

A Way Forward: Improving Transparency in Employment Reporting at American Law Schools

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The decision to attend law school in the 21st century requires an increasingly significant financial investment, yet very little information about the value of a legal education is available for prospective law students. Prospectives use various tools provided by schools and third parties while seeking to make an informed decision about which law school to attend. This Article surveys the available information with respect to one important segment of the value analysis: post-graduation employment outcomes.

One of the most pressing issues with current access to information is the ability to hide outcomes in aggregate statistical forms. Just about every tool enables this behavior, which, while misleading, often complies with the current ABA and U.S. News reporting standards. In this Article, we propose a new standard for employment reporting grounded in compromise. Our hope is that this standard enables prospectives to take a detailed, holistic look at the diverse employment options from different law schools. In time, improved transparency at American law institutions can produce generations of lawyers who were better informed about the range of jobs obtainable with a law degree.

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Introduction

Six figures of debt is a scary but self-inflicted reality for many law school graduates these days.¹ Mainstream media has chronicled the growing dissonance among the country's young lawyers, showing sympathy for struggling graduates as they attempt to pay back their loans.² Tuition at American law schools has skyrocketed over the last twenty years and nothing so far suggests this trend will change.³ The recent recession and corresponding reduction of traditionally high-paying, entry-level jobs has exacerbated the distance between the cost of a U.S. legal education and expected earnings as a lawyer.⁴ This may be a good thing—if it leads to change.⁵

This Article takes the approach that law school is an investment and that prospective law students are best viewed as potential investors in their legal education. As such, they both demand and deserve access to important information about the relative risks of attending each law school. As Justice Brandeis said in his historical call for transparency in the banking

¹ U.S. News Spreadsheet (2009), <http://lawschooltransparency.com/wp-content/uploads/2010/02/2009-US-News.xls> (last visited Mar. 6, 2010). This spreadsheet includes data available about law schools in the *U.S. News and World Report*. Of the 191 schools reporting the average class of 2008 indebtedness, 47 schools (23.7%) were over \$100,000. *Id.* The median average was \$84,492. *Id.* However, 86 schools (43.4%) had full-time tuition for 2008-2009 that, over the next 3 years and assuming no change, would cost over \$100,000. *Id.*

² E.g., Amir Efrati, *Hard Case: Job Market Wanes for U.S. Lawyers*, WALL ST. J., Sept. 24, 2007, <http://online.wsj.com/article/SB119040786780835602.html>; Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 25, 2009, <http://www.nytimes.com/2009/08/26/business/26lawyers.html>; Jeff Blumenthal, *Gloom for Law Students*, PHILADELPHIA BUSINESS JOURNAL, Feb. 19, 2010, <http://philadelphia.bizjournals.com/philadelphia/stories/2010/02/22/story3.html?b=1266814800^2907431>.

³ See Leigh Jones, *Salary Raises Dwarfed by Law School Tuition Hikes*, N.J.L.J., Feb. 6, 2006 (reporting data from NALP showing a 130% increase in private school tuition and a 267% increase in public law school tuition from 1990 to 2005).

⁴ NALP Perspectives on Fall 2009 Law Student Recruiting, <http://www.nalp.org/uploads/PerspectivesonFallRec09.pdf> (last visited Mar. 5, 2010).

⁵ As one prominent politician recently remarked, “Never let a serious crisis go to waste. What I mean by that is it's an opportunity to do things you couldn't do before.” Jeff Poor, *Newsweek's Fineman Invokes Rahm on Health Care: Obama Not Making Use of 'Crisis Mode'*, NEWSBUSTERS, Oct. 15, 2009, <http://newsbusters.org/blogs/jeff-poor/2009/10/15/newsweeks-fineman-invokes-rahm-health-care-obama-using-crisis-mode> (quoting White House Chief of Staff Rahm Emanuel).

profession, disclosure is necessary to “aid the investor in judging the safety of the investment.”⁶ Increased public scrutiny may stir reform in legal education to a degree that was not conceivable when the job market was more stable top to bottom. At the very least, the current market could cause prospective law students to more carefully assess the risks associated with getting a law degree in today’s market, rather than taking a degree’s inherent value as a foregone conclusion.

Rather than focus on the current trend of devaluing the worth of a legal education, this Article focuses on a systemic problem that affects prospective law students (“prospectives”). How can anybody accurately measure the value of a law degree or understand actual job opportunities when law schools have little incentive to exceed the reporting standard required by the American Bar Association (“ABA”)? Although the case for reform may be stronger in today’s current market, these issues date back well before the current recession. Without more attention and some meaningful action, these issues are likely to continue well into the future.

According to FinAid.org, a graduate should make \$138,000 annually to repay \$100,000 without enduring financial hardship, or \$92,000 annually to repay the debt with financial difficulty.⁷ Law school graduates are not entitled to high paying jobs to repay this debt, but jobs that allow repayment of such high debt are unavailable to the vast majority of newly minted law

⁶ LOUIS D. BRANDEIS, OTHER PEOPLE'S MONEY AND HOW THE BANKERS USE IT 102 (Melvin I. Urofsky, ed., Bedford Books of St. Martin's Press 1995) (1914) available at <http://www.law.louisville.edu/library/collections/brandeis/node/196>.

⁷ Loan Calculator, <http://www.finaid.org/calculators/loanpayments.phtml> (last visited Nov. 10, 2009). We calculated these figures using a loan balance of \$100,000, an interest rate of 6.8%, no loan fees, and a 10 year loan term. If we change the loan term to 30 years, the borrower needs to make \$78,000 annually to repay without financial hardship and \$52,000 annually to repay with financial difficulty. Federal Stafford loans have a fixed interest rate of 6.8%, but are limited to \$20,500 per year. Student Loans, <http://www.finaid.org/loans/studentloan.phtml> (last visited Nov. 10, 2009). Federal PLUS loans are available for additional needs, but bear a fixed rate of 8.5%. *Id.*

school graduates.⁸ This is true regardless of the economic climate, and loan repayment begins 6 months after graduation.⁹

Each year, nearly 50,000 law students begin investing in their legal education¹⁰ expecting to derive value from both the experience and the degree itself.¹¹ It is under this assumption that many prospective law students finance their degrees and forego other opportunities. Nevertheless, thousands of these students will graduate in three years bearing massive debt.¹²

To varying degrees, prospectives consider assorted factors to select which law school, if any, to attend. Prospectives ask themselves questions during this process that fall into two non-exclusive categories. In the long and short term, (1) What do I give up by going to X law school?

⁸ Starting salaries for law school graduates follow a bimodal distribution. NALP Salary Distribution Curve, <http://www.nalp.org/salarydistrib> (last visited Nov. 10, 2009). For the Class of 2008, there is one distinct peak near \$50,000, and another distinct peak at \$160,000. *Id.* Just over 51% of the 2008 graduating class reported their starting salary. Class of 2008 National Summary Report (on file with Authors). Of those reporting, 42% made between \$40,000 and \$65,000 per year, with a median of \$72,000, nearly half of what FinAid.org suggests for \$100,000 of debt for a 10-year loan period. *Supra* NALP Salary Distribution Curve; FinAid.org, *supra* note 7 and accompanying text. Yet according to May 2008 estimates published by the United States Department of Labor, the median annual wage of a lawyer is \$110,590. Occupational Employment and Wages, <http://www.bls.gov/oes/current/oes231011.htm> (last visited Nov. 10, 2009). However, note that 61.1% of the NALP distribution curve salaries are barred attorneys in private practice, 3.1% are in-house counsel, and 12.8% are judicial clerks. *Supra* Class of 2008 National Summary Report. Moreover, the median annual wage according to the Department of Labor includes all lawyers, not just first-years. For both reasons, the comparison to the median annual wage of all U.S. lawyers is misleading.

⁹ Repayment Information, <http://studentaid.ed.gov/PORTALSWebApp/students/english/repaying.jsp> (last visited Nov. 10, 2009).

¹⁰ See Enrollment Chart, “Enrollment and Degrees Awarded 1963-2008”, available at <http://www.abanet.org/legaled/statistics/charts/stats%20-%201.pdf>. (last visited October 29, 2009.)

¹¹ Molly McDonough, *40% of law school applicants riding out recession*, ABA JOURNAL, http://www.abajournal.com/news/40_of_law_school_applicants_riding_out_recession (citing a recent study by Kaplan Test Prep and Admissions that showed 67% of prospective students surveyed listed “potential earning power of being a lawyer” as affecting their decision to apply) (last visited Feb. 9, 2010).

¹² See Matt Straquadine, *Options for Managing Law School Student Loan Debt*, NAT’L LAW J., Oct. 5, 2009, <http://www.law.com/jsp/article.jsp?id=1202434253199> (the average 2008 private university graduate had \$91,500 of student loan debt); U.S. News Spreadsheet (2009), *supra* note 1. The high levels of debt will only rise as tuition continues rising across law schools. *E.g.* Karen Sloan, *At Public Schools, Tuition Jumps Sharply*, NAT’L LAW J., Aug. 3, 2009, <http://www.law.com/jsp/article.jsp?id=1202432727154>; Debra Weiss, *GAO Puts Blame on US News Rankings for high Law School Tuition*, ABA JOURNAL, Oct. 27, 2010, http://abajournal.com/news/why_you_can_blame_us_news_instead_of_the_aba_for_high_law_school_tuition/.

and (2) What do I get by going to law school? Everything matters, from employment opportunities and prestige, to location and feelings of fit.¹³ Prospectives consider not just the positive cost of attendance,¹⁴ but also the opportunity costs and savings of forgone alternatives.¹⁵

Career objectives and salary goals certainly vary among prospectives, but job opportunities are usually the primary motivator in deciding where to go to school.¹⁶ The decision process, in other words, is personal. During this process a prospective's internal cost calculus and penchant for risk inform the measurement and significance of each selection factor. Prospectives actively and sensibly seek information to assess their factors.¹⁷ Without meaningful information, factors may go unanalyzed, under-analyzed, or wrongly analyzed. It can be extremely difficult to determine how one school's offerings compare to another; and comparing every factor across schools is both time-consuming and costly.¹⁸

Consequently, prospectives often look to tools to facilitate comparisons. Most famously, the *U.S. News & World Report* ("U.S. News") provides composite law school rankings, as well as program specialty and judicial clerkship placement rankings.¹⁹ But the U.S. News rankings are

¹³ This list is not exhaustive. Other "selection factors" include degree programs and specialties, school resources, education quality, faculty quality, student-body quality, cost, reputation among friends, and alternative careers.

¹⁴ This includes tuition, fees, books, living expenses, travel, mandatory insurance, etc.

¹⁵ Herwig J. Schlunk, *Mamas Don't Let Your Babies Group Up To Be...Lawyers* (Vanderbilt Law and Economics Working Paper Group, Paper No. 09-29), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1497044.

¹⁶ See generally, e.g., Top Law Schools ("TLS"), <http://www.top-law-schools.com/>.

¹⁷ *Id.*

¹⁸ Richard Posner discusses rankings as cheap method that is appropriate for unimportant decisions. Richard A. Posner, *Law School Rankings*, 81 IND. L.J. 13, 13 (2006). He expects rational students to invest the time researching school characteristics, rather than relying on rankings. *Id.* Yet, he recognizes that there is a significant number of schools, so this task is difficult and rough measures to determine which schools to research further could be useful. *Id.*

¹⁹ U.S. News Article III Clerkship Rankings, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/article_iii_clerks; U.S. News Law School Rankings, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/rankings>; U.S. News Specialty Rankings, U.S. News & World Report Article III Speciality Rankings, <http://grad->

not the only tools available. Faculty quality²⁰ and student body²¹ rankings each aim to compare law school offerings. While these tools drive down transaction costs for prospectives seeking to acquire and explain information, they tend not to function dispositively, leaving room for personalized calibration. Calibration appears particularly necessary in light of the many criticisms facing law school rankings like the U.S. News rankings.²²

This Article concerns the tools prospectives use to answer questions about employment outcomes immediately²³ following graduation (“post-graduation outcomes,”²⁴). We argue that these tools inadequately serve prospective students striving to take a detailed, holistic look at the diverse employment opportunities at different law schools. While these outcomes are only a single factor in the prospective’s analysis, and other factors may lack adequate information,²⁵ the significance of post-graduation outcomes and ease of measurement make it a good place to start.

schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools (index that includes all specialty rankings).

²⁰ Brian Leiter’s Faculty Quality Rankings, <http://www.leiterrankings.com/faculty/index.shtml> (last visited Feb. 2, 2010).

²¹ Professor Leiter measures “schools in terms of student quality as measured by the average of the 75th and 25th percentile LSAT scores.” Brian Leiter’s Ranking of Top 40 Law Schools by Student (Numerical) Quality 2009, http://www.leiterrankings.com/students/2009student_quality.shtml (last visited Nov. 1, 2009). A larger school (including full-time and part-time) with the same LSAT average is ranked higher. *Id.* If two schools are within 100 students in class size, and have the same average LSAT (or are .5 apart), a school with a GPA .1 higher is ranked higher. *Id.* Although Professor Leiter ranks the top 40, carrying this out across all law schools would be easy using the ABA Official Guide.

²² *E.g.*, Brian Leiter, *How to Rank Law Schools*, 81 IND. L.J. 47–50 (2006); Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 IND. L.J. 791 (2008); Posner, *supra* note 18, at 13; David A. Thomas, *The Law School Rankings Are Harmful Deceptions: A Response to Those Who Praise the Rankings and Suggestions for a Better Approach to Evaluating Law Schools*, 40 HOUS. L. REV. 419 (2003). *But cf.*, *e.g.*, Paul D. Carrington, *On Ranking: A Response to Mitchell Berger*, 53 J. LEGAL EDUC. 301 (2003); Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403 (1998).

²³ This means outcomes at graduation and outcomes at 9 months after graduation. This is consistent with the current post-graduation outcome reporting standards of NALP, U.S. News, and the ABA. *See infra* Part I.C.1.

²⁴ Professor Morriss and Professor Henderson use this term similarly. Morriss, *supra* note 22 at 795.

²⁵ Nima Monebbi, *Informational Asymmetries, the Emperor's New Clothes and More Cries For Value*, THE BLACKBOOK LEGAL BLOG, Mar. 5, 2010, <http://blackbooklegal.blogspot.com/2010/03/more-cries-for-value-informational.html> (“law school seems (oddly enough) to present a sort of transparent information asymmetry . . .

We will not spend time in this Article normatively grounding our premise that investments should be made on an informed basis. It is reasonable to infer that law school trustees, administrators, and faculty would all agree that informed decisions are especially important for investments like a legal education.²⁶ Nobody seriously questions educators' desire to make students better off.²⁷ There are few situations more detrimental to this mission than idly watching students undertake an enormous investment without a meaningful opportunity to determine material characteristics of the legal education and degree they seek. Of course, this is

law schools fail to meet the demands and expectations students have upon entering and that employers have when hiring. Yet, it seems like we all know a little bit of what we are getting at the outset; the sales pitch is just all too compelling.”).

²⁶ Professor Morriss and Professor Henderson claim that “reliable school-level [employment] information . . . would permit [prospectives] to make more informed choices,” and that “[s]ince our collective enterprise is made possible by [prospectives’] ability to borrow money against their future earnings, the legal academy has an obligation to ensure fair and accurate disclosure to prospective students.” Morriss, *supra* note 22 at 831-32. In 1992, the MacCrate Report – the product of an ABA-commissioned task force for improving legal education – underscored “the need for informed choice.” A.B.A. SEC. LEGAL EDUC. & ADMISSIONS B., REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, at xi, 227-32 (1992) [hereinafter MacCrate Report]. While the “[o]pinions expressed in this Report are not to be deemed to represent the views of the [ABA] or the Section [of Legal Education and Admissions to the Bar] unless and until adopted pursuant to their Bylaws,” “[i]nterpretation 509-1 to Standard 509, which pertains to Basic Consumer Information, was adopted in August 1996 to prescribe expressly that ‘placement rates and bar passage data’ are to be published by every accredited law school.” *Id.* at ii; Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805,819 (2004). On this topic, the MacCrate Report discusses “the perceived lack of adequate information,” MacCrate Report, *supra* at 229, and that “prospective law students generally are not knowledgeable about the profession, [including] . . . different paths for entry into the profession.” *Id.* at 228. The Report prescribes responsibility to the ABA and individual law schools. *See id.* at 229; 2009-2010 ABA Standards and Rules of Procedure for Approval of Law Schools, <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter5.pdf>, at Standard 509 (last visited Mar. 9, 2010) [hereinafter ABA Standard 509]. Per ABA Standard 509, the ABA recognizes law schools’ obligation to provide “basic consumer information” to prospective law students. ABA Standard 509, *supra*. It does not matter to whom the law schools report this information; it must be both “fair and accurate.” *Id.* at Interpretation 509-4. Accordingly, one debate centers on whether implementation of Interpretation 509-1 is correct.

²⁷ *See, e.g.*, Kenneth D. Dean, *Information Sharing with Law Schools — One Dean's Perspective*, THE BAR EXAMINER, Feb. 2002, http://ncbex.org/uploads/user_docrepos/710102_Dean.pdf. Dean Dean argued that law schools need adequate information to perform analyses in order to improve student performance on the bar exam. *Id.* Fittingly, this example of a law school administrator seeking to help students parallels our argument for more employment information.

not a paternal call to arms. Our concern is whether prospectives have a meaningful opportunity to make an informed risk-assessment.²⁸

The debate accordingly centers on how much information prospectives have, how much information prospectives need to be adequately informed, and how to best achieve that level of disclosure. Part I analyzes the barriers to an informed decision, where prospectives may go wrong on their journey towards an informed decision, and whether prospectives should believe they have made an informed decision. Part II introduces a prospective's ideal tool, along with a discussion about why compromise is appropriate in light of stakeholder criticisms about the tool's components. Finally, in Part III, we outline a way forward. This specific compromise balances prospectives' interest in making an informed decision with the interests of other stakeholders. In other words, after finding that prospectives need help, we propose a new standard in employment reporting to improve transparency at American Law Schools.

I. Do Prospectives Make Informed Decisions?

Choosing where to attend law school screams for in-depth analysis. But when does a prospective's due diligence move her decision from mere choice to informed choice? When is the analysis good enough for her to act? Prospective law students care about this question, and they are not alone. Legal academics, journalists, and lawyers have spoken out for prospectives to

²⁸ This philosophy is similar to the approach of the Securities and Exchange Commission ("SEC"), Food and Drug Administration ("FDA"), and Consumers Union. *See* About the SEC, <http://www.sec.gov/about/whatwedo.shtml> ("The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it.") (last visited Mar. 6, 2010); About the FDA, <http://www.fda.gov/Cosmetics/CosmeticLabelingLabelClaims/default.htm> ("These laws and their related regulations are intended to protect consumers from health hazards and deceptive practices and to help consumers make informed decisions regarding product purchase.") (last visited Mar. 6, 2010); About Consumers Union, <http://www.consumersunion.org/about/> ("Consumers Union (CU) is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves.") (last visited Mar. 6, 2010).

take care in their decision-making process, tacitly recognizing the importance of making an informed decision.²⁹ But why are so many worried that prospectives are not making informed decisions? Nearly 50,000 people make this decision each year,³⁰ and presumably, almost all of them would claim to have made an informed decision. Is the intuition correct that many of these law students should not consider themselves well informed? Or are people merely reacting to one of the worst legal markets in history?

In order to make sense of these concerns, we build a model that describes the personalized decision process, and use it to point out where in their process prospectives may go wrong. This takes our descriptive model to its descriptive limits. We cannot broadly show that prospective law students are inadequately informed. Adequacy, at least as we intend to use it, is a subjective or personal evaluation. What we can do, however, is show where prospectives can run into problems with the available information, and conclude with a judgment that few reasonable prospectives could look at our analysis and believe they are adequately informed about post-graduation outcomes. Prospectives, recognizing that past prospectives were not as informed as they should have thought, may react by retooling their analyses, reconciling the common intuition with informed behavior. For convenience we build this model around “P”, a prospective law student seeking to make an informed decision as to which law school to attend (if one at all).

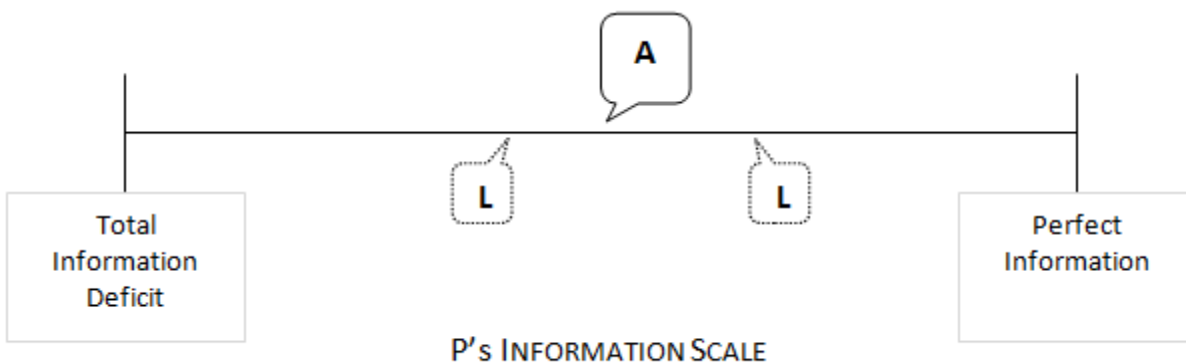
A. What Is an Informed Decision?

Adequate information refers to a point (“A”) on an information scale, where P’s need for information overcomes P’s tolerance for a lack of perfect information. As such, this point is a moving target that depends on P’s internal cost calculus and penchant for risk. P may still want

²⁹ *Id.*; William D. Henderson & Andrew P. Morriss, *What Law School Rankings Don't Say About Costly Choices*, NAT'L LAW J., Apr. 16, 2008; Posner, *supra* note 18, at 13.

³⁰ Enrollment Chart, *supra* note 10.

more information, but an increase only results in a more-informed decision. The information scale ranges from – on the far left – total information deficit to – on the far right – perfect information. An “L” on the scale represents the total information P acquired to answer the question. The more useful that P believes the included information is to the decision, the further right on the scale L belongs. If P places L at A or further right on the scale, P has adequate information. If L is to the left of A, P does not have adequate information.



Consequently, whether P makes an informed decision about which law school to attend (or to attend one at all) depends on the information P acquires about her selection factors. P’s ability to parse, understand, and organize the acquired information, with consideration to P’s objectives and risk averseness, ultimately affects what P decides. But for this analysis to happen, P must determine what information, and how much information, is available about the selection factors.

P will ask questions requesting information that is valuable to understanding each choice’s offerings for a specific factor. The amount of information that P obtains will determine how informed P is as to that factor. However, this analysis is useful beyond whether P crosses the A threshold. How far above or below A, and how important to P it is to reach A, will be pertinent to P’s analysis. Once P analyzes the selection factors, P can determine whether she is in

a position to make an informed decision. This determination, unlike consideration to the inevitable information deficit of each factor, resolves to a yes or no. Either P determines that she is sufficiently informed to make a decision, or she does not. And then – for better or worse – P decides.

B. How May Prospectives Go Wrong?

Various epistemic breakdowns cause information deficits during P's information acquisition process. However, whether P is aware of these deficits and correspondingly adjusts L depends on the individual. Where a question is a request for information, an answer is the presentation of acquired information. Accordingly, problems may arise with both the questions P asks and the information P uses to answer. In this Article, we analyze the problems as they affect one specific selection factor: post-graduation outcomes. Our analysis concerns whether the available post-graduation outcome information can adequately instruct P as to the likely post-graduation consequences of P's decision.

First, the questions P asks about post-graduation outcomes may not be the correct questions to ask. While each prospective should ask questions he or she believes are valuable, the available information may affect which questions that P believes are relevant, causing P to place L further right on the scale than she should. Notably, the U.S. News ranks law schools ordinarily from 1 to 100, plus two additional tiers.³¹ Should prospectives seek the rank of each school they consider? Many Deans and scholars argue they should not.³² But in reality students

³¹ U.S. News Law School Rankings, *supra* note 19.

³² Deans from a number of ABA-Approved law schools specifically warn prospectives to minimize the importance rankings when deciding where to go. Letter to Prospective Students, "Deans Speak out on Rankings," *available at* <http://www.lsac.org/choosing/deans-speak-out-rankings.asp> (last visited Nov. 1, 2009). *But cf.*, Morriss, *supra* note 22, at 791 (concluding that "the best solution to law schools' complaints about the impact of U.S. News rankings is greater data availability and transparency, particularly on post-graduation outcomes and other factors affecting students' eventual employment prospects").

do ask this question, and they ask it because rankings are pervasive. Even the information schools provide on their websites shape – for better or worse – what information prospectives believe is important.³³ If P asks too many wrong questions, P may unwittingly be confused as to the probable consequences of deciding to attend School X.

Four major hang-ups may limit P's progress while she seeks information to answer questions. First, there may be a problem with statements used as information to answer questions.³⁴ While information can be useful regardless of its truth-value,³⁵ a statement's utility depends on P's ability to determine that it is either true or false. Discovering what the statement attempts to convey about the world will pose problems if it is incoherent or ambiguous. That is, the statement 'this house is on fire' conveys information if and only if the truth or falsity of the statement is evaluable. P cannot evaluate an incoherent or ambiguous statement without clarification. Second, if P has uncomfortable doubt about the information's truth or falsity, P may not trust the statement, and thus be unsure about what exactly it is that she has discovered. In either case, what the statement means to P's answer is unsettled, hindering P's information acquisition progress because the statement is currently unusable (or less usable).

The third problem is with how P uses the information. The key here is that, while P may determine that some information is true, the questions P asks limit the information's qualified uses. This is a test as to the quality of the connection between the answer sought (whatever it is)

³³ *Id.* Schools that publish "median private sector starting salaries" on their websites are often great examples of how provided information shapes beliefs about that information's importance, despite low response rates and accordingly unrepresentative salaries. New York Law School Class of 2008 Employment Statistics, http://www.nyls.edu/prospective_students/student_life/employment_stats (providing that 25% of its graduates reported salary information) (last visited Feb. 9, 2010).

³⁴ For example, the statement 'this house is on fire' conveys information if and only if the truth or falsity of the statement is evaluable.

³⁵ Statements like 'the capital of Italy is Rome' can be either true or false. In either case, determining the truth-value is useful. If the statement is false, then we reduce the capital candidate cities by one (this is equivalent to 'it is true that the capital of Italy is not Rome'); if the statement is true, then we know which city is Italy's capital.

and the information used to support that answer (whatever P uses). Among other things, information may be incomplete, unrepresentative, or statistically insignificant. Saying that, for example, 'information is incomplete' does not say something about the information content. This would misunderstand the distinction between information as 'some statement that can be true or false' and P's use of the information. The former application wrongly judges the character of the information content. The latter application, however, emphasizes that how well information serves P depends on what P asked. Saying that 'information is incomplete' points to some measure of inadequacy for P's project of answering a question. Information is only incomplete because some question determined that a certain use was not enough.

While it may be worthwhile to determine exactly what makes information relevant, this Article will be more fruitful by containing our analysis to P. That is, information is relevant when P believes the information answers the question. However, this leads us to the fourth problem: P is not perfect. P may wrongly determine the truth-value of any of the three abovementioned problems, which may lead to undesirable outcomes. She may wrongly believe that (1) a statement is information, when it is not; (2) a source is trustworthy, when it is not; or (3) she used the information correctly, when she did not. When we say she 'wrongly believes that X', we assume that P, as a rational decision-maker, would change her belief or the reasons for believing her belief when presented with more facts.

Even when P has determined that the statement is information coming from a reliable source, it matters that the determination about the information is true. Consider the question, "what is the capital city of Italy?" If P determines after visiting Florence that 'the capital city of Italy is Florence' is true, that information is useful because P could determine whether the

statement is true or false and P trusts her savvy for finding capital cities. Moreover, naming a city in Italy is a qualified use because P is seeking a city in Italy for her answer.

Yet, there is still a problem because P has unwittingly determined something false. The problem is not that the statement is false, but that it is false that ‘the capital city of Italy is Florence’, while P believes it to be true. Although P has no clue that Rome is the capital of Italy, unless we include a prong for P’s connection of facts to information, we must consider P informed. The results run counter to the normal intuition about what it means to make an informed decision. This problem creeps up both when P is simply mistaken, and when P lacks the ability to use the available information rationally.

In summary, P has numerous opportunities to go wrong under our decision model. In each case, P may be inclined to move L further right on the scale than she should. If P had L to the right of A, she would have considered herself informed. But it is plausible that after considering these generic problems as applied to her situation, she would realize that L belongs to the left of A. This is what the common intuition predicts would happen when presented with information intuitively known to be unsatisfactory. The next section will consider the available information to test whether the intuition is right and whether prospectives should be convinced that their L is misplaced.

C. How Do Prospectives Go Wrong?

Many of the problems prospectives face while acquiring information concern P’s use of information and P’s potentially mistaken beliefs. We built a model in Part I.A that captures how prospectives do a multi-factor balancing test to decide which law school to attend, showing how a decision moves from mere choice to informed choice. In this Section we consider some common questions that prospectives ask (or should ask) about post-graduation outcomes, as well

as how prospectives may try to answer these questions using existing tools. But first, what motivates P to care so much about job prospects?

Numerous reasons could shape P's desire for certain professional opportunities. Expected debt, expected pay, practice area interests, exit opportunities, desire to help people, and prestige are all relevant to P's inquiry.³⁶ These reasons cause prospectives to ask questions about what jobs are open to graduates from different law schools. To help answer these questions, a number of reputable sources offer tools, and each provides considerable information about job prospects. Nevertheless, the realm of questions that these tools should be used to answer could cause P to reevaluate her placement of L.

Before we discuss common problems prospectives face deciphering and using the available information, we should highlight a persistent issue with the data this information represents. Post-graduation outcomes are necessarily single data points³⁷ that reflect the conclusive end to a complicated process. This process is special for each law student, and the end reflects unknown choices students make along the way. The Part I.A decision model applies, and predictably, the results may be largely irregular because more goes into deciding which job to take than what would commonly be the best available. Plausibly, a graduate from a top law school at the top of the class may want and choose to work for a parent's small private practice, where the name of the law school, grades, and other factors are irrelevant. While this appears like the graduate could not "do better," the outcome was still the most desirable to the graduate. Simply put, outcomes may not reflect the opportunities available to a particular graduate due to

³⁶ "[I]n addition to determining an attorney's clients and strategies, [the choice of a particular legal job] can also dictate income, hours, and overall job satisfaction" Andrew M. Perlman, *A Career Choice Critique of Legal Ethics Theory*, 31 SETON HALL L. REV. 829, 858 (2001).

³⁷ This applies to people who take multiple jobs too because there is still just one graduate.

self-selection away from or towards certain jobs.³⁸ Private, often hidden narratives accompany each outcome, precluding a genuine understanding of each graduate's decision. With access to each graduate's private narrative P could predict her own results, but no tool provides her with widespread access.

Any tool that provides information about post-graduation outcomes has to use employment data and information from somewhere. In this Section, we first discuss the collection processes for all employment data and information that law schools report to the ABA, NALP, and U.S. News. We also discuss how attorneys, employers, and others publicly provide employment data on the internet. Once the data and information sources are clear, we can examine how the tools that rely on this data and information answer prospectives' questions.

1. Data and Information Sharing

a. ABA Information

As a "critical part of the accreditation process," and as a "requirement of the Department of Education," the American Bar Association requires that "every approved law school, provisionally approved law school, and law [school] seeking provisional approval" answer the ABA's annual questionnaire.³⁹ The ABA publishes the results of each school's questionnaire in the Official Guide.⁴⁰

³⁸ Among other things, this includes to whom law students choose to send resumes and bid on during OCI. It does not simply include job offers a student chose among.

³⁹ Annual Questionnaire Training Presentation, <http://www.abanet.org/legaled/questionnaire/2009/AQTraining%202009.ppt>, at slide 4 (last visited Nov. 1, 2009).

⁴⁰ Searching the 2010 Official Guide to ABA-Approved Law Schools, http://officialguide.lsac.org/ONLG_Default.aspx ("The data collected by the ABA and published on this website.") (last visited Feb. 9, 2010).

Concerning post-graduation outcomes, the questionnaire requires that schools report the second most recent graduating class' placement rates.⁴¹ For the report due on October 31, 2009, the ABA specified that "All data . . . relate to the class of 2008 (graduates from September 1, 2007 to August 31, 2008) as of February 15, 2009 as reported to NALP."⁴² There are four question categories under the placement rate section: graduate status, type of employment, type of job, and geographical location.⁴³ For each placement rate question, the ABA requests both percentages and total numbers for the category related to the question.⁴⁴

First, the questionnaire requests employment status (known or unknown) of the school's graduates for the relevant period.⁴⁵ Next, the questionnaire requests a breakdown of those graduates whose status is known: total known to be employed; total enrolled in a full-time degree program; total unemployed and seeking work; and total unemployed and not seeking work.⁴⁶ Finally, the questionnaire requires three different breakdowns about every graduate known to be employed, each denoting different information about those graduates: type of employment,⁴⁷ type of job,⁴⁸ and geographical location.⁴⁹ For type of employment, the only consideration is the

⁴¹ ABA 2009 Annual Questionnaire, <http://www.abanet.org/legaled/questionnaire/2009/2009%20AQ%20Part%201%20-%20General.doc>, at 5 (the most recent graduating class is the class of 2009, covering the period from Sept. 1, 2008 – Aug. 31, 2009) [hereinafter ABA Questionnaire] (last visited Nov. 1, 2009).

⁴² *Id.* at 5. For the NALP reporting basics, see *infra* Part I.C.1.c

⁴³ ABA Questionnaire, *supra* note 41, at 17-18.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 17.

⁴⁶ *Id.* Both part-time and full-time employees are included on the "total known to be employed" category. *Id.* at 5.

⁴⁷ The categories are law firms, business and industry, government, public interest, judicial clerkships, academia, and unknown employers. *Id.*

⁴⁸ The categories are Bar admission required/anticipated, J.D. preferred/enhances the position, professional other, non-professional other, and unknown job type. *Id.* Each category is further broken down into the total number in full-time and part-time positions, with the total being 100% (i.e. a lawyer is not J.D. preferred). *Id.*

⁴⁹ The categories are jobs located in the law school's state, out of that state, out of the United States, and in unknown locations. *Id.* at 18. Also total number of states where graduates are employed, not including the law school's state. *Id.*

kind of employer, rather than the type of job.⁵⁰ The type of job breakdown attempts to broadly capture that information.⁵¹

b. U.S. News Information

The U.S. News, via survey, collects information in the same categories as the ABA questionnaire, for the same period.⁵² After compiling the supplied information, U.S. News publishes the latest information in April, about 23 months after graduation.⁵³ But U.S. News goes further than the ABA's requirements, also asking schools to provide information about placement rates at graduation.⁵⁴ This provides a picture of how graduates fare before school ends, at OCI for instance, and after school, where employers may require bar passage before offering employment. Supplementing the placement percentages, U.S. News also requests starting salary quartiles for graduates employed full-time in private sector jobs as reported to NALP.⁵⁵ To determine how useful the salary figures are, U.S. News requests the percent of all graduates employed full-time in private sector jobs that reported salary data.⁵⁶ Additionally, U.S. News requests the median salary for graduates employed in full-time, public service jobs, including any branch of government, judicial clerkships, academic posts, and non-profit

⁵⁰ *Id.* at 5.

⁵¹ *Id.*

⁵² 2010 U.S. News Survey, at Employment Data and Areas of Legal Practice for 2008 Graduating Class (on file with Authors) [hereinafter U.S. News Survey]. One slight change is that U.S. News also collects the “[p]ercent employed in a judicial clerkship by an Article III federal judge.” *Id.* at Question 176.

⁵³ *Id.* at Employment Data; Our New Grad School Rankings Are Online, <http://www.usnews.com/blogs/college-rankings-blog/2009/04/23/our-new-grad-school-rankings-are-online.html> (last visited Nov. 1, 2009). Although the rankings are published in the May issue of U.S. News & World Report, the online version is published in April. *Id.*

⁵⁴ U.S. News Survey, *supra* note 52, at Employment Data. U.S. News only requests numbers at graduation for the employment status unknown and known categories, as well as the employment status known subcategories. *Id.*

⁵⁵ *Id.* at Salary Data — 2008 Graduating Class Questions 164-166.

⁵⁶ *Id.* at Question 167. As we will see, differences in salary reporting rates are a significant concern for identifying where perspectives may go wrong in coming to conclusions. *Infra* Part I.C.

organizations.⁵⁷ Finally, U.S. News collects the percentage of graduates known to be employed by geographical location.⁵⁸

c. NALP Data

NALP collects data about each graduate from the most recent graduating class as of February 15.⁵⁹ In order to do this, law schools survey their graduates, using NALP's model survey at their option.⁶⁰ Schools then compile the surveys into a single document, including other data from reliable sources that they collect to fill in the gaps,⁶¹ and NALP creates report summaries from all of the schools' documents.⁶² Although NALP periodically publishes the aggregate and average information from all law schools, each graduate data point and each school's comparative performance are confidential.⁶³ NALP's reports are about the legal profession, rather than individual schools.⁶⁴

NALP collects much more data about graduates than either the U.S. News or ABA. In addition to the ABA categories, NALP requests race/ethnicity, gender, age, disability status,

⁵⁷ U.S. News Survey, *supra* note 52, at Question 168.

⁵⁸ *Id.* at Questions 186-196.

⁵⁹ 2008 Instruction Booklet for Career Services, http://www.nalp.org/assets/1293_erssinstbk08.pdf (last visited Nov. 1, 2009). Like the ABA metric for when an individual graduates, NALP measures degrees granted between September 1 and August 31 of the appropriate period. *Id.*

⁶⁰ Guidelines for Surveying Your Graduates, http://www.nalp.org/assets/1294_guidelines.pdf, at 1 (last visited Nov. 1, 2009).

⁶¹ 2008 Graduate Survey and Instructions, http://www.nalp.org/assets/1293_erssinstbk08.pdf, at 1 (last visited Nov. 1, 2009).

⁶² 2009 Graduate Survey and Instructions, http://www.nalp.org/uploads/ERSSgradsurvey_inst_09.pdf, at 3 (last visited Nov. 1, 2009).

⁶³ *Id.* The survey provides:

Your law school and NALP respect your expectations concerning confidentiality of these data. The responses provided on the enclosed survey will not be submitted directly to NALP. Data submitted to NALP will be recoded by your school and will not include any information identifying you as an individual. Moreover, you can be certain that NALP treats all information in a highly confidential manner. No information that could be associated with a specific individual or school is released — only aggregates and averages are published. *Id.* (bold text omitted; underlined text preserved).

⁶⁴ See NALP Research and Statistics for the Class of 2008, <http://www.nalp.org/classof2008> (providing studies and reports that only discuss trends in aggregated data); *supra* note 62.

program type at graduation (full-time or part-time), special job funding, timing of job offer, source of job, search status of employed graduates, job duration (temporary, permanent, etc.), annual starting salary, the size of the law firm, and the type of law firm job.⁶⁵ Since these are data requests for each graduate, NALP is able to create summaries across categories, such as median salary for a minority woman.⁶⁶ If desired, NALP could create a summary of salary quartiles for nonminority male attorneys working in the main office of private law firms with 100+ attorneys in the same state as their law school. The possibilities are practically endless, though as we will see in Part II still fall well short of what an ideal tool might offer.

d. External Reports

In addition to law schools providing information about graduates to external bodies, other parties publicly release graduate employment data and information. Some law firms list their first-year associates with school attended, journal status, and graduation year on their websites.⁶⁷ Many firms also release employment outcomes to the National Law Journal (“NLJ”) in a survey each year.⁶⁸ Meanwhile, graduates voluntarily provide data points on websites like Martindale⁶⁹ and LinkedIn,⁷⁰ where they self-identify with their employer, school, and graduation year. Law Clerk Addict – via chambers, law school administrators, and anonymous tipsters⁷¹ – provides federal clerkship placement information about each Article III court, by school, though not by

⁶⁵ Class of 2008 National Summary Report, *supra* note 8, at 1.

⁶⁶ *Id.*

⁶⁷ *E.g.*, Skadden, Arps, Slate, Meagher & Flom LLP, <http://skadden.com/Index.cfm?contentID=3> (last visited Feb. 9, 2010); Paul, Hastings, Janofsky & Walker LLP, <http://paulhastings.com/ProfessionalSearch.aspx> (last visited Feb. 9, 2010).

⁶⁸ *NLJ 250 Methodology*, NAT’L LAW J., Nov. 10, 2008, <http://www.law.com/jsp/article.jsp?id=1202425892561>. With this data, the NLJ releases some school-specific employment information. *Infra* note 104 and accompanying text.

⁶⁹ Martindale, www.martindale.com (last visited Feb. 9, 2010).

⁷⁰ LinkedIn, <http://www.linkedin.com> (last visited Feb. 9, 2010).

⁷¹ Law Clerk Addict, <http://www.lawclerkaddict.com/hiring> (last visited Feb. 9, 2010).

graduating class year.⁷² Finally, anecdotes from graduates, friends or family, and media outlets provide data, either formally or informally, that prospectives can use to supplement other acquired information.

2. A Journey for Predicting Outcomes

To illustrate the manner in which prospectives seek information about job prospects, it helps to go back to our hypothetical prospective and follow her on her journey. Like many prospectives, P has some idea about where she wants to attend law school and where she wants to work. Let's say that P's journey begins with law schools in the Northeast. P seeks to find what happened to the graduates at these schools because she values the ability to find work, as well as work of a certain kind. If she cannot find a school that reasonably enables her to find a desirable job and pay back her inevitable loans, then she may reevaluate her options, including whether it is in her best interests to attend law school at all.

a. What Do Graduates of School X Do? (“Q1”)

Q1 is a very basic question to ask, even though the answer and process for answering it are not basic. One cause of difficulty is figuring out which sources to use and what information to rely upon. Another is that P hopes to use this information to predict the future. While the past is not necessarily indicative of the future, examining the outcomes of recent graduating classes should give her some idea of what to expect, barring any major changes to the entry-level legal market.⁷³ Even where major changes do disrupt prospectives' predictions, prospectives can hypothesize about market effect to enhance their predictions. One theory is that the market will retract somewhat proportionally across schools. Another theory posits that there will be fewer

⁷² E.g., Law Clerk Addict S.D.N.Y., <http://www.lawclerkaddict.com/district/sdny> (last visited Feb. 9, 2010).

⁷³ The ABA only requires that schools provide information about past graduating classes, *supra* Part I.C.1.a, thus the ABA seems to recognize that previous outcomes are useful for making a basic consumer decision. ABA Standard 509, *supra* note 26.

reductions at the most competitive jobs at the top of the law school hierarchy than at all other schools, with the top of the other schools diminishing their mark on those jobs. A different theory is that smaller schools, and schools that do not feed into a primary (and more competitive) market, will fare better than average. In each case, the prospective's goal is to find some value in older information in light of new challenges.

Back to our hypothetical P. If one of P's options in the northeast is New York Law School ("NYLS"), P might start with the 2010 Official Guide to Law Schools to answer Q1.⁷⁴ It reveals that NYLS tracked down the employment status of 96% (363/378) of their graduates 9 months after graduation for the class of 2007.⁷⁵ The following table illustrates these graduates' employment status.⁷⁶

	Total Graduates	Percentage of Known	Percentage of Entire Class
Employed	335	92.3	88.6
Pursuing Graduate Degrees	7	1.9	1.9
Unemployed ⁷⁷	13	3.6	3.4
Subtotal	355	97.8	93.9
<i>Mysteriously Missing</i>	8	2.2	2.1
Employment Status Known	363	100.0	96.0

These numbers do not account for eight graduates for whom NYLS knew the employment status. It is unclear why NYLS declined to categorize these graduates as employed,

⁷⁴ If she wanted to know that certain schools' placement followed certain trends, she might also consult previous Official Guides to identify the trends. Additionally, the U.S. News provides employment summaries, albeit for a fee. U.S. News Law School Rankings, *supra* note 19. While the U.S. News summaries provide a more information than the ABA summaries, *supra* Part I.C.1, much of the U.S. News's information is redundant. U.S. News Law School Rankings, *supra* note 19 (although particular percentages vary, the "Areas of Legal Practice" rely on the same request from law schools that the ABA makes, *supra* note 41 and accompanying text).

⁷⁵ Official ABA Data for NYLS, http://officialguide.lsac.org/SearchResults/SchoolPage_PDFs/ABA_LawSchoolData/ABA2552.pdf, at 2 (last visited Feb. 2, 2010)

⁷⁶ *Id.*

⁷⁷ Seeking, not seeking, or studying for the bar. *Id.*

pursuing a graduate degree, or unemployed. The force of defining a graduate's status as known is that the school can fit a graduate into one of these categories. This problem may be the result of the ABA changing its reporting procedures on the 2008 Questionnaire.⁷⁸ Under the new reporting procedures, the ABA counted 'unemployed, but seeking employment' and 'unemployed, but not seeking employment' in the same category, rather than separately.⁷⁹ Under the old reporting procedures, some schools would avoid a higher unemployment rate by prematurely counting graduates as individuals who were not seeking employment.⁸⁰ One explanation is that NYLS used a similar practice under the new reporting procedures, declining to include as unemployed those who were not seeking employment. Another explanation may be that NYLS made a mathematical mistake. In either case, NYLS is not alone. A preliminary survey of 10 other law schools provided seven instances where the data did not account for all graduates for whom the school knew the employment status.⁸¹ The ABA and Law School Admissions Council ("LSAC") disclaim any warranty as to the accuracy of the information submitted by law schools, so it is unlikely that anybody corrects even basic errors.⁸²

⁷⁸ *U.S. News to Change Measure of Job Placement*, BRIAN LEITER'S LAW SCHOOL REPORTS, Jul. 16, 2007, <http://leiterlawschool.typepad.com/leiter/2007/07/us-news-to-ch-2.html>.

⁷⁹ *Id.*

⁸⁰ Professor Brian Leiter acknowledges this problem under the old reporting standards in a blog post describing U.S. News' rankings methodology change. *Id.*

⁸¹ Creighton University School of Law (missing 3), Indiana University School of Law – Indianapolis (missing 0), University of Michigan Law School (missing 1), University of North Carolina School of Law (missing 9), University of Pittsburg School of Law (missing 2), University of Richmond School of Law (missing 0), University of Tennessee College of Law (missing 0), Wayne State University (missing 17), Vanderbilt University Law School (missing 2), Yale Law School (missing 1). We used the Official ABA Data for each abovementioned school, which can be found on the Official Guide index, http://officialguide.lsac.org/ONLG_Default.aspx.

⁸² Searching the 2010 Official Guide, *supra* note 39 ("Neither the ABA nor LSAC conducts an audit to verify the accuracy of the information submitted by the law schools.") (last visited Feb. 9, 2010).

Nevertheless, P can still determine the employment status for 93.9% of NYLS's 2007 graduates.⁸³

Additionally, the Official Guide classifies employed graduates by employment type.⁸⁴

	Total Graduates	Percentage of Known	Percentage of Entire Class
In law firms	162	48.4	42.9
In business and industry	75	22.4	19.9
In government	42	12.5	11.1
In public interest	16	4.8	4.2
As judicial clerks	11	3.3	2.9
In academia	8	2.4	2.1
Subtotal	314	93.8	83.1
<i>Mysteriously Missing</i>	21	6.2	5.6
Employed	335	92.3	88.6

These numbers do not account for 21 graduates who NYLS determined to be employed. What happened to these individuals? The ABA Questionnaire provides a clear answer that P will not find in the Official Guide. It allows schools to utilize an 'unknown' category for graduates that "did not indicate type of employment."⁸⁵ Yet, unless P knows that she should inquire further, she will not seek out the instructions necessary to understand the data the Official Guide presents to

⁸³ The American Association of Law Schools ("AALS") criticizes U.S. News for using employment status, both at graduation and 9 months after graduation, as part of their rankings. Stephen P. Klein & Laura Hamilton, *The Validity of the U.S. News and World Report Ranking of ABA Law Schools*, <http://www.aals.org/reports/validity.html>. They found that:

The failure to distinguish between legal and non-legal jobs raises serious questions about the validity of this index. The placement rate also included graduates who kept jobs that they had before beginning school. By including jobs that were not acquired as a result of a student's law degree, this measure may artificially inflate values for certain schools, especially those where large numbers of students work to pay their tuition.

Id. This criticism functionally criticizes the ABA too because the ABA does not distinguish between legal and non-legal jobs. *Supra* Part I.C.1.a and Part I.C.1.b. We discuss this failure more *infra* Part I.C.2.b.

⁸⁴ Official ABA Data for NYLS, *supra* note 75, at 2.

⁸⁵ ABA Questionnaire, *supra* note 41, at 5.

prospectives because it appears self-explanatory. At this point, P can determine the employment types for 83.1% of the class.⁸⁶

While these employment summaries are easily digestible and readily available to prospectives (though sometimes at a cost), they provide many other opportunities for misuse. By asking Q1, P intimates value on the job she can expect to secure, especially as it pertains to the price she would pay to attend a school. The ABA summaries' qualified uses with respect to this question are very basic, painting only a vague picture of what her job prospects would look like if she attended NYLS. P has some additional information on graduates' employment statuses and types. Yet, P's ability to use this information is limited because the percentages, even accompanied by their category title, lack specificity. Consequently, her examination of the ABA summaries should raise two clarifying questions. First, what do these employment type categories mean? Second, are some jobs available to only some of the students in the graduating class?

b. What Do These Employment Type Categories Mean? (“Q2”)

Though on the surface the categories seem to do a good job of sorting past outcomes for P and her future classmates, closer inspection reveals a number of issues.⁸⁷ The ABA Questionnaire specifies that employment type categories refer only to the kind of employer, and not the type of job.⁸⁸ When NYLS reports 48.4% in “law firms”, this means 48.4% of their employed graduates work as an attorney, law clerk, paralegal, contract attorney, or administrator. Without access to the underlying data, P cannot evaluate which jobs graduates take in law firms,

⁸⁶ P can consult U.S. News Article III Clerkship rankings, *supra* note 19, and the NLJ 250 Chart (2007), *infra* note 105, as well as NYLS's website, http://www.nyls.edu/prospective_students/student_life/employment_stats, to learn more about these graduates' employers. We discuss these later, *infra* Part I.C.3.c.

⁸⁷ NALP appears to agree because, in order to understand the legal profession, they require more data from law schools than the schools provide to the ABA. *See supra* Part I.C.1.

⁸⁸ ABA Questionnaire, *supra* note 41, at 5; U.S. News Survey, *supra* note 52.

and she risks improperly using the available information.⁸⁹ This matters especially to prospectives who want a law school that is committed to developing public interest lawyers. Prospectives may treat the public interest percentage as indicative of the school's outward and inward attitude towards legal aid, as well as their achievement with fostering connections and funneling graduates to these jobs.⁹⁰ But if those who go off to do public interest work turn out to be community organizers, or some other non-attorney position, reliance on the public interest percentage would be unwarranted, though not necessarily inconsistent with the school's mission. Still, the prospectives cannot make this determination.

While these categories seem harmless enough, they do not intuitively describe a considerable number of law school graduates. 6.9% of all law school graduates from the class of 2008 listed as working at law firms actually work in non-attorney positions.⁹¹ When P learns that 48.4% of law school graduates work for a law firm, it is reasonable to think these graduates use their degrees. The percentage may seem small and insignificant, but it is not spread evenly throughout all ABA-approved law schools. For example, the University of Michigan Law School had zero graduates in the class of 2007 who worked in positions determined to be non-professional/other for the U.S. News survey – the job type which describes non-attorneys at law firms.⁹² On the contrary, NYLS had 15 graduates working as non-professional/others.⁹³ This

⁸⁹ The particular problem assumes either that (i) those who attend law school do not do so to graduate and work, for example, as a paralegal or legal secretary, (ii) or at least that P would not consider these jobs in the same way.

⁹⁰ *E.g.*, Posting of rolark to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=1&t=109531#p2647558> (Mar. 6, 2010, 6:11 pm); Posting of najumobi to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=1&t=101763#p2360569> (Dec. 31, 2009, 1:01 pm).

⁹¹ Class of 2008 National Summary Report, *supra* note 7, at 1.

⁹² US News, Michigan Law School Career Prospects, <http://premium.usnews.com/best-graduate-schools/top-law-schools/items/03082/@@career-prospects.html> (subscription required) (last visited Feb. 9, 2010).

⁹³ U.S. News, NYLS Career Prospects, <http://premium.usnews.com/best-graduate-schools/top-law-schools/items/03109/@@career-prospects.html> (4% x 378 = 15 total graduates in 2007) (subscription required) (last visited Feb. 9, 2010).

means that between 0% and 9.3% of NYLS's graduates employed by law firms were non-attorneys.⁹⁴ While this is more information than when she started asking questions, P cannot determine a more precise value from the available information.

This feature of the ABA summaries is not evident, even to the careful reader. The NYLS non-attorney range requires information from two separate sources, including one that requires payment.⁹⁵ At best, these categories are confusing. The categories do not appropriately group like-jobs. Working as an in-house counsel is much more like working as a junior associate than a paralegal, even if the junior associate and paralegal work in the same office. Nevertheless, both the ABA and U.S. News group in-house counsel with short-order cooks at Waffle House.⁹⁶

c. Are Some Jobs Available to Only Some of the Students in the Graduating Class? (“Q3”)

An enormous number of different opportunities are available to law school graduates, and placement summaries that contextualize the entire class by aggregating individual graduates – even when accurate – fail to convey the nuances of these opportunities. Percentages do not tell P about the individual stories. Even knowing that 42.9% of NYLS's 2007 graduates worked as attorneys at private law firms after graduation fails to answer P's first question; she is concerned with how *she* will fare by attending NYLS, not the graduating class as a whole. Knowledge of prior classes facilitates P's journey towards predicting her own outcome – or at least her chances of achieving certain outcomes. The more information P has about the underlying data, the more informed she will be.

⁹⁴ This is derived from law firms employing between 0 and 15 of the 163 graduates as non-attorneys. Official ABA Data for NYLS, *supra* note 75, at 2.

⁹⁵ Although discovering this range only requires access to U.S. News premium information and the ABA summaries, P only knew to consider this question because the NALP National Summary Report demonstrates the considerable percentage of graduates working non-attorney jobs. This is neither obvious nor trivial.

⁹⁶ See ABA Questionnaire, *supra* note 41, at 5 (“business and industry (all jobs, legal and non-legal)”); U.S. News Survey, *supra* note 52 (same).

One nuance lost by using employment summaries is the amount of competition associated with attaining particular jobs within the categories. Q3 draws out P's appropriate concern that some jobs are only available to some graduates. If a prospective's opportunities are limited relative to her peers at School X, then it will be important to know which jobs are available to which graduates. When P has more specific categories that describe the outcomes, P will have a better handle as to the opportunities available throughout the class, provided that the new categories actually serve an additional function. Two available tools impart additional information about some of the most competitive jobs by isolating parts of the employment summaries.

Article III clerkships are among the most competitive legal positions available.⁹⁷ The U.S. News provides a table of clerkship placement percentages for every ABA-approved school, including Article III clerkships.⁹⁸ This table distills the "employed as judicial clerks" category into two subcategories.⁹⁹ The first is the percentage of the entire graduating class who obtained a judicial clerkship.¹⁰⁰ The second is the percentage of the entire graduating class who obtained an Article III clerkship.¹⁰¹ Notably, the U.S. News orders the schools on the table by the percentage placed in Article III clerkships.¹⁰² Schools directly report clerkship placement numbers to the

⁹⁷ Indy Law Guide to Judicial Clerkships, <http://indylaw.indiana.edu/career/judicialclerkship.htm> (last visited Nov. 1, 2009); Yale Federalist Society Judicial Clerkship Guide, <http://www.yalefedsoc.org/fs/images/downloads/Judicial%20Clerkship%20Guide.pdf> (last visited Nov. 1, 2009). This is not the only other kind of clerkship. There are also admin judge clerks and international clerks, as well as other federal clerkships that are non-Article III. Kinds of Clerkships, <http://www.law.wisc.edu/career/WhatKindsofClerkshipsAreThere.htm> (last visited Nov. 1, 2009). Some non Article III clerkships – like state supreme courts – are just as difficult, if not more difficult, than some Article III clerkships. Indy Law Guide, *supra* note 97.

⁹⁸ U.S. News Article III Clerkship Rankings, *supra* note 19.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

U.S. News,¹⁰³ leaving room for inconsistencies between this information and the ABA Official Guide.

Large firm placement percentage is an important, albeit imperfect, proxy for the number of graduates with access to the most competitive and highest paying jobs.¹⁰⁴ The NLJ provides a categorical breakdown of post-graduation outcomes for the class of 2005 for the top 100 schools, in the 250 largest U.S.-based law firms ("NLJ 250 firm(s)").¹⁰⁵ The NLJ 250 (2005) Chart uses information from the ABA Official Guide, except that the NLJ distills the ABA's "employed in law firms" into two subcategories.¹⁰⁶ The first subcategory is the percent of the class at each school employed at NLJ 250 firms.¹⁰⁷ The second subcategory is the percent of the class employed at a non-NLJ 250 firms.¹⁰⁸ Together, the U.S. News Table and the NLJ charts provide

¹⁰³ U.S. News Survey, *supra* note 52.

¹⁰⁴ Boutique law firms are also very competitive, with some paying New York City market rates. Maureen Tkacik, *Top NY Boutique Law Firm Boosts First-Year Pay*, CRAIN'S NEW YORK, Feb. 7, 2007, <http://crainsnewyork.com/article/20070207/FREE/70207013>. Additionally, the NLJ 250 does not include large, prestigious internationally based firms. NLJ 250 Methodology, *supra* note 67. Elite public interest, clerkships, and government jobs are very competitive as well.

¹⁰⁵ *NLJ 250 Methodology*, *supra* note 68; The NLJ 250, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202425778391>; Employment Trends For Law School Grads in 2005, http://pdfserver.amlaw.com/nlj/20080414employment_trends.pdf ("NLJ 250 (2005) Chart"). In 2007, 2008, and 2009, the NLJ released just the percentage of the class that went to work for NLJ 250 firms. <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1207904889529> ("NLJ 250 (2007) Chart"); <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202428438260> ("NLJ 250 (2008) Chart") http://pdfserver.amlaw.com/nlj/law%20schools_charts_page12.pdf ("NLJ 250 (2009) Chart"). Unlike the NLJ 250 (2007) Chart and NLJ 250 (2008) Chart, the NLJ 250 (2005) Chart illustrates how this percentage relates to other percentages on a bar graph for 100 schools instead of 20 schools. NLJ 250 (2005) Chart, *supra*; NLJ 250 (2007) Chart, *supra*; NLJ 250 (2008) Chart *supra*. In 2009, the NLJ provided percentages for the top 50 schools. NLJ 250 (2009) Chart, *supra*.

¹⁰⁶ NLJ 250 (2005) Chart, *supra* note 105.

¹⁰⁷ *Id.* ALM Research collected data from these firms directly. *See id.* (it follows from citing two sources, the ABA Official Guide and ALM Research, that ALM Research provided the NLJ 250 data because the ABA does not collect that sort of data, ABA Questionnaire, *supra* note 41).

¹⁰⁸ NLJ 250 (2005) Chart, *supra* note 105.

an important step for resolving the meaning of two ABA employment type categories because each increases the amount of specific, useful information about law school graduates.¹⁰⁹

Despite the promise of these two tools, they are not very useful for answering Q3 for most prospectives, except for showing which jobs certain schools' graduates do not attain year to year.¹¹⁰ The Article III Table information is most useful for prospectives who consider schools like Yale and Stanford, where 37.2% and 23% of the 2007 graduating class clerked for an Article III court during the 2007 – 2008 term.¹¹¹ Across all ABA-approved law schools, however, this metric only provides information about a very small percentage of the graduating class. During the 2007 – 2008 term, an average of 3.7% of 2007 ABA-approved law school graduates clerked for Article III judges.¹¹² The median percentage was 2.0%.¹¹³ Unfortunately, these are inflated numbers because some schools misreported their clerkship placement numbers.¹¹⁴

The NLJ 250 tool is less useful for prospectives considering schools further down the rankings. That is, the information provided beyond what is available in the Official Guide is much less revealing for schools that place very few graduates in the NLJ 250 firms. Additionally,

¹⁰⁹ See *supra* Part I.C.b for discussion on the ABA employment type categories.

¹¹⁰ For example, none of the NLJ 250 Charts provide explicit information about NYLS graduates because NYLS does not place enough graduates in these firms. NLJ 250 (2005) Chart, *supra* note 105; NLJ 250 (2007) Chart, *supra* note 109; NLJ 250 (2008) Chart, *supra* note 105; NLJ 250 (2009) Chart, *supra* note 105. Although not to the same extent as the schools that place so few graduates in NLJ 250 jobs, this metric is limited because not all NLJ 250 firms are equally competitive or attractive. There are NLJ 250 firm offices all across the United States and around the world; and the opportunity to land a job at a certain firm varies by school due to different GPA requirements.

¹¹¹ U.S. News Article III Clerkship Rankings, *supra* note 19.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ It appears that some schools, including Western New England College of Law, mistakenly equated the total percentage of clerks in the 2007 graduating class with the total percentage of Article III clerks. Bill Childs, *Clerkship Data: A Correction*, WESTERN NEW ENGLAND COLLEGE SCHOOL OF LAW BLAWG, Sep. 8, 2009, <http://mars.wnec.edu/blawg/?p=130>. While U.S. News corrected Western New England's percentages, according to the U.S. News Article III Clerkship Rankings, an additional 13 schools placed all of their graduates with clerkships in Article III clerkships. U.S. News Article III Clerkship Rankings, *supra* note 19. It is unlikely that this is the case, especially when considering peer-to-peer comparisons.

the 2005 chart only published percentages for 100 ABA-approved schools.¹¹⁵ But complaining that the NLJ 250 (2005) Chart stops after 100 schools is a non-starter. There is diminishing return on the value of knowing whether 1% or 4% of graduates worked at NLJ 250 firms.¹¹⁶ When the percentage is so low, the only relevant question becomes, "where do the other 96% – 99% of graduates go work?"

For 68.6% of the ABA-approved law schools,¹¹⁷ the NLJ 250 (2005) Chart provides additional information for less than 10% of the class.¹¹⁸ For about half of the ABA-approved schools, this metric provides additional information about less than 5% of the class.¹¹⁹ We do not want to underestimate how useful this tool is for schools that provide ample opportunities at these larger law firms. However, only 6.7% of schools placed at least half of their 2005 graduating class in NLJ 250 firms, with five additional schools crossing that threshold in 2007.¹²⁰

The NLJ charts are most useful for understanding total class placement for schools like Chicago and Columbia, where NLJ 250 firms employed around 60% of the class in 2005,¹²¹ and nearly 75% in 2007.¹²² If the proportion of the class that goes to the largest firms as it reflects

¹¹⁵ NLJ 250 (2005) Chart, *supra* note 105. This could change in future years. However, in 2007, the Chart only provided percentages for the top 20 law schools. NLJ 250 (2007) Chart, *supra* note 105.

¹¹⁶ This is not true for the 2007, 2008, and 2009 Charts. In each of these years, the last school listed placed 38.5%, 41.2%, and 13.2%, respectively, in NLJ 250 firms. NLJ 250 (2007) Chart, *supra* note 105; NLJ 250 (2008) Chart, *supra* note 105; NLJ 250 (2009) Chart, *supra* note 105. It is not clear why the NLJ does not provide more information each year, although the 2009 Chart may be a permanent change from 2007 and 2008.

¹¹⁷ In 2005, there were 194 ABA-approved law schools. NLJ 250 (2005) Chart, *supra* note 105.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* From these percentages, a prospective is able to get a good idea of what kinds of firms are part of the ABA percentage. However, you can only tell so much about a firm by its total size. Office size, whether it is the headquarters or is at the whims of the headquarters, and prestige are among the oft-used factors for evaluating law firms.

¹²² NLJ 250 (2007) Chart, *supra* note 105. In 2008, both schools placed near 70% in NLJ 250 firms. NLJ 250 (2008) Chart, *supra* note 105. However, in 2009, both schools – like almost every top 50 law school – saw their NLJ 250

graduate competitiveness concerns a prospective, this sort of information substantially supports an evaluation about competition in the first-year legal market. However, examining Yale's NLJ 250 placement yields an unexpected result. Fourteen schools placed a higher percentage of graduates in NLJ 250 firms than Yale in 2005.¹²³ This result is unexpected because Yale graduates are widely considered among the very most competitive law school graduates in an array of job categories, especially Article III clerkships.¹²⁴ We can remedy this unintuitive result by combining the clerkship percentages from the U.S. News Article III Clerkship table with the NLJ 250 percentages from 2007.¹²⁵ The total reflects the percentage of the class that worked either for an Article III judge or for an NLJ 250 firm.

In 2007, 19 schools placed more graduates in NLJ 250 firms than Yale.¹²⁶ Aggregating Yale's NLJ 250 firm and Article III clerkship placement percentages yields a substantially more plausible result. Yale ranks seventh with over 75% working in the NLJ 250 firms or Article III clerkships.¹²⁷ We do not want to overemphasize movements up and down this derivative tool ("Aggregation Tool"), but Yale's movement illustrates how P may misuse the NLJ 250 firm placement rankings and percentages. If P relied only on the NLJ 250 percentages and the

placement percentage drop. NLJ 250 (2009) Chart, *supra* note 105. In 2009, both schools placed about 55% in NLJ 250 firms. *Id.*

¹²³ NLJ 250 (2005) Chart, *supra* note 105.

¹²⁴ U.S. News Article III Clerkship Rankings, *supra* note 19.

¹²⁵ Both the NLJ 250 placement percentage and U.S. News Article III clerkship percentage are calculated from the entire graduating class in 2007, without consideration to any other status than being granted a degree. NLJ 250 (2007) Chart, *supra* note 105; U.S. News Article III Clerkship Rankings, *supra* note 19. The NLJ 250 Chart is inappropriate here because the U.S. News Article III Clerkship rankings are for the class of 2007, and the legal market was different in 2007 than in 2005.

¹²⁶ NLJ 250 (2007) Chart, *supra* note 105.

¹²⁷ We reached this value by adding the percentages from the NLJ 250 (2007) Chart, NLJ 250 (2007) Chart, *supra* note 105, and Article III Clerkship rankings, U.S. News Article III Clerkship Rankings, *supra* note 19. To be clear, we do not think this value accounts for all the competitive jobs that Yale graduates obtained. *See supra* note 104.

assumption that NLJ 250 firms are by-definition competitive, she would possess incomplete information about how competitive Yale's graduates are in the legal marketplace.

An additional problem with how P may use the Aggregation Tool is that it requires that an individual graduate exists in a vacuum, when in fact he does not. It assumes that he is a competitive graduate because one of the two jobs is available to him. However, it is unclear how this would work in practice because there is a limited supply of NLJ 250 firm jobs and clerkships. Imagine that 90% of School X's 2L class worked for an NLJ 250 firm during their 2L summer, 30% of whom will apply for and receive clerkships. Each received an offer for permanent employment and each decided to accept, declining the clerkship opportunity. Law firms anticipate that some 2L offerees will not accept the offer to begin work shortly after graduation for many reasons, including their 2L offerees accepting clerkships. While it does not follow that each firm that offered one of these 2Ls a job overextended offers, it is plausible that some firms did because the firms accounted for less than 100% yield while making 2L summer offers. Although firms may make room for the competitive graduates who would have otherwise clerked, it is a safe assumption that NLJ 250 firm placement is closer to a zero sum game than not.¹²⁸ It is unclear whether this means that School X's graduates without clerkship offers, for whatever reason, are forced out by their more competitive classmates who would have otherwise clerked, or if those would-be clerks instead force other schools' graduates back into the legal marketplace. What is clear, however, is that some shuffling will have to take place. Unless a finite group of graduates is aggregately labeled "competitive", School X's 2Ls affect the market. For the Aggregate Tool, this means aggregate percentages, while indicative of a minimum

¹²⁸ Assuming firms attempt to hire as many associates as they project a need for.

percentage of the class with a competitive job, do not reflect any single graduate being able to obtain another competitive job.¹²⁹

d. Filling in the Gaps: What Happened to the Rest of the Class?

It is easy to compare schools with the ABA and U.S. News summaries. While comparing employment type percentages is not perfect because the categories are based on the percentage of graduates known to be employed, it is trivially easy to use this information to find the percentage of the entire class this actually represents. Yet P is still not happy. She does not learn enough by knowing that 90% of graduates are employed after 9 months, or that one school has 45% of graduates at private firms and another has 52%. She sensibly seeks to answer Q1 by filling in the information gaps she identifies.

She may take a few different approaches. The goal will be, of course, to find any and all data that enable P to clearly see what students did in the past. One important precaution P must take is controlling for class size. This does not need to be scientific, but she should generally be aware that large graduating classes might affect the results of her search. Large graduating classes can create large alumni networks, as well as saturated regions and pockets of unrepresentative outcomes. However, unrepresentative outcomes are problematic whenever one moves away from comprehensive information towards anecdotes.

School websites are a reasonable place to begin. Schools often provide the ABA-reported information, but sometimes they provide more information, like salaries,¹³⁰ geographic dispersal,¹³¹ specific outcomes, and anything else they wish to convey to their target audience.¹³²

¹²⁹ It seems more likely, however, that an Article III clerk is competitive for an NLJ 250 job, as compared to an NLJ 250 offeree vying for an Article III clerkship.

¹³⁰ See *infra* Part I.C.2.e for more on school-supplied salary information.

¹³¹ See *infra* Part I.C.2.e for more on school-supplied geographic dispersal information.

Some schools provide graduate profiles so that prospectives can see the successes of past graduates.¹³³ Others provide broad data about entire graduating classes to their prospective students, including employer name and office location.¹³⁴ Indeed, schools that provide this sort of data are the exception. Usually if schools provide lists of employers, they are either lists of firms that interview on campus¹³⁵ or lists of firms that have hired from the school in the recent past.¹³⁶ The main issue here is that it does not follow from employers interviewing students that those students work for those employers, especially when the school is in a major market where the firms attend at minimal expense to interview the very top of the class.¹³⁷ Another issue is that listing employers that have hired from the school in the past does not tell prospectives how often or over what period those names have accumulated.¹³⁸

¹³² For example, if a school targets its in-state applicants with a mission to train the state's future lawyers, it is advantageous for this school to show how this is the case. *See* University of Missouri School of Law Welcome Message, <http://law.missouri.edu/about/> (explaining that “[their] graduates are found in every county of Missouri . . .”) (last visited Mar. 5, 2010).

¹³³ *E.g.*, Loyola Law School Alumni, <http://alumni.lls.edu/> (last visited Mar. 23, 2010); Columbia Law School Alumni Profile, <http://www.law.columbia.edu/alumni/news/2009/12/michael-bogner> (last visited Mar. 23, 2010); Vermont Law School Alumni Profiles, http://www.vermontlaw.edu/Career_Paths/Alumni_Profiles.htm (last visited Mar. 23, 2010).

¹³⁴ “On March 14th, 2008, at Admitted Students Day, Vanderbilt’s admissions office released a list of where, and with whom, 196 of the 223 [class of 2007] graduates were employed.” Vanderbilt Class of 2007 Numbers, LAW SCHOOL TRANSPARENCY (“LST”), <http://www.lawschooltransparency.com/2009/05/vanderbilt-class-of-2007-numbers/> (last visited Feb. 25, 2010). This list is available at http://lawschooltransparency.com/wp-content/uploads/2009/07/Vanderbilt_2007_Grad_Raw.doc. Duke also provided its admitted students a list of its class of 2007 employed graduates. Duke Class of 2007 Numbers, LST, <http://lawschooltransparency.com/2009/07/duke-class-of-2007-numbers/>. However, we cannot track down the original list. Instead, LST provides a spreadsheet created by a Duke admitted student derived from the raw data. http://www.lawschooltransparency.com/wp-content/uploads/2009/07/Duke_2007_Grad_Original.xls.

¹³⁵ *E.g.*, Santa Clara Law Fall 2008 OCI and Resume Collection Participants, http://law.scu.edu/careers/file/OCI_Employers_Fall_08.pdf (last visited Mar. 6, 2010).

¹³⁶ *E.g.*, Hofstra University School of Law Employment Placement, http://law.hofstra.edu/StudentLife/CareerServices/careerservices_employment_statistics.html (listing “selected” employers that hired 2006 – 2008 graduates) (last visited Mar. 6, 2010).

¹³⁷ On <http://www.nalpdirectory.com>, prospectives can search NALP’s database to find how many NALP members interviewed at each school. http://www.nalpdirectory.com/dledir_search_advanced.asp (last visited Feb. 20, 2010).

¹³⁸ Hofstra Placement, *supra* note 136.

Moving away from school-generated information, P may consider websites like LinkedIn and Martindale to gather post-graduation outcome data. Each datum, so long as the graduate obtained the job within 9 months and reported it to the school, explains one individual outcome that underlies the school-reported percentages. For example, if P learns that a 2007 graduate works as an attorney for a litigation boutique in San Francisco, P can determine that one of the outcomes in ‘employed in a law firm’ category required a J.D. for a particular kind of job. The more data P acquires like this, the better the picture she can paint. But this data is difficult to parse. On LinkedIn,¹³⁹ P must contend with private profiles and graduates choosing to provide their graduation years. Though prospectives cannot overcome private profiles, an indefinite graduation year may be easier to overcome.

First, clues – like undergrad graduation year – may narrow the possible graduation years. Second, the exact graduation year only matters for some questions. While Q1 only asks about past graduates, rather than past graduates from the class of 2007, the school-provided information comes prepackaged by class. Data points that do not track to a specific class are less useful for shedding light on the class-specific information because the datum is out of context – and context matters for any anecdote. Without context, prospectives are more likely to misuse particular positive or negative outcomes to fulfill preconceived notions.

Beyond relying on anecdotal data to patch together what happened to past graduates, P may also try to find proxies for desirable post-graduation outcomes. While the NLJ charts and

¹³⁹ Martindale and LinkedIn have similar issues. The available data is much greater on Martindale, but even more difficult to navigate despite no private profiles. See <http://www.martindale.com/Find-Lawyers-and-Law-Firms.aspx>. Martindale enables searching by “Years in Practice”, which narrows the field a bit, but cannot account for people who have already left their first job. *Id.* Firms also sometimes underreport attorneys to Martindale. Sullivan Methodology, <http://www.calvin.edu/admin/csr/students/sullivan/law/method.htm> (last visited Mar. 23, 2010). Additionally, sometimes attorneys appear twice. *Id.* Other anecdotes may also be found in popular media, law blogs, and old-fashion networking.

Article III clerkship rankings tend to provide a more direct measure of desirable outcomes, prospectives also use indirect proxies to fill the gaps in available information. Most pervasive are the U.S. News composite rankings.¹⁴⁰

The intuition goes something like this. The higher a school ranks, the better that school's graduates fare in the job market compared to schools ranked lower. Empirical research suggests that the students who attend roughly the bottom 75% of the law school hierarchy engage “in a calculation that asks whether a marginally higher U.S. News ranking is worth higher tuition,” where worth has to do with the “wide array of employment opportunities.”¹⁴¹ This is not to say that prospectives function indiscriminately, but conversations with current and prospective law students demonstrate how important the rankings are to their final decisions because they think it says something about post-graduation outcomes.

It is not clear why anybody should think there is a relationship between a school's rank and their post-graduation opportunities – at least one that is strong enough to warrant choosing the #46 school over #56 because #46 is more highly rated by U.S. News. They determine rank by a score that includes many factors, but only 18% of the total score comes from post-graduation outcomes.¹⁴² Other possible factors that may indirectly inform post-graduation opportunities include reputation scores and incoming class statistics. To see how useful the composite score is for predicting post-graduation outcomes – beyond simple employment rate¹⁴³ – we need more

¹⁴⁰ Morriss, *supra* note 22 at 792.

¹⁴¹ *Id.* at 796.

¹⁴² U.S. News Law Rankings Methodology, <http://www.usnews.com/articles/education/best-law-schools/2009/04/22/law-school-rankings-methodology.html> (last visited Mar. 23, 2010). 14% of the score reflects employment at 9 months. *Id.* 4% of the score reflects employment at graduation. *Id.* As we have seen already, this figure is not that helpful in the first place. *See supra* Part I.C.2.a.

¹⁴³ For employment at 9 months, the rate ranged for the class of 2007 from 64.8% to 100%. http://taxprof.typepad.com/taxprof_blog/2009/04/2010-us-news-employed-at.html. The median was 96%, 25th percentile was 92.88%, and the 75th percentile was 98.03%. *See id.* The average was 94.55%. *See id.* For

data. While one reason prospectives resort to a proxy is lack of available data,¹⁴⁴ this does not make it advisable. Even a single year of good data would help future prospectives understand the appropriateness of this proxy.

To be sure, P does not always act independently from other prospectives. Discussion boards and blogs offer an increasingly popular vehicle through which many different prospectives share information they have gathered.¹⁴⁵ Together, prospectives can discuss, criticize, and test information regardless of who provides it.¹⁴⁶

e. Final Questions: Where Do Graduates of School X Work (“Q4”) and What Do They Make? (“Q5”)

So far, P sort of knows what graduates do, but her questions do not and should not end after Q3. Prospectives do not just want a job; they want certain kinds of jobs. And they don't want these jobs just anywhere. They want them in certain places, and they want to make a certain amount of money. While this may sound like entitlement, prospectives have understandable interest in knowing these characteristics of past post-graduation outcomes before investing in a law degree. After all, if P requires \$150,000 in loans, she will want to know that she is able to pay back her debt, as well as whether she can repay it somewhere she would like to live. This is a function of both salary and cost of living.

employment at 6 months, the rate ranged from 43.5% to 100%, with 64 schools not reporting. http://taxprof.typepad.com/taxprof_blog/2009/04/2010-us-news-employed.html. Of those reporting, the median was 77.9%, 25th percentile was 67.73%, and the 75th percentile was 87.53%. *See id.* The average was 77.26%. *See id.*

¹⁴⁴ Compared to NLJ 250 charts and the U.S. News Article III Clerkship rankings, U.S. News rankings do appear to do a good job of predicting top performers. But once we move beyond the top schools, it is hard to see why prospectives should rely on U.S. News rankings as a proxy. It may separate tiers well, but distinguishing within the tiers looks like a fool's game.

¹⁴⁵ *See, e.g.*, TLS, LSD, <http://abovethelaw.com>, <http://blogs.wsj.com/law/>.

¹⁴⁶ It is actually from this collective power that we explore a collective solution in Part III.

The Official Guide provides a short breakdown of where employed graduates have obtained work.¹⁴⁷ For NYLS:

	Total Graduates	Percentage of Employed	Percentage of Entire Class
Employed in New York	273	81.5	72.2
Employed in Foreign Countries	5	1.5	1.3

The Official Guide also provides that graduates work in 17 other states.¹⁴⁸ With help from the total class size and percentage employed in New York, P can use the total states data to get a loose picture of where NYLS's graduates work following law school. However, the qualified uses for this information are limited. While at least 22 graduates (5.8%) worked outside of New York,¹⁴⁹ P should not try to infer more. But if P were to subscribe to U.S. News, P has more information to work with. U.S. News provides subscribers with a percentage breakdown of where graduates work.¹⁵⁰ This enables P to more precisely determine the geographical dispersal of NYLS's graduates after graduation.

Yet location only means so much. On the one hand, which jobs graduates take across the country matters, as the motivation behind Q4 is the ability to find desirable work nationally – or at least to find work somewhere other than the school's home market.¹⁵¹ Perhaps somebody in the bottom 10% leaves New York because the only job he can find is back home working for a bakery. On the other hand, how much people make matters too. If P cannot tie job, location, and salary together, P must make an educated guess as to her ability to be better off than if she does not attend law school.

¹⁴⁷ Official ABA Data for NYLS, *supra* note 75, at 2.

¹⁴⁸ *Id*

¹⁴⁹ 17 graduates employed in other states + 5 employed in foreign countries = 22. *Id.*

¹⁵⁰ U.S. News, NYLS Career Prospects, *supra* note 93.

¹⁵¹ *E.g.* Posting of hiphoppopotamus to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=7&t=23551> (Jan. 26, 2008, 2:06 pm).

Compared to other industries, first-year salary information is relatively accessible. Many firms that belong to NALP annually provide salary information.¹⁵² If P can identify graduates working for NALP employers, she stands a good chance of identifying their salaries. The issue is still identifying those employers, but at least some information is available about employers.

Each year, U.S. News provides private and public sector salary information for subscribers about a relatively recent graduating class.¹⁵³ The 25th, 50th, and 75th percentile private sector salaries aim to demonstrate how salaries throughout a class compare. In order to show how much of the class the percentiles capture, U.S. News also reports the “[p]ercent in the private sector who reported salary information.”¹⁵⁴

NYLS’s median salary of \$160,000 looks great until you consider that the median represents only a very small slice of the class.¹⁵⁵ This slice represents merely 66 graduates, or 17.5% of the class.¹⁵⁶ Accordingly, somewhere near 9% of the class made \$160,000, with an \$85,000 drop to the next quartile.¹⁵⁷ If we thought these salaries were representative, the low turnout would not matter so much. However, it is reasonable to assume that those with higher salaries are more likely to report those salaries; and the graduates making at least \$75,000 probably capture all of NYLS’s 2007 NLJ 250 placement, which is probably less than 12 –

¹⁵² NALP Directory, <http://nalpdirectory.org>. Prospectives can access salary information by searching the directory by employer. *Id.* at http://nalpdirectory.com/dledir_search_advanced.asp. On the advanced search, select “Entry Level” for the “Salary for” option and enter “1” for “Minimum Salary Expected” to find all employers that report entry-level salaries. *Id.*

¹⁵³ For the 2010 U.S. News rankings, U.S. News provides information about the class of 2007. *E.g.*, NYLS Career Prospects, *supra* note 93. These rankings were first released on April 23, 2009, after law school deposit deadlines. Our New Grad School Rankings Are Online, *supra* note 53.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* At least NYLS reported the percentage of the class reporting, even if it is very small. Hofstra Law promoted its salary data without reporting percentages. Hofstra Placement, *supra* note 136 (“For those members of the Class of 2008 who reported both employment status and salary data to us. . .”).

¹⁵⁶ NYLS Career Prospects, *supra* note 93. Of the employed graduates, 162 worked for a law firm and 75 worked in business. *Id.* Of those 237 graduates, 28% or 66 graduates reported a salary. *Id.* There were 378 total graduates. *Id.*

¹⁵⁷ *Id.*

15%.¹⁵⁸ The 25th percentile salary figure puts NYLS in the 75th percentile of schools reporting to U.S. News, while the median and 75th percentile figures put NYLS at the very top, along with another 17 and 35 schools respectively.¹⁵⁹ Whether the salary illusion is why the average 2008 NYLS graduate had \$125,319 in debt is up to the reader to infer, but this level of indebtedness puts NYLS in the 99th percentile.¹⁶⁰ To be clear, this does not mean that NYLS is lying or doing anything wrong. It just means that the figures do not answer Q5 well because low response rates ground these salary figures.

Additionally, many schools advertise graduating class salary information by averages or percentiles on their websites.¹⁶¹ Again turning to NYLS, the law school provides what appears to be rather comprehensive salary information.¹⁶² NYLS explicitly states that approximately 25% of their 2008 graduates reported salary information.¹⁶³ They then list salary range and median salary by employer type.¹⁶⁴ Finally, they break down the "Private Practice" category – representing 45.7% of the class – by firm size.¹⁶⁵ We can deduce that at least 13 graduates reported a salary for other categories, leaving a maximum 87 graduates who reported a salary for their job in private practice.¹⁶⁶ This means that NYLS uses the salary information for a maximum of 21.8%

¹⁵⁸ As we pointed out earlier, high salaries are concentrated (though not exclusively) with the NLJ 250 firms. *Supra* note 104. NYLS does not appear on any NLJ 250 (2005) Chart or (2009) Chart, which meant in those years NYLS placed fewer than 5% and 13% respectively. NLJ 250 (2005) Chart, *supra* note 105; NLJ 250 (2009) Chart, *supra* note 105. While the NLJ 250 (2007) chart does not go beyond the top 20 schools, it is not likely that it changed more than a few percentage points from 2005 to 2007, or 2007 to 2009. NLJ 250 (2007), *supra* note 105.

¹⁵⁹ U.S. News Spreadsheet (2009), *supra* note 1.

¹⁶⁰ *Id.*

¹⁶¹ *E.g.*, Hofstra Placement, *supra* note 136; NYLS Employment Stats, http://nyls.edu/prospective_students/student_life/employment_stats (last visited Feb. 28, 2010).

¹⁶² NYLS Employment Stats, *supra* note 161.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* We deduce 13 from the salary range and median salary. When the minimum and maximum salaries differ, we count two graduates. When the median salary is not the average of the minimum and maximum salaries, we count

of the entire class to show how the salaries break down by firm size; for example, 15% of reporting graduates worked for huge firms making between \$135,000 and \$160,000 – or a maximum of 13 graduates (3.3%).¹⁶⁷ While not every school provides information in this manner, this is the sort of thing with which prospectives must contend. An information deficit here may be particularly damning for risk averse prospectives who manage to appreciate the deficit.

D. Should P Consider Herself Informed About Post-Graduation Outcomes?

At this point, P has examined numerous tools to answer questions about post-graduation outcomes. Under our decision model, P's next step is to evaluate the usefulness of the information she gathered. That is, she must conclude whether she has adequate information about this selection factor, as well as how close the total information she gathered is to adequate. Of course, prospectives do not think this through scientifically. The decision model is only supposed to basically capture the tacit, multifactor decision to matriculate at a law school. So instead we expect this conclusion to look something like “I have plenty of information”, “I do not know nearly enough”, or “close enough.”

Despite a broad account of career placement information, these tools present prospectives with many opportunities to misuse information because the tools do not meaningfully answer common questions like Q1 – Q5. Temptation to use available information beyond its qualified uses arises from most prospectives' status as uninformed consumers of law degrees, at least as it pertains to post-graduation outcomes tied to particular schools. It is easy to be less skeptical of the available information because the product is education-related; but as we have shown, the

one additional graduate. According to the NYLS Registrar, contacted via phone, there were 400 graduates in 2008.

{Side note: when the ABA releases new data, cite to that}. $(400 * .25) - 13 = 87$.

¹⁶⁷ NYLS Employment Stats, *supra* note 161. $87/400 = 21.8\%$. $87 * .15 = 13$. $13/400 = 3.3\%$.

information is not as complete or useful as it facially seems.¹⁶⁸ Between prospectives' thirst for answers and not knowing what to look for while answering, prospectives will likely put L further right than they should. That is, prospectives will think they are more informed than they are.

Some prospectives may realize they use information for non-qualified uses and just not care. Others may not realize it, but would not care even if they did. However, we think that the vast majority of prospectives are rational decision-makers like P. When presented with more facts like more appropriate definitions or ambiguities, we expect that P would change her beliefs about the amount and proper use of the information she acquired. At the very least, she will reevaluate the risks associated with matriculation at School X to see if the risks are too much to handle.

However, even with a guide to the qualified uses of available information, we suspect that schools will fill up their graduating classes anyway. Part of the problem is that not enough people will see the persistent issues with the information. If rational prospectives do not discover the problems, they will not benefit from our identifying the problems, nor their ability to identify the problems themselves. Secondly, even where P reevaluates the risk associated with matriculating at School X, this does not mean she will act perfectly rationally. Optimism bias may color her final determination about her employment prospects. Even if P determines that she will need to finish in the top 10% of the class to achieve the job she wants, it should surprise nobody that she might say, "I did not work hard in college, but I will work hard in law school and finish in the top 10%." Alternatively, when P identifies gaps in information, she may feel more uncertain about expected outcomes and let that uncertainty drive her optimism bias about what the unidentified parts of the class do for work. One solution, then, is to reduce uncertainty

¹⁶⁸ See Part I.C.2.

about expected outcomes. We posit that increasing information to reduce uncertainty will curb some optimism bias because less uncertainty, via a more accurate picture of prior outcomes, will reduce the gaps where P has to guess. Eliminating optimism bias is not realistic, but reducing it is an enviable and plausible goal.

The ultimate issue is the ability to hide undesirable outcomes in aggregate statistical forms. Just about every tool enables this behavior, which, while misleading, often complies with the ABA and U.S. News reporting standards. When that is the case, the standard is the problem and not the law schools that comply in good faith. The standard for employment reporting is precisely what we undertake to improve.

II. Creating a New Tool

Existing tools fail to inform prospectives' questions about post-graduation outcomes at ABA-approved law schools in a number of ways, often providing incomplete or unrepresentative information, or offering proxies in place of substantive information. The result is a perpetual flow of information that fails to show the full picture, leaving tens of thousands of prospectives guessing or otherwise believing that they know what their job prospects look like when they do not. Now that we have said there is a problem that needs fixing, what comes next?

This Part introduces the concept of an ideal tool that eliminates information deficits by providing perfect information. The ideal tool is relative to each prospective. In terms of P, her ideal tool comprehensively answers every question she has about post-graduation outcomes. While previous attempts to collect information have been admirable,¹⁶⁹ nothing has so far attempted anything close to what her ideal tool would accomplish. Together, the components of

¹⁶⁹ See Mitchell Berger, *Why the U.S. News and World Report Law School Rankings are both Useful and Important*, 51 J. LEGAL EDUC. 487, 498 (arguing that rankings have the potential to “promote accountability and positive change”).

the tool could document everything from family connections and physical appearance to grades, journal membership, and satisfaction levels with respect to job offers.

Each prospectives' ideal tool could look very different, as its structure depends on the questions the individual prospective asks. Our goal is to standardize some combination of components in order to help prospectives be informed as to post-graduation outcomes. Due to the personal nature of what information to include and how, we think categorically in an effort to identify potential components of the tool as a first step towards creating a new employment reporting standard.

We understand and emphasize that this requires huge data and information collection costs. We explore these costs by examining the candidate components through the lens of various stakeholders, including students, law schools, employers, and the legal profession. Later, in Part III, we propose a way forward to enable a standard that balances the needs of prospectives with non-prospective stakeholders, while minimizing compliance costs.

A. P's Ideal Tool

P's ideal tool would provide P all of the information that she wants about a school's historical performance. This amounts to perfect information – information that she believes she needs to answer post-graduation outcome questions – and enables her to make a fully informed decision. A tool that delivers perfect information would combine all of this information and tell a story about each individual and group of individuals. The ultimate question is: what do we expect P to ask about to determine her chances of getting some job from school X?

For starters, many prospectives seem to care about not only how job prospects differ from school to school, but also what GPA or class rank graduates need to access different jobs. People want to know what the prospects are like for not just top-performing students, but also for

students at the median.¹⁷⁰ Particularly risk-averse prospectives want to know what sort of safety net each school offers should they find themselves in the bottom of the class asking what jobs, salaries, and cities to shoot for.¹⁷¹ People may also want to know how strong interpersonal skills and interviewing ability affect job prospects, cognizant that other personal attributes may play a part as well. We categorize candidate components according to inputs and outputs, with outputs describing the eventual outcome and inputs consisting of everything else that P cares to include.

1. Input Components

An input component is any datum or information that can explain a law school graduate's post-graduation outcome. These components fall into two broad categories: post-matriculation components and pre-matriculation components. They help tell the graduate's post-graduation outcome story. The components explain why individual graduates (a) had the ability to choose the outcome; (b) chose to accept the outcome; and (c) chose to reject other outcomes.

The first category includes components that help understand outcomes by considering a student's time in law school. Traditional achievement factors that employers consider include law school, first-year GPA, journal, and moot court competitions.¹⁷² Consideration of less

¹⁷⁰ See Posting of najumobi to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=1&t=106603&p=2629361> (Feb. 26, 2010, 12:44 am) (“[I] was wondering about the placement of the average students coming out of these schools. [I]’m not really concerned about big law but [I] was wondering from which school would a median student be more easily able to land a legal job”); Posting of DallasCowboy to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=4&t=87028> (Feb. 21, 2010, 5:55 pm) (“What kind of job prospects is a 2L near the median looking at [in this economy]?”).

¹⁷¹ Many prospectives assume that by going to a law school with a national reputation, they can fall back on a secondary market if they do not do well enough to land a more prestigious position in a major city. In this context, they will want to know what jobs, cities, and salaries are available to those with less stellar credentials. Discussions also abound about what is the “lowest” school for which paying full price is worth it. *E.g.*, Posting of lawschoollll to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=2&t=110261> (Mar. 7, 2010, 5:21 pm). People often rely on median reported salaries in making this determination. As demonstrated earlier, this is troubling. *Supra* Part I.C.2.e.

¹⁷² See David B. Wilkins & Mitu G. Gulati, *What Law Students Think They Know About Elite Law Firms: Preliminary Results of a Survey of Third Year Law Students*, 69 U. CIN. L. REV. 1213 (2001) (discussing how elite

traditional factors, like effort or choices made when applying for jobs, are also important because these components can inform P as to whether a graduate's law school or GPA helped land a certain job, or whether it was special effort or even luck. The employers' financial situation and hiring needs, not to mention the current legal market, also shape law school graduates' outcomes.

Imagine a resume that includes a person's attempted employment history, in addition to actual work experience.¹⁷³ The ideal tool describes each foregone or failed job opportunity in detail, looking not just at objective factors like salary, location, job title, and employer name, but also how each student valued those opportunities and what factors led to the eventual choice. For example, a student who desires a public interest job at the local clinic, but has to take a firm job because the clinic only hires students with certain 2L summer work experience, tells P something about the job opportunities coming from school X. P's ideal tool captures all of this.

Not all law students were created equal, even at the same school. In order to provide perfect information the ideal tool must include a category describing how each individual fared in life prior to law school matriculation. These components include undergraduate institution, previous honors, prior work experience, and competitive scholarships or fellowships.

Personal attributes matter too, as an endless number of personal attributes could influence a person's employability and the decisions they make. These attributes fit into both the pre- and post-matriculation categories. This ever-present category includes everything from physical

law firms rely on heuristics, using signals like school status, grades and law review membership as shortcuts when selecting potential hires).

¹⁷³ Within the law school framework, OCI statistics are the most obvious source of information about attempted employment history. Current law students often answer questions posed by prospectives by breaking down the number of interviews, callbacks, and offers he or she received. Posting of pennstatepride to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=1&t=106481> (Feb. 3, 2010 03:03 pm); Posting of superduperxyz to Law School Discussion ("LSD"), <http://www.lawschooldiscussion.org/prelaw/index.php?topic=4011586.40> (Sept. 12, 2008, 12:18:06 am).

appearance¹⁷⁴ and height,¹⁷⁵ to family members, networking ability,¹⁷⁶ and race. It may even include undergraduate and graduate debt. This is new territory when describing job prospects at American law schools. With the exception of some personal information collected by NALP and the occasional study showing a correlation between personal attributes and employability, this category of components would expose an otherwise invisible aspect of how people advance in the legal industry. The ideal tool would identify and list them all.

The breadth of relevant input components develops continuously because the content of P's perfect information depends on her thirst for answers. However, the information P uses to answer her questions must use pre-output information. This is because these inputs produce the output, so once school X's class graduates and the post-graduation outcomes are measured, the inputs freeze forever. Development only comes with P learning about what more to ask.

2. Output Components

In contrast with the enormous variety of input components, output components are easier to describe. An output component is any data or information that P desires to know about a law school graduate's post-graduation outcome. These components describe the job in detail, looking at salary, duties, fringe benefits, hours, market-adjustments, etc. Components independent from the individual graduate include location, whether a law degree and bar passage are required, and any rankings or other measures of the employer. Components related to the specific graduate

¹⁷⁴ Jeff E. Biddle & Daniel S. Hamermesh, *Beauty, Productivity, and Discrimination: Lawyers' Looks and Lucre*, 16 J. OF LAB. ECON. 172 (1998) (finding in one study that attorneys in the private sector are better looking than those in the public sector, and also finding that the probability of achieving early partnership status rose for male attorneys along with beauty).

¹⁷⁵ Isaac B. Rosenberg, *Height Discrimination in Employment*, 4 UTAH L. REV. 907, (2009). Timothy A. Judge & Daniel M. Cable, *The Effect of Physical Height on Workplace Success and Income: Preliminary Test of a Theoretical Model*, 89. J. APPLIED PSYCHOL. 428, 428 (2004).

¹⁷⁶ Harrison Barnes, *The Importance of Networking and Your Legal Career*, LATERAL ATTORNEY REPORT, Feb. 27, 2009, <http://www.lateralattorneyreport.com/2009/02/the-importance-of-networking-and-your-legal-career/> (referencing MARK GRANOVETTER, *GETTING A JOB: A STUDY OF CONTACTS AND CAREERS* (2d ed. 1995)).

would include practice group preference, employer preference, expected quality of life, proximity to family or friends, and anything else that may add or detract from the value each graduate expects to receive from the job. As with the input components, if P thinks of an output that might be important for her purposes of selecting a law school, then the ideal tool will tell her about it.

B. Facing Reality: P's Ideal Tool Is Unworkable

Theoretically, a prospective law student could know everything about the past effect of her potential investment on post-graduation outcomes.¹⁷⁷ But how feasible are these candidate components, particularly the ones that involve systematic measurement of personal attributes? Documenting some personal characteristics like race or economic background is certainly not outside the limits of current reporting strategies, though making this information public would raise privacy considerations.¹⁷⁸ At least one study looking at the legal profession has measured and assigned values to a highly subjective characteristic, finding a correlation between physical appearance and career advancement.¹⁷⁹ Other factors such as interpersonal or networking skills are also examinable through a standardized interview process.¹⁸⁰ But measuring all of these attributes for the tens of thousands of students each year would prove both difficult and costly,

¹⁷⁷ As we discussed in Part I, past success is not indicative of future performance. *Supra* Part I.C.2.a. As one ray of hope, continued study of how different candidate components correlate with job prospects could eventually produce better predictors of an individual's chances.

¹⁷⁸ Law schools already annually collect and submit data to NALP about some characteristics, such as race or gender. *Supra* Part I.C.1. However, NALP keeps this data confidential, publishing only aggregate information about all law schools. *Id.*

¹⁷⁹ Biddle, *supra* note 174.

¹⁸⁰ A select number of law schools already conduct interviews as part of the application process, despite the significant amount of additional time it requires. *E.g.*, Northwestern Interviews, <http://www.law.northwestern.edu/admissions/applying/interview.html> (last visited Feb. 2, 2010); Vanderbilt Interviews, <http://law.vanderbilt.edu/virtual-vuls/admissions-interviewing/index.aspx> (last visited Feb. 2, 2010).

not to mention the dirty issue of creating guidelines on how to describe a student's physical build or ability to tell a joke.

These limitations and difficulties do not get to the root of the matter. While the costs associated with collecting so much information – including the outcome components – are great, it may still be a worthy investment for the legal profession. The real issue is with competing stakeholders. As shown in Part I, prospectives are in a bit of a hole. Many believe they make informed decisions when they are really uninformed consumers. If we assumed all stakeholders believed it was in their best interest to get as much information as possible to prospectives, the issue would be over how to do it, not what to include.¹⁸¹ After all, we are talking about billions of dollars in loans that finance tuition and living expenses, and tuition continues to escalate.¹⁸² Instead, the issue is that various stakeholders would object to total transparency. Prospectives are not the only stakeholders, so we must address the criticisms candidate components will cause; there are hurdles to enabling better-informed consumers of legal education.

C. The Balancing Act

Prospectives make up just one subset of all stakeholders affected by the release of employment information. While their bargaining power is substantial in the aggregate, their geographic dispersal at thousands of colleges and companies around the country and the world make it difficult to talk about collective action. As such, we leave that discussion to Part III. Instead, we begin this balancing act by asking whether standardizing P's ideal tool to benefit

¹⁸¹ Prospectives constitute, after all, virtually 100% of all future law students, graduates, attorneys, hiring partners, judges and faculty, not to mention a substantial number of political leaders at various levels of government. It is not unthinkable to suppose the people who currently hold these positions would want the very best for their eventual successors.

¹⁸² Mitchell H. Rubinstein, *Tuition Rises 15% or More at Several Public Law Schools; Avg. Public Tuition \$16,836 Per Year*, Adjunct Professors Blog, Aug. 8, 2009, <http://lawprofessors.typepad.com/adjunctprofs/2009/08/tuition-rises-15-or-more-at-several-public-law-schools-avg-public-tuition-16836-per-year-.html> (last visited Aug. 8, 2009).

prospectives is still desirable after considering the interests of all stakeholders. We showed in Part I that, insofar that prospectives want to be informed consumers, prospectives would benefit from having more access to employment outcomes, both for deciding which school is the best fit among their acceptances and to measure the level of financial risk they assume with each choice.

But what about other parties involved with the law school game, such as alumni or current students of a particular law school, whose present and future job options at least partially depend on how their school fares in the job market? What about the schools themselves, as competitive as they must be in recruiting the most academically gifted students each year, in maintaining close relationships with historical employers, and in raising funds from their alumni to continue shaping the nation's lawyers in a pedagogically responsible and U.S. News-friendly manner? And what arguments might legal employers have against a new regime in which employers do not have control over the level of disclosure regarding their hiring practices? Might the legal industry – or certain subsets of it – object to a departure from current public conception that paints a fairly uniform picture of what the majority of new lawyers do for work? And, even if all of these parties were to somehow agree to grant more access to employment information for prospectives, who would implement the standard and ensure accurate reporting?

Here we explore potential arguments against greater transparency. Perhaps the following arguments will show that the overall costs to stakeholders outweigh the benefits for the same stakeholders, including the nation's would-be lawyers. We sort these criticisms according to who might present them. Critics include law schools, current and recent students, individual employers, and the legal community and society at-large.

1. The Schools

Given what we know about law school administrators' opinions about existing tools,¹⁸³ it is likely that schools will meet any new external attempts to gather information with some resistance or skepticism. This could be due to a variety of reasons. Schools might be concerned about their students' privacy, particularly those who would not otherwise feel comfortable reporting things like salary.¹⁸⁴ Schools may not wish to reveal how deeply in a class certain employers actually hire students for fear of alienating employers who are willing to take a more holistic approach to recruiting.¹⁸⁵ For similar reasons, they might be concerned about who else other than prospectives will have access to the information; competitor law schools could use some candidate components in the same way corporations use the federal Freedom of Information Act to seek records about the competition.¹⁸⁶ They may also worry about the financial costs of complying with additional reporting requirements on top of what the ABA, NALP, and the U.S. News already require.¹⁸⁷ If the requirements are only recommended rather than mandatory, schools will need to weigh the benefits of full disclosure against the competitive harms if they end up being the only school to show where the bottom of the class ends up.¹⁸⁸

¹⁸³ Dean Letter to Prospective Students, *supra* note 32 and accompanying footnote text.

¹⁸⁴ Prospective law students are cynical of these low salary reporting rates, particularly when they result in a school reporting suspiciously high starting salaries. One current student on a public forum recently joked, "great point about law schools being hypocritical in the ethical standards by which they disclose numbers. I will update my resume to reflect the fact that I have a 4.0 GPA with 25% of my professors reporting." Posting of detljgh to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=3&t=105311> (Feb. 1, 2010 10:53 am).

¹⁸⁵ Some firms establish a GPA cut-off for a given school but may then be willing to hire students with lower GPAs who are exceptional candidates for other reasons. Increased public scrutiny may alter employers' incentive to exercise discretion in making hiring decisions, particularly if clients and competitor firms can easily track employee data and information.

¹⁸⁶ David C. Vladeck, *Information Access – Surveying the Current Legal Landscape of Federal Right-to-Know Laws*, 86 TEX. L. REV. 1787-1836 (2008).

¹⁸⁷ The specific collection requirements are available *supra*, Part I.C.1.

¹⁸⁸ As we will see in Part III, this concern begs for more discussion on how to bring about compliance with a new reporting standard. Voluntary reporting would likely gain less support from the law schools than a mandatory change to the rules that also comes with sanctions for those who do not comply.

Additionally, law schools should be rightfully concerned about diverting more of their limited resources away from curriculum offerings or faculty scholarship and into administrative costs.¹⁸⁹

Schools already collect a significant amount of data and information about each graduate, and may be hesitant to expand those efforts. Law schools collect much of their current data through user-friendly online surveys,¹⁹⁰ but many personal attributes require more than filling in a bubble because some attributes would not be self-reported or multiple choice. These components are likely too expensive to incorporate into a standard that publishes information about every individual in a graduating class.¹⁹¹

Schools have spoken out against external measurements of their program, particularly rallying against tools that attempt to collapse different education programs into a single national rank.¹⁹² P's ideal tool, of course, would provide perfect comparisons, adjusted to correct for the complaints schools may raise about comparing apples to oranges. But standardizing her ideal tool may not always do this. It would also permit the uninhibited creation of derivative tools by interested members of the public, many of whom could tailor the results to suit their own needs before making the results of the derivative tool public. This may concern law schools that value

¹⁸⁹ Stewart Sterk, *Information Production and Rent-Seeking in Law School Administration: Rules and Discretion*, 83 B.U.L. Rev. 1141, 1145 (noting that "a law school that pays faculty salaries above market rates may find it increasingly difficult to compete for [prospective] students against other institutions with lower institutional costs. Similarly, an institution that routinely awards all of its students 'A's' may find its graduates spurned on the job market, reducing the institution's attractiveness to applicants.") Note, also, that Sterk assumes information about job placement is actually provided to applicants. *Id.* This concern may also be a cost imposed upon prospective law students, since hikes in administrative costs may very easily translate into hikes in tuition. Implementing a new standard that makes law school more expensive might weigh heavily against implementing that standard, depending of course on the relative gains.

¹⁹⁰ Seattle University School of Law Class of 2009 Survey, http://www.law.seattleu.edu/Careers/Alumni/Class_Survey.xml (last visited Feb 8, 2010).

¹⁹¹ Particularly, hard-to-quantify components like personal attributes and hard-to-collect pre-law school achievements like work experience and foregone opportunities are simply too expensive to collect.

¹⁹² Dean Letter to Prospective Students, *supra* note 32 and accompanying footnote text.

their unique educational models and suffer unfairly from comparisons to programs that are entirely different.

Schools heavily invest in the recruitment of high academic talent, fundraising from alumni and members of the community, and producing scholarship. The level of competition for the most significant information-forcing mechanism on the market, the U.S. News Rankings, is very high; current reporting methods provide incentives to underreport that law school administrators cannot ignore.¹⁹³ It is therefore dangerous to be a first mover if doing so would cause negative public scrutiny, while other programs continue recruiting as if their outcomes or information sharing are sufficient or even better.

Law schools may ultimately split on the issue of increasing transparency about post-graduation outcomes. Law school deans have recently begun calling for schools to acknowledge a moral responsibility to stop misleading prospectives, even going so far as to caution prospectives about attending a law school that does not offer a good return.¹⁹⁴ And at least three law schools have begun publishing spreadsheets that list employer name and city for nearly every graduate in a class.¹⁹⁵ This is certainly a step in the right direction. But it remains to be seen whether more schools jump on board and voluntarily release more information because

¹⁹³ Professor Henderson and Professor Morriss document the various ways schools underreport information in order to achieve a higher U.S. News rank. Morriss, *supra* note 26, at 815. Most glaring is the decision of nearly fifty lower-tiered law schools to refuse to disclose the number of students employed at graduation in 2006 because under the U.S. News methodology their scores fared better that had they opted to disclose. *Id.*

¹⁹⁴ David Lat, *Changes in Legal Education: Some Thoughts from Dean David Van Zandt*, ABOVE THE LAW, Feb. 3, 2010, <http://abovethelaw.com/2010/02/changes-in-legal-education-some-thoughts-from-dean-david-van-zandt/> (summarizing remarks from Northwestern Law School's Dean who determined that the break-even point for attending law school at full tuition is a median starting salary of \$65,000, below which schools should reduce tuition or improve job opportunities); Debrah Cassens Weiss, *Law Dean Says Schools 'Exploiting' Students Who Don't Succeed*, ABA JOURNAL, Jan. 20, 2009, http://www.abajournal.com/news/article/law_dean_says_schools_exploiting_students_who_dont_succeed/ (quoting New York Law School's Dean who called for law schools to improve outcomes for students or else shut down out of moral responsibility).

¹⁹⁵ *Supra* note 134 and accompanying text.

each law school is ultimately responsible to their own batch of current students and alumni. Public choice theory suggests that schools will not participate in bringing a new standard to market if their own self-interest is better served by refusal.¹⁹⁶ Within each administration, rent-seeking may cause varying levels of accuracy as different schools allocate different amounts of money into compliance costs.¹⁹⁷ Even assuming we achieve full compliance from all schools, we must still worry about ways in which administrations may game the reporting requirements.¹⁹⁸

Even if the collection costs are negligible, some schools may still oppose a tool that focuses solely on the entry-level job market. Many schools do not report the percent of the class employed at graduation because significant portions of the class do not find jobs until after passing the bar exam.¹⁹⁹ Schools with a less-developed early interview program that rely on this delayed hiring model may lose out. However, this does not infringe on the need for prospectives to have more information about entry-level employment. Payments on most loans start six months after graduation.²⁰⁰ Schools who strongly believe their best employment outcomes are further afield should convey that to prospectives, particularly because the only employment statistics a law school must report to maintain its ABA accreditation are entry-level employment and bar passage rate.²⁰¹

Despite some intrusion, a standard based on P's ideal tool would also provide a service to law schools. By keeping track of alumni from other law schools and identifying the successful

¹⁹⁶ See Sterk, *supra* note 189, at 1160.

¹⁹⁷ *Id.* at 1160 (showing how lobbying efforts aimed at law school administrations – which compete for the best prospective students while facing pressures to allocate limited resources among other interest groups like faculty and current students – compare to traditional special interest lobbyists that target government agencies).

¹⁹⁸ This already occurs with current reporting requirements, whether imposed by the regulatory power of the ABA's accreditation arm or by the market power wielded by the U.S. News. *Supra* note 193.

¹⁹⁹ Class of 2008 National Summary Report, *supra* note 8.

²⁰⁰ Federal Stafford Loan Plain Language Disclosure,

<http://www.ifap.ed.gov/dpcletters/attachments/FP0904StaffordPLDHEOA032709.doc>.

²⁰¹ ABA Questionnaire, *supra* note 41, at 3-6.

ones, schools could continue evolving their admissions criteria in lieu of the information provided to P by her ideal tool.²⁰² This might even shift the strong tendency of schools away from emphasizing LSAT and undergraduate GPA in the admissions process towards other criteria.²⁰³ We think schools would consider this a good thing, particularly if it would serve to detach a school's reputation from its U.S. News rank.

2. The Students

The overarching concern among students²⁰⁴ would be the potentially serious ramifications of having personal, identifiable information open for public study (and available years later). P's ideal tool would include all graduates, regardless of whether they were successful in the hunt for their first job after law school because she seeks perfect information. Given the importance of social status and stigma among the legal community, and the seemingly permanent nature of information stored online, it is important not to unfairly associate individuals with failure before their careers even begin. P may benefit now from learning intimate details about current students at the law schools she considers, but she may see things differently in a few years when it is her time to be a subject of case studies. With additional detail may come additional embarrassment: listing everyone's occupation and further labeling them when they do not require a JD may shame some individuals that could have been avoided had they simply been listed as employed in Business or Academia.²⁰⁵

Some students – likely those who are outside of the top performers – may eventually benefit from the ideal tool. By not hiding some students in aggregate employment statistics, the

²⁰² Schools would not need this information to be public, however.

²⁰³ Law School Numbers, Washington University 2008 – 2009 Admissions Outcomes, <http://washu.lawschoolnumbers.com/stats/0809/>.

²⁰⁴ This includes any student – prospective, current, graduated – whose data and information would flow into the public domain with P's ideal tool.

²⁰⁵ Then again, even less embarrassment follows from schools revealing no distinguishing information about anyone.

ideal tool would incentivize law schools to do more than just find students any job for the purposes of marking them as employed. Schools might come up with new ideas on how to best secure employment as a result of greater information-sharing between schools. Additionally, law school graduates must find ways to pay off their loans. Having to report components of the ideal tool might incentivize schools to increase efforts to help struggling graduates find work that credibly illustrates the worth of a law degree.

3. The Employers

Some employers may dislike certain candidate components, particularly employers who do not want prospectives to know what they are getting themselves into for fear that the truth may scare away too much talent. This may decrease demand for prestigious legal jobs, like high-salaried and time-intensive work at elite law firms. Of course, the reality might be that better-informed prospectives outweigh the decreased demand. Students may end up more attractive to employers because, before and during law school, they can further sharpen the skills that employers desire. And if greater information about salary information leads to better debt preparedness, and fewer law school graduates are saddled with six figures in debt, they might find employees who want to be there, rather than only working there for the six-figure salary.²⁰⁶

Employers may also resist increased information access if it significantly deterred individuals who would otherwise attend law school from attending at all. If employment information ceased to reveal only the top performers and instead described all graduates with equal clarity, fewer prospectives may choose to gamble on a legal career. There may be a fear that too much transparency regarding the undesirable employment outcomes – which were safely

²⁰⁶ At least one academic argues that demand for these jobs would decrease if fewer students were graduating with significantly less debt loads. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 898 (1999).

hidden until the ideal tool came along – will discourage people with high potential from pursuing legal careers. After all, the model of law as a meritocratic profession dictates that some who attempt it will fail. Even when the legal community is saturated, the legal profession should still want large numbers of people competing within the law schools to produce the best-trained minds for entry into the legal community.

Some employers may desire the same privacy as some individuals, demanding that information about their hiring practices or work environment remain confidential. For example, public salaries may upset clients or harm morale in the office.²⁰⁷ The risk is retaliation by employers against the law schools, refusing to hire from schools that facilitate increased disclosure. In this regard even minimum information about certain inputs like the GPAs of new hires may be too intrusive to some employers. A standard that pits employers against law schools by over-disclosing information would fizzle or die fairly quickly because schools will not undermine opportunities for students.²⁰⁸

4. The Rest

Schools and employers are the obvious stakeholders who might object to many candidate components. But what about the legal community and society at-large? Besides criticisms from individual employers, alumni of a particular school who have set up so-called “feeder programs” into their firms might object strongly to components that reveal the GPA or class rank of the

²⁰⁷ E.g., Elie Mystal, *Salary Cut Watch: Gardere Wynne Cuts Salaries that ‘Just Do Not Make Sense’*, ABOVE THE LAW, May 6, 2009, <http://abovethelaw.com/2009/05/salary-cut-watch-gardere-wynne-cuts-salaries-that-just-do-not-make-sense/> (“Many clients, both ours and those of other law firms, have been upset with these salary levels and as a result have asked law firms to not use first or even second-year lawyers on their matters.”). However, it is worth pointing out that many law firms already disclose to NALP first-year salaries. NALP Directory, *supra* note 152.

²⁰⁸ This seems true on a larger level, while it is not clear on a school-by-school and firm-by-firm basis. For example, Harvard threatened to ban Sullivan & Cromwell LLP from OCI if they did not comply with the NALP rules. Zach Lowe, *S&C vs. Harvard and the Relevance of NALP’s 45-Day Rule*, THE AM LAW DAILY, Sept. 18, 2009, <http://amlawdaily.typepad.com/amlawdaily/2009/09/sc-vs-harvard-and-the-relevance-of-the-45day-rule.html>.

students they consistently hire, particularly when those metrics are lower than the advertised hiring standards. Some may object to increased transparency because it may reveal a systemic pattern of employers hiring less-qualified candidates solely because of diversity considerations. What if nepotism plays a larger role in employment outcomes than academic achievement – would the revelation that law is an aristocracy rather than a meritocracy sit well with a country founded on ideals? To put it another way, is the truth behind how people get where they are too ugly for us to in good faith make visible to anyone who wants to see it? Some things may be best left behind closed doors.

If one accepts the proposition that there are too many lawyers in our society, then increased transparency may further harm society if it somehow increased demand for JDs or encouraged more law schools to open their doors. Conversely, if the effect of additional transparency decreases the demand for legal education and some law schools eventually close, the decrease could harm the subsets of the population that are reputedly underserved by legal services (e.g. indigents, immigrants, or the poor). No matter what one's personal opinions may be about the inequality or saturation of the legal market, any major change to how lawyers are educated needs to be viewed in light of how it may impact the people who depend on lawyers' services.

D. Identifying the Problem Is Not Enough

In this Part, we identified candidate components and potential criticisms of standardizing the reporting of these components across all law schools. This effort is by no means the end of discussion. For many of the objections stakeholders might raise to certain components, the only solution is to reach a compromise that offers less information than what standardizing P's ideal tool would offer. Much of our discussion has so far ignored the practical limitations of

introducing a new standard to the market, namely cost, feasibility, and fairness. Some schools, individuals, and employers may simply refuse to participate, leaving gaps in the data and information that could harm its overall usefulness.²⁰⁹ How can such a change come about? Part III offers one answer to this question.

III. A Way Forward

In Part II, we identified components that a new standard of employment reporting may include by considering what P would include in her ideal tool. This Part discusses the effect of stakeholder criticisms on building a new standard and bringing a tool to market that improves the information available to prospectives. We believe that a successful information-forcing device will change things for the better. Competition among law schools, as with any industry, will ultimately benefit from public scrutiny into the services they offer. Sunlight, as one former Supreme has said, is the best disinfectant.²¹⁰ Justice Brandeis was referring to the need for bank disclosure almost 100 years ago; it is finally time for American law schools to follow suit.²¹¹

Despite the novelty of our proposal, calls for transparency in the legal education industry are not new. In 1992, the MacCrate Report recommended a joint effort between the Section of Legal Education and Admissions to the Bar (the ABA’s accreditation team), the Law School Admission Council, and the Association of American Law Schools.²¹² According to the report, the aforementioned entities should “seek to assure that prospective law students who are selecting a law school can obtain information about all law schools relating to . . . graduation

²⁰⁹ Beyond the short-term information provided by post graduation outcomes, long-term studies may eventually be needed to shed light beyond the entry-level market. Wilkins, *supra* note 172, calls for continued study of the norms, institutions, and practices of lawyers.

²¹⁰ BRANDEIS, *supra* note 6, at p. 91. As a complete aside, J. Brandeis is not the only Supreme to have addressed the issue of sunlight. See THE SUPREMES, LET THE SUN SHINE IN (Motown Records 1969).

²¹¹ *Id.* at 103 (arguing by analogy that “[t]he Federal Pure Food Law does not guarantee quality or prices; but it helps the buyer to judge of quality by requiring disclosure of ingredients.”)

²¹² MacCrate Report, *supra* note 26, at p. 328-30.

statistics . . . [as well as] placement and bar passage statistics.”²¹³ While on the surface it may appear that simply reporting bar passage rates and percent employed statistics (the standard currently required by the ABA and U.S. News) fulfill the MacCrate Report’s vision, a closer inspection shows that reporting these statistics only scratch the surface. One of the MacCrate Report’s major conclusions is directly relevant and worth reiterating here:

The decision to pursue a career in the law should be a considered choice reached with a full awareness of its implications . . . There are three critical stages of decision-making en route to becoming a lawyer: 1) Perhaps the most significant, whether to enter the legal profession at all; 2) which law school to choose; and 3) what career path to enter after law school. Each occasion should be a time for careful reflection and self-assessment based upon sufficient information to make an informed choice . . . *Timely and accurate information about the legal profession and the function of law schools as the gateway to the profession helps prepare prospective applicants for a future in law and may help prevent some from becoming locked into a career from which they draw no real satisfaction, for which they are poorly suited and in which they perform marginally.* Such individuals need access to comprehensive and objective information . . . *Prospective law students generally are not knowledgeable about the profession: what certain jobs entail; what different paths for entry into the profession may be; how students should prepare for their careers; and how law schools may differ in the preparation they offer.* Law students tend to be passive consumers of legal education: they simply assume that the law school experience adequately prepares them for practice.²¹⁴

It is arguable whether this statement applies directly to post-graduation outcomes, but their conclusion is clear; prospectives were uninformed about the legal profession, and access to both current and accurate information may protect some consumers from making a bad decision.²¹⁵ The MacCrate Report’s observations square well with Brandeis’ goal of improving transparency. Consumer protection is advisable whenever the potential for suppliers to mislead or defraud their consumers is present.²¹⁶

²¹³ *Id.* at 329.

²¹⁴ *Id.* at 225-228 (emphasis added).

²¹⁵ *Id.*

²¹⁶ BRANDEIS, *supra* note 6, at p. 92.

Other reasons for pursuing a new standard serve a more equitable purpose. Professor Morriss and Professor Henderson argue that schools do not have a right to continue misleading prospective students – a sentiment that law school administrators frustrated with their inability to change the accepted (and sometimes deceptive) practices occasionally echo.²¹⁷ Correcting information asymmetry between what the law schools know about their place in the job market and what prospectives think they know will eventually lead to better decision-making, more satisfied consumers of law degrees, and ultimately more efficient law schools.²¹⁸

But absent regulatory intervention by the Department of Education or ABA, what sort of consumer rights reform is achievable in today's competitive market for prospective law students? Who is capable of either enforcing or encouraging a new, transparent standard? And who can implement the standard efficiently? Recognizing the time-sensitive nature of the issue, how quickly can we implement such reform so that law schools can avoid validating allegations by the media and disenfranchised young lawyers that they are intentionally misleading tens of thousands of new recruits each year into assuming incredible levels of debt? None of these questions can be answered without balancing the interests of all involved. It is our hope that we can steer discussion away from its current trend of scapegoating and instead establish a more meaningful dialogue on how to improve both access to information and the ability of American law schools to train and place our country's future lawyers, judges, and political leaders.²¹⁹

²¹⁷ Morriss, *supra* note 22, at 833; Weiss *supra* note 194.

²¹⁸ Morriss, *supra* note 22 at 831 (“In fact, some law schools may find that the disclosure of detailed placement data may enable them to move more effectively toward a long-term niche strategy.”).

²¹⁹ For the thoughts of an Ohio practitioner on the need for change, see Jason M. Dolin, *Law Schools: A Time to Discourage, A Time to Disclose*, COLUMBUS, OHIO BAR ASS'N NEWSLETTER, May 2009, <http://fla-lap.org/wp-content/uploads/2009/08/Ohio-Bar-Assoc-Article-7-09.htm>.

A. Law School Transparency

We argue that a nongovernmental organization can successfully establish a new employment standard by creating a new post-graduation tool. To do this, Law School Transparency will follow five major operating principles.²²⁰ First, LST's new standard will balance all stakeholder interests, rather than focusing only on the interests of prospective law students. The components of this standard flow from our discussion in Part II. We undertake to eliminate components that unfairly infringe on stakeholder interests. Second, LST will freely provide all data and information on a website in an accessible form. The form will permit unrestricted use for everybody, including those wishing to develop derivative tools. Third, LST will incentivize law school cooperation with a certification mark that schools can use to certify that the data they provide meets the standards set by LST. Fourth, LST will facilitate and encourage participation by prospectives, current students, and recent graduates in order to provide for an ongoing public audit of the school-provided information to further encourage compliance and focus public scrutiny on reporting abnormalities. Fifth, LST will open a public dialogue between prospectives, law school administrators, and the general public to assist in a growing, collective effort to improve knowledge about the legal profession and the type of preparation prospectives should engage in prior to making the decision to start a legal career.

²²⁰ The components such a tool would include will likely depend on the authority and market power of the enabling mechanism. The ABA is a regulatory organization that accredits schools based on certain standards. Should the ABA determine the current standard is unsatisfactory, they could simply demand more or less transparency, regardless of school objections. In the alternative, some schools could band together because they might see greater disclosure as a way to gain a competitive advantage in the market for prospectives. This could create a race to the top with fluctuating levels of transparency. We take the ABA's inaction on the issue and law school competition as indication that these two enabling mechanisms are an unlikely source of improvement, at least for now.

B. Why Law Schools?

The first question we must ask is who is going to be responsible for collecting the data and information about each graduate. Compromise is the goal of the new standard, taking into consideration the complex relationships of all stakeholders. P's ideal tool would seamlessly gather all information, but in reality someone must put in the time to track down each of the 44,000 or so individuals who graduate from ABA-approved law schools each year.²²¹ Our optimized tool aims to describe the outputs from each school, showing where the graduates go every year and how much value they received from their degree.

The responsibility should fall to the schools given that they are in the best position to collect and distribute data and information about where their students go.²²² To reduce compliance costs, our standard requests data about every graduate, as of nine months from spring graduation, from a particular period (such as the graduating Class of 2010). This aligns our deadline and period with the ABA, NALP, and U.S. News requirements (February 15th of each year).²²³

C. The LST Standard

What data should schools actually provide? This is where the need for compromise reveals itself. The most serious handicap of the current standard revealed by our analysis of existing tools in Part I is that it allows outcomes to be hidden in aggregate statistical forms. The most important qualities of the new standard will ensure that it doesn't. The new standard envelops all graduates, includes at least some data about every individual, and is the same across

²²¹ Class of 2008 National Summary Report, *supra* note 8, at 1.

²²² *See supra* Part I.C.1.

²²³ *Id.*

law schools to permit comparisons. Compromise on these qualities is unacceptable, while compromise on which components to include is necessary.

One major criticism raised in Part II is that some components infringe on stakeholder privacy, particularly the individual graduates. Any time one describes facets of a thing, the possibility of identifying that thing enters into the equation. The more identifying facets, identification becomes more probable. Eliminating a name from individual's data obfuscates identity a bit, but given that the goal is to reveal some greater level of information than what is currently available, the LST standard does not completely alleviate the privacy concerns.

To successfully implement a new standard, the components chosen ultimately require a policy determination as to where the balance lies between individual privacy concerns and open access to information. We believe the balance is struck best by requiring two separate lists of anonymous graduates from every law school. While some schools may be comfortable associating names and certain components, we do not think most schools would comply, nor do we think current and future students would support this affront to privacy. However, prospectives could easily ask the school for a name, and we expect a school would cede the request on a case-by-case basis. For the graduates this would be no different from what already occurs across law schools nation-wide.

The first list's components will include a single row for each graduate, tying together seven possible components per row. The second list's components will do the same, but will only include four possible components. This list will be independent from the first list.²²⁴ The components are:

Job List

²²⁴ We will explain the decision to use two independent lists when we explain the Salary List, *infra* Part III.C.8 – 11.

1. Employer Type
2. Employer Name
3. Position Name
4. Bar Passage Required, Preferred, or Neither
5. Full-Time / Part-Time
6. Office Location (City, State, Country)
7. Journal Status

Salary List

8. Employer Type
9. Office Location (City, State, Country)
10. Full-Time / Part-Time
11. Salary

Of the eight unique components, schools already collect six directly from students to report to NALP.²²⁵ For position name, schools can satisfactorily describe many graduates by examining the graduates' answers to the NALP survey.²²⁶ Journal status, on the other hand, will require entirely new efforts by law schools. Overall, this amounts to piggybacking on the NALP collection efforts to reduce compliance costs enough that schools cannot credibly complain that compliance, on balance, is untenable.

1. Employer Type (Job List)

This component grounds our relationship to the ABA, U.S. News, and NALP standards. As such, it tracks the ABA standard to facilitate analysis of the reported data.²²⁷ If the graduate is unemployed according to the ABA standard, the school should report this value as

²²⁵ Employer Type, Office Location, Employer Name, Bar Passage Required/Preferred/Neither, Full-time/part-time, and salary. *Supra* Part I.C.1.c.

²²⁶ 2009 Graduate Survey and Instructions, *supra* note 62.

²²⁷ Recall that the U.S. News and NALP standard use the same language for employment type as the ABA standard. *Supra* Part I.C.1.b – c. We use “employer type” rather than “employment type” because it better describes the underlying content.

“unemployed.” Like the ABA, we do not distinguish between mental states as it relates to unemployment. Additionally, this component should say “pursuing graduate degree” or “unknown” if the graduate counts as such under the ABA standard. If the graduate is unemployed, pursuing a graduate degree, or unknown the school should not report the rest of the components. If a school wants to supplement the lists with an explanation for a particularly high unemployment or unknown rate, we encourage them to do so fairly and transparently. As shown in Part I, the ABA categories do not group like-jobs.²²⁸ This limitation requires some calibration.

2. Employer Name (Job List)

This component is the first crucial step to ensuring that current and prospective students secure employment commensurate with their expectations prior to enrolling or seeking employment. By including the names of each employer, students can research actual outcomes through firm websites and opt-in professional listings like Martindale and Linked-In, allowing them to understand various aspects of the legal profession, especially the entry-level legal market.²²⁹ Taken together, a full or near-full list of entry-level employers can illustrate that the legal profession is much more than biglaw. Prospectives then do not have to rely on how schools frame their graduates; they can see for themselves where graduates selected to work. Over time, this picture will broaden the perceptions of the entry-level legal marketplace. Such a picture can help prospectives observe the enormous cross-section of legal employers who collectively employ tens of thousands of recent graduates each year. This is often lost on prospectives

²²⁸ *Supra* Part I.C.2.b.

²²⁹ Some employers might not want their names associated with certain law schools, but we do not expect them to make up a significant portion of the overall legal employer market.

students, current students, and even recent graduates.²³⁰ In our view, this is an appropriate service to the legal profession.

3. Position Name (Job List)

This component is the second crucial step to ensuring that current and prospective students secure employment commensurate with their expectations. Including the name of the job has become increasingly important as legal employers shift their business models; not everyone who obtains a job with a law firm after graduation is an associate, let alone an attorney. Even more troubling, the employer name does not necessarily indicate how a graduate uses his J.D. For example, a Google employee may be general counsel or software engineer. Position name will give prospectives the opportunity to see, at least facially, how a graduate uses his J.D.

4. Bar Passage Required, Preferred, or Neither (Job List)

Given that this Article is about helping prospectives ascertain the value of a law degree so as to make an informed decision, it should come as no surprise that the new standard requires data about whether a graduate had to be admitted to practice law.²³¹ Even position name, particularly those that prefer rather than require bar passage, can be ambiguous. Who knows whether “Policy Analyst” requires legal competency? Schools that place graduates into policy positions like this may even benefit from explaining data typically not highlighted by attempts to inform prospectives. Many law schools already extol the virtues of how a law degree provides graduates opportunities in all aspects of society; this component proves it by identifying the graduates who choose to pursue unique career trajectories that many prospectives never considered possible with a law degree. Along with the other components, it will also help

²³⁰ We do not pretend that we are not included among this group. We know there is more out there than we can describe, but we cannot do the content of this fuzzy image justice.

²³¹ As reported to NALP, following the NALP guidelines.

prospectives – once the standard has been around for a while – determine which schools have established alumni networks in other fields.

5. Full-Time / Part-Time (Job List)

As with bar passage requirements, the designation of post-graduation outcomes as either full-time or part-time²³² explains something that the current tools often miss. Knowing whether a position is part-time tells a prospective more about the entry-level job market than they might otherwise assume. This component also better explains positions with nonprofit organizations, an increasingly appealing career path given the recent loan forgiveness plan established by Congress in 2007.²³³

6. Office Location (City, State, Country) (Job List)

The office location component answers one of the most basic questions prospectives ask: where do graduates work? It exceeds the current standard by narrowing the job's location to the city level. Many schools offer a breakdown of where their graduates go, but seldom do they go much further than describing the region or state. This component allows prospectives to see with greater clarity just how many graduates work in different markets, illustrating a school's network or over/under-abundance in certain locations. Martindale and LinkedIn serve students and graduates in this way already, but on a less systematic basis. Additionally, office location provides information about employer hiring when an employer has multiple offices with different hiring standards. Technically, these are the only employers we need this data point for because a simple web search of the employer name will return the location. In the interest of

²³² As reported to NALP, following the NALP guidelines.

²³³ Loan Forgiveness, <http://www.nasfaa.org/publications/2007/Inpublic101507.html> (last visited Apr. 6, 2010).

efficiency, it makes sense for schools to assume this responsibility for single-office employers too.

Prospectives and graduates are not the only groups benefitting from this component. Currently, schools face an uphill battle against the U.S. News rankings insofar that prospectives often choose between schools based on minor ranking differences. This component specifically, and the Job List generally, will help focus prospectives on school niches by signaling patterns underscored by schools connected to local employers. Schools can then focus on further carving out niches, be it by location or field specialties, once prospectives more readily understand the niches of various schools. Hopefully prospectives will no longer choose the 60th ranked school over the 96th ranked school because of perceived ranking value, when what matters is that the school is the best possible fit.

7. Journal Status (Job List)

Employment outcomes vary within law schools due grading curves and other input components. While including these components would surely be useful to prospectives, we leave almost every input off the Job List.²³⁴ However, we do include journal status because it does not affect stakeholders as other sorting mechanisms do. Law firms rarely include an associate's class rank or GPA in attorney biographies, but journal status is a common bullet point. This does not mean it is more important, but that GPA is a private matter that outweighs mandatory GPA-disclosure for the benefit of prospectives. Prospectives cannot and should not know certain things. We do not seek to undermine schools' competitive advantages where they can get away with it; nor do we seek to influence hiring practices at law firms. Journal status, however, appears to be uniformly public on school websites, easily accessible and measurable to law

²³⁴ More on this *infra* Part III.D.

schools, and somewhat important for hiring at certain jobs. The Job List does not require the journal name. It simply requires that schools designate whether the graduate was on a primary journal, secondary journal, or no journal. While multiple journals could qualify as secondary, each school will only be able to count one journal as the primary journal.

8. Office Location (City, State, Country) (Salary List)

9. Employer Type (Salary List)

10. Full-Time / Part-Time (Salary List)

11. Salary (Salary List)

To be sure, the Salary List is the product of particularly reluctant compromise. We strongly considered a solution that ties specific salaries to the Job List components (i.e. including the salary component on the Job List). The benefits to prospectives would be immense, but schools may credibly claim that this amounts to a violation of graduates' privacy and risks school-employer relationships. While it does seem that discussing salary is less taboo than it once was, some will consider salary a private matter. For those salaries the NALP Directory lists, this is not much of a consideration. However, for the sizeable percentage of employers who do not openly share starting salaries, we expect schools to claim that sharing this data would jeopardize relationships with employers.²³⁵

Rather than biting the bullet with these criticisms as collateral damage, we want to push the standard as far as we can without running into similarly credible and useful criticisms, while still enabling prospectives to make informed decisions. Of all the components, including salary information may be the most important. The problem prospectives face is largely a financial one; tuition is high, debt is high, and expected starting salaries are murky at best. Salary must come

²³⁵ Associating jobs with salaries may also cause some graduates to stop reporting. This would reduce the quality of salary information already available and hurt NALP's studies of the legal profession as a whole.

into play in some fashion, but we must also consider the legitimate privacy concerns of individual students and smaller employers who do not already publicize starting salaries through NALP registration or other methods. Although salary is a necessary component in calculating risk and determining appropriate debt loads, it is less clear that each salary must be tied in with other identifiable information. In other words, P may be adequately informed with a list of all starting salaries without knowing that an individual graduate made \$65,000 at Law Firm Z to make an informed decision.

Repackaging the current standard for wide scale use is a helpful start in our task of fairly pushing the Salary List as far as we can:

	Salary/Range	Employment Category
Graduate #12	≥ \$145,000	Private Sector
Graduate #5	≥ \$145,000	Private Sector
Graduate #13	≥ \$145,000	Private Sector
Graduate #1	\$145,000	Private Sector
Graduate #3	\$110,000 - \$145,000	Private Sector
Graduate #11	\$110,000 - \$145,000	Private Sector
Graduate #6	\$110,000 - \$145,000	Private Sector
Graduate #8	\$110,000	Private Sector
Graduate #4	\$75,000 - \$110,000	Private Sector
Graduate #9	\$75,000 - \$110,000	Private Sector
Graduate #2	\$75,000 - \$110,000	Private Sector
Graduate #15	\$75,000	Private Sector
Graduate #10	≤ \$75,000	Private Sector
Graduate #14	≤ \$75,000	Private Sector
Graduate #7	≤ \$75,000	Private Sector
Graduate #16	Unreported	Private Sector

	
Graduate #30	Unreported	Private Sector
Graduate #31	Unreported	Academia
	
Graduate #60	Unreported	Public Interest

The above example merely contextualizes what we already know from the U.S. News summaries. We build this list by taking school X's total graduates (60), percentage employed in the private sector (50%), and percentage reporting salary in the private sector (50%) to deduce the salary ranges based on salary quartiles [\$75,000 (25th), \$110,000 (50th), and \$145,000 (75th)]. It makes it more difficult to overlook the "50% reporting" limitation. This presentation tells prospectives what they should already know in a different way while providing no more personally identifiable data than before we unfolded the salary information. The goal, accordingly, is to improve incrementally this basic list while limiting the impact of the weighty objections that make including salary on the Job List difficult.

More specific salary figures are a good place to start because they allow for more precise expected value calculations. Listing Graduate #12 as "\$160,000" instead of listing it as " \geq \$145,000" provides a better picture without pulling hard on the stakeholder objections. We already know that at least four graduates make \$145,000 or more. Graduates and employers should not care that these numbers are more precise. Schools, on the other hand, may be more worried about this new salary reporting form, fearing that it will unnecessarily drum up controversy over the percentage of the class represented by the U.S. News salary quartiles. As reported to U.S. News by 89.9% of schools, the median percentage of the class represented by the salary quartiles was 40.5%. The 25th percentile was 31.3%; the 75th percentile was 54.0%;

the average percentage of the class represented was 42.3%. These percentages seem low and it is easy to jump to conclusions about what low turnout means for the rest of the class.

The appropriate question to ask whenever less than 100% report salaries is whether the salaries are representative of the class as a whole. Schools struggle with non-reporting graduates, even when they try hard to account for their outcomes, and are also concerned with self-selection.²³⁶ If a school believes the salary quartiles accurately represent all graduates, then it follows that pointing out that the percentage is low unnecessarily dims reality. The whole point of the Salary List is to track reality. If the salary quartiles are representative of the graduating class as a whole, the list works against this goal. As it stands, we do not believe many schools can credibly claim the salary quartiles represent. It will only harm schools with low reporting percentages that happen to track reality well. If the list looks worse than they believe it should, schools should explain why the data and information do not accurately depict post-graduation salaries. That is, schools should explain why their belief in a more positive reality is justified. After all, who knows better than the schools how their graduates fare and who better to explain why they believe what they believe?

This particular school-based worry demonstrates the importance of the next three components because full-time/part-time, employer type, and office location provide context to otherwise elusive numbers. 4.5% of employed 2007 graduates worked part-time as their primary job. While this percentage is not very large, associating salary data with this status would shed light for those who seek a J.D. to work part-time, something that the NALP reports do not currently do.

²³⁶ This “self-selection” argument attempts to explain the available salary and placement information. Post-graduation *outcomes* do not indicate post-graduation *options*. In the salary debate, this comes up whenever graduates opt to accept jobs in smaller cities where starting salaries are much lower. Essentially the argument aims to show that graduates could have had higher paying jobs, but chose other jobs for some reason.

Additionally, drilling down the employer type category from the basic list is not invasive because the categories are sufficiently large. The 25th percentile for percentage in business (one part of the ‘private sector’) is 9%, while it is 47.2% for law firms (the other part of the ‘private sector’). For government and clerkship jobs, this information is publicly accessible with open access laws. The worry is more for academia and public interest. However, if the hiring school is public, some of the salaries will be accessible through the same open access laws. Similarly, if the public interest group or private school incorporated as a non-profit, some salaries may be available on the employer’s Form 990. The underlying assumption here is that if the data is accessible to the public, it does not go too far.

Including the office location component serves an even larger function by facilitating cross-regional comparisons. For example, P might want to know who is better financially better off among graduates of two schools that predominately place their graduates in different regions. If P only knows the salary, P will not know how far each dollar will get her without knowing what kind of cost of living adjustment to apply. Because cost of living adjustments vary within regions and even states, honing in on the city will provide the best vehicle of comparison. Knowing where each graduate works with some degree of specificity is necessary to determine the relative financial burden P will face. A \$40,000 job in Brownsville makes it much easier to pay off loans than a job with an equal salary in Houston.²³⁷ Cost of living and quality of life indices often help shape the personal choice about where to live, particularly for an ever- mobile citizenry. This will benefit many schools handicapped by regional market pay bases by allowing

²³⁷ We compare Brownsville cost of living to Houston rather than an obviously more expensive city like New York because both cities are in the same state and “region” according to the ABA questionnaire, NALP survey, and U.S. News survey.

them to show why their degrees are of special value to their graduates, despite the appearance that their graduates suffer by working only in certain regions, states, or cities.

Again, introducing new components must be done in light of the privacy concern that combining more components increases the ability to identify individuals and employers with salaries in a way that disincentivizes school compliance. Adding the full-time/part-time will surely reveal the salaries of a few employers, albeit indirectly, because so few graduates work part-time. Similarly, adding office location and drilling down the ABA employment category will do the same, though on a larger scale. But many schools place their graduates in concentrated locations, so we do not think this worry is too weighty as some compromise on the salary issue must be made. Salary data is simply too important and lacks requisite meaning without context.

D. The Standard's Place in P's Journey

So what happened to all the other components mentioned in the ideal tool? These two lists wipe out much of the detailed information that P wants to use to decide where to go. Gone are all the juicy details about each graduate's looks, family connections, grades, race, and undergraduate institution that may have played a part in the hiring process. Gone are all of the components describing the actual options available for each graduate.

Of all of these missing components, GPA is probably of greatest interest to prospective law students. So why leave it out? The curt answer is that P must give some stuff up in the real world. As we touched on in Part III.C.7, we do not seek to dictate employer-hiring practices or school competitive advantages for matching students and employers. Other input components would be too difficult or too costly to gather. Some might be unpalatable even if the funds did magically appear to collect and measure the components on a wide scale basis. Having a team of

trained eyes rate the physical appearance of law school graduates, while juicy, is probably not in everyone's interest.²³⁸ Some of the candidate components may also require special approval from individuals, particularly where the requested information goes beyond the scope of information currently collected by NALP, the ABA, or U.S. News. Others, frankly, just are not important enough to our core goal to include because we fear that going too far jeopardizes our chance to compel schools to adopt the LST Standard.

In the end, we include the Part III.C components because they achieve an adequate level of information without placing too great of a burden on the stakeholders, and without requiring significant additional costs for law schools to gather and submit the information. Some components will still raise the ire of the stakeholders. Employers may not want to have their names associated with certain law schools; law schools who have large graduating classes may not want to track down the starting salaries for every graduate; and not every graduate will want their job title publicized, particularly if the list format only takes a February 15th snapshot. But taken together, each of these components help explain the post-graduation outcome of every graduate. Of course some people will be upset. Some will think we went too far. Others will think we did not go far enough. Recognizing a problem requires that we look into fixing the problem; so that is what we have done. When P tries to make an informed decision, it is in the legal profession's interest that she can do so if the costs are not too high.

This standard corrects for top-performer overrepresentation by requiring data on every single graduate. The lists aims to show a picture of post-graduation outcomes that prospectives can actually rely on for their decision-making. It shows what graduates do to a certain extent, but

²³⁸ We do not suggest that there is no value in conducting studies to reveal biases in how legal employers select graduates from the nation's law schools.

enables prospectives to research particular job features further because the list includes the employer name, office location, position name, and bar passage requirements. In the same way, it resolves the ambiguity of the ABA employment type categories, while simultaneously grounding the new data with the ABA information. On the other hand, it does not do a good job of carving up graduating classes by credentials. It will certainly allow it, as it is common knowledge in law schools what jobs people at the top of the class seek. Although journal status certainly helps, the standard does not make it easy. Yet this decision will ultimately make implementation easier, so we believe it is the right decision to make.

E. Implementing the New Standard

Implementing the new standard requires law school cooperation. Under the LST standard, schools will provide the data and bear risk with increased transparency. Schools accordingly need some sort of incentive to participate. This incentive can come internally from faculty, administrators, and students, or externally from prospectives, alumni, university trustees, the legal community, and the media. We hope that this Article engages some of these people, motivating them to ask law school decision-makers difficult questions.

Incentives for schools to comply with a new, non-compulsory standard may come in many forms. Maintaining the current standard may invoke guilt, empathy, sympathy, and moral imperative to facilitate change. Where these fuzzy feelings do not sway decision-makers to comply, they need to feel like they stand to either gain or lose. Faculty dissonance, waning alumni donations or university-wide budget allocations, and negative press may cause decision-makers to think twice about declining to cooperate because happy faculty and money are two

elements without which a school does not want to operate.²³⁹ Some schools will likely see increased transparency as a way to benefit prospective recruitment.²⁴⁰ When a prospective chooses between an LST-compliant school and non-compliant school, that person may select away from the school that does not meet the LST standard, especially when the current tools are particularly unhelpful.²⁴¹ So why have schools not tried a self-started, heightened standard already? The reality is that they have.

In fact, it is because of prior behavior that we think a first-mover problem is not as concerning as it could be. Adoption faces a first-mover problem despite reasonable incentives to adopt the standard. Events over the last few years leave us less concerned than one may expect for such an enormous shift. In March 2008, Vanderbilt shared an employment list with admitted students because we informed the admissions office that there was wrong information on TLS.²⁴² We then published this list online; about one week later Duke shared their employment list.²⁴³ While neither list qualifies under the LST standard, neither is far from compliance.²⁴⁴ Chicago has since published a similar list for the Class of 2009, although access was initially limited only to alumni.²⁴⁵ While the Chicago, Duke, and Vanderbilt lists are great steps in the right direction,

²³⁹ Many law schools cover a portion of operating costs with endowments supported by alumni donations. Karen Sloan, *Law Schools Dealing with Budget Cuts*, NAT'L LAW J., Jan. 19, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202427496279>.

²⁴⁰ *E.g.*, posting of thickfreakness to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=1&t=113124&start=25> (April 5, 2010 7:51 a.m.) (“I think that's probably why I'm trying to pick between Duke and Vandy right now. To me, the commitment to transparency and reality with career services, faculty, etc. is one of the most important factors in a school (besides cost, yikes!)”).

²⁴¹ *Supra* notes 110 – 122 and accompanying text.

²⁴² Vanderbilt Class of 2007 Numbers, *supra* note 134.

²⁴³ Posting of Martin Prince, Jr. to LSD, <http://www.lawschooldiscussion.org/prelaw/index.php/topic.103955.0.html> (Apr. 1, 2008, 12:29 am)

²⁴⁴ Both of these lists only include employer, employer city, and employer state. *Supra* note 134. However, the lists only account for employed graduates. *Id.* We included this data in the spreadsheet we published. *Id.*

²⁴⁵ Chicago's list is the same as the Duke and Vanderbilt lists, except that it also includes the graduates' names. Chicago Class of 2009 Numbers, LST, <http://www.lawschooltransparency.com/2010/04/chicago-class-of-2009-numbers/> (last visited Apr. 6, 2010).

they are not the only schools to have voluntarily exceeded the ABA and U.S. News standard in some fashion. Each time schools publish data and information beyond the minimum required standards, they incrementally increase prospectives' level of informedness.²⁴⁶

As we emphasized earlier, the economic state of the legal profession lays a ready foundation for reform.²⁴⁷ We expect some schools to say, “we actually did pretty well despite this economy, let’s show the world so that we can recruit more effectively.” We hope that there will then be a snowball effect as schools see – or fear – other schools benefiting from more transparency. In other words, schools will comply as a reaction to peer participation.

Of course, a new, widely accepted standard will not just happen on its own. There must be a concerted effort to make schools aware and make schools care about the standard. LST will coordinate effort on three fronts to facilitate acceptance. Prospective collective action, press, and a private certification system will together generate buzz and pressure, hopefully with enough force to compel compliance. All coordination efforts will center on our website so that one location serves as the go-to place for the heightened standard’s results.

Despite the potential bargaining power of a massive consumer group like prospective law students, there has been minimal effort to harness this power.²⁴⁸ Schools really care about this group, although many will surely object to describing prospectives as consumers. Schools do not want to fill their classes with just anybody; schools would not otherwise offer scholarships, read applications, or spend money recruiting. But whether or not schools will admit it – and some do – schools care about their U.S. News ranking, even if it is only because certain stakeholders

²⁴⁶ *E.g.*, knowing that X graduates make \$160,000, even if just a small percentage of the class, increases the total information known to P.

²⁴⁷ *Supra* note 5 and accompanying footnote text.

²⁴⁸ TLS publishes school profiles and interviews from time to time. TLS, *supra* note 16. The site’s popularity incentivizes schools to get involved.

think they should. Some prospectives already use their position to pressure schools. They share information to help each other negotiate scholarships, gain acceptances after being waitlisted, and determine ‘feelings of fit’ for those who are unable to visit prior to matriculating.²⁴⁹

LST can use similar information-sharing tactics to harness the collective bargaining power of prospective law students and signal to them that certain schools comply, while others do not. To do this, LST will provide law schools the opportunity to use a certification mark that represents to the world that they meet the heightened standard. While the mark in no way certifies the quality of the school or the school’s post-graduation outcomes, it does certify that prospectives have more access to information than under the ABA and U.S. News standards. As owners of the mark, LST retains the right to set a standard that, if met by schools, permits them to use the mark. That is, LST will provide licenses to law schools to use the mark in return for compliance with the standard. When a law school uses the mark on their website or in their print materials it signals full compliance with the standard. The license will require a warranty to prospective law students guaranteeing that the information law schools provide is complete and accurate – the same guaranty that law school deans make to the ABA each year for the annual ABA questionnaire. The license will clearly outline how a school may pass certification, how a school may lose certification, and the qualified uses of the mark.

In order for a certification mark to have the intended effect, prospective law students will need to know to look for the mark, and be moved to inquire why law schools have not undertaken the heightened standard. In part, this means empowering prospectives to believe that they can make a difference. We believe they can. By housing the information on a website that

²⁴⁹ Some prospectives search www.LawSchoolNumbers.com for scholarship awards and use this information as a baseline for scholarship negotiations. Scholarship Negotiation?, <http://www.lawschooldiscussion.org/prelaw/index.php?topic=4017857.0> (last visited Apr. 6, 2010).

integrates law school administrators and prospective law students, prospectives (and the general public) can serve as auditors of the school-provided data and information. This offers a low-cost policing function that will both engage site visitors and further incentivize schools to comply with the standard requirements in good faith. As a practical matter, searching the websites is easy, so prospectives would have access not only to each school's publicly disclosed information, but to the collective thoughts (but also paranoia) of other prospectives who came before them. By reviewing an open discussion among prospectives, law schools can observe in real-time how people respond to new data and information. This, in turn, may permit rapid adjustments in how schools approach their recruiting methods.

There is another practical reason to include prospectives in the auditing process. Information asymmetry is one of the greatest failures identified in this Article; sophisticated producers of a good (the law schools) sell to uninformed consumers (the prospectives). This new tool would not only reduce the information gap by providing important knowledge to the people thinking about purchasing the good, but it would do so at no cost and with minimal effort by the consumers.

However, prospectives' collective voices may not be loud enough. Even assuming we can direct a sufficient volume of prospectives to the website, we must also find ways to inform non-prospective stakeholders about the project. There is a thriving community of legal blogs, including Above the Law, The Wall Street Journal's Law Blog, and PrawfsBlawg to supplement traditional media. Combined, a promotional campaign on these fronts is our best shot at success through market pressure.

Law schools have a history of adapting to market pressure. One only has to look at the U.S. News to see a third party market force that effectively compelled a higher reporting

standard. This does not mean we want to be like U.S. News. In fact, we emphatically do not want to be like U.S. news. We want to help students find work commensurate with their expectations pre-1L and facilitate data and information sorting by prospectives. We do not want to rank schools, although we expect any widely accepted standard will find use as a composite ranking input. For law schools, this may be an unattractive consequence. But a graduate who is not blindsided by a lack of opportunities of a certain kind is a graduate who will be more inclined to donate time, money, and other resources like mentorships, internships, and externships. Fearing misuse is a reason to transparently explain data in good faith, not a reason to avoid a heightened standard altogether.

Additionally, for both the certification mark and prospective collective action, prospectives need to believe that the standard we push is worthwhile and that Law School Transparency is the right body for the job. We began this project with no scholarly article in mind. We realized, however, that implementing this standard cannot be understood separate from justified behavior. While all it took was passion to start this project, more is required to justify this kind of fundamental shakeup. This Article serves as our justification to the legal world, present and future members alike, that this sort of change is the kind of change we should and can engage in.

F. Potential Consequences

There are many consequences, both good and bad, that might follow from this initiative's success.²⁵⁰ Although nobody can tell for certain where the future will lead with this project, it is

²⁵⁰ We ignore in this paper the consequences of our attempted efforts if our efforts are unsuccessful, even though some further action would likely occur in that event. It is also possible that other solutions come to light before we manage to fully embark in this attempt, which could render this entire scholastic exercise moot. Circumstances outside the focus of this article may even bring changes to our standard in ways that are not currently foreseeable. In any event, we have embraced having the opportunity to explain what we believe needs fixing and how we are currently preparing to go about it.

worthwhile to consider the possibilities. Consequences will vary depending on the level of compliance. Assuming (optimistically) that all or many ABA-approved law schools comply, a number of things may happen. First, improved transparency about where all graduates work—as opposed to only a certain top percentage—may diminish consumer demand for law degrees to the point where the talent pool of aspiring lawyers shrinks. We are not just talking about the possibility that a market correction produces fewer applicants, but also that prospectives may overreact to a rush of new information. The rapid shift from the current level of transparency to a higher standard may create an additional level of alarmism that the actual job prospects do not warrant. Anchoring may affect how prospectives perceive the “new” employment outlook, at least for those who are aware of how post-graduation outcomes appeared before the new standard.²⁵¹ We want the country’s future lawyers to be able to see what the job market actually looks like before they dive in without causing them to behave irrationally.

In the alternative, removing uncertainty about job prospects may actually increase the talent pool by encouraging more risk-averse applicants to actually attend. Only a portion of all people who consider attending law school actually take the LSAT, and of them only a portion are accepted. Better information about job prospects may encourage more people to take the next step, some of which will eventually decide to matriculate.

We may see a temporal shift whereby some prospectives wait to save money and lower their debt burden before choosing to attend law school. This may create a dearth of applicants in the short term as more prospectives leave the applicant pool. In the long term, however, temporally-shifted prospectives may be more inclined to pay full tuition. We may see a spatial realignment whereby prospectives choose to go based on the new information. For example,

²⁵¹ For a discussion of anchoring effects, see Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, SCIENCE, 185, 1124-1130 (1974).

strong regional schools may see their student-body quality increase as prospectives who wish to practice in that region stop traveling across the country to attend a law school ranked a few spots higher by U.S. News. Or we might see more prospectives accept a scholarship at a less reputable school due to greater precision with their expected earnings after graduation.

Prospectives may collectively punish law schools for which the gap between actual and advertised job prospects was the greatest. If prospectives interpret the information as proof that some law schools were previously intentionally misleading prospectives, the market may punish those schools in the same way consumers punish perceived irresponsible corporate behavior.²⁵² Such punishment may be severe, perhaps resulting in a sharp enough decrease in student quality at some schools that they risk losing ABA accreditation.²⁵³ More likely, however, decreases in student quality at some schools may see changes in their U.S. News rankings.

Adaptation by the schools and competition for applicants may increase as schools try to find new ways to improve their post-graduate outcomes. This could mean reducing or increasing class sizes, lowering or increasing tuition, changing the geographic makeup to improve overall job placement, and allocating resources away from or towards employer recruitment and career services. Which direction each school will move is up to respective administrations and demand. Many of these potential changes are market corrections that, in the long run, will help ensure that prospective law students will be better financially prepared, make better decisions about which law school to attend based on individual career goals, and three years later be more willing to accept their job prospects as being commensurate with expectations. While we expect some

²⁵² Geoffrey Alan Williams & John Zinkin, *The Effect of Culture on Consumers' Willingness to Punish Irresponsible/Corporate Behaviour: Applying Hofstede's Typology to the Punishment Aspect of Corporate Social Responsibility* (April 2006), available at <http://ssrn.com/abstract=905202>.

²⁵³ Losing ABA accreditation due to poor student quality itself seems highly unlikely because accreditation focuses on bar passage rates, rather than LSAT or undergrad GPA.

schools may be less inclined to comply with the new standard than other schools, we believe their legitimate concerns have been addressed by not including certain components in our new standard.

Might law schools use employer lists from other law schools as a recruitment database from which they try and poach employers? Might law firms use the information to gain some sort of competitive edge, perhaps by showing clients how they recruit more top performing law students than their peers? What about what happens when for whatever reason a law school has a particularly bad year in job placement; do they deserve to take a disproportionate hit in recruiting because competitor schools were quick to pounce on the poor job placement? One consequence these lists provide is the long-term potential for more – in addition to NALP – studies about entry-level, legal hiring. Each year has a different economic climate; firms have different hiring needs based on current and projected growth; and law students vary which markets and employers to target each year. As patterns emerge through analyzing data across multiple years of hiring, people may discover more useful information about how different schools operate react to different economic climates. In this sense, even the lists for relatively bad years are useful. We hope that collecting this data now will make it easier to tell prospectives the legal profession’s story.

The above discussion hypothesizes what may result from a new standard in which all or many ABA-approved law schools complied fully. We recognize it is unlikely that every law school will see to it to comply fully with the new standard. Because of this, we expect – and in fact aim to encourage through discussion and public involvement — that the impact will be worse for any noncompliant programs. Schools that refuse to comply with a new standard may see competitor schools receiving “transparency premiums” in the market, while the

noncompliant schools risk losing top applicants who distrust a lack of openness about employment reporting.²⁵⁴ It is also possible (though we think unlikely) that the converse emerges: noncompliant schools may benefit by continuing to overemphasize top performers in the graduating class, while the schools who attach their names to less lucrative or desirable post-graduation outcomes suffer the brunt of the backlash.²⁵⁵

Permitting open access to this information also raises some of the criticisms explored in Part II. One major concern is how we can ensure that people do not use the data and information in a manner that distorts or undermines the data. By offering free data we encourage others to develop derivative tools without direct oversight to ensure those tools are crafted fairly. What if these derivative tools overshadow the data we present, exacerbating the ongoing problems presented in this Article? Clear guidelines and explanations, along with an accessible and active staff will go a long way to stave such misuse, but the solution must be a community effort.

The alternatives – restricted access to data and information or too strong of oversight of how this data and information are used – would go against the purpose of this new standard. It would continue producing information asymmetry in a market that already sees tens of thousands of people each year potentially making uninformed financial decisions. Providing open, uninhibited access to information is the only way to fulfill Justice Brandeis’ mandate that “the disclosure must be real. And it must be a disclosure to the investor.”²⁵⁶

²⁵⁴ This “transparency premium” is already occurring at schools that have been first movers in improving access to employment information. E.g. posting of thickfreakness to TLS, <http://www.top-law-schools.com/forums/viewtopic.php?f=1&t=113124&start=25> (April 5, 2010 7:51 a.m. (“I think that’s probably why I’m trying to pick between Duke and Vandy right now. To me, the commitment to transparency and reality with career services, faculty, etc. is one of the most important factors in a school (besides cost, yikes!). The situation’s never going to be flat-out bad at either school, so why be deceptive, especially when most people who do a few minutes of casual research can figure out that most of those salary figures are bogus anyway?”))

²⁵⁵ See, e.g., posting of thickfreakness, *supra* note 240.

²⁵⁶ BRANDEIS, *supra* note 6, at p. 106.

This Is Not a Conclusion

Although no socially optimal standard would provide access to all the input data that prospectives value, we have identified one way to create a low-cost tool that would provide open access to valuable employment data and information. A way forward may also come about through other ways that need to be explored further. Notably, regulatory reform or collaboration among ABA-approved law schools could help prospectives in ways a market-based mechanism cannot.

We hope that by enabling this new tool and facilitating the creation of derivative tools aimed at transparency, LST brings about significant, long-term change in legal education. Given the enormous individual costs thousands of prospective law students face each year, students, regulators, and administrators need to dedicate more time to engage in this debate. This Article emphasizes the need for greater collaboration along what the MacCrate Report called “the education continuum,” where prelaw advisors, prospectives, law schools, and employers could all participate in determining a truly optimal level of employment transparency. It represents our first attempt to engage academics in this debate and include them in the continuum, while we move forward with our actual attempt at improving the standards of transparency in American legal education. More work needs to be done, to be sure, but we are on our way forward.