially if the law school is located in a state with a moderately difficult MBE cut score.¹²³ Moving exclusively to a student outcome measure that abandons bar passage percentages in favor of a national mean MBE score may detrimentally affect those schools. The following discussion focuses on the application of both a bar examination passage standard and a national mean standard to Atlanta John Marshall Law School.

¹²¹ *Id.*

¹²² See ABA Standards and Rules of Procedure, *supra* note 17, at 24 (requiring that all accredited law schools have at least a bar passage rate of 75% three calendar years out of the last five).

¹²³ See Letter from the Cal. State Bar Ass'n to Professor William W. Patton, *supra* note 72.

Atlanta John Marshall Law School enrolls a very high percentage of Black law students: (1) 2015 [52.6%]¹²⁴; (2) 2014 [38.6%]¹²⁵; (3) 2013 [30.9%]¹²⁶; (4) 2012 [29.2%]¹²⁷; (5) 2011 [28.5%].¹²⁸ As the chart below demonstrates, although Atlanta John Marshall students pass the Georgia bar examination¹²⁹ at rates above the Law School Transparency 60% litmus test, they rarely meet the annual national mean MBE score:

TABLE 6

ATLANTA JOHN MARSHALL¹³⁰

National Mean MBE	JM MBE All Taker	JM 1st Time Bar %	National Mean MBE¹³¹	JM MBE All Taker	JM 1st Time Bar %
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¹²⁴ Retrieving Atlanta's John Marshall Law Sch. - 2015 Standard 509 Information Report, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "Atlanta's John Marshall Law School" and "2015" from the drop-down menus; then click "Generate Report") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹²⁵ Retrieving Atlanta's John Marshall Law Sch., 2014 Standard 509 Information Report ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "Atlanta's John Marshall Law School" and "2014" from the drop-down menus; then click "Generate Report") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹²⁶ Retrieving Atlanta's John Marshall Law Sch., 2013 Standard 509 Information Report ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "Atlanta's John Marshall Law School" and "2013" from the drop-down menus; then click "Generate Report") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹²⁷ Retrieving Atlanta's John Marshall Law Sch., 2012 Standard 509 Information Report ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "Atlanta's John Marshall Law School" and "2012" from the drop-down menus; then click "Generate Report") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹²⁸ Retrieving Atlanta's John Marshall Law Sch., 2011 Standard 509 Information Report ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "Atlanta's John Marshall Law School" and "2011" from the drop-down menus; then click "Generate Report") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹²⁹ See *Bar Exam Difficulty*, L. SCH. TRANSPARENCY, <https://www.lawschooltransparency.com/reform/projects/investigations/2015/data/other-stats/?show=cutscores> (last visited on Oct. 20, 2017) (showing that the Georgia bar examination MBE cut score is 135, compared to California's 144).

¹³⁰ See *Georgia Bar Admission Statistics*, GA. OFF. OF BAR ADMISSIONS, <https://www.gabaradmissions.org/georgia-bar-examination-statistics> (last visited Oct. 20, 2017) (detailing the MBE average scores and first time bar passage rates for Georgia Law School students taking the Georgia Bar over the past ten years) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹³¹ See *2016 MBE Statistics*, NAT'L CONF. OF BAR EXAM'RS, <http://www.ncbex.org/publication>

136.9	<u>FEB. 2007</u> 131.7	40.0%	143.7	<u>JULY 2007</u> 140.3	75.0%
137.7	<u>FEB. 2008</u> 138.7	100%	145.6	<u>JULY 2008</u> 143.8	83.1%
135.7	<u>FEB. 2009</u> 131.5	77.7%	144.5	<u>JULY 2009</u> 138.9	83.1%
136.6	<u>FEB. 2010</u> 130.9	57.1%	143.6	<u>JULY 2010</u> 136.0	59.5%
138.6	<u>FEB. 2011</u> 138.3	92.3%	143.8	<u>JULY 2011</u> 138.5	70.4%
137.0	<u>FEB. 2012</u> 134.1	67.8%	143.4	<u>JULY 2012</u> 135.8	64.3%
138.0	<u>FEB. 2013</u> 139.2	79.1%	144.3	<u>JULY 2013</u> 137.2	67.1%
138.0	<u>FEB. 2014</u> 134.0	64.5%	141.5	<u>JULY 2014</u> 133.7	59.6%
136.2	<u>FEB. 2015</u> 131.0	51.3%	139.9	<u>JULY 2015</u> 129.0	52.5%
=====					

Atlanta John Marshal scored above 60% on the bar examination on 67% (twelve/eighteen) of bar administrations from 2007 to 2015.¹³² The law school's students met or exceeded the national mean MBE score on only two of eighteen bar examinations.¹³³ As Atlanta John Marshall has been successful at enabling hundreds of minority law students to become members of the bar, an ABA student outcome measure that relies solely on a national mean MBE score would

s/statistics/mbe-statistics/ (last visited Oct, 20, 2017) (detailing the national average MBE scores over the past ten years) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹³² Ga. Off. of Bar Admissions, *supra* note 120. *Georgia Bar Admission Statistics*, *supra* note 35

¹³³ See *supra* notes 120–21 and accompanying text.

significantly reduce diversity in their bar.¹³⁴ Therefore, the ABA should promulgate a dual standard that requires law schools to meet either a standard deviation from the national mean MBE score or a minimum bar examination passage rate.

IV. *A Comparison of California and New York Law Schools' Admission Statistics and Bar Examination Passage Rates.*

The proposed national mean MBE score standard will not only cure the significant unfairness of the current one-size-fits all states bar passage rule, but also will illustrate why that modification will level the playing field among all ABA law schools by mollifying states' wildly divergent cut scores as a disadvantage in ABA accreditation. To demonstrate the effectiveness and fairness of this bar examination proposal, the following will compare the input and output measures of five California law schools (Southwestern, University of San Francisco, La Verne, Golden Gate, and Thomas Jefferson) with five New York law schools (St. John's, SUNY-Buffalo, Pace, New York Law School, and Touro) on the July 2016 California and New York bar examinations. The MBE cut score on the California bar exam is 144 and is 133 on the New York exam.¹³⁵ The following chart demonstrates the unfairness of the Council's recently rejected 75% passage in two-years standard¹³⁶ and shows how the addition of the national mean MBE score for two of the last three years will cure that unfairness.

¹³⁴ *Id.*

¹³⁵ Moeser & Guback, *supra* note 26.

¹³⁶ *See Notice and Comment Archive*, *supra* note 11 (showing the recently rejected standard for accreditation).

TABLE 7¹³⁷
COMPARATIVE BAR PASSAGE RATES ON THE
JULY 2016 CALIFORNIA AND NEW YORK BAR EXAMINATIONS

School	July 2016	GPA			LSAT			HISPANIC		BLACK	
	NY/CA Passage ¹³⁸	75 th	50 th	25 th	75 th	50 th	25 th	Students		Students	
								#	%	#	%
<u>CALIFORNIA LAW SCHOOLS</u>											
	<u>NY</u>	<u>CA</u>									
	<u>Bar</u>	<u>Bar</u> ¹³⁹									
Southwestern	74% (38%)	3.42	3.17	2.91	155	152	150	83	22.6%	16	4.4%
Univ. S.F.	72% (36%)	3.51	3.28	2.95	158	153	151	17	21.6%	10	5.8%
UnivLaVerne	68% (31%)	3.12	2.83	2.71	152	147	146	16	32.7%	4	8.2%
Golden Gate	67% (31%)	3.41	3.11	2.74	153	150	147	15	16.7%	4	2.7%
Thomas Jeff.	66% (31%)	3.16	2.81	2.62	149	146	144	63	24.7%	22	8.6%
<u>NEW YORK LAW SCHOOLS</u>											
St. Johns	76.5%	3.62	3.39	3.17	158	156	153	31	11.9%	17	6.5%
SUNY-BUFF.	73.0%	3.66	3.48	3.21	158	154	150	12	6.1%	13	6.6%

¹³⁷ See; see also

¹³⁸ See Robert Anderson, *California law school bar passage rates recalculated for the New York bar*, WITNESSETH: L., DEALS, & DATA (Dec. 19, 2016), <http://witnesseth.typepad.com/blog/2016/12/california-law-school-bar-passage-rates-recalculated-for-the-new-york-bar.html> (illustrating the difference between bar exam passage rates for California and New York in July 2016 by applying the California ABA law schools' mean MBE scores to the MBE score required to pass the New York examination) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); see also Paul Caron, *California Law School Bar Pass Rates Recalculated for New York: Stanford, UCB, USC > NYU; UCI, UCLA > Columbia; Chapman, Loyola, McGeorge, Pepperdine, Santa Clara, UCD, USD > Fordham*, TAXPROF BLOG (Dec. 22, 2016), http://taxprof.typepad.com/taxprof_blog/2016/12/andersoncalifornia-law-school-bar-passage-rates-recalculated-for-new-york-usccolumbia-ucicorndell.html (comparing Professor Anderson's results for California law schools' projected New York bar passage rates with the actual passage rates) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); cf. Mark A. Albanese, *The Testing Column: The July 2014 MBE: Rogue Wave or Storm Surge?*, 84 THE B. EXAMINER 35, 35–48 (June 2015), http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2015%2F840215-TestingColumn.pdf (discussing the National Conference of Bar Examiners long-held positions that the LSAT is directly related to MBE scores and that MBE scores are the best determinate of bar passage rates).

¹³⁹ The number in parenthesis is the California ABA law school's bar passage rate on the July 2016 California bar examination.

Pace	71.0%	3.51	3.21	2.92	153	151	147	17	9.4%	11	6.1%
NYLS	70.3%	3.43	3.17	2.87	153	151	149	51	15.8%	25	17.8%
Touro	62.0%	3.34	3.02	2.75	150	148	145	37	18.0%	21	10.2%

The five California law schools had passage rates on the July 2016 California bar exam so low (31%-38%) that it would be virtually impossible for them to have met the Council's proposed 75% in 2-years standard.¹⁴⁰ As demonstrated in the chart, those five California ABA law schools would have been required to obtain passage rates ranging from 66% to 74%, if their students had taken the July 2016 New York bar examination.¹⁴¹ Those five California law schools would easily have met the Council's proposed 75% in 2 years standard if located in New York, but would fail miserably if judged, not by the quality of their students' scores on the MBE in relation to the national mean MBE score, but rather on the unproven and unrealistically high California MBE cut score that is out of those schools' ability to control.¹⁴²

There has been a great deal of discussion about the relatively low LSAT scores of law students admitted into some of California's ABA law schools.¹⁴³ The data in the Table 7 demonstrates that even the lowest performing California law

¹⁴⁰ See Gen. Stat. Rep. July 2016 Cal. Bar Examination, *supra* note 137.

¹⁴¹ See Caron, *supra* note 138.

¹⁴² See *id.* ("If California used the same passing score as New York . . . California schools would have had passage rates above 80%, and all of them would be well within striking distance of the ABA's proposed 75% passage rate in two years.").

¹⁴³ See Paul Caron, *July 2016 California Bar Exam Carnage*, TAXPROF BLOG (Nov. 22, 2016), http://taxprof.typepad.com/taxprof_blog/2016/11/july-2016-california-bar-exam-carnage.html (reporting the release of the California State Bar results from the July 2016 bar exam and discussing the possible causes of lower passage rates) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

schools provide a value-added legal education which results in their students performing better on the MBE and on other bar examinations than students from comparable law schools in other states.¹⁴⁴

A. Southwestern v. SUNY-Buffalo

First, compare Southwestern with SUNY-Buffalo. SUNY-Buffalo's 2013 entering class with LSAT scores of (158/154/150)¹⁴⁵ which are substantially higher than Southwestern's (155/152/150).¹⁴⁶ In addition, SUNY-Buffalo admitted students with much higher grade point averages (3.66/3.48/3.21)¹⁴⁷ than Southwestern (3.42/3.17/2.91).¹⁴⁸ All predictive models would suggest that SUNY-Buffalo students would pass the New York bar at a significantly higher rate than Southwestern students.¹⁴⁹ Just the opposite occurred. Southwestern's MBE scores resulted in a 74% New York bar passage rate, while SUNY-Buffalo's pass rate was only 73%.¹⁵⁰

Southwestern's New York bar passage rate is particularly remarkable because the students passed the July 2016 California bar exam at a rate of only

¹⁴⁴ See *supra* note 137 and accompanying text.

¹⁴⁵ Retrieving Univ. of Buffalo-SUNY 2013 Standard 509 Information Report, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "University of Buffalo-SUNY" from drop-down menu; then select year "2013" from drop-down menu; then select "Generate Report") (on file with Washington & Lee Journal of Civil Rights & Social Justice).

¹⁴⁶ Retrieving Southwestern Law School 2013 Standard 509 Information Report, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "Southwestern Law School" from drop-down menu; then select year "2013" from drop-down menu; then select "Generate Report") (on file with Washington & Lee Journal of Civil Rights & Social Justice).

¹⁴⁷ See Univ. of Buffalo-SUNY 2013 Standard 509 Information Report, *supra* note 145.

¹⁴⁸ See Southwestern Law School 2013 Standard 509 Information Report, *supra* notes 146.

¹⁴⁹ See *supra* note 127 and accompanying text.

¹⁵⁰ *Id.*

38%.¹⁵¹ But another variable makes Southwestern's New York bar passage rate even more remarkable in relation to SUNY-Buffalo's. As the chart demonstrates, SUNY-Buffalo has a very small number and percentage of Black (6.6%/13) and Hispanic (6.1%/12) students compared with Southwestern (Black, 4.2%/16 students and Hispanic, 19.8%/83 students).¹⁵²

Although no information has been published regarding New York law schools' mean MBE scores on the July 2016 bar examination, the California bar examiners have published the mean MBE scores for all California law schools.¹⁵³ Even though Southwestern students only passed the California bar at 38%,¹⁵⁴ Southwestern students' "all taker" mean MBE score for the July 2016 exam was 139.9¹⁵⁵ compared with the national "all taker" MBE mean of 140.3.¹⁵⁶

¹⁵¹ *Id.*

¹⁵² See *supra* note 137 and accompanying text. It is impossible to draw any definitive conclusions about the number and percentage of minority students who were admitted to SUNY-Buffalo and to Southwestern who actually took a bar examination because that data is not available to the public. One relevant factor is the schools' academic attrition rates. SUNY-Buffalo in 2014 had no students academically disqualified, but Southwestern had 25. However, even if one were to speculate that a majority of Southwestern students academically disqualified were minority students (and there is no data to support that speculation), Southwestern would still have a substantially larger minority student population taking the bar examination (Southwestern total Black and Hispanic students admitted [(94) minus (25 disqualified)] equals 69 minority bar takers) than SUNY-Buffalo with total 30 Black and Hispanic bar takers.

¹⁵³ See *Supplemental Stat. Rep. for the July 2016 Cal. Bar Examination*, CAL. B. EXAMINERS (2017), <https://assets.documentcloud.org/documents/3237100/CAL-LAW-SCHOOLS.pdf> (listing the mean MBE scores among California law schools for the July 2016 bar examination) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See *2016 MBE Nat'l Summary Statistics*, NAT'L CONF. OF B. EXAMINERS, (Jan. 18, 2017), <http://www.ncbex.org/publications/statistics/mbe-statistics/> (charting the national mean MBE score and its decline over the past three years) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

The Southwestern analysis demonstrates the irrational and unjust consequences of the Council's proposed 75% bar passage in 2-years standard.¹⁵⁷ Southwestern would have little chance of meeting that proposed ABA standard even though its students scored very close to the national mean on the MBE and even though its students, had they taken other easier bar examinations like the New York exam, would have scored higher than comparable New York law schools whose students have better entering LSAT/GPA credentials. But worse, Southwestern is one of the California law schools that admit a significant number of Black and Hispanic law students.¹⁵⁸ The dis-accreditation of Southwestern would be a significant setback to not only increasing, but also to merely maintaining, diversity in the California bar.¹⁵⁹

B. University of San Francisco v. NYLS.

New York Law School's (NYLS) 2013 entering class had statistics (LSAT 153/151/149 and GPA 3.43/3.17/2.87)¹⁶⁰ slightly lower than the University of San Francisco's (USF) statistics (LSAT 158/153/151 and GPA 3.51/3.28/2.95).¹⁶¹ NYLS had a 70.3% passage rate on New York's July 2016 bar exam, and, if applied to New

¹⁵⁷ See *supra* note 137 and accompanying text.

¹⁵⁸ See Southwestern Law School 2013 Standard 509 Information Report, *supra* note 146 and accompanying text (looking at the disclosures required by the ABA. for Southwestern Law School, specifically the J.D. Enrollment and Ethnicity data).

¹⁵⁹ See *generally supra* note 137 and accompanying text.

¹⁶⁰ Retrieving New York Law School 2013 Standard 509 Information Report, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "New York Law School" from drop-down menu; then select year "2013" from drop-down menu; then select "Generate Report") (on file with Washington & Lee Journal of Civil Rights & Social Justice).

¹⁶¹ Retrieving Univ. of San Francisco Law School 2013 Standard 509 Information Report, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select "San Francisco, University of" from drop-down menu; then select year "2013" from drop-down menu; then select

York State's standards, USF would have had a 72% passing rate on the New York exam.¹⁶² Under the Council's proposed 75% passage rate, in 2 years, NYLS will easily meet the proposed standard. Because USF had a passage rate of only 36% on California's July 2016 bar examination, the school would almost certainly fail to raise its passage rate to 75% within the next three bar examination administrations, and could potentially lose ABA accreditation.¹⁶³

Both NYLS and USF admit many minority law students.¹⁶⁴ The 2013 NYLS entering class had a combined 23.6% of Black and Hispanic law students¹⁶⁵ compared to USF's combined 27.4% Black and Hispanic students.¹⁶⁶ Under the Council's proposal NYLS would have easily been able to meet the rejected 75% in 2-year bar passage standard, and New York residents would be able to enjoy and benefit from that increased diversity in the New York bar association.¹⁶⁷ Even though USF's students would have scored higher than NYLS' students on New York's July 2016 bar, USF would fail the Council's 75% in 2-year standard and would lose ABA accreditation.¹⁶⁸

"Generate Report") (on file with Washington & Lee Journal of Civil Rights & Social Justice).

¹⁶³ See *supra* note 137 and accompanying text; see also Table 7, *supra* note 137.

¹⁶⁴ See NEW YORK LAW SCHOOL 2013 STANDARD 509 INFORMATION REPORT, *supra* note 147 and accompanying text (showing a chart containing J.D. Enrollment and Ethnicity for the academic year), see also UNIV. OF SAN FRANCISCO LAW SCHOOL 2013 STANDARD 509 INFORMATION REPORT, *supra* note 148 and accompanying text (providing the ethnicity of students enrolled at University of San Francisco Law School).

¹⁶⁵ See NEW YORK LAW SCHOOL 2013 STANDARD 509 INFORMATION REPORT, *supra* note 160.

¹⁶⁶ See UNIV. OF SAN FRANCISCO LAW SCHOOL 2013 STANDARD 509 INFORMATION REPORT, *supra* note 161.

¹⁶⁷ See *supra* note 137 and accompanying text.

¹⁶⁸ See *id.*

The five California ABA law schools studied in this report had a combined mean July 2016 California bar passage rate of 33.4%, even though they would have had a combined mean passage rate of 69.4% on the July 2016 New York bar examination.¹⁶⁹ Under the Council’s proposed 75% passage in 2-years rule, all five of these California ABA law schools would lose ABA accreditation. What effect on diversity in the California bar will the loss of these five law schools have? In 2014, these five California schools enrolled 208 Hispanic law students and 83 Black law students.¹⁷⁰ If these five California law schools lose ABA accreditation, there will be a 36% reduction in the number of Black law students and 31% fewer Hispanic law students attending California ABA law schools.¹⁷¹

C. Out-of-State ABA Students’ Poor Performance on the California Bar Exam

¹⁶⁹ See *id.*

¹⁷⁰ See *id.*

¹⁷¹ See generally Univ. of San Francisco Law School 2013 Standard 509 Information Report, *supra* note 148; see generally Southwestern Law School 2014 Standard 509 Information Report, *supra* note 145; see generally Retrieving Univ. of La Verne 2014 Standard 509 Information Report, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select “University of La Verne” from drop-down menu; then select year “2014” from drop-down menu; then select “Generate Report”) (on file with Washington & Lee Journal of Civil Rights & Social Justice); see generally Retrieving Golden Gate Univ. 2014 Standard 509 Information Report, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select “Golden Gate University” from drop-down menu; then select year “2014” from drop-down menu; then select “Generate Report”) (on file with Washington & Lee Journal of Civil Rights & Social Justice); see generally Retrieving Thomas Jefferson School of Law 2014 Standard 509 Information Report, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS, <http://www.abarequireddisclosures.org/> (select “Thomas Jefferson School of Law” from drop-down menu; then select year “2014” from drop-down menu; then select “Generate Report”) (on file with Washington & Lee Journal of Civil Rights & Social Justice). Data from each source was added together and the data showed 666 Hispanic and 230 Black law students were admitted to California ABA approved law schools in 2014.

It is not just students from middle to bottom tier law schools that face serious problems passing the California bar examination.¹⁷² Table 8 compares California ABA approved law school students' bar results with out-of-state ABA law students' California bar examination passing percentages. The 14,252 out-of-state ABA students who took the California bar examination from February 2007 to July 2015 is a statistically significant sample size to support a reliable analysis.¹⁷³

Table 8
Comparative First-Time CA ABA and
Out-of-State ABA Schools on
The California Bar Exam¹⁷⁴

Test	CA ABA ABA	Out-of-State ABA
Feb. 2007	60.8	51.6
Jul. 2007	75.9	67.3
Feb. 2008	62.2	53.4
Jul. 2008	83.2	74.9
Feb. 2009	53.2	45.2
Jul. 2009	79.3	69.4
Feb. 2010	60.1	51.1
Jul. 2010	75.2	68.1
Feb. 2011	63.4	57.6
Jul. 2011	76.2	66.1
Feb. 2012	62.1	47.5
Jul. 2012	76.9	63.6
Feb. 2013	60.6	49.1
Jul. 2013	75.9	64.2
Feb. 2014	68.6	44.3
Jul. 2014	69.4	59.9

¹⁷² See generally *supra* note 138 and accompanying text (explaining that the California bar exam results were very low across all California law schools).

¹⁷³

¹⁷⁴ See *supra* note 112 and accompanying text.

Feb. 2015	53.9	40.5
Jul. 2015	68.2	58.8

Table 8 provides many interesting data points. First, students who attend California ABA law schools have substantially outperformed out-of-state ABA students on every July California bar examination for the past 9 years.¹⁷⁵ Over the past nine years, students who attend ABA accredited schools out-of-state and sit for the California bar earn a passage rate almost 10% lower than in-state students. The mean score for students who attended school in California was 75.6% versus an out-of-state mean of 65.8%.¹⁷⁶ This bar passage differential cannot be overstated. For instance, in other states, like New York, the in-state ABA bar passage percentage is barely higher than that of the out-of-state ABA test takers:¹⁷⁷

New York Bar First-Time Bar Passage Results¹⁷⁸

	<u>N.Y. ABA</u>	<u>Out-of-State ABA</u>
2015	78%	78%
2014	82%	81%
2013	87%	83%
2012	83%	80%

The mean differential between students at New York ABA accredited law schools and out-of-state test takers is merely 2.53%. New York students earn an

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See *NYS Bar Exam Statistics*, THE N.Y. STATE BD. OF LAW EXAM'RS, <http://www.nybarexam.org/ExamStats/Estats.htm> (listing data set forms for each administration of the New York State bar examination from 2012 to 2016 and includes the annual pass rates from 2004–2015) (last visited on Oct. 21, 2017) (on file with Washington & Lee Journal of Civil Rights & Social Justice).

average of 82.58 versus out-of-state ABA 80.05, compared to the California ABA versus out-of-state ABA differential of 10%.¹⁷⁹

Many students from law schools rated in the top half of all law schools in the U. S. News Law School Rankings have great difficulty passing the California bar examination.¹⁸⁰ For instance, the mean differential between these out-of-state ABA law school's home state bar passage rates and their passage rates on the California bar examination from February 2010 to July 2014 were: (1) Washington St. Louis 115 students (home state bar 94% but 67% CA bar); (2) Georgetown 391 students (home state bar 92% but CA 77%; (3) Northwestern 166 students (home state bar 95% but 82% CA bar); and (4) George Washington 236 students (home state bar 93% but 77% CA bar).¹⁸¹

One might consider several reasons as to why students from even an ABA top-20 rated law school would perform so much worse on the California bar examination than on their home states' bar examinations. [ADD: THE FOLLOWING SECTIONS DISCUSS THOSE POSSIBLE REASONS.]

1. The Number of State Specific Topics on a Bar Examination

¹⁷⁹ See generally *id.* (adding the data provided by the N.Y. ABA.); *see also California Bar Exam Statistics*, THE STATE B. OF CAL., <http://www.calbar.ca.gov/Admissions/Law-School-Regulation/Exam-Statistics> (last visited on Oct. 21, 2017) (providing data from the past California bar examinations) (last visited on Oct. 21, 2017) (on file with Washington & Lee Journal of Civil Rights & Social Justice).

¹⁸⁰ *See Best Law Schools*, U.S. NEWS (2017), <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (listing the top half of all law schools in the United States with respective statistics) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹⁸¹ *See* AMERICAN BAR ASSOCIATION, www.abarequireddisclosures.org (last visited Oct. 21, 2017) (offering ABA Standard 509 information about law schools' bar passage rates) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); *see also* Exam Statistics for the California Bar, *supra* note 179 (listing data from each administration of the California Bar examination from February 2007 to July 2015); *see generally id.*

Perhaps the California bar examination tests too many “California-specific” legal topics, not taught in out-of-state ABA law schools.¹⁸² That explanation is contradicted by the evidence. During the period of bar examinations for this study, which ranged from February 2010 until July 2014, California only tested one California specific legal area: California community property.¹⁸³ During that time, there was a 10% higher mean bar passage rate for all students who attended California law schools and who took the California bar examination than for all ABA out-of-state test takers.¹⁸⁴ If the hypothesis is that in-state and out-of-state test takers’ bar passage rate is correlated with the numbers of “state-specific” legal areas tested, then that hypothesis is clearly disproven by New York’s bar results. New York has traditionally tested New York Constitutional law, New York family law, and New York jurisdiction and procedure.¹⁸⁵ Based on the number of state subjects tested, one would therefore predict that the New York differential between

¹⁸² See generally *California Bar Exam Subjects*, U. OF SAN DIEGO SCH. OF L., <https://www.sandiego.edu/law/student-affairs/bar-exam/california-bar-exam-subjects.php> (last visited on Oct. 21, 2017) (listing all of the topics testing on the California bar examination) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹⁸³ See *Past Exams*, THE ST. B. OF CAL., <http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Past-Exams> (last visited Oct. 21, 2017) (providing past California bar examinations from October 2012 through February 2017) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹⁸⁴ See *California Bar Examination Statistics*, THE ST. B. OF CAL., <http://www.calbar.ca.gov/Admissions/Law-School-Regulation/Exam-Statistics> (last visited Oct. 21, 2017) (publishing the percentage of California ABA law students and the percentage of out-of-state ABA law students who pass the examination for each bar administration which provides the data to calculate the out-of-state ABA law students’ examination data) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

¹⁸⁵ See THE N.Y BAR EXAM, *Multistate Bar Exam Subjects* (2017), <http://www.newyorkbarexam.com/new-york-bar-exam-subjects/#> (last visited Oct. 21, 2017) (listing a break-down of subjects tested on the New York bar exam) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

in-state and out-of-state test takers would be substantially higher than California's. The mean differential between the New York ABA and the out-of-state ABA test takers is in fact only 2.53%, with New York students earning 82.58 versus out-of-state students earning 80.05).¹⁸⁶

2. Do Only Low-Performing Out-of-State ABA Students Take the California Bar?

Another hypothesis is that only the poorest performing students from out-of-state law schools take the California bar examination. Unfortunately, the data necessary to test that hypothesis is not publicly available as California does not publish specific information about individual out-of-state test takers' UGPA, LSAT scores, or LSGPA.¹⁸⁷ This hypothesis is inconsistent with common sense arguments because it is unlikely that a significant percentage of poorly qualified graduates from ABA out-of-state schools would just happen to spend the thousands of dollars to take the California bar examination where the passage rate for out-of-state test takers is so low. In addition, because the out-of-state schools' samples in this study are large, for instance Georgetown University Law Center (391 students)¹⁸⁸, The George Washington University Law School (236 students)¹⁸⁹ and American University Washington College of Law (221 students)¹⁹⁰, it is unlikely that low

¹⁸⁶

¹⁸⁷ See *About the State Bar*, THE ST. B. OF CAL. (2017), <http://www.calbar.ca.gov/About-Us/Who-We-Are> (outlining publication requirements for the California State Bar) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

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performing out-of-state students predominate those test takers at levels to explain the passage differentials.

3. Differences Between California's MBE Cut Score and Out-of-State Cut Scores Account for the Low Passage Rates of Out-of-State ABA Students on the California Bar

The third hypothesis—and, admittedly, the most likely explanation for the difference in bar passage rates—suggests that the discrepancy results from the significant difference between an out-of-state law school's state bar MBE cut score and the much higher California MBE cut score. There is significant empirical evidence that a rise in the MBE cut score results in a lowering of a state's bar passage rates.¹⁹¹ For instance, a decline of 2.8% in the MBE mean score on the July 2014 bar examination predicted a decrease in the bar passage rate of only 2.9% in a state with a cut score of 129, but predicted a reduction in the bar passage rate of 8.7% in a state with an MBE cut score of 145.¹⁹²

My proposal to amend ABA Standard 316 by adding an alternative standard deviation from the national mean MBE score in two of the last three years will both cure the unfairness to schools located in states with very high MBE cut scores, and

¹⁹¹ See Paul Carlon, *California Law Deans Take Bar Exam Complaints To Lawmakers; State Bar Director Admits There Is 'No Good Answer' For High MBE Pass Score*, TAXPROF BLOG (Feb. 15, 2017), http://taxprof.typepad.com/taxprof_blog/2017/02/california-law-deans-take-bar-exam-complaints-to-lawmakers-state-bar-director-admits-there-is-no-goo.html (“California test takers scored higher on the multistate bar exam portion of the exam than the national average, but their pass rate lagged behind peers in other states where the required score is lower.”) (on file with Washington & Lee Journal of Civil Rights & Social Justice).

¹⁹² See Albanese, *supra* note 138.

assure that law schools' students perform well on the MBE to demonstrate their knowledge of substantive law.

V. *Increasing the Rigorousness of the ABA Bar Passage Standard Will Substantially Impact Attorney Diversity in Jurisdictions That Have Very High MBE Cut Scores*

The ABA Council approved the ABA Standards Review Committee's proposed modification of ABA Standard 316 and forwarded that proposal to the ABA House of Delegates for approval.¹⁹³ The rejected proposal would have provided that "[a]t least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must . . . [pass] a bar examination administered within two years of their date of graduation."¹⁹⁴ The central issue with the Council's proposal was that it would have caused a tremendous upheaval for law schools, like those in California, that enroll high numbers of minority law students in a jurisdiction that has a very high MBE cut score. Table 9 demonstrates the low first-time bar passage rates for Hispanic and Black law students in California.¹⁹⁵ According to Law School Transparency, it is extremely unlikely that these bar passage

¹⁹³ See generally *Section of Legal Education and Admissions to the Bar Revised Standards for Approval of Law Schools*, ABA (Feb. 2017) <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Midyear%20Meeting%20Resolutions/110b.pdf> (showing the purposed amendments to Standard 316 and that they were rejected) (on file with Washington & Lee Journal of Civil Rights & Social Justice).

¹⁹⁴ See Memorandum from The Hon. Rebecca White Berch & Barry A. Currier on ABA Standards for Approval of Law Schools Matters for Notice and Comment 1, 6 (Mar. 25, 2016) https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20160325_notice_and_comment_memo.authcheckdam.pdf (last visited Oct. 21, 2017) (on file with Washington & Lee Journal of Civil Rights & Social Justice).

¹⁹⁵ See *Exam Statistics*, *supra* note 175 and accompanying text.

percentages would rise to the required accreditation standard of 75% within just four administrations of the California bar examination.¹⁹⁶

TABLE 9
California ABA Hispanic & Black
First-Time Bar Examination Pass Rates¹⁹⁷

<u>EXAMINATION DATE</u>	<u>HISPANIC</u>		<u>NUMBER OF TEST TAKERS</u> <u>BLACK</u>	
	<u>Number Taking</u>	<u>Passage</u>	<u>Number Taking</u>	<u>Passage</u>
FEB 2009/ JULY 2009	339	67.0%	116	56.0%
FEB 2010/ JULY 2010	389	63.0%	126	52.0%
FEB 2011/ JULY 2011	420	62.0%	149	54.0%
FEB 2012/ JULY 2012	423	67.0%	139	59.0%
FEB 2013/ JULY 2013	446	68.0%	134	55.0%
FEB 2014/ JULY 2014	460	60.0%	166	54.0%
FEB 2015/ JULY 2015	522	59.0%	158	45.0%
FEB 2016/ JULY 2016	537	50.0%	147	41.0%

TABLE 10
California ABA Hispanic & Black
Repeat Bar Examination Pass Rates¹⁹⁸

¹⁹⁶ See *supra* note 71 (concluding that a first-time bar passage rate must meet or exceed 60% for the 2-year bar passage rate to meet or exceed the proposed 75% bar passage in two years).

¹⁹⁷ See *Exam Statistics*, *supra* note 175 (combining the California State Bar individual first-time examination results from February 2009 to July 2016 to calculate the annual number of Black and Hispanic test takers and their annual California bar passage rates to determine law schools' chances of meeting a specific ABA bar passage standard).

¹⁹⁸ See *id.* (combining the California State Bar individual repeat examination results from February 2009 to July 2016 to calculate the annual number of Black and Hispanic test takers and their annual California bar passage rates to determine law schools' chances of meeting a specific ABA bar passage standard).

<u>EXAMINATION DATE</u>	<u>NUMBER OF REPEAT TEST TAKERS</u>			
	<u>HISPANIC</u>		<u>BLACK</u>	
	<u>Number Taking</u>	<u>Passage</u>	<u>Number Taking</u>	<u>Passage</u>
FEB 2009/ JULY 2009	290	32.0%	138	24.0%
FEB 2010/ JULY 2010	259	33.0%	140	20.0%
FEB 2011/ JULY 2011	301	25.0%	150	21.0%
FEB 2012/ JULY 2012	308	36.0%	156	22.0%
FEB 2013/ JULY 2013	307	40.0%	137	32.0%
FEB 2014/ JULY 2014	271	36.0%	134	35.0%
FEB 2015/ JULY 2015	376	32.0%	145	37.0%
FEB 2016/ JULY 2016	407	32.0%	154	21.0%

Tables 9 and 10 illustrate several critically important findings. According to Law School Transparency’s table discussing the 60% bar passage criteria, it is clear that, under California’s high 144 MBE cut score, many Black and Hispanic first-time and repeater rates will pose serious problems for the six historically low performing California law schools.¹⁹⁹ The data demonstrates that the mean first-time bar passage rate for Black students in California from 2009–2016 was only 52% and the Black repeat test taker mean was only 27%.²⁰⁰ In addition, the mean first-time Hispanic bar passage rate for the same range was only 62%, and the Hispanic repeat mean rate was only 33%.²⁰¹ These bar passage rates were the

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

California statewide ABA mean percentages, which include schools such as UCLA, Berkeley, Stanford, USC, and UCI.²⁰² Although California does not publish the minority bar passage rates for each California ABA law school, it is likely that many minority/ethnic students in schools at the bottom quarter of the state's bar passage rate score substantially lower than the statewide mean based on their lower LSAT/GPA credentials. Consequently, these minority students would almost certainly fail to meet the ABA Council's rejected 75% in two-year standard.

The trend in Hispanic and Black first-time and repeat California bar passage scores from 2013 to 2016 has steadily decreased.²⁰³ The Hispanic first-time test taker in 2013 had a passage rate of 68%, which fell to 50% in 2016. Over that same period, the Hispanic first-time rate fell for that same period from 55% to 41%.²⁰⁴ From 2013 to 2016, the Hispanic repeat test taker rate fell from 40% to 32% and the Black repeater rate fell from 32% to 21%.²⁰⁵ Under the Law School Transparency bar passage model, it is clear that the Hispanic and Black bar passage rates will not come close to reaching the 75% passage within 2 years required under the Council's rejected bar examination proposal.²⁰⁶ It would be shocking if California ABA law schools in the bottom quarter of bar passage results did not consider the effects of

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ See *Exam Statistics*, *supra* note 175 (showing the Hispanic first-time bar passage rate dropped).

²⁰⁵ *Id.*

²⁰⁶ See generally *supra* note 71.

admitting Hispanic and Black law students based on their probability of meeting more rigorous ABA bar passage standards.²⁰⁷

VI. A Blueprint For Future Research On Bar Examination Student Competence Outcome Measures.

Currently, the attorney licensing system in the United States is dysfunctional for a number of reasons. First, there is currently no requirement or mechanism for the ABA, state bar associations, the NCBE and law schools to share data about bar examination statistics. The ABA does not require law schools to report certain critically important data like a law school's students' mean MBE scores because law schools do not control the data supplied to them by State Bar Associations.²⁰⁸ State Bar Associations often do not on their own collect and/or do not seek data from the NCBE,²⁰⁹ and even if they collect bar examination data they often do not publish that information.²¹⁰ Further, the NCBE, a private non-profit corporation,²¹¹ often refuses to supply researchers with bar examination data that the NCBE they maintain is proprietary and legally protected.²¹² Some law schools refuse to provide non-ABA required information for fear of infecting the school's

²⁰⁷ See *supra* notes 84, 81, 99, 105 and accompanying text (computing information for the first-time July bar passage mean [2007-2015] for these schools: Golden Gate (60.55%), Southwestern (62.8%), Thomas Jefferson (51.5%), and Whittier (58.2%)).

²⁰⁸ See *generally Managing Director's Guidance Memo Standard 509*, ABA. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE B. (Rev. July 2016) (articulating Standard 509 and the required disclosure from law schools).

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²¹¹ See *Our Mission*, NAT. CONF. OF B. EXAMINERS <http://www.ncbex.org/about/> (last visited on Oct. 21, 2017) ("The National Conference of Bar Examiners is a not-for-profit corporation founded in 1931.") (on file with Washington & Lee Journal of Civil Rights & Social Justice).

²¹²

reputation and/or U. S. News ranking.²¹³ In order to intelligently investigate and draft better and fairer national law school accreditation standards, this lack of information vortex must end.

This paper proposes a 3-step process for creating a bar examination information sharing ethos:

First, the ABA, the Conference of Chief Justices, the National Center for State Courts, the NCBE and the ABA Council of Legal Education and Admission to the Bar need to cohost a conference on bar examinations and law student data sharing. The conference should invite a wide range of decision makers, academics, researchers, and psychometricians to participate on panels related to the issues and possible solutions to the bar examination data gap dilemma. The bar licensing system will only improve if all stakeholders can come to consensus on the importance of and procedures to share data.

Second, researchers and other interested persons should exhaust state remedies to seek available bar examination data that has not been published by state bar associations. “All 50 states also have public records laws which allow members of the public (including non-residents) to obtain documents and other public records from state and local government bodies.”²¹⁴ Although some state public records acts limit the types of data and the governmental agencies covered by disclosure statutes, some statutes specifically include state bar associations. For

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²¹⁴ See *State Records Laws*, FOIADVOCATES, <http://www.foiadvocates.com/records.html> (last visited Oct. 21, 2017) (listing all fifty state public records statutes) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

instance, the “[e]ffective January 1, 2016, the State Bar of California is subject to the California Records Act (CPRA) (Gov. Code sections 6250, et. seq.).”²¹⁵ In fact, the data used in Part II, *supra*, regarding California ABA law schools’ mean MBE scores was only attainable from the California State Bar Association by filing a California Public Records Request.²¹⁶

3. Significant reform in the National Conference of Bar Examiners’ monopoly over law license testing in the United States and access to NCBE’s test data is required in order to intelligently assess and reform state and ABA bar examination standards. Except for states like Wisconsin who use a diploma privilege for licensing rather than a bar exam for certain students, and Louisiana that does not use portions of the NCBE bar testing machinery, every other law student in the country must take some form of licensing test written by, administered by and graded by the NCBE. Historically, until the middle of the 1970’s the NCBE had little involvement in the bar licensing process. For example, California did not adopt the MBE until 1972 and until 1980, before adopting the MPRE, California wrote, administered, and graded its own professional responsibility examination.²¹⁷ According to the California State Bar Association

²¹⁵ E-mail from State Bar of Cal. to William Patton (Dec. 25, 2015) (on file with author).

²¹⁶ See Letter from the Cal. State Bar Ass’n to Professor William W. Patton, *supra* note 72. (stating how author received information regarding California ABA law schools’ mean and MBE scores)

²¹⁷ See *California Bar Examination Information and History*, THE ST. B. OF CAL., 1-2 (explaining how the California State Bar intends to discontinue administration of the California Professional Responsibility Examination and instead will take and pass the Multiple Professional Responsibility Exam); Interview with Gayle Murphy, Senior Director, State Bar Admissions, (Mar. 13, 2013) (speaking about California’s adoption of the MBE and MPRE); see also Email from Kellie Early, NCBE, to Professor Patton on December 5, 2016 (“NCBE has brought all MBE test development

and the NCBE, California no longer has any involvement in the writing, administering or grading of the MBE and MPRE.²¹⁸

Because the NCBE now has the largest data base on bar examination statistics in the United States, researchers and public policy makers have no access to that data that would earlier have been in the possession of individual state bar associations and subject to discovery under a state public records request. Although the NCBE publishes some of its bar examination statistics, it does not provide the public or researchers access to their non-published data. When the NCBE was contacted for non-published MPRE data for another article, the NCBE responded with the following response: “The information on our web site is the only data available to the public. I am sorry we cannot be of further assistance.”²¹⁹ The lack of access to the NCBE data base is not only problematic for independent researchers, it also infects the credibility of NCBE’s many statistical reports and analyses. Without access to the raw data there is no way for independent researchers to validate the NCBE reports, and the lack of outside peer review of

activity in-house, and...the California State Bar Committee of Examiners does not play any role.”) (email on file with author).

²¹⁸ See Letter from The Committee of Bar Examiners of the State Bar of California to William Wesley Patton (Aug. 29, 2016) (on file with author) (explaining how the MBE is owned by the National Conference of Bar Examiners and they can determine the format, scope, topics, questions, and grading process).

²¹⁹ See E-mail from Kellie Early, *NCBE Publications and Research*, to Professor Patton (May 24, 2016) (on file with author) (stating the only information available is the public information on the website).

article published in the NCBE's journal, the Bar Examiner, raises questions regarding the neutrality and accuracy of NCBE analyses.²²⁰

There is a potential remedy in some states to make up for the lack of access to NCBE non-published bar examination data. Some states prohibit governmental organizations from entering into contracts or delegating governmental work to organizations that refuse to provide public access to information otherwise discoverable if that data were to be maintained by the governmental agency.²²¹ For instance, in California a “[s]tate or local agency may not allow another party to control the disclosure that is otherwise subject to disclosure pursuant to this chapter [California Public Records Act].”²²² In California, the State Bar Act provides that the Committee of Bar Examiners is vested with authority over three state attorney licensing functions: (1) “to administer the requirements for admission to practice law”; (2) “to examine all applicants for admission”; and, (3) “to certify to the Supreme Court for admission those applicants who fulfill the

²²⁰ In response to my question, “I looked at the members of the editorial board, but I did not see any experts on methodological design such as psychometricians. Is that part of the editorial process handled by the NCBE staff?”, the NCBE responded, “Should an article require evaluation of a psychometric nature, we would engage NCBE psychometric staff to participate in the review.” (I would consider moving the first part of this footnote to the actual text of the note). See E-mail from Professor Patton, NCBE, to Claire J. Guback (July 26, 2016, TIME EST) (on file with author)(questioning whether an article requiring evaluation of a psychometric nature would engage NCBE psychometric staff to participate in the review). “The public’s interest in a fair and transparent licensing process outweighs the interests of an entity. We need time to have this change [in UBE format] studied by a disinterested party to validate NCBE’s representatives.” (I would put this in the actual text of the note); see Suzanne Darrow-Kleinhaus, *A Reply to the National Conference of Bar Examiners: More Talk, No Answers, so Keep on Shopping* 15 (stating how public interest outweighs interest of an entity with licensing processes).

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²²² See Cal. GOVT Code § 6253.3 (2009) (discussing the disclosure rules in California).

requirements.”²²³ The California Committee of Bar Examiners delegated to the NCBE its duty to “examine all applicants for admission,” even though it originally exercised the function of writing, administering, and grading the California General Bar Exam.²²⁴ As it is the Committee’s duty to examine what information has been transferred to the NCBE, and because the NCBE is a private corporation that is not directly covered by the California Public Records Act, the State Bar violated California Government Code § 6253.3.²²⁵ To cure this violation of the California Public Records Act, the public and researchers have access to several procedural remedies. First, they could attempt to negotiate with the State Bar to obtain information maintained and privately held by the NCBE that would otherwise be discoverable under the public records act. This option provides the State Bar with an incentive to work with the data requester in order to avoid litigation that could result in a court prohibiting the State Bar Association from delegating bar testing to the NCBE. If the negotiation fails, then a data requester could sue in superior court for a writ of mandate and/or prohibition to either obtain the data or cease the relationship between the State Bar Association and the NCBE. For instance, in *Community Youth Athletic Center v. City of National City*²²⁶ the court found that

²²³ See Bus. & Prof. Code §§ 6000 et seq. (2012) (giving the Committee of Bar Examiners three state licensing functions).

²²⁴ See *California Bar Exam Grading*, THE ST. B. OF CAL., <http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Exam/Description-and-Grading-of-the-California-Bar-Exam> (last visited on Oct. 21, 2017) (“The MBE, which is administered on Wednesday, is developed and graded by the National Conference of Bar Examiners (NCBE).”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

²²⁵ See Cal. GOVT Code, supra note 222.

²²⁶ See *Youth Athletic Center v. City of National City*, 220 Cal. App. 4th 1385 (2013) (holding in favor of the plaintiff because the government failed to keep control of the data).

defendant illegally retained a “private consultant” and relied on the consultant’s data to decide the City’s eminent domain redevelopment power. The trial court held that the City violated California Government Code § 6253.3 because it failed to keep control of data otherwise discoverable by petitioners under the CPRA.²²⁷ The Court of Appeals stated that no “bad faith finding” is required under the CPRA, and that the “City is not justified in arguing that it did everything it could or should have to do, or that all the fault lay with its contractor RSG.”²²⁸ The Court of Appeals upheld the trial court’s declaratory relief and mandated that the City “make reasonable efforts to facilitate the location and release of the information.”²²⁹ In *Sander v. State Bar of California*²³⁰ the California Supreme Court held that the public has a legitimate interest in the state bar licensing process and that it has a right to non-confidential information regarding the reliability, fairness, and the bar examination’s possible disparate impact based upon race, ethnicity and gender.²³¹ Obviously, if law suits were lodged in several states, the NCBE might be sufficiently incentivized to agree to abide by state public records acts except for disclosure of student identifying data and NCBE’s proprietary test data.

CONCLUSION

An ABA Standard based solely on law school bar percentage passage rates results in inequitable application in states that have promulgated much higher

²²⁷ *Id.* at 1428–29.

²²⁸ *Id.*

²²⁹ *Id.* at 1429.

²³⁰ *Sander v. State Bar of California*, 54 Cal. 4th 300 (2013).

²³¹ *See id.* at 324-325 (2013) (finding that the public has an interest in the state bar licensing process and has a right to non-confidential information).

than national mean MBE cut scores. This bar passage percentage standard creates an incentive for schools in high MBE cut score states not to admit students with slightly lower LSAT/GPA credentials, including minority/ethnic applicants, to maintain maintain ABA accreditation. The best method to level the playing field for minorities among all states, maintaining and/or increasing diversity in the bar, and assuring consumer protection is to add a within “X” standard deviation from the national mean MBE score for 3 out of the last 5 years for maintaining ABA accreditation regarding students’ outcome measures as a proxy for legal competence and the quality of law school instruction. It is time for the ABA and the NCBE to combine their resources and share all existing MBE data, to determine the appropriate “X” standard deviation from the national mean MBE score, and to use a new element of Standard 316 to judge the quality of student competence on the bar examination.

Sent: Friday, October 19, 2018 5:23 AM
Subject: LSAT#
First Name: Keith
Last Name: Sutton

Message:

Dear American Bar Association,

My name is Keith Sutton, I wanted to let you know that first of all I have two associates degrees one in general studies with a concentration in biology, and also in nursing. I also have my Bachelors in nursing, and a masters in nursing from a top 20 program when I graduated. I am currently in a Doctorate of nurse practitioner program(DNP), after this semester I have one class left to complete this degree. I am considered a minority in nursing for two reasons one is because I am a male in a dominated female professional, and secondly I am black.

Nursing programs are like being in the military, they usually harp on grammar big time like law school does. If you are one point away from a A- they don't round off your grade but if I was in medical school they wouldn't do that.

So what I'm getting at is there are a lot of other considerations that you should allow than constantly relying on the LSAT, it doesn't make a person a better lawyer. The reason I can say this is because nursing schools use to want and rely heavily on the graduate record exams for entry into the nurse practitioner programs. I was a head of my time and argued that this doesn't make you a better nurse practitioner. Then they basically got rid of that requirement!!

It is time to change because you are leaving out a lot of minority's like me that has the medical knowledge to be able to challenge death penalty cases brilliantly if I had a law degree. I am honest I have had a history of have diabetes and most recently went through treatments for cancer over the year and a half, and finishing my DNP will be hard but a huge challenge because it is like a military program again instead if I went to medical school they don't grade the students low at all in their clinical rotations at all. I know this because at one time my father told me this and he is a medical doctor that use to teach with a medical school. You are going to not have more diversity of minority candidates if you don't start to change the heavy reliance on the LSAT. Schools are feeling pressured because you guys are coming down on them way to hard, such as in Arizona, North Carolina, just to name a few of them.

Even if schools can include the consideration based also on the minority admissions it is interesting to me that the LSAT is usually considered the most. The reason why I know this is because I have spoken to many law schools around the country!! I appreciate your time and consideration of my concerns.

Thank You
Keith Sutton FNP/BC

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October 24, 2018

Mr. Fernando Mariduena

Council of the Section of Legal Education and Admissions to the Bar
ABA Section of Legal Education and Admissions to the Bar
321 N. Clark Street, 21st Floor
Chicago, IL 60654

Via email: Fernando.mariduena@americanbar.org

Dear Mr. Mariduena,

On behalf of the ABA Commission on Lawyer Assistance Programs, The National Task Force on Lawyer Well-Being, and the ABA Law Student Division, we are jointly writing and requesting that the Council consider revisions to the ABA Standards on Legal Education.

Law students are experiencing significant challenges in the areas of substance use (including alcohol) and mental health. These needs were confirmed with the publication of *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns (the "Law Student Survey")* by Jerome Organ, David Jaffe and Kate Bender in the Journal of Legal Education (2016). In the same year, a separate study documented the challenges that attorneys, and particularly young attorneys, were confronting in the profession. *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys (the "Hazelden Study")* (P.R. Krill, R. Johnson, & L. Albert, 10 J. Addiction Med. 46 (2016). Throughout this time period, national media coverage of some high-profile deaths from suicide has continued to dramatize the urgent and compelling need for action.

In response to these serious and well-documented trends, a national task force of relevant stake-holders convened to discuss next steps. Those deliberations resulted in *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (August, 2017). This comprehensive report, available at lawyerwellbeing.net, outlines an ambitious agenda for institutional changes throughout the legal profession. The ABA House of Delegates, at the 2018 Midyear Meeting in Vancouver, adopted a resolution urging stakeholders to consider the recommendations of the report. These recommendations included the following proposals relating to law schools:

30. INCLUDE WELL-BEING TOPICS IN COURSES ON PROFESSIONAL RESPONSIBILITY.

Mental health and substance use should play a more prominent role in courses on professional responsibility, legal ethics, or professionalism. A minimum of one class session should be dedicated to the topic of substance use and mental health issues, during which bar examiners and professional responsibility professors or their designee (such as a lawyer assistance program representative) appear side-by-side to address the issues. Until students learn from those assessing them that seeking assistance will not hurt their bar admission prospects, they will not get the help they need.

31. COMMIT RESOURCES FOR ONSITE PROFESSIONAL COUNSELORS.

Law schools should have, at a minimum, a part-time, onsite professional counselor. An onsite counselor provides easier access to students in need and sends a symbolic message to the law school community that seeking help is supported and should not be stigmatized. Although the value of such a resource to students should justify the necessary budget, law schools also could explore inexpensive or no-cost assistance from lawyer assistance programs. Other possible resources may be available from the university or private sector.

We write to urge the Section on Legal Education to consider the following recommendations that recognize the importance of law student well-being in the ABA Standards. Our request includes:

- (1) articulating professional well-being as a fundamental learning outcome in Section 302;
- (2) urging by an Interpretation to Section 303 that one hour in the Professional Responsibility course be dedicated to education on substance use and mental health;
- (3) ensuring that law school student services as defined in Section 508 include the substance use and mental health counseling desperately needed on every campus in this era.

The Commission on Lawyer Assistance Programs works with state and local lawyer assistance programs around the country whose mission is to serve lawyers, judges, and law students who are struggling with alcoholism, substance and mental health challenges. Many LAPs around the country are already working closely with law schools to provide needed education and counseling. Many law schools are working closely with central University Counseling Centers to provide on-campus services, and in some instances have hired dedicated staff to provide on-site services. These revisions require that every law school have a plan to address these needs but would not require the expenditure of additional funds.

Task Force members, working with multiple sections of the American Bar Association and the Conference of Chief Justices, continue to advocate for institutional change on many fronts, including the bar admission process, continuing legal education requirements, law firm leave policies, and burdens faced by the judiciary. At a time when the entire profession is moving forward on this national agenda for Lawyer Well-Being, we urge the Council to take action on these proposed revisions.

Sincerely,

Bree Buchanan
ABA Commission on Lawyer Assistance Programs

Bree Buchanan, Chris Newbold, William Slease
National Task Force on Lawyer Wellbeing

Negeen Sadeghi-Movahed
ABA Law Student Division

Proposed Changes to the ABA Standards for Approval of Law Schools
Submitted on Behalf of the ABA Commission on Lawyer Assistance Programs, the National Task Force on
Lawyer Well-Being, and the ABA Law Student Division

Standard 302. LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession including the tools needed to promote personal and professional well-being.

Standard 303. CURRICULUM

- (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
 - (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
 - (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
 - (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement as defined in Standard 304.

Interpretation 303-5

Mental health and substance use should play a more prominent role in the required course on professional responsibility. A minimum of one class session should be dedicated to the topic of substance use and mental health issues, during which bar examiners and professional responsibility professors or their designee (such as a lawyer assistance program representative) appear side-by-side to address the issues.

Standard 508. STUDENT SUPPORT SERVICES

A law school shall provide all its students, regardless of enrollment or scheduling option, with basic student services, including maintenance of accurate student records, academic advising and counseling, financial aid and debt counseling, substance use and mental health counseling, and career counseling to assist students in making sound career choices and obtaining employment. If a law school does not provide these student services directly, it shall demonstrate that its students have reasonable access to such services from the university of which it is a part or from other sources.

MORE TRANSPARENCY, PLEASE

Kyle McEntee*

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I. INTRODUCTION

Transparency comes in many forms, from data to documents. Yet what matters most is what transparency does. It reveals. Through revelation, transparency can reduce information asymmetry to help markets, policymakers, and even decisionmakers at the institutions subject to scrutiny. It exposes blind spots and signals opportunities for change. As such, transparency is not a final step in progress—it is an early step. Whatever transparency reveals, the value is severely limited without action because progress is *not* inevitable. Progress depends on what people and institutions do with what is revealed.

This is both a blessing and a curse. Transparency is easy to be in favor of and disproportionately difficult to be against. It can also be the easy way out when confronted with a problem. Increasing transparency may let policymakers off the hook without passing additional laws, regulations, or standards. The phrase *caveat emptor* comes to mind. Of course, because transparency is easier to achieve than more onerous limits on behavior, it also

* Executive Director, Law School Transparency (“LST”). Founded in 2009, LST is a nonprofit dedicated to making entry to the legal profession more transparent, affordable, and fair. The author thanks members of the Iowa State Bar Association Young Lawyers Division, including Kyle Fry, Thomas Hillers, Abhay Nadipuram, Rob Poggenklass, and Maggie White, for co-authoring *A Way Forward: Transparency in 2018*. This article draws on that report. The author also thanks Olympia Duhart, Kimber Russell, Marissa Olsson, Deborah Merritt, Susan Poser, and Caren Ulrich Stacy for the essential part each played in LST’s *Women in the Law*. That mini-series about the challenges women face in the legal profession sparked several recommendations made in this article.

provides the opportunity to build genuine progress over time while values catch up. Transparency can therefore operate as a powerful, ironically discrete tool.

At times the American Bar Association (“ABA”) Section of Legal Education and Admissions to the Bar (“Section”), the accreditor of law schools, has acknowledged and responded to problems in legal education through transparency measures. The ABA Standards and Rules of Procedure for Approval of Law Schools (“Standards”), for example, now expressly prohibit schools from providing false, incomplete, or misleading consumer information.¹ The Standards also require law schools to publish detailed employment data on their websites.²

The impetus for these changes began in 2010, but were caused by deceptive marketing practices that had become the norm over several decades.³ Specifically, law schools overstated job and salary outcomes.⁴ The lack of transparency and accountability resulted in inflated enrollment, inadequate job prospects, and higher prices.⁵ Once identified, covered by the legal and mainstream press, and remedied through changes to the Standards and voluntary disclosure norms, law school enrollment fell dramatically, job prospects improved, and tuition increases slowed or in some cases declined.⁶

Conditional scholarships provide another example of how transparency can meaningfully affect law schools. “A conditional scholarship is any financial aid award that depends on the student maintaining a minimum grade point average or class standing, other than that ordinarily required to remain in good academic standing.”⁷ *The New York Times* described conditional scholarship programs as a “bait and switch” tactic.⁸ The programs raised

¹ AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018–19 35 (2018).

² *Id.*

³ Kyle McEntee & Patrick J. Lynch, *A Way Forward, Improving Transparency in Employment Reporting at American Law Schools* (Apr. 10, 2010) (unpublished manuscript), https://www.lawschooltransparency.com/documents/LST_White_Paper_April_2010.pdf.

⁴ *Id.*

⁵ *Law School Enrollment, LAW SCH. TRANSPARENCY*, <https://data.lawschooltransparency.com/enrollment/all/> (last visited Aug. 21, 2018).

⁶ After 1L enrollment peaked in 2010 at 52,404 new students, enrollment fell dramatically in each of the next three years, followed by four years of even lower, but steady enrollment between 37,000 and 38,000 new 1Ls. *Id.* While smaller class size certainly helps the percentage of the class who can get a lawyer job, the entry-level market remains structurally weak. Since 2013, fewer graduates obtained full-time lawyer jobs each year than the prior year. *Law School Job Outcomes, LAW SCH. TRANSPARENCY*, <https://data.lawschooltransparency.com/jobs/legal-jobs/> (last visited Aug. 21, 2018).

⁷ *Conditional Scholarships, LAW SCH. TRANSPARENCY*, <https://data.lawschooltransparency.com/costs/conditional-scholarships/> (last visited Aug. 21, 2018).

⁸ David Segal, *How Law Students Lose the Grant Game, and How Schools Win*, N.Y. TIMES (May 1, 2011), <https://www.nytimes.com/2011/05/01/business/law-school-grants.html>.

fairness concerns because students did not fully understand their terms—law school grading curves are a harsh reality for students who achieved all A’s and B’s in college—and because students were disposed not to re-assess continued enrollment once the price drastically changed in the middle of their studies, something law schools took advantage of to maximize tuition revenue. Starting in 2013, the Section required law schools to publish the number of students who receive conditional scholarships and the number of those students who lost some or all their scholarship value due to law school performance.⁹ By the 2016-17 academic year, 36 law schools had eliminated these programs, a reduction of 29%.¹⁰

The motivation behind the change is tough to definitively pin down. Schools fiercely competed for students in that time as the number of law school applicants tumbled.¹¹ And some applicants successfully negotiated their scholarship conditions away. However, schools also came under significant fire from their own faculty, at academic conferences, and in the press. Hard data highlighted schools that utilized these scholarship programs and showed how students fared. Individuals at schools were forced to assess how these practices comported with their values, as well as the school’s. The nation’s top law schools in particular fled to higher moral ground.¹²

With both employment data and conditional scholarships, transparency measures were designed to address known problems. With the latter, schools likely responded to dissonance between their values and their choices. With the former, the law school applicant market responded to new information to produce change. But rebounding applicant demand despite a flat job market is likely to showcase the shortcomings of relying on transparency to create a system of legal education that suits its important place in society. The Section’s transparency measures allow observers to see worsening job prospects for graduates coming, but the Standards do not attempt to limit enrollment through, for example, a minimum employment rate as the Section does with the minimum bar passage standard.¹³ Likewise the Section could have banned conditional scholarships, but instead opted to institute mandatory disclosures. Open data access enables researchers to produce new

⁹ *Conditional Scholarships*, *supra* note 7.

¹⁰ *Id.* The number of law schools with conditional scholarship programs was flat for the first three years of data. However, these data were cemented before the new mandatory disclosures. Once the data were in the open, the number of schools with these programs fell, first slowly and then more quickly.

¹¹ *Demand for Law School*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/enrollment/demand-for-law-school/> (last visited Aug. 21, 2018).

¹² Jerry Organ, *Far Fewer Law School Conditional Scholarship Programs in 2016-17 than in 2011-12*, TAXPROF BLOG (Jan. 2, 2018), http://taxprof.typepad.com/taxprof_blog/2018/01/far-fewer-conditional-scholarship-programs-in-2016-17-than-in-2011-12.html.

¹³ AMERICAN BAR ASSOCIATION, *supra* note 1, at 24; *see also* Scott F. Norberg, *J.D.s and Jobs: The Case for an ABA Accreditation Standard on Employment Outcomes*, 67 J.L.E. 1035 (2018).

information by combining datasets, as illustrated in Part A.3. It also allows problems to be identified earlier and systematically, instead of by anecdote. Yet the impact on progress—however measured—is limited by what comes after transparency, whether standards, market adjustments, or self-correction in the face of a moral dilemma.

The proposals in this article are the product of discussions with young lawyers, law students, legal academics, and leadership in various sections and divisions in the ABA. Part A outlines transparency proposals related to student debt, scholarships, and diversity. Part B considers the costs to law schools and the Section from additional data collection and reporting. Part C considers constraints related to making the resultant datasets public. Finally, Part D provides concluding remarks about the balance between the costs and benefits of these proposals.

The Council already has the authority to collect and require schools to publish all the data described below. Standard 104 permits the Council to collect these data “in the form, manner, and time frame” it specifies each year.¹⁴ Rule 49(b) permits the Council to publish these data when “authorized under Standard 509 or [when] . . . made public by the law school.”¹⁵ Standard 509 allows the Council to require schools to publish these data “in the form and manner and for the time frame designated by the Council.”¹⁶

If enacted, these proposals will shed light on law student debt, inequitable pricing practices, and lasting inequality. The resultant data will allow legal educators and policymakers to confront difficult realities and to direct resources in directions that strengthen and stabilize the law school pipeline. Better consumer information will help students make sense of their choice, while also shedding light on legal education’s contributions to the legal profession’s diversity. It will also lay bare certain decisions schools make in how and why they allocate resources.

This aligns squarely with the Section of Legal Education’s mission and values. The Section is the nationally recognized accreditor of law schools, but its mission is broader.¹⁷ Its mission is also “[t]o be a creative national force in providing leadership and services to those responsible for and those who benefit from a sound program of legal education and bar admissions.”¹⁸ In July 2017, the Section convened a roundtable of legal education stakeholders to discuss how to modify the Standards to encourage innovation and address challenges related to cost, declining job opportunities, and

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 76.

¹⁶ *Id.* at 35.

¹⁷ *Mission Statement*, A.B.A., https://www.americanbar.org/groups/legal_education/about_us.html (last visited Aug. 24, 2018).

¹⁸ *Id.*

declining bar passage rates. One theme that emerged from the roundtable is the necessity of more transparency. While transparency is not a magic bullet, the foundation for reform is good data. In the meantime, the following recommendations will expand access to valuable data to spark reforms that advance the United States legal system.

II. DATA PROPOSALS

A. Student Borrowing

The typical law student borrows a significant sum of money to attend law school. In 2017, the average private law school graduate who borrowed received \$130,145 in student loan disbursements during law school.¹⁹ The average public law school graduate who borrowed received \$92,997 in student loans.²⁰ Notably, borrowing averages do not reflect the amount of debt owed when repayment begins six months after graduation. For the 2018-19 academic year, interest immediately begins to accrue for students at 6.6% for Stafford Loans (up to \$20,500 per year) or 7.6% for Graduate PLUS loans (up to the full cost of attendance).²¹ The government does not subsidize law student interest payments during school, thus the cost of the first-year loan increases by nearly 25% while the student is studying and before a single loan payment is due if the student does not make interest payments or repay principal during law school.

These national averages come from school-level borrowing averages. Each school's average includes any graduate who borrowed at least \$1 during law school, whether they borrowed for just one semester—perhaps \$5,000 to pay for a trip—or they borrowed the full cost of attendance each year. While the average can tell us about the entire population, it tells us little about individual students. With cost of attendance in 2017-18 as high as \$95,883 at Stanford Law School, student borrowing can vary wildly based on scholarships and ability to pay.²² The latest available data show that 55% of Stanford Law students pay full price.²³ After accounting for interest that accumulates during law school, a Stanford graduate who paid full price for

¹⁹ *Law School Debt*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/debt/?scope=national> (last visited Aug. 21, 2018).

²⁰ *Id.*

²¹ *2018-19 Federal Student Loan Interest Rates*, ACCESSLEX, <https://www.accesslex.org/2018-2019-federal-student-loan-interest-rates> (last visited July 27, 2018).

²² *Stanford University Costs*, LAW SCH. TRANSPARENCY, <https://www.lstreports.com/schools/stanford/costs/> (last visited July 27, 2018).

²³ *Id.*

all three years may owe over \$300,000 when the first payment is due, even factoring in a 2L summer associate salary.

The public does not know how many (if any) graduates actually borrow the full amount, just that 80% of Stanford Law graduates in 2017 borrowed at least \$1 and that the average graduate borrowed \$131,745.²⁴ Perhaps borrowing several hundred thousand dollars from one of the nation's elite law schools is not a matter of public interest or concern. But the debt loads at schools with worse job and bar exam outcomes can reach astronomical levels too.

Take, for example, Southwestern Law School. Its annual cost of attendance was \$82,600 in 2017-18.²⁵ Half of its students paid full price.²⁶ Only 43% of its 2017 graduates obtained a long-term, full-time job that requires bar passage within ten months of graduation.²⁷ Only 52.3% of 2017 graduates passed the California bar exam on the first try.²⁸ The public does not know how many, if any, graduates actually borrowed nearly a quarter of a million dollars at this school. But unlike for Stanford, the public does not know the average amount borrowed at Southwestern Law School because the school has not disclosed graduate borrowing data since 2012, when the average amount borrowed for the 78.9% of graduates who borrowed was \$147,976.²⁹ Since that time, tuition at the school is up 23%; net tuition is up 8%; cost of living is up 12%; the median and 75th percentile scholarship has not changed; and the 25th percentile scholarship has declined by a third.³⁰

Given the cost of legal education and the expected entry-level salaries, many graduates face consequential financial strain. The amount of strain

²⁴ *Debt by Law School for 2017 Graduates*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2017> (last visited Aug. 21, 2018).

²⁵ *Southwestern Law School Costs*, LAW SCH. TRANSPARENCY, <https://www.lstreports.com/schools/southwestern/costs/> (last visited Aug. 21, 2018).

²⁶ *Id.*

²⁷ *Southwestern Law School ABA Charts*, LAW SCH. TRANSPARENCY, <https://www.lstreports.com/schools/southwestern/aba/> (last visited Aug. 21, 2018).

²⁸ *Southwestern Law School Bar Exam Outcomes*, LAW SCH. TRANSPARENCY, <https://www.lstreports.com/schools/southwestern/bar/> (last visited Aug. 21, 2018).

²⁹ *Debt by Law School for 2012 Graduates*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2012> (last visited Aug. 21, 2018).

³⁰ *Compare 2012 Southwestern Law School Standard 509 Report*, A.B.A., <http://abarequreddisclosures.org/Disclosure509.aspx> (under the section titled "Standard 509 Information Reports", select "2012" as the year; then select "Southwestern Law School" as the institution; finally, click "Generate Report"), with *2017 Southwestern Law School Standard 509 Report*, A.B.A., <http://abarequreddisclosures.org/Disclosure509.aspx> (under the section titled "Standard 509 Information Reports", select "2017" as the year; then select "Southwestern Law School" as the institution; finally, click "Generate Report"), and *Net Tuition for U.S. Law Schools*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/net-tuition/> (last visited Aug. 21, 2018).

differs greatly based on the amount an individual owes. Financial advisors typically recommend devoting no more than 10 or 15% of income to debt service.³¹ A graduate who borrows \$110,000 owes roughly \$125,000 at first payment, which translates to a monthly payment of about \$1,400 on the standard ten-year plan. To remain in range of the recommendation, the graduate must make between \$112,000 (for 15%) and \$168,000 (for 10%). This graduate would devote 24% of her pre-tax salary if she earns the median entry-level salary of \$70,000 for 2017 graduates in long-term, full-time law jobs.³² She would devote 34% of her pre-tax salary if she borrowed \$147,976 (Southwestern's 2012 average amount borrowed).³³ The burden accelerates with a greater amount borrowed, a lower salary, or both.

The Section of Legal Education does not publish any school-level borrowing data, although the Section does collect related data as part of its annual questionnaire to law schools. Each law school must report the total amount borrowed by all J.D. students for the previous academic year, as well as the number of J.D. students who borrowed.³⁴ From this, the Section can calculate the average amount borrowed for a single year of law school. When combined with the total J.D. enrollment, the Section can also calculate the percentage who borrowed. In the past, the Section measured the cumulative

³¹ *Loan Debt and Repayment*, COLLEGE BOARD, <https://bigfuture.collegeboard.org/pay-for-college/loans/loan-debt-and-repayment> (last visited Aug. 21, 2018).

³² NAT'L ASS'N FOR LAW PLACEMENT, CLASS OF 2017 NATIONAL SUMMARY REPORT (2018), https://www.nalp.org/uploads/Classof2017_NationalSummaryReport.pdf. These salary numbers are not perfect, but they overstate rather than understate salaries. The percentage of a graduating class employed in jobs that require a law license is sensitive to two distinct supply figures: total graduates and total available jobs. For example, if graduates increase and the number of jobs stays the same, the percentage will decline. The percentage of graduates obtaining full-time entry-level legal jobs was quite high in the 1980s, peaking at 84.5% in 1988. The average rate in the mid to late 1980s was 82.9%. The next two decades (90s and 00s) each had an average that was ten points lower, 73.7% in the 90s and 71.4% in the 00s. This decade, so far, the average is 61.7%—an additional ten points lower. *National Report on Law School Job Outcomes*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/jobs/legal-jobs/> (last visited Aug. 21, 2018). Strikingly, these shifts appear to reflect enrollment management decisions by law schools instead of demand for new lawyers. Between 1976 and 2000, law schools steadily enrolled between ~40,000 and ~44,000 new students each year. From 1976 to 1987, the average was 40,973. From 1988 to 2000, the average was 43,497—a little over 6% higher. But between 2000 and 2002, law schools increased first-year enrollment 11.2%. In subsequent years, enrollment steadily crept up, with minor ebbs and flows, until peaking in 2010 at 52,404. The number of jobs, on the other hand, has been far steadier. Between 1985, the first year for which we were able to analyze data, and 2010, the number of new full-time law jobs each year generally stayed between 27,000 and 30,000. Increased enrollment and a steady number of jobs spell a lower employment rate for law school graduates. *Id.*

³³ Using a weighted interest of 7.2%, she would owe just over \$169,000, which translates to just shy of a \$2000 monthly payment on a standard ten-year plan.

³⁴ *Annual Questionnaire*, A.B.A. (2018), https://www.americanbar.org/groups/legal_education/resources/questionnaire.html (last visited Aug. 21, 2018) (scroll down and select "Part IV: Financial Aid instructions and questions" and download Word document).

amount a graduating class borrowed for law school. This old measurement produces the figures peppered throughout this article.

Up-to-date graduate borrowing figures are possible because *U.S. News & World Report* continued to request the data after the Section changed the cohort and time period for which they measured student borrowing. Accordingly, public borrowing data for all years of law school come from voluntary disclosures by law schools to *U.S. News*. This comes with several clear consequences.

Consumers, schools, and researchers lose out because the only source for law school borrower data is a news magazine that muddies the decision-making process for consumers and schools alike. The Section encourages people to visit the *U.S. News* website through its decision not to publish these borrowing data. These data are not as reliable as they would be if they were reported to and published by the Section. Every year, more than a handful of schools make erroneous disclosures to *U.S. News*, which only occasionally get corrected. For example, some law schools routinely report to *U.S. News* the average borrowed by all J.D. students who borrow, presumably because school administrators assume the *U.S. News* survey instrument matches the Section's questionnaire. One additional consequence of a voluntary publishing regime is that, every year, a dozen or so schools decline to publish the average amount borrowed by graduates.³⁵

That said, the average amount borrowed by graduates and the percentage borrowing are limited in utility to consumers, although there is value in confronting consumers with figures that account for several years of schooling instead of just the annual cost of attendance. The average amount borrowed also helps journalists, advocates, and policymakers to contextualize bar passage and employment rates, as well as entry-level salaries. It is important for the Section to return to collecting borrower data for graduates in addition to borrower data during a single academic year, even if graduate borrowing data are imperfect. For example, a transfer student who graduates from the school after the first year will not have all borrowing captured. Graduate borrowing figures also exclude those who never graduated, whether they failed out or left voluntarily.

Beyond publishing the data the Section used to collect, the Section would do a great service to legal education if it enabled consumers, researchers, and internal influencers, such as faculty, to peer underneath the surface figures (average borrowed) to see the borrower makeup. Shedding light on underlying borrowing data may stir policymakers, faculty, and administrators to think more clearly and realistically about the problem of student debt. One way to do this is through a frequency distribution, which

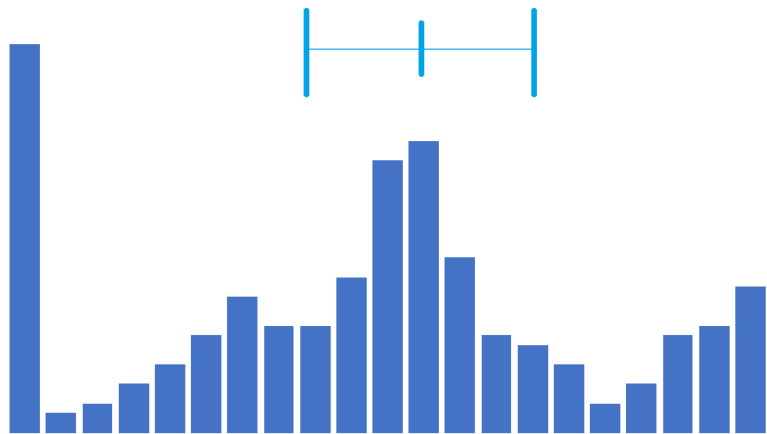
³⁵ *Debt by Law School for 2017 Graduates*, *supra* note 24.

“displays the frequency of various outcomes in a sample.”³⁶ The following data table, **Table A**, uses \$10,000 bands. **Figure A** applies the data table in graphic form (axes/data labels omitted), along with a modified box-and-whisker plot to represent the median and the interquartile range.

Table A

Amount Borrowed	# Graduates	\$	#	\$	#
\$0	40	\$60,000-\$69,999	11	\$130,000-\$139,999	9
\$1 - \$9,999	2	\$70,000-\$79,999	11	\$140,000-\$149,999	7
\$10,000 - \$19,999	3	\$80,000-\$89,999	16	\$150,000-\$159,999	3
\$20,000 - \$29,999	5	\$90,000-\$99,999	28	\$160,000-\$169,999	5
\$30,000 - \$39,999	7	\$100,000-\$109,999	30	\$170,000-\$179,999	10
\$40,000 - \$49,999	10	\$110,000-\$119,999	18	\$180,000-\$189,999	11
\$50,000 - \$59,999	14	\$120,000-\$129,999	10	\$190,000-\$199,999	15
Median of Borrowers	\$104,000				
Mean of Borrowers	\$106,250				

Figure A

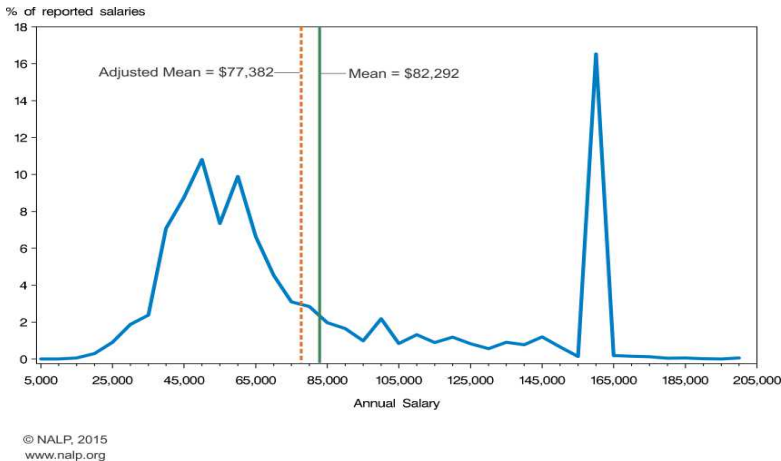


In legal education, the most famous application of a frequency distribution is NALP’s bi-modal salary distribution curve (shown below, **Figure B**). This curve continues to shape how policymakers, researchers, consumers, and the public understand entry-level salaries. The mean salary may have been \$82,292 for 2014 graduates, but very few graduates made at or near that amount. Instead graduates fell into one of two “humps”—

³⁶ *Frequency Distribution*, WIKIPEDIA, https://en.wikipedia.org/wiki/Frequency_distribution (last visited Aug. 21, 2018).

\$160,000 on the one side and between \$40,000 and \$65,000 on the other.³⁷ It is impactful because readers must confront the individuals that make up the averages.

Figure B



In an ideal world, the public would know how much graduates owe when the first payment is due including interest, but this is not possible without federal legislation. Instead, the Section should collect data on student loan borrowing outcomes for graduates and publish those outcomes using a frequency distribution table, including non-borrowers, using its authority under Standard 104 and Rule 49(b).

This proposal poses no additional collection burden and minimal reporting burden for law schools. As evidenced by roughly 90% of law schools voluntarily disclosing the average amount borrowed to *U.S. News* each year, the burden would be negligible for schools to report the relevant figures once again to the Section. Further, the reason law schools can calculate an average at all is that the schools process student loans for their students. Reporting individual records, properly anonymized in the same way as employment outcome records, would require minimal staff time and produce valuable data for public consumption.

B. Tuition Prices and Discounts

Over the past several decades, law school tuition has increased dramatically, well above inflation. Compared to tuition in 1985, private and public law school tuition is 2.7 and 5.8 times as expensive after accounting

³⁷ *Salary Distribution Curves*, NAT'L ASS'N FOR L. PLACEMENT, <http://www.nalp.org/salarydistrib> (last visited Sept. 22, 2017).

for inflation.³⁸ The average private law school tuition was \$46,329 in 2017, with residents at public schools paying an average of \$26,425 per year.³⁹ The range of tuition, however, demonstrates remarkable variability. At public schools, one year of resident tuition ranged from \$7,383 to \$58,300.⁴⁰ At private schools, the range was \$16,418 to \$67,564 per year.⁴¹ While the average tuition at top performing law schools is much higher than the rest, prices do not scale with job outcomes elsewhere.⁴² The average tuition at the lowest performing schools is similar to the average for mid-range schools.⁴³

Law schools engage in significant tuition discounting through grants and scholarships. Although the nominal tuition price has increased, it does not tell the whole story. About 30% of students pay full price.⁴⁴ For the 70% receiving a discount, the discounts have shifted away from need-based discounts based on ability to pay towards merit-based discounts based on LSAT and undergraduate GPA. Those with the highest LSATs and GPAs receive the discounts. As such, the students who are least likely to complete school, pass the bar, and get a job subsidize the students who are more likely to succeed. These also tend to be the students who are the most disadvantaged.⁴⁵

The Section of Legal Education collects and publishes useful data related to how much students pay for their legal education. The Section currently requires schools to report and publish for full-time and part-time students: tuition and fees; scholarship data by the median and interquartile range; and scholarship data by the percentage of tuition covered, e.g. what percentage of all students have a scholarship that covers up to 50% of tuition.⁴⁶ Moreover, the Section requires schools to report and publish whether and how often they reduce or eliminate scholarships after poor academic performance.⁴⁷

³⁸ *Law School Tuition in the United States 1985–2017*, LAW SCH. TRANSPARENCY, <https://www.data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2017> (last visited Aug. 21, 2018).

³⁹ *Id.*

⁴⁰ *Law School Tuition Grouped by 2016 Job Outcomes*, LAW SCH. TRANSPARENCY, <https://www.data.lawschooltransparency.com/costs/tuition/?y1=2016&y2=2017&scope=jobs> (last visited Aug. 21, 2018).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Net Tuition for U.S. Law Schools*, *supra* note 30.

⁴⁵ LAW SCH. SURVEY OF STUDENT ENGAGEMENT, LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUITY 2016 ANNUAL SURVEY RESULTS (2016), <http://lsse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf>.

⁴⁶ *Annual Questionnaire*, *supra* note 34.

⁴⁷ *Id.*

The Section already recognizes the value of publicly available price information for consumers, researchers, and the public. But with increased discounting and the shift away from need-based aid, additional clarity would add additional value. The utility of data for policymaking and decision-making depends not only on whether data are publicly available, but also data presentation. The Section can further its efforts of helping people understand the cost of legal education with frequency distribution tables for tuition paid by students using relatively narrow distribution bands. The Section should collect data on tuition paid by each enrolled individual and publish up to four frequency distributions tables per law school—one for 1L tuition paid, one for upper-level tuition paid, and a distinction for part-time and full-time as necessary—using its authority under Standard 104 and Rule 49(b).

This proposal poses no additional collection burden and minimal reporting burden for law schools. In fact, rather than a new style of information, this proposal merely improves upon the frequency distribution table the Section already utilizes for how much tuition students pay, referred above as “scholarship data by the percentage of tuition covered.” **Table B** reproduces a Standard 509 Information Report arbitrarily selected (seriously) from ABArequireddisclosures.org, with several stylistic and linguistic clarifications to showcase its contents. The clearly erroneous part-time column is reproduced without any adjustment.

Table B

	All		Full Time		Part Time	
Total Students	248	100%	240	97%	8	3%
No Grant Received	44	18%	67	26%	0	0%
Receiving Any Grant	204	82%	177	74%	27	338%
< Half Tuition	81	33%	71	30%	10	125%
Half to Full Tuition	57	23%	48	20%	9	113%
Full Tuition	48	19%	45	19%	3	38%
> Full Tuition	18	7%	13	5%	5	63%

The proposal (below, **Table C**) would improve the precision of the table by introducing narrower bands than the first column in **Table B**. The proposal also reframes, for the sake of precision, the bands from the percentage of tuition to the amount of tuition paid. These simple changes will help people connect tuition prices to the real lives affected by them. The resultant **Table C** showcases the transactional nature of tuition discounting, rather than a framework that treats scholarships as acts of generosity, which restricts how consumers, policymakers, and internal decision-makers understand and

act on the information. Law school financial aid and admissions administrators frequently and rightfully complain that prospective students focus too much on the scholarship amount, rather than on the price they would pay. Consider a student who receives a \$10,000 scholarship at School A with \$35,000 annual tuition and a \$20,000 scholarship at comparable School B with \$45,000 annual tuition. Although the price paid is the same, students in his or her position often complain about disparate scholarship amounts.

Table C

Tuition Paid, Full Time	# Students	\$	#
\$0	58	\$18,000 - \$20,999	[0-48]
\$1 - \$2,999	[0-48]	\$21,000 - \$23,999	[0-27]
\$3,000 - \$5,999	[0-48]	\$24,000 - \$26,999	[0-27]
\$6,000 - \$8,999	[0-48]	\$27,000 - \$29,999	[0-27]
\$9,000 - \$11,999	[0-48]	\$30,000 - \$32,999	[0-27]
\$12,000 - \$14,999	[0-48]	\$33,000 - \$35,999	[0-27]
\$15,000 - \$17,999	[0-48]	\$36,000 - \$38,999	44
Median Tuition Paid	\$25,706	\$39,000 - \$41,999	63
Mean Tuition Paid	\$28,071		

Table C is the author's best estimate using publicly available data. The range of students for the distribution bands from \$1 to \$35,999 (75 total students) were derived from the frequency distribution table on the Standard 509 Information Report. The interquartile range and median produced a different distribution across those bands—and the distributions contradicted each other, almost surely due to a data reporting error by the unnamed law school.

As this table merely refashions how the price paid by students is communicated to the public, the burden would be negligible for law schools to report the necessary data to the Section. Every law school can account for how much its students pay—in fact, it is necessary to know this for any school that processes Title IV student loans (all law schools). Reporting individual records, properly anonymized in the same way as employment outcome records, would require minimal staff time and produce valuable data for public consumption. It also has the added benefit of holding law school deans accountable for public and private claims about net tuition.

C. Gender Diversity

In 1965, just 1 in 25 law students was a woman. That number steadily climbed to 1 in 4 in 1975; 1 in 3 in 1980; and since 2000, the proportions have been roughly equal—though slightly more men than women every year except the 2017 entering class. Parity in law school enrollment marked an enormous milestone, but new research demonstrates that national parity masks lurking gender inequality.

The research shows three significant “leaks” in the law school pipeline for women.⁴⁸ The first of these leaks involves women applying to law school. Even though women are 57% of college graduates, they account for only about 51% of the law school applicants.⁴⁹ If women applied at the same rate as men to law school, applications would increase 16%.⁵⁰ The second leak is that women who apply to law school are less likely than men to be admitted. For the class entering in 2015, law schools admitted about 80% of the men who applied, but just 76% of the women who applied.⁵¹ The third leak is that, even when women are admitted, they are not spread evenly across law schools. They instead cluster disproportionately in schools with the weakest employment outcomes and worst reputations.⁵²

The first and second leaks go back several decades. The third leak, however, is new and worsening. In 2001, when schools had just gotten to roughly 50/50 nationwide, women were evenly distributed amongst schools.⁵³ But by 2006 the story had started to change. Although the pattern did not yet reach statistically significant, it had started to emerge. By 2015, the pattern was statistically significant and quite stark. Today, the top 50 schools are the mirror opposite of the bottom 50 schools.⁵⁴

The emerging explanations mostly relate to the *U.S. News* law school rankings, with the most compelling relating to schools jockeying for higher LSAT scorers to increase the median score, which is a considerable driver of ranking. Over the past 15 years, in their quest to secure or improve their *U.S. News* ranking, law schools have decided to emphasize LSAT scores more in admissions decisions. This emphasis may explain, in part, the emergence of the third leak over the course of a decade. Women actually score two points worse on average than men on the LSAT, and there are fewer higher scorers

48 *LST's Women in the Law: Leaky Pipeline – Assumptions and Law Schools*, LST RADIO (Nov. 30, 2016), <https://www.lstradio.com/women/?theme=lp1>.

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

as well.⁵⁵ This is typical of standardized tests with predominately multiple choice questions, unlike writing examinations that tend to favor women.⁵⁶ Additional explanations may include an uneven distribution of applicants (perhaps increased median LSATs drive applicants away), uneven distribution of scholarship money (perhaps because schools overvalue the extra two points they get from men), and scholarship negotiation tendencies (perhaps because women are less likely to ask for more or any money). Additional data will provide a more robust understanding of very concerning patterns related to progress for gender diversity in the legal profession.

The Section of Legal Education collects rafts of data from law schools by gender yet publishes almost none of it. The Section has had a standing practice of publishing the gender breakdown of the entire student body, which is how the author discovered the third leak. But only beginning with the 2017-18 academic year did the Section break this out by the year in school, e.g. the number of women 1Ls. However, the number of 1Ls is a different number than the number in the first-year class, which the Section collects but does not publish. The latter does not include, for example, students who were re-admitted after academic dismissal or re-enrolled after voluntarily leaving.⁵⁷ Likewise, the Section collects but does not publish gender data for the number of applicants, the number of admitted applicants, the number of graduates, the number of transfers, and the number attrited.⁵⁸

The Section should publish these data in the interest of its efforts to diversify the legal profession and to promote fairness using its authority under Rule 49(b). Under the same authority, along with Standard 104, the Section can further these efforts by collecting and publishing gender data related to scholarship amounts, conditional scholarships, and first-year class profiles.

Together and apart, these data may illuminate unknown problems and explain known ones. These data may also help consumers make informed choices. As outlined in the previous subpart on tuition and borrowing, law school is expensive. Reducing the information asymmetry—allowing

⁵⁵ SUSAN P. DALESSANDRO, ET AL., LSAT PERFORMANCE WITH REGIONAL, GENDER, AND RACIAL/ETHNIC BREAKDOWNS: 2005–2006 THROUGH 2011–2012 TESTING YEARS 17 (2012).

⁵⁶ SAMUEL A. LIVINGSTON & STACIE L. RUPP, PERFORMANCE OF MEN AND WOMEN ON MULTIPLE-CHOICE AND CONSTRUCTED-RESPONSE TESTS FOR BEGINNING TEACHERS 17 (2004); THE AM. PHYSICAL SOC'Y, FIGHTING THE GENDER GAP: STANDARDIZED TESTS ARE POOR INDICATORS OF ABILITY IN PHYSICS 3 (2016), <https://www.aps.org/publications/apsnews/199607/upload/jul96.pdf>; Andrew Hacker, *Standardized Tests are the New Glass Ceiling*, NATION (Mar. 1, 2016), <https://www.thenation.com/article/standardized-tests-are-a-new-glass-ceiling/>.

⁵⁷ *Annual Questionnaire*, *supra* note 34.

⁵⁸ *Id.* Gender numbers for the first-year class are required to fully understand the three abovementioned leaks because the number of 1Ls is not interoperable with the number of applicants and admitted applicants. In other words, calculating the yield rates for women applicants and women admitted applicants is impossible from the now-public number of women 1Ls.

students to more clearly understand their bargaining position—will help them to pay less, which would reduce debt and/or enhance the school options. Additionally, these data will help the Section analyze compliance with Standard 206(a). Standard 206(a) provides that “a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.”⁵⁹ If a school, even inadvertently, is biasing enrollment towards men because it is too concerned with chasing a higher ranking, then the school may be out of compliance with the ABA’s Standards.

Most of this proposal involves the Section making public data it already collects from law schools. For the data the Section does not yet collect by gender—scholarship amounts, conditional scholarships, and first-year class profiles—this proposal poses minimal burden. Law schools already classify every student and graduate by gender. Law schools also already possess individual, organized records for each of the proposed data categories. Matching these two datasets, to the extent law schools do not do so already, would require minimal staff time, produce valuable data for public consumption, and help decisionmakers and policymakers meet diversity objectives.

D. Racial and Ethnic Diversity

Whereas tremendous progress has been made towards gender parity, even with the emerging trend of gender clustering at the most and least reputable schools, significant progress remains for enrollment by race and ethnicity.⁶⁰

Table D

	Hispanic	NA	Asian	Black	Hawaiian	White	2+ Races
2016 1Ls	13.7%	0.5%	6.5%	9.6%	0.1%	65.2%	4.3%
US Population	17.8%	1.3%	5.7%	13.3%	0.2%	61.3%	2.6%

⁵⁹ AMERICAN BAR Association, *supra* note 1, at 12.

⁶⁰ *Statistics*, A.B.A., https://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited Sept. 28, 2017) (Under “Bar Passage and Enrollment Data” select “2017 1L Enrollment by Gender & Race/Ethnicity” and download Word doc). Excludes unknowns and non-resident 1Ls. U.S. Population percentages come from the U.S. Census. *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045216> (last visited Sept. 28, 2017).

Aaron Taylor, the executive director of AccessLex's Center for Legal Education Excellence, observed similar trends with race and ethnicity as the previous subpart outlined about gender. Taylor found that Black and Hispanic students were more likely to attend schools with lower median LSAT scores, which tend to be less prestigious.⁶¹ Whereas White and Asian students were more likely to attend more prestigious schools with higher LSAT median scores.⁶² Taylor told the *National Jurist* that "[t]his affects long-term outcomes, career trajectories and payoffs from law school investments. There are many implications tied in large part to race and ethnicity."⁶³

Even on the tuition and debt front, the implications are huge. According to the Law School Survey of Student Engagement (LSSSE), then-directed by Taylor, "[i]t seems apparent that increased costs of attending law school have placed undue pressures on students from less affluent backgrounds to rely on student loans to finance their education. This burden falls disproportionately on Black and Hispanic students, who are more likely to come from low-wealth backgrounds."⁶⁴ Less than 5% of Black students and less than 10% of Hispanic students expected zero law school debt.⁶⁵ For White students, it was about 20% and for Asian students about 25%.⁶⁶ On the high end, about 25% of White students expected debt in excess of \$120,000, compared to almost 45% of Black students and about 40% of Hispanic students.⁶⁷

Of course, these disparities relate to the "large racial and ethnic wealth disparities in the U.S."⁶⁸ But they also appear to relate to law school scholarship policies, because wealth explains part of the divergence in LSAT scores, which play an outsized role in determining the price a student pays to attend law school. According to LSSSE's 2016 report, which had a response rate of 53% from 72 different law schools, two in three White students receive a merit scholarship, while just one in two Black and Hispanic students do.⁶⁹

⁶¹ Aaron Taylor, *Diversity as a Law School Survival Strategy* 17 (Saint Louis U. Legal Studies Research Paper No. 2015-1, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2569847.

⁶² *Id.*

⁶³ Laira Martin, *Law Schools Enrolling More Minorities to Combat Enrollment Drop*, NAT'L JURIST (Feb. 17, 2015), <http://www.nationaljurist.com/prelaw/law-schools-admitting-more-minorities-combat-enrollment-drop>.

⁶⁴ LAW SCH. SURVEY OF STUDENT ENGAGEMENT, HOW A DECADE OF DEBT CHANGED LAW SCHOOL EXPERIENCE 12 (2015), <http://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE-Annual-Report-2015-Update-FINAL-revised-web.pdf>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 1, 4, 9.

The LSSSE dataset is the only available dataset on race/ethnicity and scholarships, so school-specific data are not publicly available. Using its authority under Rule 49(b) and Standard 104, the Section of Legal Education should collect and publish race/ethnicity data related to scholarship amounts and conditional scholarships.

Despite the lack of race/ethnicity scholarship data, by and large, the Section does a much better job at publishing the race/ethnicity data it collects each year compared to gender data. It publishes breakdowns by race/ethnicity for the number of graduates, the number enrolled by the year in school, the number of transfers, and the number attrited.⁷⁰ However, as with gender, the Section does not publish the data it collects by race/ethnicity for the number of applicants, offered applicants, and enrollees (first-year class).⁷¹ This leaves gaps that relieve schools of accountability in light of common promises to advance diversity. The Section should publish these data using its authority under Rule 49(b).

Enhancing the race/ethnicity dataset may illuminate unknown problems and explain known ones, as well as help consumers more clearly understand their bargaining position and make informed choices. Additionally, these data will help the Section analyze compliance with Standard 206(a). Most of this proposal involves the Section making public data it already collects from law schools. For the data it does not yet collect by gender—scholarship amounts and conditional scholarships—this proposal poses minimal burden. Law schools already classify every student and graduate by race/ethnicity and can match datasets, as with the gender data. This would require minimal staff time, produce valuable data for public consumption, and help decisionmakers and policymakers meet diversity objectives.

E. Additional Diversity Data

For the foregoing reasons outlined in the subparts on race/ethnicity and gender data, the public would also benefit if the data requested in the subparts on tuition prices and student borrowing outcomes were publicly accessible by race/ethnicity and gender. The Section of Legal Education may do so under its current authority under Standard 104 and Rule 49(b). This proposal poses no additional collection burden and minimal reporting burden for law schools—the same dataset matching requirement from the previous two subparts.

⁷⁰ *Annual Questionnaire*, *supra* note 34.

⁷¹ *Id.*

III. COSTS OF ADDITIONAL DATA COLLECTION AND REPORTING

The costs of additional data collection and reporting are relevant to any discussion about the value of transparency efforts. As outlined for each proposal in **Part A**, the Section of Legal Education already has the authority to cause schools to report the relevant data. Not even one of the above proposals requires law schools to collect new data. In some cases, such as the number of women applicants, law schools already report the data to the Section. In other cases, such as scholarship amounts by gender, schools may need to connect two datasets, e.g. the list of students with their genders and the list of students by their scholarship. Regardless, the schools have all the relevant data and the reporting burden for each proposal is minimal.

But this article argues for the adoption of all these proposals—not just one. As such, the aggregate cost of collecting and reporting these data, including the burden born by the Section, is relevant to assessing the value of the efforts relative to the policy goals. Law schools already have direct access to all data proposed above. The cost of reporting, therefore, comes down to how schools submit the data to the Section and how the Section processes the data. These choices belong to the Section through its accreditation authority.

In some cases, the Section chooses to collect data in summary form. The school counts the number of students in a category and reports the total number in an individual cell. That is the equivalent of asking schools to populate a data table, such as **Tables A, B, and C** embedded earlier in this article. In other cases, the Section chooses to collect raw data and the school reports all students on the equivalent of a spreadsheet. Each row is a different student, distinguished by a unique individual identifier; each column indicates something about the student. The Section previously asked for first-year enrollment data in this way. The school reported a list of all first-year students and their LSAT and GPA.⁷² From the list, the Section calculated the 25th, 50th, and 75th percentile LSATs and GPAs.

The second approach allows the Section to more easily audit the reported data and do national analyses with the data. The first approach is less work for the Section and puts the onus on proper summarization on the law schools. As shown in **Table B** above, schools do not always do that correctly.

For law schools, their reporting burden stems from connecting just two spreadsheets or database tables—depending on how the school organizes its data. The first (**Spreadsheet A**) is for all graduates in a given year and schools possess it in nearly, if not exactly, this form already.

⁷² *Id.*

Spreadsheet A

Class of 201x Graduate Data			
Graduate ID	Gender	Race/Ethnicity	Total Borrowed
123456	M/F/O	White/Black/Etc.	\$zz,zzz

From Spreadsheet A, the law school can either export the data to the Section or produce the required statistical summaries, whichever the Section chooses. The second (**Spreadsheet B**) is for all students in a given year. Some schools may already have a spreadsheet or database table like this, but each can readily generate it because each column is associated somewhere in a law school's records with a unique individual identifier.

Spreadsheet B

201x - 201x Academic Year Student Data				
Student ID	Class	Gender	Race/Ethnicity	Program
654321	1L/2L/3L	M/W/O	White/Black/Etc	FT/PT
	Tuition & Fees Paid	Tuition Discount	Conditional Scholarship	Reduced or Eliminated
	\$zz,zzz	\$zz,zzz	Yes/No/Blank	Yes/No/Blank

These spreadsheets produce all the data necessary for the above proposals, except for data in two categories. The first category includes data that the Section already collects, e.g. the number of women who applied, were admitted, and who enrolled. The schools and Section have no additional reporting burden. The second category has only one dataset: first-year class profiles by gender. The Law School Admissions Council (LSAC) can generate these data for law schools through the organization's ACES² student management software, which every law school uses. Already the Section relies on LSAC to help schools report first-year enrollment data to the Section.⁷³ To report these statistical profiles for gender, LSAC would only need to add a gender column to the list it already provides schools. LSAC, having been apprised of this proposal, has agreed to do so.

In sum, schools can create two spreadsheets from existing datasets and download a report from LSAC with ease. For the Section of Legal Education, the additional burden is well worth it, even if it chooses the more laborious task of maintaining individual records for each new dataset. The effort

⁷³ *Id.* "LSAC will provide each law school . . . a list of first-year enrollees from the data entered in the ACES² system. Once each law school has verified the information provided by LSAC, the information will be shared with the [Section of Legal Education]." *Id.*

produces significant, valuable data that advances its mission that reaches beyond accrediting law schools, as well as helps it to enforce Standard 204 and Standard 509.

IV. COSTS OF ADDITIONAL DATA PUBLICATION

Not all data the Section of Legal Education collects winds up published. This article has thus far made the case for the Section to publish additional data under its Rule 49(b) authority. The Section currently publishes data in a variety of formats on its website, including national summaries, spreadsheets, and school-specific reports. These data help analysts repurpose the data for presentation, whether as part of scholarship, consumer-facing tools, policy-making research, or internal research. The proposals in Part A are consistent with the Section's current practices related to making data public for analysts.

Standard 509 also permits the Section to require law schools to publicly disclose information on their websites "in the form and manner and for the time frame designated by the [Section]."⁷⁴ The Section requires schools to publish a variety of important consumer information on their individual websites, including tabular and summarized data on reports, text descriptions, lists, and more. This information helps consumers decide whether and where to go to law school.

The decision to make data public and to require schools to disclose information in their own materials are related, but can produce divergent results because the audiences, while overlapping, differ. There is little reason to worry about broad disclosures on the Section's various websites provided the data are contextualized and reliable. The Section also publishes definitions, survey instruments, and guidance memos. A law school can be sanctioned or lose its accreditation for reporting false or incomplete data to the Section.

Open access to data has enhanced data integrity since the Section began to publish spreadsheets with school-level employment data for the class of 2011. Since that time, external parties have caught and reported errors, usually before legal and mainstream press stories. In the early years, schools and the Section made innocent mistakes that would not have been caught in a timely fashion, if at all, but for open access for analysts. Today, there are fewer mistakes in employment data as the Section has refined its pre-release process.⁷⁵

⁷⁴ AMERICAN BAR ASSOCIATION, *supra* note 1, at 35.

⁷⁵ The importance of open datasets cannot be understated, but it is not a guarantee that the public will catch problems either. The erroneous data the author happened upon, reproduced in **Table B**, is available to the public as part of a spreadsheet on the Section website. At least seven other schools made

The decision to publish data for consumer use is more complicated. It involves choices about how to organize and summarize a dataset, which translates data from its raw form into meaningful information for use by less sophisticated, more impressionable audiences. With any dataset, the data can be presented in various forms, including charts, graphs, and tables. The best method depends on the audience(s). Presentation choices must balance what the audience wants to know and what they should want to know, along with consideration to information overload, complexity, and utility. Importantly, these choices set the benchmark for what matters to the audience.

The default position should be for schools to publish information that will help consumers decide whether and where to attend law school, provided the Section collects the underlying data through Standard 104 and may require schools to publish through Standard 509. The proposals in Part A are not only pre-authorized for the Section, but will also help students understand important financial details, their bargaining power with schools, and where schools' priorities lie. However, these proposals add substantially to what a consumer is asked to mine through and understand. The additions may prove to be so overwhelming that consumers ignore important information, making them worse off.

Already, each law school publishes four PDF reports prescribed by the Section and "current information on refund policies; curricular offerings, academic calendar, and academic requirements; and policies regarding transfer of credit earned at another institution, including a list of institutions with which the law school has established articulation agreements" in a "readable and comprehensible manner."⁷⁶ The first PDF is the Standard 509 Information Report, which details a variety of statistics that help students figure out when to apply, whether they can get in, how much it costs, how diverse the student body is, and at what rate students complete school.⁷⁷ The second PDF is the Employment Summary Report and includes graduate employment data.⁷⁸ The third and fourth PDFs are the First-Time Bar Passage and Ultimate Bar Passage reports, which detail bar exam outcomes for two different measurement periods.⁷⁹

The Section extracted the employment and bar passage data from the Standard 509 Information Report in recent years. In 2011, the Section

this same reporting error for the 2017-18 school year. The Section must also be more vigilant in its use of the resources it makes available.

⁷⁶ AM. BAR ASS'N, MANAGING DIRECTOR'S GUIDANCE MEMO (2016), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_509_guidance_memo_final.authcheckdam.pdf.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ The July 2016 Guidance Memo has not been publicly updated for the bar-related information reports.

changed disclosure requirements for graduate employment outcomes. In 2018, the Section changed disclosure requirements for bar exam outcomes. In both cases, the Section changed when schools published information. Likewise, the Section increased how much information schools published. This ensured more timely and more comprehensible publication of important consumer information.

Nevertheless, the Standard 509 Information Report remains dense even with the three additional reports because the Section has continued to add data to benefit consumers. The changes built on an outdated format, however. The Standard 509 Information Report was originally designed two decades ago for print in the LSAC Official Guide. The current PDF is not the optimal method for distributing information given modern advances in technology and design theory.

If the Section finds some or all the proposed disclosures sufficiently valuable for consumers, the Section should reevaluate its approach. The Section should continue to publish most, if not all, of the current data, as well as most, if not all, of the proposed data. But modest changes to how the Section styles, words, and formats the disclosures will maximize comprehension of, and confidence in, the contents. Fear of information overload, however, should only be used as justification to withhold information after alternative presentation formats are dutifully explored.

V. CONCLUSION

The transparency measures outlined in this report have been designed to address some of the most pressing issues in legal education. Every suggestion from this report can be accomplished by the Section of Legal Education without additional authority from the ABA Standards. In many cases, the suggestions can be accomplished without additional reporting burdens for law schools. In other cases, schools already possess the data but are not required to report it as part of the annual questionnaire. On balance, the value of public data will outweigh the costs of reporting in these cases.

Informed policy choices require a diversity of information and voices. What these measures reveal can contribute to change. Whether it amounts to progress will come down to the choices made by regulators, schools, and consumers. Regardless, clarity is in order. The problems facing legal education are as immense as they are important and the foundation for addressing them will be high-quality, smartly presented data.

Adopting these transparency measures:

- Does not require changes to the ABA Standards
- Creates no collection burden and minimal reporting burden for law schools
 - Either the schools or ABA already possess the data for each proposal
- Creates minimal collection burden for the Section of Legal Education and enhances its ability to enforce Standard 204 and Standard 509
- Creates measurable but justified burden for the Section of Legal Education to design and to publish data on ABArequireddisclosures.org
- Creates minimal burden for law schools to publish additional data on their websites

Data Categories:

- Law School Debt – *how much students borrow*
 - Groups: All students; by gender; by race/ethnicity
 - Publication Type: frequency distribution tables
- Law School Tuition Prices – *how much students pay*
 - Groups: All students; by gender; by race/ethnicity
 - Publication Type: frequency distribution tables
- Other Data
 - By Gender
 - Number in the first-year class; first-year class profiles; number of applicants; number of admitted applicants; the number of graduates; the number of transfers; the number attrited; scholarship amounts; conditional scholarships.
 - By Race/Ethnicity
 - Number in the first-year class; number of applicants; number of admitted applicants; the number of transfers; scholarship amounts; conditional scholarships.
 - Publication Type: in the form published for “all students” for the relevant data

Example Frequency Distribution Tables:

Amount Borrowed	# Graduates	\$	#	\$	#
\$0	40	\$60,000-\$69,999	11	\$130,000-\$139,999	9
\$1 - \$9,999	2	\$70,000-\$79,999	11	\$140,000-\$149,999	7
\$10,000 - \$19,999	3	\$80,000-\$89,999	16	\$150,000-\$159,999	3
\$20,000 - \$29,999	5	\$90,000-\$99,999	28	\$160,000-\$169,999	5
\$30,000 - \$39,999	7	\$100,000-\$109,999	30	\$170,000-\$179,999	10
\$40,000 - \$49,999	10	\$110,000-\$119,999	18	\$180,000-\$189,999	11
\$50,000 - \$59,999	14	\$120,000-\$129,999	10	\$190,000-\$199,999	15
Median of Borrowers	\$104,000				
Mean of Borrowers	\$106,250				

Tuition Paid, Full Time	# Students	\$	#
\$0	58	\$18,000 - \$20,999	[0-48]
\$1 - \$2,999	[0-48]	\$21,000 - \$23,999	[0-27]
\$3,000 - \$5,999	[0-48]	\$24,000 - \$26,999	[0-27]
\$6,000 - \$8,999	[0-48]	\$27,000 - \$29,999	[0-27]
\$9,000 - \$11,999	[0-48]	\$30,000 - \$32,999	[0-27]
\$12,000 - \$14,999	[0-48]	\$33,000 - \$35,999	[0-27]
\$15,000 - \$17,999	[0-48]	\$36,000 - \$38,999	44
Median Tuition Paid	\$25,706	\$39,000 - \$41,999	63
Mean Tuition Paid	\$28,071		

Spreadsheets

Schools can report all data, other than the datasets LSAC will provide through ACES², through spreadsheets with one row per graduate.

Spreadsheet A

Class of 201x Graduate Data

Graduate ID	Gender	Race/Ethnicity	Total Borrowed
123456	M/F/O	White/Black/Etc.	\$zz,zzz

Spreadsheet B

201x - 201x

Academic Year

Student Data

Student ID	Class	Gender	Race/Ethnicity	Program
654321	1L/2L/3L	M/W/O	White/Black/Etc	FT/PT
	Tuition & Fees Paid	Tuition Discount	Conditional Scholarship	Reduced or Eliminated
	\$zz,zzz	\$zz,zzz	Yes/No/Blank	Yes/No/Blank

MEMORANDUM

DATE: October 31, 2018

TO: ABA Council of the Section of Legal Education and Admissions to the Bar

FROM: Scott Norberg

RE: Standards Review 2018-2019

In response to the Council's invitation to submit ideas and suggestions regarding issues related to the ABA Standards and Rules of Procedure for Approval of Law Schools, I write to offer two ideas. The first is to consider adoption of an employment outcomes standard. The second is to revise the Annual Questionnaire to have schools report the LSAT scores and UGPAs of the students in their entering classes.

An Employment Outcomes Standard

Most ABA accredited law schools report robust graduate employment outcomes at 10 months after graduation. However, there is a small but significant group of schools that consistently report profoundly weak numbers – with fewer than 30 or 40% of graduates obtaining long-term, full-time bar passage required jobs. In examining the admissions criteria of these schools, it is apparent that almost all of them follow policies that are designed to maintain enrollment without regard to their graduates' employment prospects. Thus, in almost all cases, they have lowered admissions requirements as applications to law school have declined. The predictable result is that their bar pass rates have declined and their graduates' employment prospects are further diminished.

This state of affairs reveals a gap in the current ABA standards. The bar passage and admissions/attrition standards leave schools much room to enroll large numbers of students who will not realize the promise of the J.D. degree. This is particularly problematic where the cost of legal education is so high. Most of the schools with the weakest employment outcomes also report relatively high average graduate debt.

I have extensively researched the gap in the Standards in an article published in the Journal of Legal Education: *J.D.s and Jobs: The Case for an ABA Accreditation Standard on Employment Outcomes*, 67 J.L.E. 1035 (2018). As a starting point for discussion, I proposed the following draft standard:

Standard XXX. Graduate Employment Outcomes

(a) A law school must demonstrate that for at least two of the past five graduating classes:

(1) at least sixty percent of the graduates were employed in full-time, long-term, bar passage-required or J.D. Advantage jobs as of March 15 of the year following graduation; or

(2) at least seventy-five percent of the graduates were employed in full-time, long-term, bar passage-required or J.D. Advantage jobs as of March 15 of the second year following graduation.

No more than fifteen percent of graduates employed in full-time, long-term J.D. Advantage jobs may be counted toward the percentage rates specified in subparagraphs (1) and (2) of this paragraph.

(b) A law school that fails to comply with subsection (a)(1) of this standard with respect to any graduating class must promptly submit a detailed plan for how it will remain in compliance with the standard.

(c) As used in this standard,

(1) “graduating class” is defined as a cohort of graduates who graduated between September 1 and August 30 of the following year, and includes graduates whose employment status is unknown, but excludes graduates who are pursuing a graduate degree full time; and

(2) the terms “full-time,” “part-time,” “long-term,” “short-term,” “bar passage-required,” and “J.D. Advantage” are as defined in the Definitions and Instructions accompanying the ABA Employment Questionnaire, except, however, that graduates employed as solo practitioners shall not be counted as employed.

Annual Questionnaire Reporting of Entering Class LSAT Scores and UGPAs

Many who are familiar with the accreditation process probably assume that the Annual Questionnaire (AQ) already asks schools to report the LSAT scores and UGPAs of the students in the entering class together with a unique identifier, but it does not. (The Site Evaluation Questionnaire asks schools to report this information for the current and past two years.) The burden of reporting the information is absolutely minimal, as schools necessarily maintain this information in their LSAC ACES admissions data bases.

At the same time, the potential uses and benefits of the data are substantial. Aside from being able to verify schools’ reported LSAT score and UGPA percentiles, which is currently done with the assistance of LSAC, the data would allow the Council to track law schools’ student outcomes based on LSAT scores and UGPAs from enrollment through transfer, dismissal, graduation, bar

passage, and employment. As with many of the Standards and AQ questions, this sort of tracking would be necessary or useful only for weaker schools. But for those schools, it would be highly useful in assessing the efficacy of their programs, from admissions and academic standards to curriculum. It would also allow the ABA to evaluate how different schools with similar matriculant profiles add more or less “value” in preparing their students for the bar exam and the practice of law.

To the Council for the Section of Legal Education and Admission to the Bar:

The Iowa Bar Association has undertaken activities aimed at ensuring tomorrow's young lawyers are less encumbered by the staggering debt loads that have arisen in the legal field. Our Young Lawyers Division formed a task force to address this issue and found that roughly one-half of the young attorneys in Iowa are bearing twice the debt load that can reasonably be serviced by Iowa's starting median salary.

Earlier this year, the task force partnered with Law School Transparency to produce a report that assessed the issues facing legal education and a slate of proposals related to those issues.

To date, the report has received endorsements from numerous state bar and ABA affiliate entities demonstrating a common goal of reducing these debt loads, in part, through increasing the transparency of information provided by law schools for consumption by their ultimate consumers - prospective students.

We urge you to adopt the transparency measures detailed in the report, which can be found at www.LSTReport.com.

A handwritten signature in cursive script, reading "Tom Levis".

Tom Levis
President

A handwritten signature in cursive script, reading "Maggie White".

Maggie White
President, Young Lawyers Division

A Way Forward: Transparency in 2018

Law School Transparency
Kyle McEntee

Iowa State Bar Association
Young Lawyers Division*

* Kyle Fry, Thomas Hillers, Abhay Nadipuram, Rob Poggenklass, and Maggie White contributed to this report on behalf of the Iowa YLD.

Executive Summary

We recommend that the ABA and law schools take the following steps to improve legal education for the benefit of students, the legal profession, and the public.

1. Young Lawyer Representation in Accreditation

- The ABA Section of Legal Education and Admissions to the Bar should add two young lawyers to its Council in 2018.
- The ABA Section of Legal Education and Admissions to the Bar should change its bylaws to designate two of 15 at-large Council positions to young lawyers.

2. Increased Data Transparency

- The ABA Section of Legal Education and Admissions to the Bar, using authority it already has under the ABA Standards and Rules of Procedure for Approval of Law Schools, should require schools to report as part of the Section's annual questionnaire, and for the Section and schools to provide on their websites, (1) disaggregated borrowing data, including subcategories by race and gender; (2) disaggregated data on the amount of tuition paid by class year (1L or upper-level), race/ethnicity, and gender; (3) data on applicants and scholarships by gender and, to the extent the Section does not do so already, by race/ethnicity; (4) data on J.D. program completion and bar passage success.

3. User-Friendly Data Presentation

- The ABA Section of Legal Education and Admissions to the Bar should simplify the Employment Summary Report, which includes graduate employment data.
- The ABA Section of Legal Education and Admissions to the Bar should simplify and reorganize the Standard 509 Information Report, which includes data related to admissions, attrition, bar passage, price, curricular offerings, diversity, faculty, refunds, and scholarships.

4. Disclosures at Time of Admission

- The ABA Section of Legal Education and Admissions to the Bar should require law schools to provide every admitted law student a copy of the Standard 509 Information Report and Employment Summary Report as part of each student's admissions offer.

5. Voluntary Disclosures by Law School

- Every ABA-approved law school should voluntarily publish its school-specific NALP Report each year.

Introduction

The future of legal education—and by extension the legal profession—depends on the ability of law schools and the profession to attract prospective lawyers. Our profession must become a more welcoming place for an increasingly diverse population, as well as evolve to stay relevant in a changing legal services landscape. Law schools must adapt their business models to become more affordable because the price of legal education has and will threaten new lawyer recruitment. If Congress and the current presidential administration successfully eliminate federal student loan hardship programs and invite private, predatory lenders to supplant the federal government as the all-but-exclusive law student lender, the affordability challenges for law schools will amplify.¹ Potential changes to the student loan and repayment program only increase the import of addressing the price of legal education.

Over the past several decades, law school tuition has increased dramatically, well above inflation. Compared to tuition in 1985, private and public law school tuition is 2.7 and 5.8 times as expensive after accounting for inflation.² The average private law school tuition was \$45,329 in 2017, with residents at public schools paying an average of \$26,425 per year.³ The range of tuition, however, demonstrates remarkable variability. At public schools, one year of resident tuition ranged from \$7,383 to \$58,300.⁴ At private schools, the range was \$16,418 to \$67,564 per year.⁵ While the average tuition at top performing law schools is much higher than the rest, prices do not scale with job outcomes elsewhere.⁶ The average tuition at the lowest performing schools is similar to the average for mid-range schools.⁷

To pay these high tuition prices, three out of four law students borrow⁸ at interest rates that are almost double the average home mortgage interest rate.⁹ A first-year student this academic year will borrow their first \$20,500 at 6% and all excess funds (up to \$70,000 more) at 7% annual

¹ *House GOP to Propose Sweeping Changes to Higher Education*, Wall Street Journal, Nov. 29, 2017, <https://www.wsj.com/articles/house-gop-to-propose-sweeping-changes-to-higher-education-1511956800>; *Reversal on Graduate Lending*, Inside Higher Ed, Dec. 11, 2017, <https://www.insidehighered.com/news/2017/12/11/house-gop-higher-education-overhaul-would-cap-graduate-lending-and-end-loan>.

² LST Data Dashboard, <https://www.data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2017>.

³ *Id.*

⁴ *Id.* at <https://www.data.lawschooltransparency.com/costs/tuition/?y1=2016&y2=2017&scope=jobs>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at <https://data.lawschooltransparency.com/costs/debt/?scope=national>.

⁹ *Mortgage Rate Volatility Expected in the Coming Month*, Washington Post, Dec. 7, 2017, https://www.washingtonpost.com/news/where-we-live/wp/2017/12/07/mortgage-rate-volatility-expected-in-the-coming-month/?utm_term=.1c00271fb04c.

interest.¹⁰ The government does not subsidize law student interest payments during school, thus the cost of the first-year loan increases by 21% and 24.5%, respectively, while the student is studying and before a single loan payment is due.

The average graduate will borrow, exclusively for law school, \$145,419 from a for-profit school, \$134,497 from a private school, and \$96,054 from a public school.¹¹ After accounting for accumulated interest during law school, even the average public law school graduate owes well into six-figures for law school alone when they make their first payment. Financial advisors typically recommend devoting no more than 10 or 15% of income to debt service.¹² A graduate who owes \$125,000 at first payment has a monthly payment of about \$1,400 on the standard ten-year plan. To remain in range of the recommendation, the graduate must make between \$112,000 (for 15%) and \$168,000 (for 10%). The median entry-level salary for the 2016 graduates in long-term, full-time law jobs was \$66,499.¹³

Servicing these debts is increasingly challenging because any-level lawyer salaries are declining in real terms. In April 2017, Deborah Merritt, a law professor at The Ohio State University, analyzed the most recent U.S. Bureau of Labor Statistics data for salaried lawyers.¹⁴ “At the high end, salaries are still increasing faster than inflation,” according to Professor Merritt’s analysis, “[b]ut for the majority of salaried lawyers (at least seventy-five percent), salaries are falling in constant dollars and earnings in other occupations are outpacing them.”¹⁵ Of course, these figures all presume a graduate gets and keeps a salaried lawyering job—law schools as a whole still enroll many more graduates than there are entry-level legal jobs.

The percentage of a graduating class employed in jobs that require a law license is sensitive to two distinct supply figures: total graduates and total available jobs. For example, if graduates increase and the number of jobs stays the same, the percentage will decline. The percentage of graduates obtaining full-time entry-level legal jobs was quite high in the 1980s, peaking at 84.5% in 1988.¹⁶ The average rate in the mid to late 1980s was 82.9%.¹⁷ The next two decades (90s and 00s) each had an average that was ten points lower, 73.7% in the 90s and 70.7% in the 00s.¹⁸ This decade,

¹⁰ Federal Student Aid, U.S. Dept. of Education, <https://studentaid.ed.gov/sa/about/announcements/interest-rate>.

¹¹ *Supra* LST Data Dashboard, note 2, <https://data.lawschooltransparency.com/costs/federal-investment/>.

¹² Loan Debt and Repayment, College Board, <https://bigfuture.collegeboard.org/pay-for-college/loans/loan-debt-and-repayment>.

¹³ Class of 2016 NALP Summary Report, NALP, https://www.nalp.org/uploads/Classof2016_NationalSummaryReport.pdf. These salary numbers are not perfect, but they overstate rather than understate salaries.

¹⁴ *Jobs and Salaries for New Lawyers*, Law School Cafe, Apr. 30, 2017 <https://www.lawschoolcafe.org/2017/04/30/jobs-and-salaries-for-new-lawYERS/>.

¹⁵ *Id.* Entry-level salaries are also declining in real terms in most categories. *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/jobs/salaries/>.

¹⁶ *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/jobs/legal-jobs/>.

¹⁷ *Id.*

¹⁸ *Id.*

so far, the average is 60.1%—an additional ten points lower.¹⁹

Strikingly, these shifts appear to reflect enrollment management decisions by law schools instead of demand for new lawyers. Between 1976 and 2000, law schools steadily enrolled between ~40,000 and ~44,000 new students each year.²⁰ From 1976 to 1987, the average was 40,973.²¹ From 1988 to 2000, the average was 43,497—a little over 6% higher.²² But between 2000 and 2002, law schools increased first-year enrollment 11.2%.²³ In subsequent years, enrollment steadily crept up, with minor ebbs and flows, until peaking in 2010 at 52,404.²⁴ The number of jobs, on the other hand, has been far steadier. Between 1985, the first year for which we were able to analyze data, and 2010, the number of new full-time law jobs each year generally stayed between 27,000 and 30,000.²⁵ Increased enrollment and a steady number of jobs spell a lower employment rate for law school graduates.

As law schools were pressured to become more transparent about job outcomes beginning in 2010, the media and prospective law students took notice of inflated enrollment, inadequate job prospects, and high prices—and enrollment dropped.²⁶ After 1L enrollment peaked in 2010 at 52,404 new students, enrollment fell dramatically in each of the next three years, which was then followed by four years of even lower, but steady, enrollment between 37,000 and 38,000 new 1Ls.²⁷ Lower enrollment has created a difficult financial reality for law schools that depend on tuition revenue to keep the lights on.²⁸ While smaller class size certainly helps the percentage of the class who can get a lawyer job, the entry-level market remains structurally weak. Since 2013, fewer graduates obtained full-time lawyer jobs each year than the prior year.²⁹ Given the cost of obtaining a J.D. and current features of the entry-level job market, law schools are likely to continue to struggle to attract enough qualified students to maintain their business models—even with the “Trump Bump” in law school applicants.³⁰

This poses enormous difficulty for an aging profession that needs a pipeline of law school

¹⁹ *Id.*

²⁰ *Id.* at <https://data.lawschooltransparency.com/enrollment/all/>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at <https://data.lawschooltransparency.com/jobs/legal-jobs/>.

²⁶ *Increasing Transparency in Employment Reporting by Law Schools: What Is To Be Done?*, Above the Law, Apr. 21, 2010, <https://abovethelaw.com/2010/04/increasing-transparency-in-employment-reporting-by-law-schools-what-is-to-be-done/>. *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/enrollment/all/>.

²⁷ *Id.*

²⁸ 2015 State of Legal Education, Law School Transparency, <https://lawschooltransparency.com/reform/projects/investigations/2015/analysis/>.

²⁹ *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/jobs/legal-jobs/>.

³⁰ *Increase in LSAT test takers is seen as evidence of 'Trump bump'*, ABA Journal, Nov. 21, 2017, www.abajournal.com/news/article/increase_in_lsats_test_takers_is_seen_as_evidence_of_trump_bump.

graduates who will not only protect and improve the rule of law, but who will also reflect society's diverse population. While signs point to fewer lawyers working differently in the future, lawyers should remain an essential part of our system of justice and private ordering, as well as an essential line of defense for abuses of power of all kinds. But our legal education system, and thus lawyers' role in the rule of law, is vulnerable when we price future contributors out of our profession. We need a pipeline of students who want and can afford to join.

This report makes several basic recommendations aimed at strengthening this pipeline. We begin by urging that the law school accreditation process be infused with those who have experienced what dissuades so many people each year from attending law school. It continues with high-quality data that allows legal educators and policy-makers to confront difficult realities and to direct resources in directions that strengthen and stabilize the pipeline. Better consumer information will help students make sense of their choice, while also shedding light on our profession's way forward. Data may not be the solution to law school affordability, but it is a necessary first step to finding and implementing solutions. Informed policy choices require a diversity of information and voices.

Recommendations

1. Young Lawyer Representation in Accreditation

The ABA Section of Legal Education and Admissions to the Bar should add two young lawyers to its Council in 2018.

The ABA Section of Legal Education and Admissions to the Bar should change its bylaws to designate two of 15 at-large Council positions to young lawyers.

The American Bar Association (“ABA”) Section of Legal Education and Admissions to the Bar is the nationally recognized accreditor of law schools, but its mission is broader.³¹ Its mission is also “[t]o be a creative national force in providing leadership and services to those responsible for and those who benefit from a sound program of legal education and bar admissions.”³² Over the recent decades, legal education has become significantly more practical, service-oriented, and diverse. But the Section also oversaw legal education as costs spiraled out of control and schools adopted predatory admissions practices solely to ensure survival in a time of great tumult.³³

Indeed, a Committee of the United States Department of Education recently recommended that the

³¹ *After Trump's election, more students consider law school, hoping to make a difference*, Chicago Tribune, Nov. 16, 2017, www.chicagotribune.com/business/ct-biz-lsat-registration-up-trump-bump-20171116-story.html.

³² *Id.*

³³ *Supra* 2015 State of Legal Education, note 28.

Section's accreditation authority be suspended.³⁴ At the end of the hearing, Paul LeBlanc, a college president and member of the Education Department's National Advisory Committee on Institutional Quality and Integrity, summarized his view of the Section's conduct as follows:

This feels like an agency that is out of step with a crisis in its profession, out of step with the changes in higher Ed, and out of step with the plight of the students that are going through the law schools.³⁵

Several choices by the Section over the past few decades have negatively impacted legal education in the long term. In 1995, the Section reached a settlement with the Department of Justice after the DOJ's antitrust division contended that the accreditation process was used to inflate law school faculty salaries and benefits.³⁶ The beneficiaries of this abuse of accreditation are largely still on staff at law schools, thus the Section's actions continue to directly affect the cost of providing legal education because salary increases compound, working conditions tend to endure, and law faculty have tenure.

More recently, the Section was slow to act decisively to stop law schools from exploiting students, despite internal and external calls for accountability. In part, this was due to poorly-drafted accreditation standards. In 2008, after determining that a minimum bar passage standard would serve an important consumer protect function, the Section passed a standard so rife with loopholes that law schools with sub-30% bar passage rates have still not been found non-compliant.³⁷ The bar passage standard, now Standard 316 instead of Interpretation 301-6, remains on the books despite two separate attempts to address the standard's substantial flaws.³⁸

Fortunately, Standard 316 is not the only tool at the Section's disposal to address predatory admissions and retention practices. The Section has had a standard for decades to prevent schools

³⁴ Transcript Reveals Debate Over ABA's Accrediting Power, Bloomberg Big Law Business, Aug. 3, 2016, <https://biglawbusiness.com/transcript-reveals-debate-over-abas-accrediting-power/>.

³⁵ June 22, 2016 Hearing on the American Bar Association Council of the Section of Legal Education and Admission to the Bar's Renewal of Recognition Petition for Accreditation Authority, 235:2-6.

³⁶ Department of Justice Press Release, June 27, 1995, https://www.justice.gov/archive/atr/public/press_releases/1995/0257.htm.

³⁷ ABA Standards Archives, https://www.americanbar.org/groups/legal_education/resources/standards/standards_archives.html (The ABA added Interpretation 301-6 for the 2008-2009 academic year; the ABA moved the interpretation to Standard 316 for the 2014-2015 academic year.) *What Will The ABA Do To Restore Trust In Law Schools?*, Above the Law, Dec. 2, 2015, <https://abovethelaw.com/2015/12/what-will-the-aba-do-to-restore-trust-in-law-schools/> (outlining six loopholes in Standard 316, the bar passage standard).

³⁸ *Supra* ABA Standards Archives, note 37; 2013 Congressional Black Caucus Review, pg 20, https://issuu.com/cbcaucus/docs/cbc_year_in_review_-_final_webversi_1743e0cbc454b2 (discussing the CBC's thwarting of the attempt to strengthen Standard 316 in 2013); *ABA House Rejects proposal to tighten bar-pass standards for law schools*, ABA Journal, Feb. 6, 2017, http://www.abajournal.com/news/article/aba_house_rejects_proposal_to_tighten_bar_pass_standards_for_law_schools (discussing the House of Delegates' rejection of the Council's approval of a stronger Standard 316 in 2016).

from enrolling students who do not appear capable of getting through school and the bar.³⁹ Yet the Section misapplied Standard 501—the prohibition of predatory admissions practices—by presuming compliance with Standard 501 if a school was compliant with the fatally flawed Standard 316.⁴⁰ This hampered the Section’s ability to react quickly. The Section leadership determined it was not properly interpreting (and thus enforcing) Standard 501 in late 2015.⁴¹ It subsequently refined its approach and added an additional enforcement layer to the text of the standard.⁴² The Section has since found ten law schools out of compliance with Standard 501, with other schools likely to follow.⁴³

The Section was also inattentive to problems related to transparency. In 2010, the Section and law schools first came under fire for misleading employment statistics.⁴⁴ The most flagrant statistics involved reporting an employment rate, often well above 90%, without indicating that the figure included part-time jobs, short-term jobs, jobs funded by the law school, and non-lawyer jobs. While law schools deserve responsibility for deceptive marketing practices that misled students and the public, the Section collected but did not disclose data from law schools that made these practices apparent. The Section’s annual questionnaire that law schools must accurately complete to remain accredited asked schools for a breakdown of graduates by job types, including whether jobs required bar passage or were part time. However, the Section only published the top-line figure too, just as was common practice by law schools. This information asymmetry favored law schools and allowed them to grow enrollments well beyond reason. Between 2011 and 2012, the Section changed the ABA Standards to address misleading statistics and to force law schools to detail these misleading top-line numbers and disclose real employment statistics.⁴⁵ These changes contributed to demand for law school declining dramatically.⁴⁶

The Section’s efforts to make law school admissions fairer may have been a reaction to negative publicity, but for several years the Section’s actions indicated to schools that it would embrace transparency and not tolerate deceptive marketing practices. Indeed, it was a model of transparency for the rest of higher education. The Section refined the public reports schools must publish, adjusted definitions, added an audit protocol, and provided guidance to schools about how not to

³⁹ *Supra* ABA Standards Archives, note 37.

⁴⁰ Memo on Standard 501 from Kyle McEntee to the Section of Legal Education leadership, http://lawschooltransparency.com/reform/projects/investigations/2015/documents/Memo_on_Standard_501.pdf.

⁴¹ *Id.*

⁴² *ABA House rejects proposal to tighten bar-pass standards for law schools*, ABA Journal, Feb. 6, 2017, http://www.abajournal.com/news/article/aba_house_rejects_proposal_to_tighten_bar_pass_standards_for_law_schools.

⁴³ *10 Law Schools Sanctioned by ABA for Lax Admissions*, National Law Journal, Nov. 21, 2017, <https://www.law.com/sites/almstaff/2017/11/21/10-law-schools-sanctioned-by-aba-for-lax-admissions-outcomes/>. *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/transparency/aba-compliance/>.

⁴⁴ *Supra* *Increasing Transparency in Employment Reporting*, note 26.

⁴⁵ *Law School Transparency Gets R-E-S-P-E-C-T*, The Careerist, June 14, 2011, <https://thecareerist.typepad.com/thecareerist/2011/06/law-school-.html>.

⁴⁶ *Supra* notes 26-30 and accompanying text.

mislead students and the public. However, in just the past year, the Section's Council took actions that incensed transparency advocates and law schools alike.⁴⁷ Without public input, the Council changed the mandatory job statistics disclosures.⁴⁸ In October 2017, the Council reversed course, but not before losing credibility among various stakeholders.

Several of the Section's specific actions, along with a general inattention to fundamental problems in legal education, have sparked significant interest by young lawyers in the direction of legal education. Young lawyers are interested in the consumer protection aspects of accreditation, as well as in shaping the Council's perspective in an official capacity as it seeks to be a creative force for the betterment of legal education. All lawyers, but young lawyers in particular, have an interest in a strong profession that can attract qualified people to do the important work of lawyers throughout our democratic society. When legal education falters, the profession's reputation is harmed. More importantly, those who need high-quality legal services suffer.

Historically, the Section has not had young lawyers on its Council. The nomination rules for the Council are clear, but the process is uninviting and the practical criteria for membership go unstated. Recently, the Section's managing director shared a helpful hint with a journalist. He told the ABA Journal that he "encourage[s] the young lawyers, and all of us on staff, to try to figure out ways to get more folks who are closer to the beginning of their careers involved on site visit teams. That's a primary credential for service on the council."⁴⁹

One way to encourage young lawyers would be to designate two spots on the Council that indicate that there is, in fact, a place for young lawyers in a space dominated by older lawyers and those whose primary professional employer is a law school. This would provide fresh perspectives to the Council. Currently, the Council consists of a single law student, who serves for one year, 15 at-large positions, and five executive officers.⁵⁰ While the ABA Young Lawyers Division has a liaison to the Council, that member does not have voting power and is not permitted in closed sessions.

The Council is currently comprised of members who, on average, graduated from law school 38 years ago. The greenest members graduated in 1990. Age and experience are not the problem, however. The problem is that tuition averaged \$3,236 at public schools and \$11,728 at private

⁴⁷ *ABA Takes Giant Step Backwards On Transparency*, Above the Law, Aug. 3, 2017, <https://abovethelaw.com/2017/08/aba-takes-giant-step-backwards-on-transparency/>.

⁴⁸ *Id.*

⁴⁹ ABA Legal Ed council revisits admissions test requirement, tables bar exam standard, ABA Journal, Nov. 1, 2017, http://www.abajournal.com/news/article/aba_legal_ed_council_bar_pass_rate_standards_admissions_test/.

⁵⁰ ABA Section of Legal Education Bylaws, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_section_bylaws.authcheckdam.pdf.

schools in 1990, and substantially less in prior years.⁵¹ The deans and faculty on the Council know the cost of today's tuition only in the sense that they can recite the price. They do not understand the life impact of tuition prices of \$40,000, \$50,000, or even more than \$60,000 *per year* have on decision-making. A student working for 15 weeks at an annualized salary of \$180,000—New York City market rate for entry-level associates at large law firms—would not cover annual tuition at the average private school today, let alone books and living expenses. Not only is that job unavailable to the vast majority of students, but its term is three to five weeks longer than a typical summer associate works.

The continued increase of law school tuition compared to the relatively stagnant value of that education is an important consequence of a broken legal education system that proliferated under the Section's leadership. We can begin to understand the current, unfair state when we examine how schools and the ABA govern; how schools recruit new students and set prices; and how policymakers and their influencers fundamentally misunderstand what it means to provide "access to education." These factors enable and cause our broken system to endure.

Achieving a higher education should not hurt students—economically, socially, or personally. But our legal education system has hurt many. Countless well-meaning people defend the status quo reflexively, choosing to focus on theories of long-term return on investment or the J.D.'s intrinsic value to justify the current state of legal education. Enchanting as these arguments may sound, they are presently and justly overshadowed by crippling debt. Simply put, if you are a young college graduate or mid-career applicant right now, then you aren't buying the idea of a long-term return when the most certain thing about your future is your monthly loan obligation.

While the Council considers restructuring,⁵² there is no guarantee or even indication that it would result in the addition of young attorneys to the Council. There are qualified young attorneys, with good ideas and great intentions, who feel that their voice has not been heard because of the assumption that the Council's interests are captured by law schools. While we appreciate the individual Council members' contribution to the advancement of the law and education as a whole, we also believe that young lawyers would offer keen and unique insight into recent changes in legal education and prospective changes in accreditation. Importantly, we are confident that these prospective members would join the Council with a goal of collaboration and with newly formed views that are not entwined with the entities the Council regulates. The renewed vigor and unique perspectives will propel legal education and the profession forward.

⁵¹ *Supra* LST Data Dashboard, note 2, at <https://www.data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2017>.

⁵² Memo on the Reorganization of the Structure of the Accreditation Project, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/November2017CouncilOpenSession/17_nov_restructuring_project_cover_memo_authcheckdam.pdf.

2. Increased Data Transparency

The ABA Section of Legal Education and Admissions to the Bar, using authority it already has under the ABA Standards and Rules of Procedure for Approval of Law Schools, should require schools to report as part of the Section’s annual questionnaire, and for the Section and schools to provide on their websites, (1) disaggregated borrowing data, including subcategories by race/ethnicity and gender; (2) disaggregated data on the amount of tuition paid by class year (1L or upper-level), race, and gender; (3) data on applicants and scholarships by gender and, to the extent the Section does not do so already, by race/ethnicity; (4) data on J.D. program completion and bar passage success.

For the better part of a decade, law schools have faced pressure to be more transparent, affordable, and fair. Concerned people inside and outside of the legal profession alike have objected to deceptive marketing, over-enrollment, and runaway tuition. In many ways, the Section of Legal Education has acknowledged and responded to the criticism. The ABA Standards and Rules of Procedure for Approval of Law Schools (“Standards”) now expressly prohibit schools from providing false, incomplete, or misleading consumer information.⁵³ The Standards also require law schools to publish detailed employment data on their websites.⁵⁴ More recently, the Section convened a roundtable of legal education stakeholders to discuss how to modify the Standards to encourage innovation and address challenges related to cost, declining job opportunities, and declining bar passage rates. One theme that emerged from the roundtable is the necessity of more transparency.

We propose several recommendations for the Section that, if enacted, will shed light on law student debt, inequitable pricing practices, exploitative admissions and retention choices, and lasting inequality. The Council already has the authority to collect and require schools to publish all of the data described below. Standard 104 permits the Council to collect these data “in the form, manner, and time frame” it specifies each year.⁵⁵ Rule 54(b) permits the Council to publish these data when “authorized under Standard 509 or [when] ... made public by the law school.”⁵⁶ Standard 509 allows the Council to require schools to publish these data “in the form and manner and for the time frame designated by the Council.”⁵⁷

Transparency forces the public and school leaders to confront difficult realities, whether it’s high prices, burdensome debt, low bar passage rates, or unfulfilled diversity promises. These recommendations will expand access to valuable data, helping consumers to make informed decisions, schools to change to meet evolving demands, and the Section to create and maintain an environment of accountability.

⁵³ Standard 509, 2017-18 ABA Standards and Rules of Procedure for Approval of Law Schools.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

Student Debt

In 2016, the average private law school graduate received \$134,497 in student loan disbursements during law school.⁵⁸ The average public law school graduate received \$96,054.⁵⁹ Notably, these figures do not reflect the amount of debt owed when repayment begins six months after graduation because they do not factor in interest, which the government does not subsidize for law students. This year, interest immediately began to accrue at 6% for Stafford Loans (up to \$20,500 per year) or 7% for Graduate PLUS loans (up to the full cost of attendance) for students.⁶⁰

These eye-popping numbers come from school-level borrowing averages. Each school's average includes any graduate who borrowed at least \$1 during law school, whether they borrowed for just one semester—perhaps \$5,000 to pay for a trip—or they borrowed the full cost of attendance. So while the average can tell us about the entire population, it tells us little about individual students. With cost of attendance in 2017-18 as high as \$95,883 at Stanford Law School, student borrowing can vary wildly based on scholarships and ability to pay.⁶¹ The latest available data show that 55% of Stanford Law students pay full price.⁶² After accounting for interest that accumulates during law school, a Stanford graduate may owe over \$300,000 when the first payment is due, even factoring in a 2L summer associate salary.

The public does not know how many (if any) graduates actually borrow the full amount, just that 75% of Stanford Law graduates in 2016 borrowed at least \$1 and that the average amount borrowed was \$137,625.⁶³ Perhaps borrowing several hundred thousand dollars from one of the nation's elite law schools is not a matter of public interest or concern. But the debt loads at lesser-performing schools can reach this astronomical amount too—and it is at those schools that underlying borrowing data will serve the most important purpose.

Take, for example, Southwestern Law School. Its annual cost of attendance is \$82,600.⁶⁴ Half of its students paid full price in 2016-17.⁶⁵ In 2016, only 38.9% of its 2016 graduates obtained a long-

⁵⁸ *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2016>.

⁵⁹ *Id.*

⁶⁰ *2017-2018 Interest Rates Announced*, Access Lex, <https://www.accesslex.org/xblog/2017-2018-interest-rates-announced> (last visited Sept. 26, 2017).

⁶¹ Stanford Law School, LST Reports, <https://www.lstreports.com/schools/stanford/costs/> (last visited Dec. 29, 2017).

⁶² *Id.* With 55% of students paying full price and 25% of the class not borrowing, at least 30% of those who paid full price borrowed at least \$1—but probably much more.

⁶³ *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2016>.

⁶⁴ Southwestern Law School Costs, LST Reports, <https://www.lstreports.com/schools/southwestern/costs/> (last visited Dec. 29, 2017).

⁶⁵ *Id.*

term, full-time job that requires bar passage within ten months of graduation.⁶⁶ Only 38% of 2016 graduates passed the California bar exam on the first try.⁶⁷ The public does not know how many (if any) graduates *actually* borrowed nearly a quarter of a million dollars at this school. But unlike Stanford, the public does not know the average amount borrowed because Southwestern Law School has not disclosed graduate borrowing data since 2012, when the average amount borrowed for the 78.9% of graduates who borrowed was \$147,976.⁶⁸ Since that time, tuition is up 23%; net tuition is up 8%; cost of living is up 12%; the median and 75th percentile scholarship has not changed; and the 25th percentile scholarship has declined by a third.⁶⁹

The Section of Legal Education does not publish any school-level borrowing data, although the Section does collect the average amount borrowed and the percentage borrowing on its annual questionnaire.⁷⁰ Rather, borrowing data come from voluntary disclosures by law schools to *U.S. News & World Report*. Every year, more than a handful of schools make erroneous disclosures to *U.S. News*, which only occasionally get corrected. Every year, a dozen or so other schools decline to publish the average amount borrowed by graduates.

Consumers, schools, and researchers lose out because the only source for information that the Section possesses is a news magazine that muddies the decision-making process for consumers and schools alike. As the best source for borrowing data, the Section encourages people to visit the *U.S. News* website through its decision not to publish the borrowing data it possesses. That said, the average amount borrowed by graduates and the percentage borrowing are limited in utility, although there is value in confronting consumers with figures that account for several years of schooling instead of annual cost of attendance. The Section would do a great service to legal education if it enabled consumers and researchers to peer underneath the surface figures (average borrowed) to see the borrower makeup by amount borrowed. Shedding light on underlying borrowing data may stir policymakers, faculty, and administrators to think more clearly and realistically about the problem of student debt. One way to do this is through a frequency distribution, which “displays the frequency of various outcomes in a sample.”⁷¹

In legal education, the most famous application of a frequency distribution is NALP’s bi-modal salary distribution curve (shown below, Figure A). This curve continues to shape how

⁶⁶ *Id.* at ABA Report, <https://www.lstreports.com/schools/southwestern/aba/>.

⁶⁷ *California Bar Exam Results by School in 2016*, Above the Law, <http://abovethelaw.com/2016/12/california-bar-exam-results-by-law-school-2016/>.

⁶⁸ *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2012>.

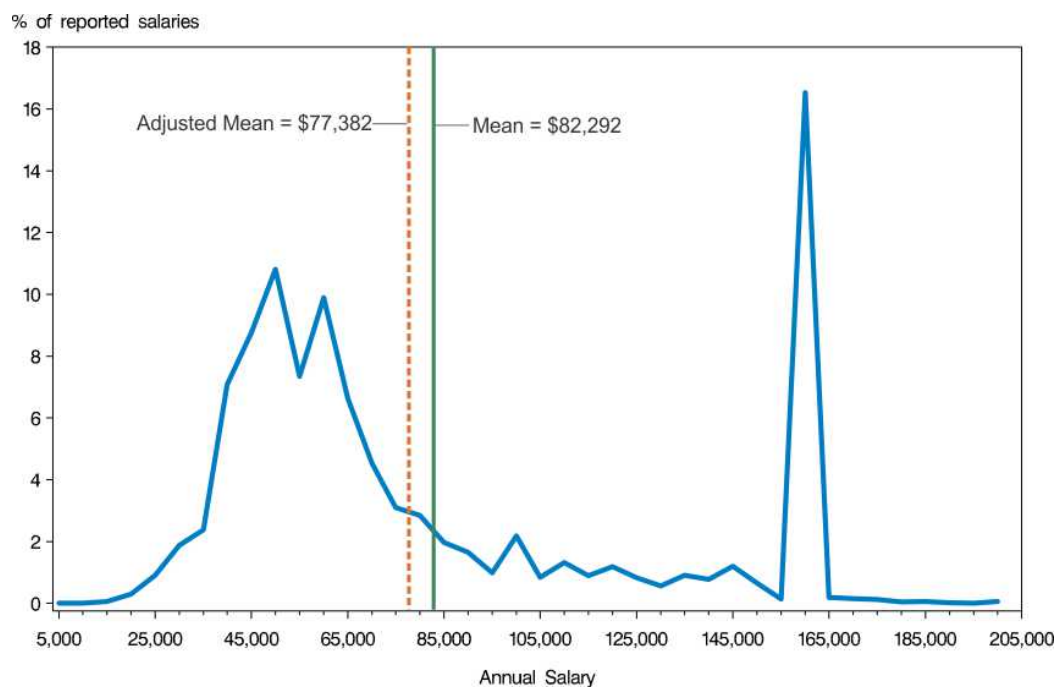
⁶⁹ *See*, generally, ABA Required Disclosures for Southwestern Law School, <http://abarequireddisclosures.org/>. The net tuition estimates can be found on the LST Data Dashboard, *supra* note 2, at <https://data.lawschooltransparency.com/costs/net-tuition/>.

⁷⁰ In the past, the Section collected graduate borrowing data, but currently only collects annual loan disbursements.

⁷¹ Frequency Distribution, Wikipedia https://en.wikipedia.org/wiki/Frequency_distribution.

policymakers, researchers, consumers, and the public understand entry-level salaries. The mean salary may have been \$82,292 for 2014 graduates, but very few graduates made at or near that amount. Instead graduates fell into one of two “humps”—\$160,000 on the one side and between \$40,000 and \$65,000 on the other.⁷²

Figure A



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www.nalp.org

In an ideal world, the public would know how much graduates owe when the first payment is due including interest, but this is not possible without federal legislation and, in our estimation, not worth the effort. Instead, we ask the Section to collect data on student loan borrowing outcomes for graduates and to publish those outcomes using a frequency distribution table, including non-borrowers, using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 104 and Standard 509(b)(2).

Tuition Prices and Discounts

Since 1985, inflation has been a factor in rising law school prices, but legal education inflation far exceeds the inflation rate. In 1985, the average private school tuition was \$7,526 (1985 dollars), which would now cost a student \$17,118 (2017 dollars).⁷³ Instead the average tuition is \$46,329

⁷² NALP Salary Distribution Curves, <http://www.nalp.org/salarydistrib> (last visited Sept. 22, 2017).

⁷³ *Supra* LST Data Dashboard, note 2, <https://www.data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2017>.

(2017 dollars).⁷⁴ In other words, private law school is now 2.7 times as expensive as it was in 1985 after adjusting for inflation. Public school (for residents) is now about 5.8 times as expensive.⁷⁵

Since then, law schools have engaged in more tuition discounting through grants and scholarships. So although the nominal tuition price has increased, it does not tell the whole story. About 30% of students pay full price.⁷⁶ For the 70% receiving a discount, the discounts have shifted away from need-based discounts based on ability to pay towards merit-based discounts based on LSAT and undergraduate GPA. Those with the highest LSATs and GPAs receive the discounts. As such, the students who are least likely to complete school, pass the bar, and get a job subsidize the students who are more likely to succeed. These also tend to be the students the most disadvantaged.⁷⁷

Currently, the Section requires schools to report and publish cost of attendance data and scholarship data about the 25th, 50th, and 75th percentiles for full-time and part-time students. It also requires schools to report and publish scholarship data by the percentage of tuition covered, e.g. what percentage of all students have a scholarship that covers up to 50% of tuition. Moreover, the Section requires schools to report and publish whether and how often they reduce or eliminate scholarships after poor academic performance.

The Section already recognizes the value of publicly available price information for consumers, researchers, and the public. But with increased discounting and the shift away from need-based aid, additional clarity would add additional value much in the way that more graduate borrowing data would. The Section should therefore further its efforts of helping people understand the cost of legal education. As such, we ask the Section to collect data on tuition paid for each enrolled individual and to publish up to four frequency distributions tables per law school—one for 1L tuition paid, one for upper-level tuition paid, and a distinction for part-time and full-time as necessary—using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 104 and Standard 509(b)(2).

Gender Diversity

In 1965, just 1 in 25 law students was a woman. That number steadily climbed to 1 in 4 in 1975; 1 in 3 in 1980; and since 2000, the proportions have been roughly equal—though slightly more men than women every year except last year. Parity in law school enrollment was an enormous milestone, but new research demonstrates that national parity masks lurking gender inequality.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at <https://data.lawschooltransparency.com/costs/net-tuition/>.

⁷⁷ *Law School Scholarship Policies, Engines of Inequity*, 2016, <http://lsse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf>.

The research shows three significant “leaks” in the law school pipeline for women.⁷⁸ The first of these leaks involve women applying to law school. Even though women are 57% of college graduates, they account for only about 51% of the law school applicants. If women applied at the same rate as men to law school, applications would increase 16%. The second leak is that women who apply to law school are less likely than men to be admitted. For the class entering in 2015, law schools admitted about 80% of the men who applied, but just 76% of the women who applied. The third leak is that, even when women are admitted, they are not spread evenly across law schools. They instead cluster disproportionately in schools with the weakest employment outcomes and worst reputations.

The first and second leaks go back several decades. The third leak, however, is new and worsening. In 2001, when schools had just gotten to roughly 50/50 nationwide, women were evenly distributed amongst schools. But by 2006 the story had started to change. Although the pattern was not yet statistically significant, it had started to emerge. By 2015 the pattern was statistically significant and quite stark. Today the top 50 schools are the mirror opposite of the bottom 50 schools.

The emerging explanations mostly relate to the *U.S. News* law school rankings, with the most compelling relating to schools jockeying for higher LSAT scores to increase the median score, which is a considerable driver of ranking. Over the past 15 years, in their quest to secure or improve their *U.S. News* ranking, law schools have decided to emphasize LSAT scores more. Women actually do two points worse on average than men on the LSAT, and there are fewer higher scorers as well.⁷⁹ This is typical of standardized tests with predominately multiple choice questions, unlike writing examinations that tend to favor women.⁸⁰ Additional explanations may include an uneven distribution of applicants (perhaps increased median LSATs drive applicants away), uneven distribution of scholarship money (perhaps because schools overvalue the extra two points they get from men), and scholarship negotiation tendencies (perhaps because women are less likely to ask for more or any money). At this point, further research is not possible because school-level applicant and scholarship data are not available by gender.

Data on applicants and scholarships would also help consumers make informed choices. As outlined in the previous sections on tuition and debt, law school is expensive. Reducing the information asymmetry—allowing students to more clearly understand their bargaining position—will help them to pay less, which would reduce debt and/or enhance the school options.

⁷⁸ *The Leaky Pipeline*, Deborah Merriitt and Kyle McEntee, <https://www.lstradio.com/women/?theme=lp1>.

⁷⁹ *LSAT Technical Report October 2012*, Law School Admissions Council, [https://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-12-03.pdf?sfvrsn=4](https://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf?sfvrsn=4) (Figure 10).

⁸⁰ Performance of Men and Women on Multiple-Choice and Constructed-Response Tests for Beginning Teachers, Samuel A. Livingston and Stacie L. Rupp, ETS Research Report, <https://files.eric.ed.gov/fulltext/EJ1110967.pdf>; Fighting the Gender Gap: Standardized Tests Are Poor Indicators of Ability in Physics, Barrett H. Ripin APS News Letter, <https://www.aps.org/publications/apsnews/199607/gender.cfm>; *Standardized Tests Are a New Glass Ceiling*, Andrew Hacker, The Nation, <https://www.thenation.com/article/standardized-tests-are-a-new-glass-ceiling/>.

Additionally, these data will help the Section analyze compliance with Standard 206(a). Standard 206(a) provides that “a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.” If a school, even inadvertently, is biasing enrollment towards men because it’s too concerned with chasing a higher ranking, then the school may be out of compliance with the ABA Standards.

As such, we ask the Section to collect and to publish data on applicants and scholarships by gender using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 509(b)(1) and Standard 509(b)(2).

Racial and Ethnic Diversity

Whereas tremendous progress has been made towards gender parity, even with the emerging trend of gender clustering at the most and least reputable schools, significant progress remains for enrollment by race and ethnicity.⁸¹

Table B

	Hispanic	NA	Asian	Black	Hawaiian	White	2+ Races
2016 1Ls	13.7%	0.5%	6.5%	9.6%	0.1%	65.2%	4.3%
US Population	17.8%	1.3%	5.7%	13.3%	0.2%	61.3%	2.6%

Aaron Taylor, the executive director of AccessLex’s Center for Legal Education Excellence, observed similar trends with race and ethnicity as the previous section outlined about gender. Taylor found that Black and Hispanic students were more likely to attend schools with lower median LSAT scores, which tend to be less prestigious.⁸² Whereas white and Asian students were more likely to attend more prestigious schools with higher LSAT median scores.⁸³ Taylor told the *National Jurist* that “[t]his affects long-term outcomes, career trajectories and payoffs from law school investments. There are many implications tied in large part to race and ethnicity.”⁸⁴

Even on the tuition and debt front, the implications are huge. According to the Law School Survey of Student Engagement (LSSSE), then-directed by Taylor, “[i]t seems apparent that increased costs

⁸¹ 1L percentages come from the ABA, downloadable from the Section’s statistics website. https://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited Sept. 28, 2017). Excludes unknowns and non-resident 1Ls. U.S. Population percentages come from the U.S. Census. <https://www.census.gov/quickfacts/fact/table/US/PST045216> (last visited Sept. 28, 2017).

⁸² *Diversity as a Law School Survival Strategy*, Aaron Taylor, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2569847 (last visited Sept. 28, 2017).

⁸³ *Id.*

⁸⁴ *Law schools enrolling more minorities to combat enrollment drop*, NATIONAL JURIST, Laura Martin, Feb. 17, 2015, <http://www.nationaljurist.com/prelaw/law-schools-admitting-more-minorities-combat-enrollment-drop>.

of attending law school have placed undue pressures on students from less affluent backgrounds to rely on student loans to finance their education. This burden falls disproportionately on Black and Hispanic students, who are more likely to come from low-wealth backgrounds.”⁸⁵ The proportion of Black students expecting no debt was less than 5% in 2015 and less than 10% for Hispanic students.⁸⁶ For white students, it was about 20% and for Asian students about 25%.⁸⁷ On the high end, about 25% of white students expected debt in excess of \$120,000, compared to almost 45% of Black students and about 40% of Hispanic students.⁸⁸

Of course, these disparities relate to the “large racial and ethnic wealth disparities in the U.S.”⁸⁹ But they also appear to relate to law school scholarship policies, because wealth explains part of the divergence in LSAT scores, which play an outsized role in determining the price a student pays to attend law school. According to LSSSE’s 2016 report, 2 in 3 white students receive a merit scholarship, while just 1 in 2 Black and Hispanic students do.⁹⁰

For the same reasons outlined above for gender, including adherence to and enforcement of Standard 206(a), we ask the Section to collect and to publish data on applicants and scholarships by race/ethnicity using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 509(b)(1) and Standard 509(b)(2).

Additional Diversity Data

For the foregoing reasons outlined in the sections on race/ethnicity and gender data, the public would also benefit if the data requested in the sections on tuition prices and student borrowing outcomes were publicly accessible by race/ethnicity and gender. The Section may do so under its current authority under Standard 104, Standard 509, and Rule 54(b).

Completion and Bar Success

Many law schools have enrolled students that face a significant risk of not completing school or passing the bar exam.⁹¹ Despite a decrease in completion rates, bar passages rates have also

⁸⁵ *Law School Survey of Student Engagement 2015 Report*, pg. 12, <http://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE-Annual-Report-2015-Update-FINAL-revised-web.pdf>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Law School Survey of Student Engagement 2016 Report*, pg. 9, <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf>.

⁹¹ *Study Cites Lower Standards in Law School Admissions*, New York Times, Elizabeth Olson, Oct. 26, 2015, <https://www.nytimes.com/2015/10/27/business/dealbook/study-cites-lower-standards-in-law-school-admissions.html> (reporting on Law School Transparency’s 2015 *State of Legal Education*, <https://www.lawschooltransparency.com/reform/projects/investigations/2015/>).

decreased. After years of steady bar passage rates, overall passage rates have fallen 10 points and first-time rates have fallen 9 points between 2013 and 2016, although the declines have not been uniform across the country.⁹² For example, first-time rates fell 36 points in South Dakota, 19 points in Iowa, 18 points in New Mexico, 16 points in Oregon, and 15 points in Arizona.⁹³ On the other hand, first-time rates increased in Nebraska, Louisiana, and Michigan.⁹⁴ Similarly, declines have not been uniform across all law schools. Some schools have increased their bar passage rates, such as Florida International University College of Law.⁹⁵ Many others have seen dramatic declines.⁹⁶

The declines were predictable based on lower Law School Admissions Test (“LSAT”) scores and insufficient mitigation through, for example, higher grade point averages (“GPA”) and more forced attrition.⁹⁷ Highlighting which schools, through their educational programs, help or do not help students outperform their predictors would help consumers make more informed choices about where to attend law school, while helping law schools compete on metrics other than the *U.S. News* law school rankings. Further, it would help the legal education community develop best practices for maximizing the success of students at higher risk of failure—an essential goal that will not only help legal educators get the most out of students, but also increase diversity in the profession by fortifying our leaky pipeline.

The Section has determined that completion rates based on available predictors are valuable in assessing compliance with the Standards, as well as the progress non-compliant schools are making towards coming back into compliance. Since August 2016, the Council for the Section has publicly sanctioned five law schools in relation to its admissions and retention choices.⁹⁸ Each sanction included remedial actions, including a requirement that each school provide current students bar passage rates for previous, similarly-situated students. While similarity was determined based on law school GPA, information fashioned for prospective law students would be valuable too. Prior to enrollment, there is not yet a better predictor of school completion and bar exam success than the LSAT. In fact, the Section’s accreditation committee requested that at least one of the schools—Charlotte School of Law—report completion and bar passage rate information for students with LSATs at or below the median in order to assess compliance with

⁹² National Conference of Bar Examiners, 2016 Statistics, pg. 33, www.ncbex.org/pdfviewer/?file=%2Fdocsdocument%2F205.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Florida Bar Exam Statistics, <https://www.floridabarexam.org/web/website.nsf/52286AE9AD5D845185257C07005C3FE1/660E3F5B6C35DE2585257C0B006AA3F4>.

⁹⁶ *Id.*

⁹⁷ For example, law schools have not increased incoming undergraduate GPAs enough to outweigh lower LSAT scores. In fact, GPAs were down almost uniformly across the schools studied. 2015 *State of Legal Education*, Law School Transparency, <https://www.lawschooltransparency.com/reform/projects/investigations/2015/data/other-stats/?show=mbe>.

⁹⁸ ABA Section of Legal Education Announcements, https://www.americanbar.org/groups/legal_education.html (Arizona Summit Law School, Charlotte School of Law, Ave Maria School of Law, Texas Southern University Thurgood Marshal School of Law, Valparaiso University School of Law)

the ABA Standards.⁹⁹ As such, we ask the Section to collect and publish data on program completion and bar passage success by LSAT score using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 509(b)(4), and Standard 509(b)(8). We decline, at this time, to recommend a specific format for publishing these data. Instead, we recommend that the Section implement a tracking system, including admissions indicators and demographic status, for all new students that can track progress through bar passage and entry-level employment.

3. User-Friendly Data Presentation

The ABA Section of Legal Education and Admissions to the Bar, using authority it already has under the ABA Standards, should simplify the Employment Summary Report, which includes graduate employment data.

The ABA Section of Legal Education and Admissions to the Bar, using authority it already has under the ABA Standards, should simplify and reorganize the Standard 509 Information Report, which includes data related to admissions, attrition, bar passage, price, curricular offerings, diversity, faculty, refunds, and scholarships.

The recommendations in the previous section work without changes to the ABA Standards. Not only can the Council collect and publish a variety of data in the manner and form that the Council sees fit, it may require schools to make any of this information available to students and the public on their websites or via other means of communication. At the school level, the Section—at the direction of the Council—presents two sets of data available to the public directly: the Employment Summary Report and the Standard 509 Information Report. The Council also requires law schools to publish these reports prominently on their websites.

Employment Summary Report

The Employment Summary Report details post-graduation employment outcomes for a graduating class, measured as of March 15th the following year for the class of 2014 and later—about ten months after graduation. The report allows people to calculate important data points, such as unemployment rate, percentage in law firms (and by size), percentage in public sector jobs, and percentage in jobs that require bar passage. It also includes information about where the jobs are located, whether jobs are funded by the law school, and whether jobs are short or long term and part or full time. These disclosures have already reshaped legal education, but students and the public would nevertheless be served by simplifying the Employment Summary Report.

⁹⁹ *Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs – Charlotte School of Law*, U.S. Department of Education, <https://studentaid.ed.gov/sa/sites/default/files/csl-recert-denial.pdf> (pg. 4 - 5).

We ask the Council to adopt the Proposed Employment Summary Report (Appendix A). It includes a complete changelog between forms and addresses the concerns expressed by Councilmembers at the June 2017 Council meeting, as well as the concerns of many stakeholders. Specifically, the Proposed Report reduces the number of cells by 56% without altering data collection. It maintains the status quo on school-funded jobs above the line, which provides an equal playing field for law schools. It does not unnecessarily collapse categories that demonstrate significant differentiation. It provides clearer, and more consistent naming conventions. It maximizes visual cues that enhance consumer comprehension, including spacing, punctuation, and color. Altogether, it will help consumers make informed choices about whether and where to attend law school.

Standard 509 Information Report

The Standard 509 Information Report details a variety of statistics that help students figure out when to apply, whether they can get in, how much it costs, how diverse the student body is, and at what rate students complete school and pass the bar exam. This report is already a dense, though enormously helpful document. However, if the Council advances some or all of our data recommendations involving additional disclosure requirements and if the Council finds some or all of the new data important enough to earn a spot on the report, it will require simplification to ensure students and the public continue to make ample use of its contents. But even if the Council adopts none of the aforementioned data recommendations, there remains the opportunity to simplify the report and design it for maximum consumer comprehension. After all, the current report was originally designed two decades ago for print in the LSAC Official Guide. Today's Standard 509 Information Report is viewed online as a PDF.

Data presentation involves choices about how to organize and summarize datasets, translating data from its raw form into meaningful information. With any dataset, the data can be presented in various forms, including charts, graphs, and tables. The best method depends on the audience(s). Presentation choices must balance what the audience wants to know and what they should want to know, along with consideration to information overload, complexity, and utility. Importantly, these choices set the benchmark for what matters to the audience.

We do not ask the Council to adopt a specific, new format for the Standard 509 Information Report. The ideal format will depend on what data recommendations the Council adopts. In principle, the most serious flaw is that parts of the report amount to a data dump. While the Section should continue to make *all* data available on spreadsheets—an important practice of the Section that benefits students, schools, researchers, policymakers, and journalists—the Standard 509 Information Report targets people who seek a valuable summary of individual law school offerings. The report should reflect this objective.

Consider the J.D. enrollment and ethnicity table (**Table C**, below) from the 2016 Standard 509 Information Report.

Table C

J.D. Enrollment and Ethnicity (academic year*)															
	Men		Women		Other		Full-Time		Part-Time		First - Year		Total		J.D. Deg Awd
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Hispanics of any race	23	5.7	23	6.6	0	0	46	6.1	0	0	19	7.9	46	6.1	12
American Indian or Alaska Native	2	0.5	0	0	0	0	2	0.3	0	0	0	0	2	0.3	1
Asian	42	10.4	53	15.3	0	0	95	12.7	0	0	27	11.2	95	12.7	33
Black or African American	25	6.2	26	7.5	0	0	51	6.8	0	0	17	7	51	6.8	17
Native Hawaiian or Other Pacific Islander	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Two or more races	12	3	10	2.9	0	0	22	2.9	0	0	10	4.1	22	2.9	6
Total Minority	104	25.8	112	32.4	0	0	216	28.8	0	0	73	30.2	216	28.8	69
White	230	57.1	187	54	0	0	417	55.7	0	0	143	59.1	417	55.7	159
Nonresident Alien	19	4.7	23	6.6	0	0	42	5.6	0	0	9	3.7	42	5.6	8
Race and Ethnicity Unknown	50	12.4	24	6.9	0	0	74	9.9	0	0	17	7	74	9.9	22
Total	403	53.8	346	46.2	0	0	749	100	0	0	242	32.3	749	100	258

Some rows (Total Minority and Total) reflect the sum of other rows, but there is no visual cue to distinguish rows with sums and other rows. The columns and data time period are also not clearly indicated. Most importantly, however, the raw data do not add value to the table commensurate with the costs to consumer experience. The columns labeled # add to information overload, which reduces comprehension and therefore decision quality.

Consider an alternative table (**Table D**, below) that conveys the same information.

Table D

Total Enrollment: 749 Total First-Years: 242 Total Graduates: 258	J.D. Enrollment and Ethnicity, 2016-17 Academic Year							
	Total Enrollment						Graduates	First-Year
	Men	Women	Other	Full-Time	Part-time	Total		
Total Minority	13.9%	15.0%	0%	28.8%	0%	28.8%	26.7%	30.2%
Hispanics of any race	3.1%	3.0%	0%	6.1%	0%	6.1%	8.9%	7.9%
American Indian or Alaska Native	0.3%	0.0%	0%	0.3%	0%	0.3%	0.4%	0%
Asian	5.6%	7.1%	0%	12.7%	0%	12.7%	12.8%	11.2%
Black or African American	3.3%	3.5%	0%	6.8%	0%	6.8%	6.6%	7.0%
Native Hawaiian or Other Pacific Islander	0%	0%	0%	0%	0%	0%	0%	0%
Two or more races	1.6%	1.3%	0%	2.9%	0%	2.9%	2.3%	4.1%
White	30.7%	24.9%	0%	55.7%	0%	55.7%	61.6%	59.1%
Nonresident Alien	2.5%	3.0%	0%	5.6%	0%	5.6%	3.1%	3.7%
Race and Ethnicity Unknown	6.7%	3.2%	0%	9.9%	0%	9.9%	8.5%	7.0%
Total	53.8%	46.2%	0%	100%	0%			

It shades rows that total other rows, indents the sub-totaled rows, bolds the overall total, and labels the academic year. It eliminates the raw data except for total enrollment, total first-year enrollment, and total graduates, which the layout emphasizes at the top. The layout also emphasizes two critically important figures: overall minority and gender percentages. The table also uses the percentage of the entire class for each row that shows the intersection of race and gender, rather than percentage of gender.

Again, the raw data must remain publicly available. But on a summary report such as the Standard 509 Information Report, the main takeaways of the table should not be dwarfed by a volume of data, as is the case with **Table C**.

For the 2017 Standard 509 Information Report, released on December 15, 2017, the Section made several changes to **Table C**. The table (**Table E**) now includes gender and race subcategories for each class cohort. While the table does remove redundant cells, the Section chose raw data over percentages, so the tables remains a data dump that undercuts its purpose of informing consumers.

Table E

J.D Enrollment as of October 5th 2017													
	1L				2L				3L				Total
	T	M	W	O	T	M	W	O	T	M	W	O	T
Hispanics of any race	11	7	4	0	4	3	1	0	4	3	1	0	19
American Indian or Alaska Native	0	0	0	0	0	0	0	0	0	0	0	0	0
Asian	2	0	2	0	1	1	0	0	4	2	2	0	7
Black or African American	12	8	4	0	5	2	3	0	12	7	5	0	29
Native Hawaiian or Other Pacific Islander	0	0	0	0	0	0	0	0	0	0	0	0	0
Two or More Races	6	3	3	0	4	1	3	0	1	1	0	0	11
Total Minority	31	18	13	0	14	7	7	0	21	13	8	0	66
White	145	77	68	0	134	62	72	0	86	49	37	0	365
Nonresident Alien	3	3	0	0	4	3	1	0	0	0	0	0	7
Race and Ethnicity Unknown	5	4	1	0	5	2	3	0	5	4	1	0	15
Total	184	102	82	0	157	74	83	0	112	66	46	0	453

The cost of attendance and scholarship information on the Standard 509 Information Report (collectively **Table F**, below) could also use improvement.

Table F

Tuition and Fees (academic year*)		
	Resident	Non-Resident
Full-Time	\$ 47,125	\$ 47,125
Part-Time	\$ 32,715	\$ 32,715
Tuition Guarantee Program		No
Living Expenses (academic year*)		
Estimated Living Expenses for singles		
Living on Campus	\$ 0	
Living Off Campus	\$ 26,080	
Living at Home	\$ 26,080	
Conditional Scholarships		
Students Matriculating in	# Entering with	# Reduced or Eliminated
2015-2016 Academic Year	182	70
2014-2015 Academic Year	214	81
2013-2014 Academic Year	176	90

Table G

Cost of Attendance		
2016-17 Tuition	Resident	Non-Resident
Full Time	\$47,125	\$47,125
Part Time	\$32,715	\$32,715
Tuition Guarantee Program		No
Living Expenses	\$26,080	
Tuition Discounts, 2015-16 Academic Year		
	Full Time	Part Time
Pay Full Price	37.8%	61.7%
Discount Percentage	62.2%	38.3%
< Half Tuition	41.0%	24.2%
Half to Full Tuition	14.0%	9.7%
Full Tuition	3.0%	1.1%
> Full Tuition	4.3%	3.2%
Discount Amount		
25th Percentile	\$9,500	\$3,937
50th Percentile	\$16,000	\$8,500
75th Percentile	\$25,500	\$15,619

Conditional Scholarships		
Award may be lost based on academic performance		
First-Year Students	% Entering With	% Reduced/Eliminated
2015		
334 New 1Ls	54.5%	38.5%
2014		
357 New 1Ls	59.9%	37.9%
2013		
404 New 1Ls	43.6%	51.1%

Grants and Scholarships (prior academic year*)						
	Total		Full-Time		Part-Time	
	#	%	#	%	#	%
Total # of students	1,021	100	744	72.9	277	27.1
Total # receiving grants	569	55.7	463	62.2	106	38.3
Less than 1/2 tuition	372	36.4	305	41	67	24.2
Half to full tuition	131	12.8	104	14	27	9.7
Full tuition	25	2.4	22	3	3	1.1
More than full tuition	41	4	32	4.3	9	3.2
75th Percentile grant amount			\$ 25,500		\$ 15,619	
50th Percentile grant amount			\$ 16,000		\$ 8,500	
25th Percentile grant amount			\$ 9,500		\$ 3,937	

The report devotes an entire section for living expenses. Only 12 schools differentiated between living on or off campus for the 2016-17 academic year.¹⁰⁰ At more than half of those schools, the difference was less than \$1200.¹⁰¹ The report also includes a column on the “Grants and Scholarships” table for full- and part-time students combined. In that section, as well as the Conditional Scholarships section, consumers would benefit from percentages without raw data.

The table to the left (**Table G**) addresses these problems.

A new Standard 509 Information Report should also consider data about transfers *out* instead of *in*. Comparing law school GPAs of transfers in is like comparing apples to oranges. Information about the law school GPAs of transfers out, on the other hand, actually provides actionable information for students.

The current Standard 509 Information Report needs additional changes that follow similar themes described in this section, regardless of whether the Council includes additional data on the summary. The choices made will balance various

¹⁰⁰ *Supra* ABA Required Disclosures, note 69.

¹⁰¹ *Id.*

competing interests, but should ultimately advance the intended audience's comprehension of valuable information.

Additional Disclosures

Standard 509 also requires law schools to publish data on their websites beyond the Employment Summary Report and Standard 509 Information Report: tuition refund policies, articulation agreements, curricular offerings, faculty and staff information, and more. To the extent that the Council wants students to still have certain raw data, the mandated ABA Required Disclosures page, which is a clearinghouse for all Standard 509 disclosures, can be expanded. The same principles of useful organization apply to these pages, but there is more flexibility because everything disclosed does not need to appear on a relatively short PDF.

4. Disclosures at Time of Admission

The ABA Section of Legal Education and Admissions to the Bar should require law schools to provide every admitted law student a copy of the Standard 509 Information Report and Employment Summary Report as part of each student's admissions offer.

Standard 509 requires that law schools publish a variety of information on their websites, but permits schools to publish information elsewhere as long as it is not false, incomplete, or misleading. Standard 509(d), however, requires law schools to distribute conditional scholarship data to all recipients of conditional scholarship offers as part of their offer letter—whether by email or post. A conditional scholarship is one where retention of the full amount depends on academic performance in law school. Data on conditional scholarships helps consumers assess their chances of keeping the scholarship so that they can make an informed decision about accepting it and attending the institution. Without it, the consumer may be misled about the true likely cost of the legal education.

Similar logic underlies the requirement that information be made available to the public on the school website via Standard 509, including the Standard 509 Information Report and Employment Summary Report. The information contained in those two reports in particular is essential to consumers making informed decisions. However, the Council determined that the conditional scholarship information is important enough to also be sent to every conditional scholarship offeree. We recommend extending this logic to the two reports. The Council should require schools to include the reports as part of every offer of admission.

Standard 509(a) already permits the Council to do this. The standard provides that any information a school distributes must be “complete, accurate and not misleading.” The Section’s managing director has this to say in the Section’s Standard 509 Guidance Memo:

The following guidance is offered regarding how the Council and the Accreditation Committee view this overriding requirement of publishing information that is complete, accurate, and not misleading. Wherever a school offers any analysis or elaboration of the information covered by Standard 509, the required disclosures must be repeated or there must be a link to those required disclosures that is sufficiently proximate and prominent to draw the reader’s attention to the link. The disclosures or link to them must precede the analysis or explanation. Finally, the display of the analysis and elaboration of the data may not be more conspicuous or prominent than the display of the mandated disclosures or the link to them.¹⁰²

The memo’s prescriptions apply to any analysis or elaboration of data specified in Standard 509(b) or Standard 509(c), such as information related to costs, scholarship, bar passage, and employment data, e.g. employment rate computations from employment data. The prescription means that anytime that information is relayed to a person or to the public, through the website or otherwise, the relevant required disclosures in Standard 509(b) or Standard 509(c) “must be repeated or there must be a link ... that is sufficiently proximate and prominent.” In other words, when a law school advertises its employment rate, the Council may prescribe how and what the school must provide in order to not provide incomplete, false, or misleading information.

Given the analyses schools include in their offer letters and accompanying materials such as viewbooks or marketing flyers, the Council can choose to require schools to attach the Standard 509 Information Report and the Employment Summary Report as the means for a school to satisfy Standard 509(a). At minimum this prescription would guarantee receipt of the relevant information to anyone who would actually have the opportunity to attend, even if no marketing materials are sent at the time. A school that never sends marketing materials to an admitted student with information covered by Standard 509 would be the first.

If the Section does not agree with the preceding analysis, Standard 509(d) allows the Council to mandate disclosure of at least the Standard 509 Information Report. Here’s the relevant portion of the Standard 509 Guidance Memo:

Law Schools that offer conditional scholarships must include the conditional scholarship information from the Standard 509 Information Report at the time that a conditional

¹⁰² Managing Director’s Guidance Memo on Standard 509 (revised July 2016), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_509_guidance_memo_final.authcheckdam.pdf.

scholarship offer is extended. It is not sufficient to provide a link to the page on the ABA's website where the law school's 509 Information Report can be generated. The data itself must be posted.¹⁰³

Instead the Council can choose to require the school to provide the Standard 509 Information Report instead of the above prescription. Indeed, this would help the recipient of the conditional scholarship offer put the scholarship offer in context because the report includes data about tuition, cost of living, and scholarship amounts. This method, unfortunately, only helps reach a subgroup of accepted students (those receiving conditional scholarships) at a subgroup of schools (those offering conditional scholarships).¹⁰⁴ But that subgroup includes about half of all schools and about half of those schools' students. That's worth doing.

To reach the remaining students (about 75% of accepted 1Ls), the Council would need to amend Standard 509 or find other justification under the ABA Standards. A change would also be necessary in the event that the Council believes it does not have *any* present authority to mandate the inclusion of the Standard 509 Information Report and the Employment Summary Report with the offer of admission. Here, the ABA Law Students Division's recent letter to the Council is relevant:

We call upon the Council to require all Standard 509 reports be provided with every admission letter. We affirm that Standard 509 reports are not readily known by potential law students and should be presented in an effort to increase consumer protection.¹⁰⁵

Indeed, the information contained in the two reports is important enough that schools should send it as part of the admissions package.

5. Voluntary Disclosures by Law School

Every ABA-approved law school should voluntarily publish its school-specific NALP Report each year.

Since 1974, the National Association of Law Placement ("NALP") has processed annual graduate employment and salary data collected by individual law schools. All ABA-accredited law schools are surveyed by NALP, and the schools use NALP graduate survey forms or something similar to collect data from their graduates and then pass the data on to NALP. NALP checks the data for discrepancies or obvious questions, and returns analyses back to law schools in the form of a 25+ page report. NALP does not make individual school reports public, but individual law schools may voluntarily make their respective NALP reports public.

¹⁰³ *Id.*

¹⁰⁴ *Supra* LST Data Dashboard, note 2, <https://data.lawschooltransparency.com/costs/conditional-scholarships/>.

¹⁰⁵ Unpublished Letter.

The NALP report is valuable to prospective law students because of information it contains. An individual school report has employment information that goes well beyond ABA-mandated disclosures and includes salary data (aggregated in categories, not individual salaries) and employment outcomes data about job source (e.g., OCI, networking, or direct mailings), job offer timing (before graduation, before bar results, after bar results), employed graduate search status (employed graduates who are either still seeking or not seeking), job region and job states, and job type breakdowns by employer type (e.g., Government–J.D. Advantage). When a school chooses to publish its NALP report and make it easily accessible, the school makes it easy to compare its graduates’ outcomes with those from other schools that also choose to make the report public.

Starting with the class of 2010, LST requested that schools make these reports available to the public. At the time, no school made its report public even though the only costs associated with making it available were scanning the document and uploading it to their website. Today, about 60% of schools make the report public. **Table G** (below) shows the status of NALP report disclosure as of January 10, 2018—and we expect reports to continue to trickle in.¹⁰⁶

Table H

Year	Total Reports (%)	✓ Full Reports	✓ Partial Reports	⚠ Withheld Reports	No Reports Available
2016	117 (58.5%)	106	11	83	3
2015	118 (59%)	102	16	82	5
2014	125 (62.8%)	112	13	74	4
2013	115 (58.7%)	103	12	81	4
2012	112 (57.1%)	97	15	84	4
2011	97 (49.7%)	84	13	98	2
2010	63 (32.8%)	63	0	129	8

As of January 24, 2018

While some schools have instituted a culture of transparency and go beyond the ABA standards without publishing the NALP report, it can still be difficult for prospective students to compare schools due to differences in terminology and presentation on school websites. NALP reports give students data in a uniform manner, helping them to compare schools based on the job metrics most important to them.

¹⁰⁶ *Supra* LST Data Dashboard, note 2, at <https://data.lawschooltransparency.com/transparency/nalp-report-database/>.

Next Steps

This report is the product of discussions with young lawyers, law students, legal academics, and leadership in various sections and divisions in the ABA. The process started immediately after the Standards Review Committee convened its roundtable in July 2017 to discuss how to encourage innovation and address challenges related to cost, declining job opportunities, and declining bar passage rates. Transparency emerged as an essential, immediate step.

The transparency measures outlined in this report have been designed to address the most pressing issues in legal education. Every suggestion from this report can be accomplished by the Section of Legal Education without additional authority from the ABA Standards. In many cases, the suggestions can be accomplished without additional reporting burdens for law schools. In other cases, schools already possess the data but are not required to report it as part of the annual questionnaire. On balance, the value of public data will outweigh the costs of reporting in these cases.

We do recognize that there are important, formal processes in place to add items to the Standard Review Committee's annual agenda. We nevertheless hope that when the Council for the Section of Legal Education next meets—in San Antonio on February 8-10, 2018—the Council will choose to encourage its Standards Review Committee and the Section staff to review this report's proposals related to data collection and data presentation and, as appropriate, add items to the agenda for the coming year.

In further pursuit of a better, more responsive legal education, we also hope the Council will consider adding two young lawyers to the Council in 2018 and guarantee two spots in the future. At minimum, we hope the Council will more broadly circulate notice of Council nominations to generate a more diverse slate of nominees.

Finally, every faculty member and administrator at a law school that does not annually publish its NALP Report should assess why this choice has been made. We hope the state bar associations, especially the young lawyer divisions and committees focused on professionalism, will impress upon schools within their jurisdictions the importance of taking a very basic step to improve transparency. Appendix B has a list of the latest non-participating schools by state. Schools of all types fall in either group.

Strengthening the pipeline from prelaw students to law students to young lawyers begins with addressing the price of legal education. Enacting the proposals from this report will help consumers make more informed decisions, exert downward pressure on law school tuition prices, advance legal education research of cost and diversity, and increase accountability. All together, these proposals help secure the legal profession's continued, important place in society.

Appendix A: Proposed Employment Summary Report

EMPLOYMENT SUMMARY FOR 2017 GRADUATES

Employment Type	Full Time Long Term	Other	Total
Bar Passage Required	373	14	387
J.D. Advantage	61	11	72
Professional	4	2	6
Non-Professional	1	0	1
School Funded	9	24	33
Type Unknown	0	0	0
Employed Total	448	51	499
Non-Employed			
Pursuing Graduate Degree Full Time			10
Unemployed: Deferred Start Date			0
Unemployed: Not Seeking			6
Unemployed: Seeking			37
Status Unknown			3
Non-Employed Total			56
Total Graduates			555

Employer Type	Full Time Long Term	Other	Total
Law Firm			
Solo	0	0	0
2-10 Attorneys	32	10	42
11-25 Attorneys	16	1	17
26-50 Attorneys	7	0	7
51-100 Attorneys	14	2	16
101-250 Attorneys	15	0	15
251-500 Attorneys	31	0	31
501+ Attorneys	130	3	133
Size Unknown	0	0	0
Business & Industry	47	11	58
Government	84	0	84
Public Interest	20	0	20
Federal Clerkship	21	0	21
State, Local, & Other Clerkship	21	0	21
Education	1	0	1
School Funded	9	24	33
Employer Type Unknown	0	0	0
Employed Total	448	51	499
Non-Employed Total			56
Total Graduates			555

Employment Location	State	Total
Most Common Employment Destination	Washington D.C.	242
Second Most Common Employment Destination	New York	57
Third Most Common Employment Destination	Virginia	51

CHANGE LOG

- * Simplified form header to remove extraneous information that is easy to find in many places
- * Collapsed 3 columns involving short-term or part-time jobs into 1 "other" column
- * Changed last column from "Number" to "Total"
- * Altered headings: "Employment Status" became "Employment Type" (bar passage required is not a status but a type of employment) and "Employment Type" became "Employer Type" (law firm is an employer, regardless of what someone does for the firm; also makes for consistency with the "employer type unknown" subcategory of "employer type")
- * Introduced new heading "Non-Employed" to reflect any category that does not reflect employed graduates. Purpose is to show context for employer type and employment status tranches, without repeating rows of data unnecessarily
- * Separated Employed and Non-Employed tables
- * Introduced sum rows for "Non-Employed" so "Employer Type" has clearer context
- * Changed coloring (white to light yellow) on any row that is the sum of other rows
- * Added "attorneys" to each row title under the "law firm" employer type category; switched "Unknown Size" to "Size Unknown" for consistency with other unknown subcategories; made "Law Firms" singular to be consistent with sibling categories, e.g. government.
- * Changed "Pub. Int." to "Public Interest"
- * Combined state & local clerkship row with other clerkships row into 1 row
- * Added new row under employer type for school-funded jobs, which resulted in school-funded jobs (as defined above the line) in other categories, e.g. education or public interest, being removed from those categories
- * Removed school-funded jobs table (BPR, JDA, etc), but this would still be available via spreadsheet
- * Changed row titles for employment location for clearer statement of what's reflected
- * Removed foreign employment row

KEY POINTS

- * Accomplished without changing data collection process at all
- * Maintains status quo on school-funded jobs, e.g. these jobs remain above the line, excluded from BPR, JDA, Pro, and NP categories
- * Reduced cells from 155 to 87, 56% reduction
- * Does not unnecessarily collapse categories that demonstrate significant differentiation
- * Clearer and more consistent naming conventions
- * Maximizes visual cues that enhance consumer comprehension, including spacing, punctuation, and color

Appendix B: Schools That Did Not Publish Their 2016 NALP Report, by State

Alabama	Faulkner University
	Samford University
	University of Alabama
Arizona	Arizona State University
	Arizona Summit Law School
Arkansas	University of Arkansas - Fayetteville
California	Chapman University
	Southwestern Law School
	Stanford University
	University of California - Davis
	University of La Verne
	Western State University
Connecticut	Quinnipiac University
	University of Connecticut
	Yale University
Delaware	Widener University - Delaware
Florida	Ave Maria School of Law
	Barry University
	Florida A&M University
	Florida Coastal School of Law
	Florida International University
Georgia	Emory University
	Mercer University
	John Marshall Law School - Atlanta
Hawaii	University of Hawaii
Idaho	Concordia University School of Law
	University of Idaho
Illinois	University of Chicago
Indiana	Indiana University - Indianapolis
	University of Notre Dame
	Valparaiso University
Iowa	Drake University
Kentucky	University of Kentucky
	University of Louisville
Louisiana	Southern University Law Center
	Tulane University
Massachusetts	Boston University
	Harvard University
	New England School of Law
	Northeastern University
	Suffolk University
Michigan	Thomas M Cooley Law School
Minnesota	Mitchell Hamline School of Law
Missouri	St. Louis University
	Washington University in St Louis
Nebraska	Creighton University

New York	Brooklyn Law School
	Hofstra University
	Touro College
	SUNY Buffalo
North Carolina	Campbell University
	Charlotte School of Law
	Duke University
	Elon Law School
	North Carolina Central University
	Wake Forest University
Ohio	Ohio Northern University
Oregon	Willamette University
Pennsylvania	Duquesne University
	Pennsylvania State University - Dickinson Law
	University of Pennsylvania
	University of Pittsburgh
	Villanova University
	Widener University - Pennsylvania
Rhode Island	Roger Williams University
South Carolina	Charleston School of Law
South Dakota	University of South Dakota
Tennessee	Belmont University
	Lincoln Memorial University
Texas	South Texas College of Law Houston
	Texas Southern University
Vermont	Vermont Law School
Virginia	Appalachian School of Law
	Liberty University
	Regent University
	University of Richmond
	University of Virginia
Washington	Gonzaga University
	University of Washington
Washington, D.C.	Catholic University of America
	George Washington University
	Howard University
Wyoming	University of Wyoming