



LST's  
2025  
VISION



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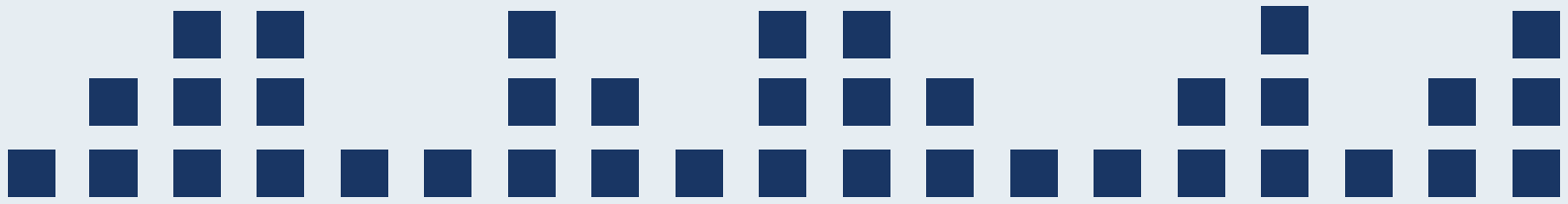
## ACKNOWLEDGMENTS

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TRANSPARENCY**

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# WHERE WE ARE TODAY



**U.S.** legal education has broken from tradition over the past 50 years in admitting more diverse students and adopting new teaching methods. While law schools still have far to go on both access and curricular reform, schools have even further to go on law school affordability. What compounds that challenge is that the vast majority of law schools struggle under the weight of an unsustainable business model. The resultant price of legal education affects both the justice gap and diversity in the legal profession. Each day we fail to address the price of legal education is another day we fail our promise to society that lawyers can steward the legal system.

**Law school tuition has exceeded inflation for decades.** Private and public law school tuition is 2.8 and 5.9 times as expensive as it was in 1985—after accounting for inflation. In 2019, tuition topped out at \$72,360. The average tuition at top-performing law schools is much higher than the rest. But prices do not scale with job outcomes. The average tuition at the lowest-performing schools is similar to the average for mid-range schools.

While law schools typically discount the sticker tuition price for a portion of the class, 25% of J.D. students paid full price in 2018-19. Students who pay full price or close to it are more likely to come from lower socioeconomic backgrounds or be underrepresented racial minorities. Their tuition dollars subsidize the scholarships that their more advantaged classmates receive. These disparities enhance persistent inequity in law practice.<sup>1</sup>

**Students borrow to pay these high prices.** Three in four graduates borrow for law school at high interest rates. Among borrowers, the average 2018 graduate borrowed \$115,481. This person is likely to have roughly \$130,000 in debt from law school alone when they start repayment six months after graduation because interest accrues immediately on law school loans. As with scholarships, underrepresented racial minorities—not to mention women—borrow more on average for law school.<sup>2</sup>

**When factoring in graduate salaries, students borrow excessively for law school.** One common-sense rule in student lending provides that students should not borrow more than they expect to earn after their first year. At 94% of law schools, the median amount borrowed exceeds the median earnings in the first full year after graduation. The median debt-to-income ratio is 1.86. One in six law schools have a ratio of 3.0 or higher, which means that the median amount borrowed exceeds the median earnings by 200%.

<sup>1</sup> Law School Transparency Data Dashboard: National Tuition Report, <https://data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2019>; School Tuition Report, <https://data.lawschooltransparency.com/costs/tuition/?y1=2015&y2=2019&scope=schools>; Tuition by Job Outcomes, <https://data.lawschooltransparency.com/costs/tuition/?y2=2019&scope=jobs>; National Net Tuition Report, <https://data.lawschooltransparency.com/costs/net-tuition/> (last visited Jan. 22, 2020). Law School Survey of Student Engagement (LSSSE), *Law School Scholarship Policies: Engines of Inequity* (2016), <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf> (hereinafter “2016 LSSSE Report”).

<sup>2</sup> LST Data Dashboard, National Debt Report, <https://data.lawschooltransparency.com/costs/debt/> (last visited Jan. 22, 2020); 2016 LSSSE Report, *supra* note 1; LSSSE, *The Cost of Women’s Success* (2020), <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-AnnualSurvey-Gender-Final.pdf> (hereinafter “2020 LSSSE Report”).

# WHERE WE ARE TODAY



Another common sense-rule in student lending recommends that a graduate should not devote more than 10 or 15% of income to monthly student loan obligations. The median borrower across all law schools ranges from 10.7% to 78.7% using the standard loan ten-year repayment term and the median income. The median percentage of pre-tax income devoted to debt service is 29%.<sup>3</sup>

A graduate who owes \$130,000 at first payment has a monthly payment of about \$1,450 on the standard plan—nearly 50% higher than the median mortgage in the United States.<sup>4</sup> To remain in range of the recommendation the graduate must make between \$116,000 (for 15%) and \$174,000 (for 10%). The median entry-level salary for 2018 graduates was \$70,000. That average is generous due to non-responses and nearly double-digit unemployment.<sup>5</sup>

**Changes to the federal student loan program would devastate many law schools.** Law schools depend on tuition to meet their budgets. Across all law schools, 69% of revenue comes from tuition. A quarter of law schools receive at least 88% of revenue from tuition.<sup>6</sup> With

so many students borrowing, law school tuition dependency is really federal student loan dependency. Major changes to the loan program would mean major problems for law schools.

Both President Obama and President Trump proposed significant changes to the federal loan program that would be less generous and thus more likely to make students stay away from law school.<sup>7</sup> This might sound good in theory, but the reality is that it would make our profession less racially and socioeconomically diverse. We also happen to need new lawyers.

**But even if the federal student loan program does not change, the cost of law school is indefensible.** Law school is expensive and it is insufficient to return to prices and borrowing levels from a decade ago. The status quo threatens the long-term health of the legal profession and the legal system.

When law schools price potential contributors out of the profession, they jeopardize the pipeline of students who want and can afford to protect the rule of law, deliver quality legal services, and narrow the justice gap. Myriad factors stand between good intentions and meaningful reform, but more accessible, affordable, and innovative law schools can become the new normal if we devote additional energy to changing the structural barriers that hold schools back.

<sup>3</sup> LST Data Dashboard: National Debt-to-Income Ratio Report, <https://data.lawschooltransparency.com/costs/debt-income/>; National Debt-Service Ratio Report, <https://data.lawschooltransparency.com/costs/debt-income/?scope=repayment> (last visited Jan. 22, 2020).

<sup>4</sup> Value Penguin, *Average Monthly Mortgage Payment*, May 15, 2019, <https://www.valuepenguin.com/mortgages/average-monthly-mortgage-payment> (citing the U.S. Census Bureau's 2015 American Housing Survey, which found a median monthly mortgage payment of \$1030 in the United States.)

<sup>5</sup> LST Data Dashboard, National Salary Report, <https://data.lawschooltransparency.com/jobs/salaries/> (last visited Jan. 22, 2020).

<sup>6</sup> American Bar Association (ABA) Task Force on Financing Legal Education, *Report* (2015), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2015\\_june\\_report\\_of\\_the\\_aba\\_task\\_force\\_on\\_the\\_financing\\_of\\_legal\\_education.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.pdf) (hereinafter "2015 Legal Ed ABA Finance Report").

<sup>7</sup> In his 2015 budget, President Obama proposed capping Public Student Loan Forgiveness (PSLF) at \$57,500 for new borrowers. In 2018, President Trump proposed eliminating PSLF entirely. He also proposed extending the repayment period for Income-Based Repayment to 30 years with a requirement that you pay 12.5% of discretionary income instead of 10%, which is the most common percentage now.

# WHERE WE ARE TODAY



On the one hand, the regulatory landscape needs change. The law school accreditation standards need to be stricter in some places and less restrictive in many others. On the other hand, the incentives landscape must also change. Schools and students alike rely on the *U.S. News & World Report* law school rankings as the pinnacle benchmark for quality and prestige. Students use these rankings to make decisions about where to apply and attend; schools use them to decide how to allocate limited resources. Students that rely on *U.S. News* make less informed decisions, increasing their debt and expanding the mismatch between debt loads and career outcomes. Schools, meanwhile, drain their resources and creative spirit to compete. The incentives the *U.S. News* ranking system creates and the hierarchy it reinforces complicate even the most basic reform conversations within law schools. Decision-makers want and need new systems of measurement that produce better incentives, yet still offer consumers valuable information as they decide where to attend law school.

We can talk endlessly about who or what is to blame for the exorbitant price of law school, but it's far more productive to focus on changing what needs to change. Law School Transparency (LST), in partnership with state bar associations and nonprofits like the Stanford Center on the Legal Profession, is undertaking an array of projects related to accreditation and the *U.S. News* law school rankings. We envision lower tuition, less financially-stressed graduates, and a profession that looks more like our diverse society. Together, these projects will create the necessary conditions for affordable, accessible, and innovative legal education and cause faster positive change.

When we collectively fail to address serious problems with law school access, affordability, and innovation, the legal profession loses out on people who could positively impact clients and diversify our profession. It also worsens our access to justice problem, whether because people take fewer entrepreneurial risks, cannot go into public service, or never enter at all.

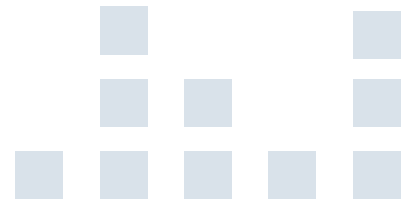
We don't quite know what the future holds for law schools. Who will they educate? How? When? What we do know is that we are not satisfied with the current path. We can diverge, however, if people throughout our profession work together on systemic change. It won't happen on its own.

**We envision lower tuition, less financially-stressed graduates, and a profession that looks more like our diverse society.**

**The incentives the *U.S. News* ranking system creates and the hierarchy it reinforces complicate even the most basic reform conversations within law schools.**



# LST'S 2025 VISION: A GUIDE TO OUR WAY FORWARD



The challenges facing legal education in 2020 run deep and, in some cases, will take several decades to address. Our vision for lower tuition, less-financially stressed graduates, and a more diverse profession requires that we change the environment in which law schools operate. Over the next five years, we believe it is possible to create the conditions necessary to achieve both rapid and long-term positive change.

Our plans and proposals are intricate and thorough, making this report lengthy and dense. The next few pages will serve as a guide to the report's two main parts. The first part of the report looks at how LST plans to remake law school incentives. This part begins with a section on the *U.S. News* law school rankings methodology and how the rankings negatively impact students, schools, our profession, and more. The next section estimates the cost to buy or license the rankings—a thought experiment that demonstrates the absurd power *U.S. News* has over law schools. The next section examines two projects from LST aimed at fostering competition with *U.S. News* as part of an effort to mitigate its influence on law school operations. The last section describes a change to the rankings methodology that LST is encouraging *U.S. News* to adopt.

The second part of the report looks at modernizing the law school accreditation standards. The first section examines the overly prescriptive nature of the current standards. The second section contemplates how the standards can better protect consumers. The final section details several transparency proposals related to costs, diversity, and innovation.

Our plans and proposals found in this report are summarized below. The full report provides more details on these plans and proposals. **You can learn more about how to support the projects related to LST's 2025 vision at [www.LawSchoolTransparency.com/progress/](http://www.LawSchoolTransparency.com/progress/).**

Over the next five years, we believe it is possible to create the conditions necessary to achieve both rapid and long-term positive change.

# LST'S 2025 VISION: A GUIDE TO OUR WAY FORWARD



## Remaking Law School Incentives

The incentives landscape paralyzes legal educators at a time when rapid change is essential. We do not need to eliminate the *U.S. News* rankings to positively impact legal education, but the system of incentives facing law schools will not change without concerted effort. LST and its partners are leading the charge.

- A** LST will provide market-based incentives for law schools that strive to offer accessible, affordable, and innovative legal education.
  - i. The LST Reports will continue to help prelaw students decide whether and where to go to law school using high-quality data about employment, salaries, admissions, costs, and bar exam outcomes.** Law school applicants act differently when they have well-organized and trustworthy information to act upon. Among certain segments of applicants, the narrative related to *U.S. News* has begun to shift, but there remain significant opportunities for LST to do more. Reaching everyone earlier—and reaching more people who ultimately attend local and regional schools—requires boots on the ground at colleges across the country, a refreshed site design, and more visibility on the social media platforms that today’s applicants use daily. The LST Reports now function as an intermediate-to-expert level tool. While the process can never be completely personal, it should take would-be students of all levels through the process more empathetically.
  - ii. The LST Index will be a deliberate, thoughtful, and transparent assessment tool that will reward law schools for valuable societal contributions on a range of measures that *U.S. News* does not reward.** Through a free certification overseen by an independent standards council, schools will be able to showcase how they devote more than words to meaningful objectives. While the Index will be clear in its vision for legal education, schools will retain flexibility in how they achieve their certification. The Index will create the necessary conditions for affordable, accessible, and innovative legal education—and cause faster positive change.
- B** LST will encourage *U.S. News* to update its methodology to redefine quality.
  - i. LST will continue to encourage *U.S. News* to swap its expenditures per student metric for an efficiency metric.** The expenditures metric, which *U.S. News* uses to proxy educational quality, rewards schools that spend money. The proposed efficiency metric will reward schools that charge students less tuition and manage enrollment relative to the job markets a school serves.

The incentives landscape paralyzes legal educators at a time when rapid change is essential.

# LST'S 2025 VISION: A GUIDE TO OUR WAY FORWARD



## ***Modernize Law School Regulation***

As accreditor of U.S. law schools, the American Bar Association Section of Legal Education and Admissions to the Bar, plays a critical role in protecting consumers, whether students or the public. The balance between regulation and flexibility should be intentional and thoughtful, and the ABA should rethink its accreditation standards according to three themes. Smart regulation will lead to more effective and innovative programs of legal education—potentially at a substantially lower price.

**A Fewer Limits on Innovation: remove barriers to help schools meet societal needs.** The accreditation standards are overly prescriptive and reflect decades of gamesmanship between stakeholders and an era where conformity constituted quality. Instead, the accreditation standards should include only the standards necessary for a quality legal education. The Council should:

- i. Allow more flexibility in how law schools deliver learning outcomes
  - **Implicated Standards:** Standard 311; Interpretation 311-1
- ii. Undertake a comprehensive review of what a full-time faculty member must do and what is necessary (and why) to the provision of a quality legal education
  - **Implicated Standards:** Standards 107, 201, 203, 401, 402, 403, 404, 405, 601, 603, 605, 606; Interpretations 402-1, 701-1
- iii. Continue to liberalize distance education standards
  - **Implicated Standard:** Standard 306
- iv. Allow more flexibility in how law schools structure operations
  - **Implicated Standards:** Standards 106, 201, 306, 311, 312, 403; Interpretations 311-1, 402-1
- v. Reconsider the library standards in light of the library's evolution to a learning commons
  - **Implicated Standards:** Standards 601, 602, 603, 604, 605, 606; Interpretation 606-1
- vi. Eliminate restraints that toughen the road for new law schools
  - **Implicated Standards:** Standards 102, 107, 311
- vii. Refine the variance system
  - **Implicated Standard:** Standards 107

The balance between regulation and flexibility should be intentional and thoughtful.

# LST'S 2025 VISION: A GUIDE TO OUR WAY FORWARD



- B More Consumer Protection: thoughtful accreditation enhancements to ensure the seal of ABA approval continues to mean something to the public.** The accreditation standards have improved greatly over the past decade, but it remains necessary to continue to improve consumer protection. The Council should convene a series of working groups to consider how it can use its regulatory authority to improve the state of legal education with consideration the most significant challenges in 2020.
- i. Law schools remain significantly behind other graduate degree programs in developing learning outcomes and assessment tools. Where the market fails to hold schools accountable, the Council should fill the gap through narrow regulation.
  - ii. Law school pricing is not equitable. People of color and women should not pay more for law school than their majority peers. Law schools should not take advantage of known student mindsets related to conditional scholarships.
  - iii. Law school costs too much for everyone. The legal profession needs a pipeline of students who want and can afford to join.
- C More Transparency: more data to serve as the foundation for reform and as an impetus for change.** Transparency exposes blind spots and signals opportunities for change. The Council should adopt a series of proposals that shed light on law school debt, inequitable pricing, and last inequality. It can do so without modifying the accreditation standards. The resultant data will allow legal educators and policymakers to confront difficult realities and to direct resources in a manner that strengthens and stabilizes the law school pipeline.
- i. Expand data on student borrowing. While averages tell the public something about entire populations, policymakers, faculty, and administrators will think more clearly about the high price of legal education when the disclosures peer underneath average student debt figures.
  - ii. Expand data on tuition prices and discounting. Schools engage in significant discounting through scholarships. Those with the largest scholarships are the students who are most likely to complete school, pass the bar, and get a job that helps them to repay their debts. More public information will highlight this disparity and hold schools accountable for claims about their generosity towards students.
  - iii. Expand data on diversity. Data on student borrowing and tuition discounting should also be made public by gender and race given the demographic differences in how much people pay and borrow for law school.



Part I:

# REMAKING LAW SCHOOL INCENTIVES

# THE IMPACT OF U.S. NEWS ON LAW SCHOOL OPERATIONS



The 203 law schools accredited by the American Bar Association (ABA) share considerable similarities with one another. There are, however, considerable differences in size, location, culture, priorities, selectivity, and, most notably, job outcomes and reputation at the local, regional, and national levels. ABA accreditation only signals that a school meets minimum standards. The ABA does not rank or otherwise pass judgment on the quality of accredited law schools. Tens of thousands of people considering law school each year must seek other means to compare programs and decide where to apply and attend.

ABA accreditation only signals that a school meets minimum standards.

The most popular tool belongs to *U.S. News*, which supplies an annual list of the “Best Law Schools.” Although *U.S. News* does not say what these schools are best at, it enjoys immense power by claiming that a higher-ranked school is better than a lower-ranked school. The simplicity makes the rankings appear authoritative and valuable. Each year, the law school world overreacts to slightly-shuffled *U.S. News* rankings, haphazardly justifying the ranking’s authority and value (albeit in a backward sort of way). Faculty circulate leaked copies of the rankings. Proud alumni and worried students voice concerns. Provosts threaten jobs. Prospective students confuse the annual shuffle with genuine reputational change.

Law school administrators react predictably with obsession and derision. They articulate methodological flaws and lament negative externalities, but nevertheless commit to the rankings rat race through their statements, press releases, actions, and inaction. Assuring stakeholders who bear pitchforks has become part of any dean’s job description. The reactions cement the outsized impact of *U.S. News* on law school operations. As a result, these rankings play a direct role in increasing legal education costs and decreasing the commitment schools can have to access, affordability, and innovation.

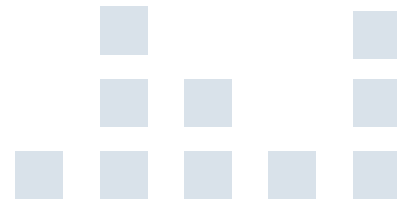
## ***U.S. News Mechanics and Methodology***

Since 1987, *U.S. News* has published its annual ranking of law schools. Currently, the methodology includes 12 metrics that fall into four categories: reputation, selectivity, outcomes, and faculty resources.<sup>8</sup> Each metric is standardized and then weighted, totaled, and rescaled to produce a list of schools that *U.S. News* ranks ordinally. In an ordinal ranking system, the schools are listed in descending order from #1, with each school ostensibly better than all others below it.

The reputational metrics target perception. A school’s peer assessment score (weighted at 25%) represents its reputation among surveyed faculty at other ABA-approved law schools. A school’s lawyer/judge score (15%) represents its reputation among the bench and bar surveyed throughout the country. The selectivity metrics target preference among applicants. These include a school’s 1L class median entrance exam scores (12.5%), median undergraduate GPA (10%), and acceptance rate (2.5%). The outcomes metrics target graduate performance. These include job placement at graduation (4%), job placement 10 months after graduation (14%), and the bar passage rate (2%).

<sup>8</sup> Robert Morse, *U.S. News Methodology: 2021 Best Law Schools Rankings*, Morse Code Blog, <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> (last visited March 18, 2020)

# THE IMPACT OF U.S. NEWS ON LAW SCHOOL OPERATIONS



The faculty resources metrics target the quality of legal education. These include:

- 1 Expenditures per Student (9.75%): The amount spent on instruction, library, and supporting services divided into total J.D. student enrollment.
- 2 Modified Expenditures per Student (1.5%): The amount spent on instruction, library, and support services, plus financial aid, divided into total J.D. student enrollment.
- 3 Student-Faculty Ratio (3%): The ratio of students to faculty members, according to a modified version of the Common Data Set definition.
- 4 Library Resources (0.75%): The total number of volumes and titles in the school's law library.

This methodology is the cheese for this rat race, which would be easier to stomach if the rankings effectively measured anything meaningful. The trouble is that the rankings are neither meaningful nor effective.

*U.S. News* generally relies on the ABA approval process to determine inclusion as part of the “best law school” picture. The unspoken message is that one of these choices is the right one for you (although some may be more right than others). In further support of that message, *U.S. News* excludes provisionally-accredited schools, schools on probation, schools that reported false data, and the three law schools in Puerto Rico. But this message breaks down if we reject the premise that ABA approval renders every school a sound pursuit of time and money because individual students have different career goals and price sensitivity..

One frequent consequence of a single list of law schools is that prospective students choose between schools that are insufficiently comparable. A single list of law schools implies that a head-to-head comparison of a regional California school and a regional Pennsylvania school matters. Graduates from these schools do not compete with one another for jobs; only a handful of schools have a truly national reach in job placement and merit head-to-head comparison despite no geographical proximity. The rest have a regional, in-state, or even just local reach. It turns out that 80.5% of schools place at least half of their employed class of 2018 graduates in one state. The top state destination for each school accounts for 68.7% of employed graduates. A much smaller 8.5% of employed graduates go to a school's second most popular destination, with just 4.4% of employed graduates working in the third most popular destination. Only 18.4% of employed graduates end up in a state other than the top three (see **Figure 1** on the next page). The lack of transparency and meaningful analysis of school-specific job outcomes, despite recent progress, has propagated the myth that a national list of schools serves prospective law students in their pursuit of an informed decision.

Rankings are not inherently bad. In fact, they are conceptually quite useful. They order comparable things to help people sort through more information than they know how to or can weigh. However, ranking credibility is lost when methodologies are unsound, through irrational weighting or meaningless metrics, or when the scope is too broad. The legal profession is worse for elevating the importance of a publication that falls victim to these flaws each and every year.



# THE IMPACT OF U.S. NEWS ON LAW SCHOOL OPERATIONS

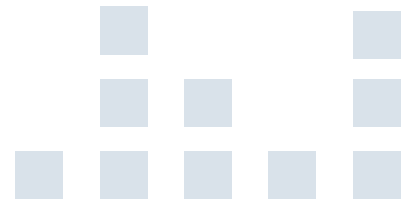
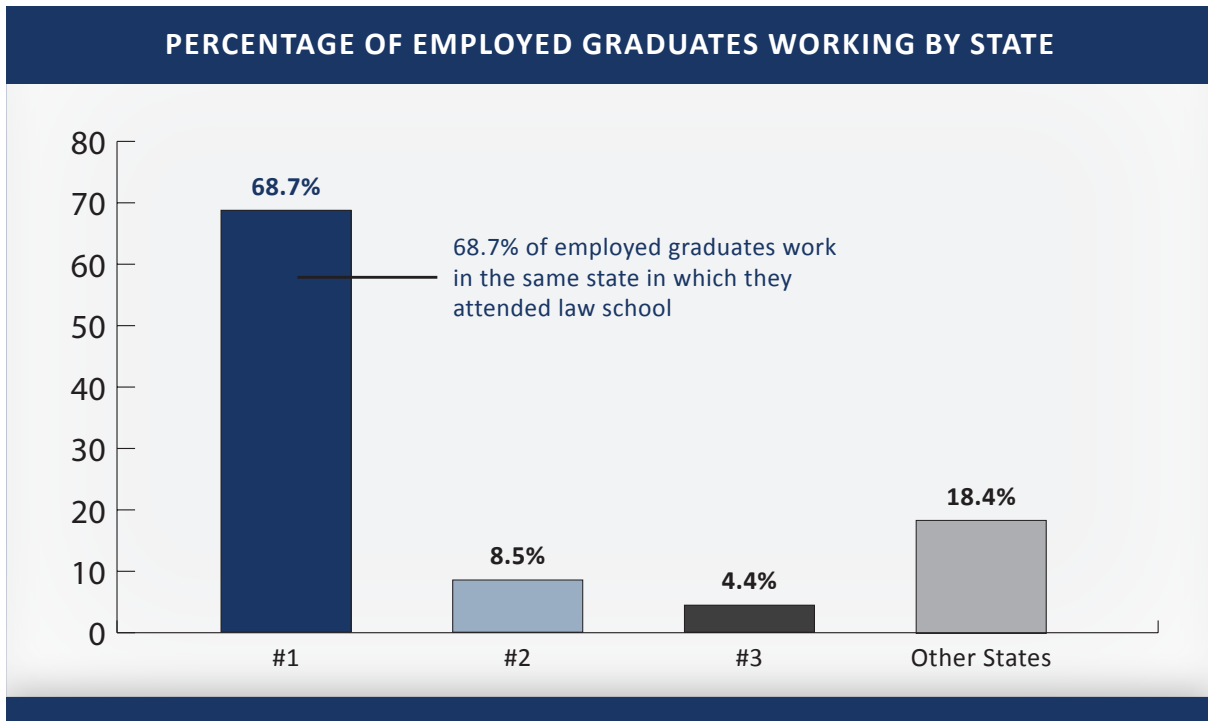


Figure 1



## ***The Commitment to Access, Affordability, and Innovation***

The *U.S. News* rat race is a story of incentives. These rankings persistently affect decisions made at law schools and by prospective students despite significant changes to the kind and quality of consumer information available to the public because so many stakeholders care so much. Rank jockeying costs not only time and money, but creative spirit. Explicit or implicit, these particular rankings are an X factor in decision-making. Want to make a program or curricular change? Assessing the impact on the school's *U.S. News* ranking (and accordingly the dean's job) plays a part.

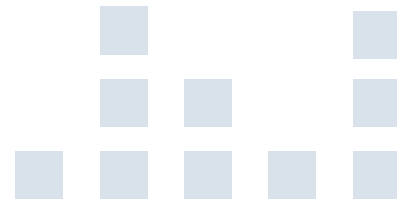
One law school dean, as part of an interview for a 2004 qualitative study on the pressures caused by the *U.S. News* rankings, lamented the choice between "what is good for the law school and what is good for rankings."<sup>9</sup> This has not improved in the intervening years, and has likely worsened. Law schools' data operations have significantly matured, helping schools put data analytics to work beyond cursory rankings studies and attempts by faculty committees to identify areas of improvement. Faculty committees still exist, of course, but often work with teams from other university departments to conduct sophisticated assessments to isolate and explain rankings performance. A cottage industry of ranking consultants has also emerged and earns handsome sums to analyze how schools can make efficient gains. *U.S. News* even encourages schools to game the rankings with Academic Insights, its \$15,000 per-year tool to help schools "validate strategic decision making" and "enable data-driven decisions."<sup>10</sup>

<sup>9</sup> Andrew P. Morriss and 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, available at <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1234&context=ilj>.

<sup>10</sup> Academic Insight marketing materials from *U.S. News* on file with Law School Transparency.



# THE IMPACT OF U.S. NEWS ON LAW SCHOOL OPERATIONS



While ranking concerns can be abstract, these concerns also drive policies that target key metrics.<sup>11</sup> This is not always a negative. The incentive to perform in the rankings as a whole, as well as on specific metrics, can positively impact a law school and its students. A dean interviewed for a 2009 study from the Law School Admission Council (LSAC) explained this well:

You could argue that making us all a lot more conscious of the consumer and worrying about how many graduates are employed nine months after graduation is a good thing. We all spend much more time now keeping track of our students, and that's a good thing; bar passage rate is a good example of this. If the stakes weren't so high, the rankings wouldn't be so bad. We ought to have been asking some of the questions that USN has forced us to ask. We ought to have been asking who is in our pool of students and why. We ought to have been asking where do our graduates go, how successful are we at getting them jobs when they walk out the door. And if we would have been having bar passage problems, presumably we would have been asking questions about that. On all of that kind of stuff, it does serve as a benchmark, and if you are out of line with your peers, it makes you ask why you are out of line. And that really is helpful.<sup>12</sup>

*U.S. News* also exerts downward pressure on law school enrollment.<sup>13</sup> In 2011 and subsequent years, fewer high LSAT and GPA students enrolled in law school.<sup>14</sup> Because schools care about their GPA and LSAT medians (for *U.S. News* and other reasons), many schools reduced enrollment.<sup>15</sup> With the number of entry-level lawyer jobs relatively flat, lower enrollment translated to fewer unemployed graduates.<sup>16</sup>

Today, however, various forces meaningfully hold law schools accountable, including the ABA, watchdogs, and the press. The considerable harm caused by the ranking rat race today significantly outweighs whatever accountability *U.S. News* provided in the past. For example, the focus on LSAT and GPA medians has distorted how

<sup>11</sup> Schools also hire outside consultants for other purposes, including but not limited to efforts to maximize how much tuition revenue a school can collect from students without triggering additional problems.

<sup>12</sup> Michael Sauder and Wendy Espeland, *Fear of Falling: The Effects of U.S. News & World Report Rankings on U.S. Law Schools*, available at [https://www.lawschooltransparency.com/documents/cites/fearfailing\\_lsac\\_2007.pdf](https://www.lawschooltransparency.com/documents/cites/fearfailing_lsac_2007.pdf) (hereinafter "2009 LSAC Report").

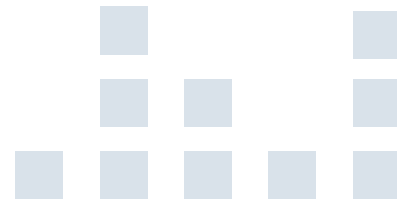
<sup>13</sup> Jerry Organ, et al., *Competitive Coping Strategies in the American Legal Academy: An Empirical Study*, 19 Nev. L.J. 583 (2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3255397](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3255397).

<sup>14</sup> LST Data Dashboard, 2010 through 2019 Admissions Standards Comparison, [https://data.lawschooltransparency.com/enrollment/admissions-standards/?y1=2010&y2=2019&scope=lsat\\_25](https://data.lawschooltransparency.com/enrollment/admissions-standards/?y1=2010&y2=2019&scope=lsat_25).

<sup>15</sup> But not all law schools. Some schools chose lax admissions standards due to budgetary pressure. Many schools chose a combination of a reduction in enrollment and a reduction in admissions standards.

<sup>16</sup> LST Data Dashboard, National Jobs Report, <https://data.lawschooltransparency.com/jobs/legal-jobs/?scope=national>.

# THE IMPACT OF U.S. NEWS ON LAW SCHOOL OPERATIONS



some law schools structure enrollment. Schools use transfers to increase revenue without a credentials hit—the medians only include new first-year students. Strategic choices with part-time enrollment aid the student-faculty ratio.<sup>17</sup> Schools further game the ratio by encouraging faculty to take leaves of absence in the spring rather than the fall, when *U.S. News* measures faculty size.<sup>18</sup> These tactics tend to affect the cost of getting a law degree too. Completing school part-time costs students more in time and tuition; transfer students tend to pay full price at their new school; and implementing these policies require staff time and energy.

Undue attention to LSAT and GPA medians has affected admissions in far more perverse ways too. In pursuit of higher medians, law schools shifted resources away from need-based aid to merit-based aid, where merit is largely a function of these two credentials.<sup>19</sup> Merit scholarships go to the students who are most likely to complete school, pass the bar, and get a job that eases debt service.<sup>20</sup> The students who are least likely to succeed, and who on average are more racially diverse and from poorer backgrounds, subsidize the tuition of their more advantaged peers.<sup>21</sup> This focus appears to have also damaged gender diversity, where women are more likely to attend law schools with significantly worse job outcomes, despite the appearance of parity in national figures.<sup>22</sup> This focus also makes recruiting a racially diverse class more difficult because several underrepresented racial minority groups perform worse on the LSAT for a variety of structural reasons unrelated to whether they would make great lawyers.<sup>23</sup> With an inverse relationship between several characteristics of good lawyers and LSAT score,<sup>24</sup> the obsession with traditional credentials may have a negative effect on the quality of legal services, as well as the likelihood of those services being provided to disadvantaged communities.<sup>25</sup>

To further improve, or at least maintain, their rank, law schools spend considerable money on marketing to other law schools to affect their peer reputation score. Flashy brochures and magazines, the theory goes, will impact the rating surveyed faculty will provide. One dean told the 2009 LSAC Report researchers, “I could hire a faculty member for the amount of money spent on this; I could support twenty students for this price; I could buy a substantial number of books for our library; all of which strike me as what this enterprise ought to be about.”<sup>26</sup> The dean then offered specific numbers for their school-to-school marketing costs. The annual cost was “in excess of \$100,000 per year” for “just the production cost and the mailing list,” plus staff time, for what the dean described as “a pretty limited mailing list by the standards of some of these things.”<sup>27</sup>

<sup>17</sup> 2009 LSAC Report, *supra* note 12, pg. 14. Prior to a methodological change, schools could strategically enroll more part-time students because, at the time, they did not count towards the LSAT and GPA medians.

<sup>18</sup> *Id.*

<sup>19</sup> 2015 ABA Legal Ed Finance Report, *supra* note 5, pg. 9..

<sup>20</sup> LSSSE 2016 Report, *supra* note 5.

<sup>21</sup> *Id.*

<sup>22</sup> Deborah Jones Merritt and Kyle McEntee, Gender Equity in Law School: An Elusive Goal, Forthcoming in the Journal of Legal Education, *available at* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3464582](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3464582).

<sup>23</sup> Kristen Holmquist, Marjorie Shultz, et al., *Measuring Merit: The Shultz-Zedeck Research on Law School Admissions*, 63 J. Legal Educ. 565 (2014), *available at* <https://jle.aals.org/home/vol63/iss4/2/>.

<sup>24</sup> *Id.* at 580.

<sup>25</sup> *Id.* at 570-1.

<sup>26</sup> 2009 LSAC Report, *supra* note 12, pg. 10.

<sup>27</sup> *Id.*

# THE IMPACT OF U.S. NEWS ON LAW SCHOOL OPERATIONS



The unfortunate irony is that reputation is generally very difficult to change and that the legal education echo chamber proves far more impactful than money spent to move reputation scores.<sup>28</sup> Many law school administrators, knowing the waste of money, “feel that they must demonstrate to outside audiences that they are doing something to address the school’s rank; a law school that dropped in the ranking and had not produced this type of marketing material would be vulnerable to criticism from external audiences.”<sup>29</sup>

But the amount spent on school-to-school marketing pales in comparison to how much schools spend on recruiting and retaining “faculty who are prolific and respected scholars” to impact the reputation score.<sup>30</sup> Schools cite additional justifications for faculty recruitment, salary and benefit runups, and dwindling teaching loads, but it requires a suspension of reality to avoid seeing the relationship between faculty expenses and a school’s ranking objectives.

Yet even if faculty and marketing expenditures provide negligible rankings benefit to peer reputation scores, they help both expenditures-per-student metrics, which track education-related expenditures as a proxy for educational quality. That’s nonsense, of course, but the rewards are nonetheless real. One dean recently reported in a private conversation that their staff calculated that raising the dean’s salary by \$10 million would likely catapult the school into the top 10 of the rankings. Additionally, one of the two expenditures-per-student metrics credits schools for their scholarship spend and employing a basic accounting trick. The metric favors the school with a \$40,000 list price and a \$10,000 average scholarship over a school that does not discount its \$30,000 tuition. Worse still, prospective law students prefer the former over the latter because it makes them feel valued, even with zero difference between the two offers. This makes moving to a more sensible (and fairer) pricing model a traditional collective action problem.

The rankings produce a non-stop rat race without a finish line, but with a host of incentives that extract a school’s resources rather than enhance its ability to affordably deliver a better education. The negative effects compound yearly due to the structure of contemporary law schools. Moreover, the rat race supports beliefs by students, alumni, and media that these rankings measure something meaningful. If the law school administrators, faculty, and trustees pay attention to the rankings, then the rankings must signal real value. They do not. Every signal they provide—whether placement at large law firms or incoming class LSATs and GPAs—is better analyzed through raw data now widely available. In other words, what’s the point?

**The rankings produce a non-stop rat race without a finish line, but with a cadre of incentives that extract a school’s resources rather than enhance its ability to affordably deliver a better education.**

<sup>28</sup> Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 Ind. L.J. 229 (2006).

<sup>29</sup> 2009 LSAC Report, *supra* note 12, page 11.

<sup>30</sup> Illinois State Bar Association, *Final Report, Findings & Recommendations on The Impact of Law School Debt on the Delivery of Legal Services* (2013), available at [https://www.lawschooltransparency.com/documents/cites/Illinois\\_SBA\\_Report\\_2013.pdf](https://www.lawschooltransparency.com/documents/cites/Illinois_SBA_Report_2013.pdf).

# BUYING THE U.S. NEWS LAW SCHOOL RANKINGS



Imagine the *U.S. News* rankings simply disappeared tomorrow. Deans would celebrate. Competition would bloom. And law school stakeholders and prelaw students would find new benchmarks. The societal value of the disappearance depends on the cost to make it happen and what comes next. While ultimately hypothetical—unlike the balance of this report—this thought experiment and exercise in valuation reinforces the absurdity of how much schools spend to compete. *U.S. News* is an elephant in terms of influence, but a mouse in terms of enterprise value relative to the money in legal education. The hypothetical also highlights the need for a different kind of competition among law schools based on a set of shared values that the rankings do not presently reward.

## ***The Business of the U.S. News Law School Rankings***

Estimating a price tag for any potential purchase, lease, or retirement of its rankings requires understanding the business structure of *U.S. News*, especially its law school vertical. This includes assessing revenue and costs. As a privately held entity, no independently verifiable public information exists regarding the company's gross revenues. To estimate revenue, we consulted publicly available information about its business dealings.

Like other businesses, *U.S. News* has a multitude of business verticals and derives its revenue from a variety of sources within each of those verticals. Estimates of annual gross revenue range from \$15.3 million (Crunchbase/Owler) to \$100-\$500 million (Glassdoor) to \$101.11 million (D&B Hoovers).<sup>31</sup> Our analysis uses the D&B Hoovers revenue estimate because it is a widely-used revenue estimator in the business world.

The revenue streams for *U.S. News* are almost exclusively digital despite being founded as a print magazine in the 1930s. According to the *U.S. News* media kit, the website has roughly 2 billion page views each year, with nearly 500 million of these page views from the education vertical.<sup>32</sup> With few exceptions, each page on *U.S. News* has numerous digital advertisements. In some cases, these are native advertisements sold by *U.S. News*, but the vast majority of digital advertisements appear to be through Google AdSense. *U.S. News* also sells advertisements directly; these include banner ads, video inserts, sponsored content, and special placement for businesses on various indices and rankings on the website. The company does publish several annual print publications, including the “Best Colleges 2020 Guidebook” and “Best Business Schools 2020 Guidebook” for \$11.95 each.<sup>33</sup> *U.S. News* does not publish a general guidebook for graduate schools or a specific guidebook for law schools.

*U.S. News* also sells access to several tools. For students, the “College Compass” and “Grad Compass” sell for an annual fee of \$39.95 and \$29.95, respectively, and provide expanded profiles for schools, financial aid info, and advanced searches.<sup>34</sup> For schools, *U.S. News* provides “Academic Insights” to help schools benchmark performance against their peers, e.g. to aid competition on ranking metrics. The Academic Insights package for law schools costs \$15,000 per year; a limited version is available for an annual fee of \$5,000. *U.S. News* offers

<sup>31</sup> Crunchbase/Owler, <https://www.crunchbase.com/organization/u-s-news#section-competitors-revenue-by-owler> (last visited Jan. 22, 2020); Glassdoor, [https://www.glassdoor.com/Overview/Working-at-U-S-News-and-World-Report-EI\\_1E5475.11,36.htm](https://www.glassdoor.com/Overview/Working-at-U-S-News-and-World-Report-EI_1E5475.11,36.htm) (last visited Jan. 22, 2020); D&B Hoovers, [http://www.hoovers.com/company-information/cs/company-profile.us\\_news\\_world\\_report\\_inc.e02647bf53d22b2c.html?aka\\_re=1](http://www.hoovers.com/company-information/cs/company-profile.us_news_world_report_inc.e02647bf53d22b2c.html?aka_re=1) (last visited Jan. 22, 2020).

<sup>32</sup> *U.S. News* Media Kit, <https://mediakit.usnews.com/index.php>.

<sup>33</sup> *U.S. News* Rankings and Guidebooks, <https://usnews.com/products/features/home> (last visited Jan. 22, 2020).

<sup>34</sup> *U.S. News* College Compass Offer, <https://secure.usnews.com/commerce/checkout/college-compass-with-digital> (last visited Jan. 20, 2020). *U.S. News* Grad Compass Offer, <https://secure.usnews.com/commerce/checkout/grad-compass> (last visited Jan. 20, 2020).

# BUYING THE U.S. NEWS LAW SCHOOL RANKINGS



universities a discount when multiple programs subscribe to the tool. Additionally, *U.S. News* charges schools, hospitals, and law firms a licensing fee to use a badge that indicates its status as among the best at whichever topic. A recent price sheet indicates that the badge license costs as much as \$16,000 for law schools—but the revenue is split 50/50 with Wright’s Media, which manages badge licenses across all verticals.<sup>35</sup>

## Valuation

The *U.S. News* business model is built on providing consumer information to large segments of the U.S. population. Those interested in law school and the 203 ABA-approved law schools make up a relatively small proportion of society as a whole. Of *U.S. News*’s \$101.11 million in revenue, it is likely that only a small amount originates from its rankings and affiliated product offerings in the law school vertical.

Acquisition prices are typically based on a company’s annual earnings before interest, tax, depreciation, and amortization (EBITDA). It is a commonly used number to determine the true enterprise value of an asset (or sub-assets if those are purchased). For the purposes of this report, we explore both the acquisition price and the price to license the rankings for a limited time period. For those limited purposes, the estimated price for either option starts with the company’s annual EBITDA for its law school vertical. Asset pricing typically uses a 2-10x multiple of EBITDA. Licenses typically use a smaller multiplier equivalent to the number of years the license is in effect plus an additional royalty to incentivize the license.

### Estimated Revenue from the Law School Vertical

We derive the estimate law school vertical revenue in two directions. First, based upon the above-described estimates of enterprise revenue and the proportion attributable to the law school vertical. Second, based on below-described estimates of revenue from the law school vertical.

The enterprise revenue method estimates the percentage of overall revenue attributable to the law school vertical. We use traffic as a proxy for all revenue sources because each identified revenue source relates to volume. While the education and car verticals, for example, both sell digital advertisements, *U.S. News* does not sell subscriptions within the car vertical. Instead it sells leads, certifies car dealers, and appears to take a cut of generated sales.<sup>36</sup>

The overarching education vertical accounts for 28.7% of page views and we consider a range of 8% to 12% of that traffic attributable to the law school vertical.<sup>37</sup> As a percentage of enterprise revenue, we estimate 2.3% to 3.4% comes from the law school vertical based on website traffic.<sup>38</sup> Based on the estimated revenue of \$101.11 million, we attribute between \$2.32 million and \$3.48 million of annual revenue to the law school vertical.

<sup>35</sup> Eric Hoover, *The U.S. News Seal of Approval Isn’t Free*, Aug. 17, 2010, <https://www.chronicle.com/blogs/headcount/the-us-news-seal-of-approval-isnt-free/26287>.

<sup>36</sup> *U.S. News* Best Price Program, <https://cars.usnews.com/cars-trucks/best-price-program> (last visited Jan. 22, 2020)

<sup>37</sup> *U.S. News* Media Kit, *supra* note 32.

<sup>38</sup> We estimate this range based on monthly page views and monthly site visitors in the education vertical. We generously attribute 10% to 20% of the education vertical to law school. We applied these percentages to page views (40 million) and visitors (7 million) to arrive at 1.9%, 2.5%, 3.8%, and 5% of enterprise revenue. We use the middle two values for our range.



# BUYING THE U.S. NEWS LAW SCHOOL RANKINGS



We can also generate an estimate from the ground up based on how much schools and students pay *U.S. News*. Law school revenue sources are derived from Academic Insights, badges, Grad Compass subscriptions for prospective students, and advertisements. From two sources at *U.S. News*, we understand that roughly one-third of ABA-approved law schools buy Academic Insights. While some of these schools buy the limited version, and others receive a discount, the high-end estimate assumes full price for 66 law schools or \$990,000 of annual revenue. If 20 of those schools pay \$5,000, the low-end estimate is \$790,000.

Only the top 100 law schools can obtain a badge for the law school programs. The top 34 law schools can obtain a badge for their part-time programs. The 13 specialty rankings in 2020 (up from nine in 2019) also reflect revenue opportunities for *U.S. News* because many schools not in the top half of the first two rankings are in the top half of one of the many specialty rankings. With those data points, we estimate between 40 and 70 law schools pay the licensing fee. Assuming Wright Media receives 50% of badge revenue and that each of these schools purchase the most permissive license at \$16,000 per year, we estimate between \$320,000 and \$560,000 of annual badge revenue.

For the 2018-19 admissions cycle, 62,388 people applied to ABA-approved law schools.<sup>39</sup> The addressable market also includes parents of applicants and people who decided against applying despite taking the LSAT. A very high-end estimate puts the addressable market at 100,000 people. If a very generous 25% of this group subscribes at \$29.95, subscriptions provide about \$750,000 of annual revenue. At 15%, subscriptions provide \$450,000 of annual revenue.

Finally, the *U.S. News* website includes many advertisements, although ad blockers successfully block the vast majority of the company's advertisements when used. According to a recent report from AudienceProject, 46% of 15-25 year olds and 37% of 26-35 year olds use an ad blocker.<sup>40</sup> After account for ad blockers, we estimate that *U.S. News* serves between 2.4 and 4.8 million monthly pages with advertisements.<sup>41</sup> From this traffic, *U.S. News* makes between \$6,000 and \$12,000 per month per advertisement on a page.<sup>42</sup> On average, it appears that *U.S. News* uses five ads per page in the law school vertical, which translates to \$360,000 to \$720,000 per year in ad revenue for the law school vertical.

<sup>39</sup> Kellye Testy, *Sizing up the 2019 Incoming Class – What Do the Numbers Tell Us?*, Law School Admission Council Blog, <https://www.lsac.org/blog/sizing-2019-incoming-class-what-do-numbers-tell-us>.

<sup>40</sup> A. Guttman, *Adblocking penetration rate in the U.S. Q2 2018, by age group*, Statista, Jun. 25, 2018, <https://www.statista.com/statistics/352030/adbloking-usage-usa-age/> (premium account required).

<sup>41</sup> If the law school vertical receives between 4 million and 8 million page views per month (based on the above estimates), and 40% of these pages do not show these ads, the law school vertical receives between 2.4 million and 4.8 million page views per month with advertisements.

<sup>42</sup> Using the education category from Google AdSense benchmarks, the clickthrough rate is .53% (1/200 page views result in an advertisement click) at an average of 47 cents per click in 2018. Mark Irvine, *Google Ads Benchmarks*, Wordstream, Aug. 27, 2019, <https://www.wordstream.com/blog/ws/2016/02/29/google-adwords-industry-benchmarks>.

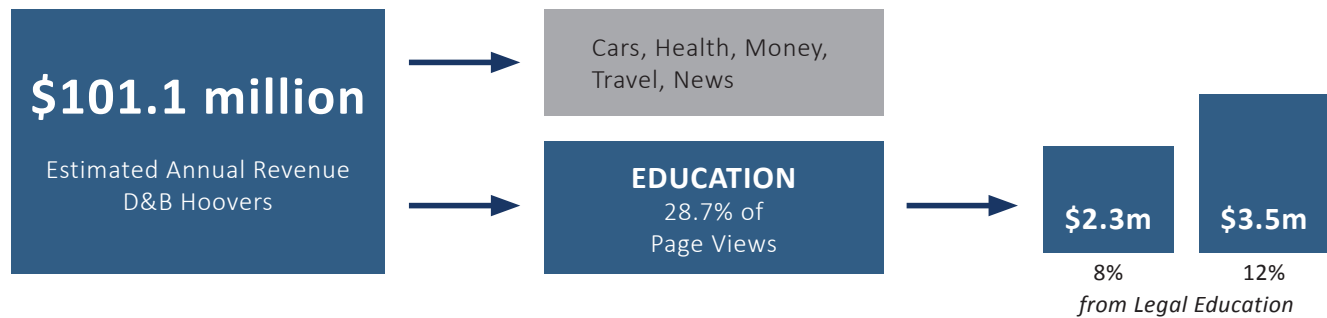
# BUYING THE U.S. NEWS LAW SCHOOL RANKINGS



## Estimated Price

We established two revenue ranges in the previous subsection. Based on estimated enterprise revenue, the range is \$2.32 million and \$3.48 million of annual revenue from the law school vertical.

Figure 2

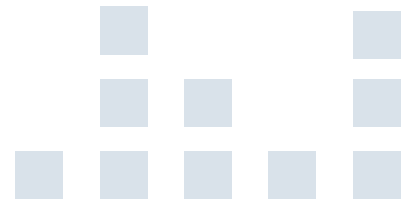


Based on law school vertical estimates, the range is \$1.92 million and \$3.02 million.

Figure 3

Revenue Source	Low	High
Academic Insights	\$790k	\$990k
Badges	\$320k	\$560k
Subscriptions	\$450k	\$750k
Digital Advertisements	\$360k	\$720k
<b>Total</b>	<b>\$1.92 million</b>	<b>\$3.02 million</b>

# BUYING THE U.S. NEWS LAW SCHOOL RANKINGS



Both approaches produce strictly revenue estimates and do not account for direct costs or shared overhead. That said, for both the purchase and lease estimates, we assume zero marginal costs in generating revenue for the law school vertical because we believe these costs would be absorbed by the education vertical. The subscription apparatus exists regardless; badges are paid for through a revenue sharing agreement with Wright Media; advertisements are almost exclusively managed through Google AdSense; the Academic Insights and website development team does not specialize; and the data team that develops the rankings is small and handles all education rankings.

The estimated annual revenue in the law school vertical supports price estimates for both the purchase agreement and lease agreement.

**Figure 4**

Purchase Price Estimates	Low	High
	Based on 10X EBITDA	
Law School Vertical Estimate	\$23.2 million	\$34.8 million
Enterprise Value Estimate	\$25.3 million	\$38.4 million

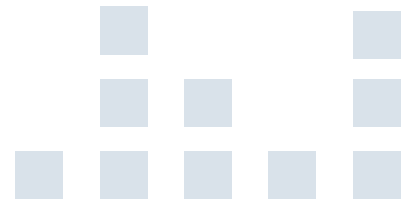
**Figure 5**

5-Year Lease Price Estimates	Low	High
	Based on 5x EBITDA + 20%	
Law School Vertical Estimate	\$13.9 million	\$20.9 million
Enterprise Value Estimate	\$15.2 million	\$23.0 million

Based on the above, we believe the acquisition price would be between \$25 million and \$30 million and a five-year license would be between \$15 million and \$18 million.



# BUYING THE U.S. NEWS LAW SCHOOL RANKINGS



## ***Societal Value Proposition***

Based on our ground-up estimate of the law school vertical revenue, we believe that *U.S. News* makes a majority of this vertical's revenue from law schools, between \$1.1 million and \$1.55 million. If law schools stop subscribing to Academic Insights and stop licensing the *U.S. News* badges, our valuation estimate range falls to between \$8.1 million to \$14.7 million. The desire for *U.S. News* to continue to devote resources to the law school vertical may even diminish if the company loses its law school revenue.

Not only are law schools financially responsible for the ongoing success of *U.S. News*, but they expend resources to compete. For every \$10,000 each ABA-approved law school spends to compete on *U.S. News* each year, schools spend an aggregate \$2 million. The actual average is many multiples of \$10,000. If the average is as high as \$150,000 per school, then schools spend more each year than our estimated purchase price between \$25 million and \$30 million. At the \$75,000 level, the purchaser could disrupt the legal education market for the price schools collectively spend over the course of two years.

An outright purchase of the rankings would provide the most flexibility for law schools to rearrange resources. It would also encourage new market entrants and existing market competitors to provide thoughtful information to prospective law students. That said, a license or purchase could backfire. New rankings and other tools for prospective law students would emerge and they may worsen the situation. Students may instead rely on the final published *U.S. News* rankings, which would positively impact law school incentives even if it would not help students make more informed choices. The purchaser may simply decide that letting the *U.S. News* law school rankings assets languish is a waste, and replace the current methodology with something as bad or worse. Additionally, a new entrant may attempt to recreate the current methodology in its own ranking to capture prospective students and maintain the current incentives.

Ultimately, we do not know what would happen if this thought experiment came to pass, but we think the risk/reward would be worth the cost. Schools spend obscenely on a system that virtually all law school administrators agree does more harm than good. Shelving these particular rankings for any period of time would certainly spark innovation. The beneficiaries would be students who want to make informed choices, as well as leaders who want to allocate resources according to their values and mission.

**Not only are law schools financially responsible for the ongoing success of *U.S. News*, but they expend resources to compete.**

**Schools spend obscenely on a system that virtually all law school administrators agree does more harm than good.**

# LST'S ROLE IN REMAKING INCENTIVES



We don't need to eliminate the *U.S. News* rankings to positively impact legal education, but meaningful competition can unseat these rankings as the benchmark for law school quality and prestige. That task starts with understanding consumer behavior. Many applicants turn to *U.S. News* to help decide where to apply and attend law school because the rankings turn a chaos of information, sometimes conflicting, into an actionable list that appears authoritative and valuable.

The rankings also provide protection—a paradigm for applicants to feel like they made a sensible choice. The fear that drives the desire is understandable. They borrow and spend a tremendous amount of money on an inexact choice that may not pay off in the short, medium, or long run. To make such a high-stakes decision without the tool the entire legal profession seems to obsess over (not to mention their family and friends) could reasonably feel reckless, even if it makes more sense to ignore them.

These applicants then become students who care about the rankings to validate their school choice and to enshrine their status. When those students graduate, they become alumni who care about minor rank movement. Trustees, presidents, administrators, faculty, and donors care because the rankings signal prestige and justify programmatic investment, but also because rank movement impacts the school's financial health and ability to recruit students that maintain or improve its status.

Law schools need benchmarks that validate values and achievements not traditionally rewarded by stakeholders, including applicants.

*U.S. News* is a part of the decision-making fabric—a feedback loop that draws in all law school stakeholders. As students pay attention, law schools pay attention. And as law schools pay attention, students pay attention. Escaping the feedback loop requires a focus on how students use the rankings to make school choices, as well as how the rankings reward choices made within law schools. We have plans that account for both. Prospective law students—the people who might attend law school—need to believe that alternatives will make their choice easier and better. Law schools need benchmarks that validate values and achievements not traditionally rewarded by stakeholders, including applicants. The next two sections discuss two simultaneous approaches LST and its partners will pursue to unbind law schools from the grips of *U.S. News* and to push them toward greater access, affordability, and innovation.

## ***The LST Reports: Data-Driven Tools for Applicants***

Unfortunately for applicants, the *U.S. News* rankings are terribly ineffective at sorting schools and considerably effective at affecting how schools sort their affairs—which increases how much students have to pay and the quality of their education and experience. Of course, any widely-adopted tool will create incentives. Schools will respond to whatever helps them present best, devoting resources in those directions. The trick is to maximize positive incentives and minimize the negative ones.

# LST'S ROLE IN REMAKING INCENTIVES



## Alternatives Emerge in the Transparency Era

The transparency era, marked by newly available and high-quality employment data, ushered in potential competition to *U.S. News* because student consumers care about their career prospects. The most visible competitors are Above the Law (“ATL”) and LST. ATL publishes a traditional ranking focused on outcomes and ranks only 50 schools. The LST Reports takes a more nuanced approach than traditional rankings and profiles all ABA-approved law schools with extensive data on employment, salaries, admissions, costs, bar exam outcomes, and more on the website [LSTreports.com](https://www.lstreports.com).

The current LST Reports is the fourth generation of tools from Law School Transparency that parse employment data. The first tool, the Data Clearinghouse, explicated the meaning of common employment statistics. The site demonstrated that salary and employment claims rarely stacked up to first impressions. For example, salaries frequently reflected a very small portion of the overall graduating class outcomes. Employment rates rarely indicated key subcategories, e.g. jobs that required a law license. The Data Clearinghouse showed the math and undermined common beliefs.

The Score Reports was LST’s second-generation tool. The website aimed to help people make informed application and enrollment decisions using both required and voluntary data.<sup>43</sup> In a traditional ranking, the numerical rank is the primary sorting mechanism. For the Score Reports, geography and a trio of scores served that function. The initial sort depended on which state a user preferred for their first job. The site directed users to a state report based on where they want to work. Except for a dozen or so national law schools, graduates typically work where they attend law school. More than two-thirds of 2018 graduates obtained a job in the same state as their law school.<sup>44</sup> Nearly 80% of employed 2018 graduates obtained a job in the same or an adjacent state.<sup>45</sup> Each state report included law schools with an objective connection to the state, i.e. employment outcomes.

Once a user reached a state report, the site sorted schools by Employment Score. The Employment Score represented the percentage of graduates who had successfully started a career in the practice of law, though it did not judge the quality of that start. Two additional scores flanked the Employment Score. The Under-Employment score represented the number of graduates underusing their skills and credentials; they had not successfully started any professional career ten months after graduating law school (shortly after their first loan payment was due). The Unknown Score rounded out the trio, showing how many graduates either did not report what sort of job they had or an employment status at all. The Unknown Score interacts with the two other scores by indicating their degree of completeness and reliability. Each score boils complex data into a single percentage so users can see intuitive, upfront approximations of risk.

<sup>43</sup> In large part because of LST’s advocacy, law schools are required by the American Bar Association (ABA) accreditation standards to publish detailed graduate employment data related to job type, employer type, and location. About 60% of law schools each year go above and beyond the minimum ABA standards and publish their NALP report, an even more detailed set of data related to graduate salaries, how and when graduates found job, and additional location data that the National Association of Law Placement (NALP) produces annually. When LST started to ask schools to publish NALP reports, 0% of law schools published. LST Data Dashboard, NALP Report Database, <https://data.lawschooltransparency.com/transparency/nalp-report-database/> (last visited Jan. 22, 2020).

<sup>44</sup> Data on file with Law School Transparency.

<sup>45</sup> The ABA only publishes the top three states for each school. Instead, we assessed 105 law schools that published their full NALP report for 2017 graduates, which includes state-based location data for all employed graduates. For this group, 71% of employed graduates worked where they went to law school.

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These scores whet a user's appetite and encourage them to dive deeper into the data to learn more about the school, from admissions chances to costs, and much in between. The third-generation tool had the same name, but introduced customization, head-to-head school comparisons, and financial planning tools. Both versions avoided the mistakes made by *U.S. News*. By emphasizing actual outcomes, the tool provided an "escape hatch." If the chances of becoming a lawyer were too low for a user's risk tolerance, this fact immediately confronted them. The tool signaled value by outcomes, rather than by being relatively better than another program on an ordinal scale. It also compared like-schools instead of placing all schools on a single scale.<sup>46</sup>

This is sensible given two fundamental questions for prospective law students. First, is attending law school, in general terms, better than other educational or professional paths? Second, do any of the specific schools they have been admitted to fulfill their reasons for wanting to attend law school generally? Ordinal rankings do not encourage prospective students to ask either question. Instead, they encourage users to jump to the question of which option is the best, hiding the possibility that the student may actually be deciding which option is the least bad.

The fourth-generation tool, rebranded the LST Reports, maintains the same underlying philosophy of the Score Reports. LST refreshed the look, added more types of data, and showcased trends more prominently. The site is mobile friendly and continues to help prelaw students make informed choices about whether and where to attend law school. The site serves tens of thousands of prospective law students each year through several thousand pages of free resources. With this generation, LST also introduced two fee-based analytics. (1) The LST Wizard is a collection of proprietary algorithms that narrow the national list of law schools and index them based on user preferences, as well as predict admissions chances, anticipated scholarships, and school-specific job outlooks. (2) The Legal Career Compass is a psychometric assessment that shows which practice areas and settings best fit an individual's mindset and personality through an algorithm that compares their traits to thousands of lawyers.

## The LST Reports: Good in Theory, Good in Practice

Although the *U.S. News* rankings are omnipresent in both casual and sophisticated conversations about attending law school, they are not immune to competition. In particular, relevant, high-quality data organized with student needs in mind should compete with these rankings. A competitor should succeed if its quality obviously eclipses that of the *U.S. News* rankings, while remaining simple enough to capture the intuition and attention of those making application and enrollment decisions. Yet just because something should be the case does not mean that it will be.

The good news is that prospective law students act differently when they have well-organized and trustworthy information to act upon. LST has served many tens of thousands of prelaw students over the years, with the average user engaging deeply with the content as measured by return visits, time per page, and usage patterns. The underlying structure of the LST Reports recognizes that the ABA's approval does not preordain sound choice,

<sup>46</sup> That said, LST did use a national report that included all law schools. The site flow and design deemphasized the national report but remained accessible to site visitors.

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while providing intuitive information that supports applicants through the admissions process. It is responsibly simple and considered authoritative in part because the site is from a nonprofit named “Law School Transparency.” Transparent data sources further reinforce authority.

In response to a survey, one student said that the LST Reports “allowed me to directly compare schools beyond the one-dimensional *U.S. News* rankings.” Another said that “LST put me in a good position to start to ask some questions based on a thousand-mile view of what I didn’t realize was a personalizable experience.” Students who have used the LST Reports learn from the site design that geography matters a lot, and they apply that knowledge to their analysis of a one-size-fits-all national ranking: “Perhaps more than anything else LST makes it clear that law is a relatively local profession (i.e. it makes much more sense to go to school where you want to practice, which is not as significant for undergrad, even at the expense of rankings).”

Schools, unfortunately, can make this realization difficult. As one student pointed out, “It’s easy to think from school promotional materials that all law schools are all things to all people. Most law schools appear as if they have the same cost and allow you to practice anywhere in any sort of legal job.” The student continued on to say that the LST Reports cuts through the noise and sets them on a better track. “LST clarifies the data and shows that, yes, there are differences between different law schools, and some schools are a better fit for my goals than others.” Another student echoed this sentiment and showed how the realization empowered them in their decision-making. “It has changed my complete outlook and expectation of what I am going to need from a law school. I viewed the admissions process as if only I as the applicant had something to prove. Because of LST, law schools now have something greater than a *U.S. News* ranking to prove to their applicants.”

Similar patterns can be found across prelaw student websites, including Reddit.com, Top-Law-Schools.com, and LawSchool.Life. Super users on these websites recommend against *U.S. News* utilizing many of the arguments in this report and suggest the LST Reports as the smart alternative for making application and enrollment decisions. Those who have been around the process for a while frequently respond to students wrestling with competing admissions offers by asking what the LST Reports say.<sup>47</sup> This is heartening, but also demonstrates the importance of making student-focused choices every step of the way in how the site is laid out, what data to emphasize, and what context students need to make informed decisions.

“Perhaps more than anything else LST makes it clear that law is a relatively local profession (i.e. it makes much more sense to go to school where you want to practice, which is not as significant for undergrad, even at the expense of rankings).”

<sup>47</sup> See, e.g., Re: U Illinois vs. UConn, LawSchool.Life, <https://www.lawschool.life/forums/viewtopic.php?f=23&t=7693&p=301687> (“What does LST Score reports say about the feasibility of your goals from either school?”).

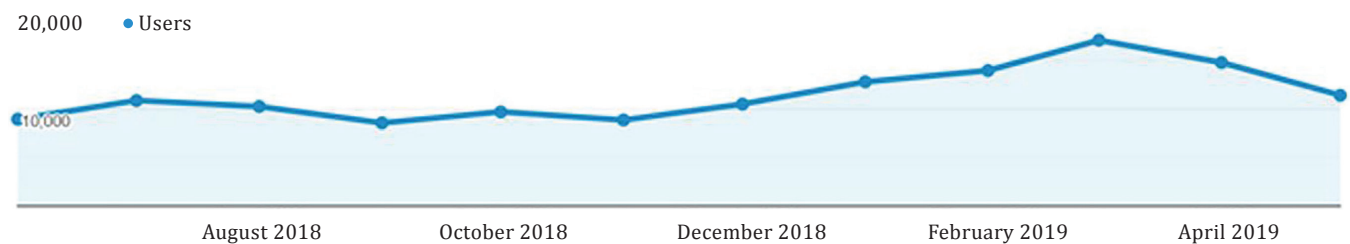
# LST'S ROLE IN REMAKING INCENTIVES



## How LST Will Help Even More

LST has made steady progress through four generations of tools. The core approach has a proven track record with prelaw students and the narrative related to *U.S. News* has begun to shift. Those who use the tools make more informed choices and provide more informed advice. But there remain significant opportunities to improve, particularly relative to the broader goal of mitigating the influence of *U.S. News* on applicant and therefore school behavior. While the site received 116,000 unique user visits during the 2018-19 cycle, and traffic patterns indicate genuine engagement, there remain two key problems: reach and timing.

Figure 6



While an imperfect comparison, the Law School Admission Council (LSAC) reported nearly 79,219 first-time LSAT takers between June 2018 and March 2019.<sup>48</sup> Although there were more unique user visits to the LST Reports, many of these visits were from lawyers, legal educators, advisors, and the public generally. There remain significant opportunities for market penetration. The reach is also insufficiently diverse: the top 50 schools (by job outcomes) receive considerably more traffic than the other 150 schools. More people use the site later in the application cycle, after submitting applications, which constrains their ability to make informed choices about whether and where to attend law school. Reaching everyone earlier—and reaching more people who ultimately attend local and regional schools—requires boots on the ground at colleges across the country, better site design, and more visibility on the social media platforms that today’s applicants use daily.

To further support growth, the system of LST tools need to be organized better, especially for people who do not know much or anything about the law school application process, graduate outcomes, or what lawyers even do. Today, the LST Reports functions as an intermediate-to-expert level tool. It need not become a bludgeon in the way that *U.S. News* or even ATL functions. It should continue to provide a scalpel that helps students edge closer and closer to their best choice, yet ultimately requires them to reflect on what matters to them. The process can never be completely personal. But it can take would-be applicants through the process more empathetically.

To maximize impact, LST needs to stop charging for the LST Wizard, a tool for making admissions and enrollment choices. The LST Wizard is part of the LST Pro package, which retails for \$75 and also includes the Legal Career Compass, a psychometric assessment provided by The Right Profile that compares the test-taker’s traits to thousands of practicing attorneys. The LST Wizard’s custom algorithm allows individual prelaw students to predict admissions chances and anticipated scholarships on the front end, and to weigh their options on the back end.

<sup>48</sup> LSAC, Test Registrants and Test Takers, <https://report.lsac.org/TestTakers.aspx> (last visited Jan. 22, 2020).



# LST'S ROLE IN REMAKING INCENTIVES

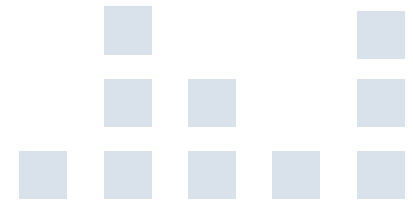


Figure 7

LST WIZARD REPORT								
Index	Name	Admission Chances	Jobs Outlook	2018 Graduate Jobs Outcome				
				Any Lawyer	Any Firm	Large Firm	Public Service	Clerkship
1.68	Private University	Low	Stable	85.9%	73.9%	70.8%	13.6%	22.2%
1.68	Private University	Low	Stable	81.2%	72.8%	72.3%	12.7%	36.6%
1.67	Private University	Low	Stable	85.1%	79.5%	78%	8.2%	26.7%
1.64	Public University	Low-Medium	Stable	87.2%	81.4%	79.2%	11.6%	6.5%
1.45	Public University	Low-Medium	Improving	81.3%	74.7%	69.4%	6.6%	9%
1.22	Private University	Low-Medium	Stable	67.3%	50.4%	44.1%	19.6%	6.9%
1.02	Public University	High	Stable	65.5%	44%	27.2%	18.5%	7.8%
0.78	Private University	High	Declining	65.9%	45.7%	12.3%	17.4%	4.4%
0.50	Public University	High	Declining	55.7%	31.2%	3.3%	14.8%	21.3%
0.23	Private University	High	Improving	32.8%	17%	1.2%	13.5%	1.2%

The LST Wizard is a design and functionality success, but it only reaches people who can afford it. The costs of applying to law school add up without the additional cost for information that LST believes should be free. At the same time, the modest revenue from LST Pro has supported the organization’s bootstrap budget since late 2016. Without this revenue, LST could not have provided its resources or contributed to the betterment of legal education or the legal profession through its policy work. That said, making the LST Wizard free is a must for improving the LST Reports. Strengthening the LST Reports will accordingly align law school incentives with behaviors that benefit students, the profession, and society.

Efforts to refresh the LST Reports—the 5th generation tool—translate into two broad imperatives: more content and more positive influence. These efforts will increase the amount of high-quality consumer information available to prospective law students and grow the reach of the LST Reports, which means helping more students through a life-changing decision, reducing the negative influence of the *U.S. News* rankings, and providing market-based incentives for law schools that strive to offer innovative, accessible, and affordable legal education.

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## **The LST Index and Certification: External Validation of Law School Values and Achievement**

As a general benchmark, the *U.S. News* rankings push schools in ways that do not align with their values. After countless conversations with current and former law school deans and other senior administrators, it is apparent that they desire a deliberate, thoughtful, and transparent mechanism that measures the good work that they do and that they want to do. In other words, these deans seek an external validator beyond *U.S. News* in part to arm themselves for difficult conversations with stakeholders. From LST's perspective, the purpose is to unbind schools from the grips of *U.S. News*, create the necessary conditions for affordable, accessible, and innovative legal education, and cause faster positive change.

[T]he *U.S. News* rankings push schools in ways that do not align with their values.

### **A Model for Success in Legal Education**

In 2013, LST assessed school websites for the accurate publication of information important to consumers and required by the ABA. This process uncovered problems and motivated schools to improve the quality of information they provided. For the assessment, named the Transparency Index, schools received a green ✓ or red ✗ for each of the 19 criteria: ten voluntary disclosure criteria and nine criteria that measured compliance with the new ABA Standard 509.<sup>49</sup> Administrators at 199 ABA-approved schools received performance results along with explanations of the requirements and common issues. Schools had three weeks to address shortcomings. A website disclosed initial performance, but emphasized where schools landed. This encouraged schools to improve performance over time.

In that short time, 84 schools improved their standing on the Transparency Index. The media covered the results, which caused even more schools to improve and the ABA to ramp up enforcement related to Standard 509, all-but eliminating violations of the new ABA disclosure standards. The process and results earned the Transparency Index a mention in Transparency International's Global Corruption Report as one of the U.S. case studies on integrity in higher education. Even today, over 60% of law schools publish the voluntary disclosures from the Transparency Index in full each year.<sup>50</sup> It lastingly changed disclosure norms.

Fundamentally, schools were motivated by the ability to earn green checks. In some cases, law school deans wanted green checks for all criteria. In other cases, the deans just wanted to meet or exceed performance of particular peers. In all cases, schools were responding to a new market for transparency. Schools competed on a series of new, straightforward metrics that looked at the quality and honesty of consumer disclosures.

<sup>49</sup> Law School Transparency, 2013 Transparency Index, <https://www.lawschooltransparency.com/reform/projects/Transparency-Index/>.

<sup>50</sup> LST Data Dashboard, NALP Report Database, <https://data.lawschooltransparency.com/transparency/nalp-report-database/>. The voluntary components of the Transparency Index are all met through publishing the NALP report.



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## Philosophy and Basic Structure

LST will extend its success on transparency with three additional themes: access, affordability, and curricular innovation. As outlined in earlier in this report, an unrelenting system of incentives makes equitable access, lowering prices, and modernizing curriculums extremely difficult. LST will help schools align their values and decisions by creating a functional market for access, affordability, and curricular innovation.

There are two key top-level elements that will allow these new markets to flourish: a public performance index and a free certification. The LST Index will assess schools according to transparent criteria related to the above four themes. A school receives a **✓** for each criterion it meets; a school receives an **X** for each criterion it does not meet. For some criteria, a **?** may be a third option that indicates no position.

Figure 8

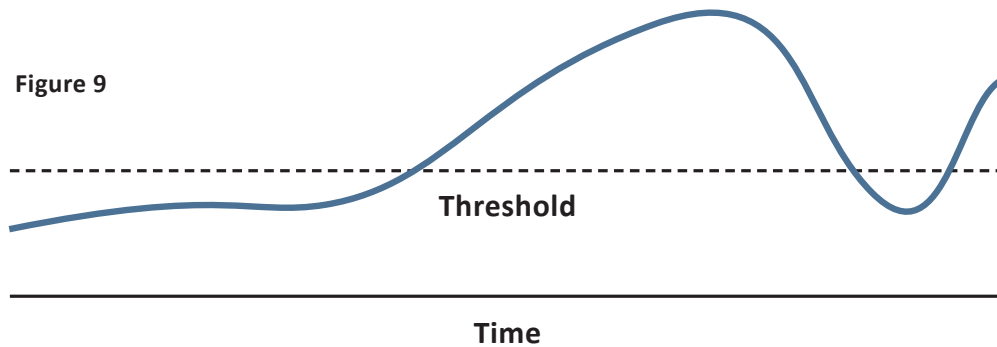
	A	B	C	D	E	F	G	H	I	J
B. Obama Law School	✓	✓	X	✓	✓	X	X	X	✓	✓
RGB School of Law	X	✓	✓	✓	X	X	✓	X	?	✓
J. Roberts Law School	✓	X	X	X	X	✓	X	✓	X	✓

The criteria may measure gender and racial representation, tuition transparency, diverse faculty and staff hiring practices, concrete steps to create inclusive environments, and much more. Version 1 of the criteria will be set after a period of notice and comment. The standards, required documentation, and performance will all be publicly available at [www.LSTIndex.com](http://www.LSTIndex.com).

Schools will also be able to earn a certification that signals to the market its values and achievements. To become certified—an official name will be revealed at a later date—a school must meet or exceed a points threshold. Schools will earn points based on LST Index performance. The points available for meeting each individual criterion will be determined through a variety of factors by an independent standards board created by LST. Through a transparent point system, schools will retain flexibility in how they achieve their minimum certification score. The total score will rise and fall with performance over time, but as long as the school meets or exceeds the threshold, it may claim certification.





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**Figure 9** looks at the fictional RBG School of Law's performance over time. Schools will receive a score by participating in an online assessment that asks schools a series of questions related to the criteria. Some answers will be pre-populated with data from the ABA, which the school must confirm for accuracy. Other answers will require documentation. Each criterion will have a set period of time for which the answer qualifies. For example, every December, the ABA publishes new data related to tuition, scholarships, and student demographics. Insofar any part or combination of the December dataset qualify a school for one or more criteria, these data preempt the prior year's data, unless the criteria utilizes performance over several years. Expiration will be baked into the program to ensure timeliness and progress. Schools will receive advanced notice when documentation will expire, especially if the expiration jeopardizes certification without the school updating its documentation. The lead time will allow schools to pivot when possible.

The index and certification will not take a 360° view of a law school and its contributions to their community, the legal profession, and beyond. The purpose is not to dictate the missions or emphasis of law schools. Instead, this project seeks to instill a baseline for U.S. legal education as it relates to cost, diversity, transparency, and innovation. The vision will be robust but not so strident that schools do not retain the flexibility to serve diverse missions. The criteria selected, weight prescribed, and threshold delineated will reflect a vision of legal education where law schools are more affordable, more inclusive, more open, and more responsive to what society needs from its lawyers. They will also reflect a process that involved law school administrators and educators from the start.

Ultimately, the 2013 Transparency Index worked because it created a market for disclosure. Law schools competed for green checks, seeking to do as well or better than peer schools. The tabular green 's and red 's in the new LST Index, along with the certification and associated scores, will likewise promote accountability and competition; law school stakeholders can benchmark their school against peer schools and internal goals. The certification will attest to what a school values and showcase that it devotes more than words to meaningful objectives. In the end, the LST Index and certification will provide a genuine opportunity to alter the incentives landscape that paralyzes legal educators in a time where rapid change is essential. Many individuals in and around law schools care about access, affordability, and curricular innovation. Creating markets for those themes will help them take their efforts to the next level.

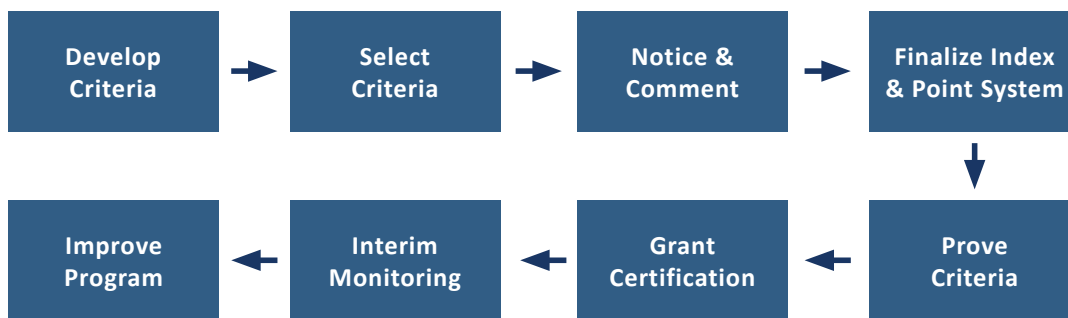
# LST'S ROLE IN REMAKING INCENTIVES



## The Process

The system is designed to recognize achievement and cause positive change. To do so, the system as a whole and each part must be reasonable, practical, and worthwhile. Without these pillars, the system collapses and the potential impact minimized. To ensure success, LST has consulted (and will continue to consult) law school deans, administrators, and faculty; current and former regulators; young and seasoned lawyers; people at legal education nonprofits; and even people outside of the legal profession, including those with expertise in point-based certification systems. The project is completely independent from law schools but requires their input to satisfy the pillars. **Figure 10** (below) charts the process beyond the basic index and certification structure.

Figure 10



## Develop Criteria

The LST Index will include a variety of criteria that touch on one or more themes. Each criterion is a measurement. Sometimes we will measure outcomes; other times we will measure process or practices. The key consideration is what is necessary for the kind of progress envisioned, or even what just might be helpful. Small movements can be incredibly valuable when targeting the right levers. The criteria cannot be so unreasonable that schools cannot possibly comply, but must reach far enough as to make the entire enterprise worthwhile. Importantly, perfect cannot be the enemy of the good.

Many of the conversations related to potential criteria have been one-on-one conversations. Others have involved very small groups over the phone or video conference. LST also presented the core index and certification structure at Wolters Kluwer Leading Edge in July 2019, the ABA Annual Meeting in August 2019, Law's Futures: New Institutions for Legal Education in September 2019, the Center for Computer-Assisted Legal Instruction (CALI) Board of Directors meeting in January 2020, and the Society for American Law Teachers (SALT) Board of Directors meeting in January 2020. At each event, LST solicited feedback on the structure and ideas for criteria from senior law school administrators, legal educators, and members of the bar.

Additionally, LST co-hosted two workshops related to access, diversity, and inclusion metrics at two law schools. In October 2019, the University of South Carolina School of Law co-hosted the first workshop. Participants included senior leaders from the Law School Admission Council (LSAC), Law School Survey of Student Engagement (LSSSE), CALI, and Diversity Lab's Move the Needle Fund, the dean on an HBCU law school, members of the local bar, and law students. In February 2020, Boston College Law School co-hosted the second workshop. Participants included a half-dozen current and former law school deans, former regulators, members of the local bar, and law students.

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At both convenings, LST asked participants to take an industry-wide scope, wear their model citizen hat, and understand that successful administration of the project will benefit the legal profession, access to justice, and the rule of law. All participants took the instructions seriously. During and after the events, the consensus was that the workshop was personally enriching, but also that success was plausible and would mean lasting, wide-ranging change in legal education. This in large part was because the convenings brought together former ABA regulators, law school and university administrators, students, legal education data wonks, and diversity and inclusion experts to ensure the criteria workshopped were reasonable, practical, and worthwhile.

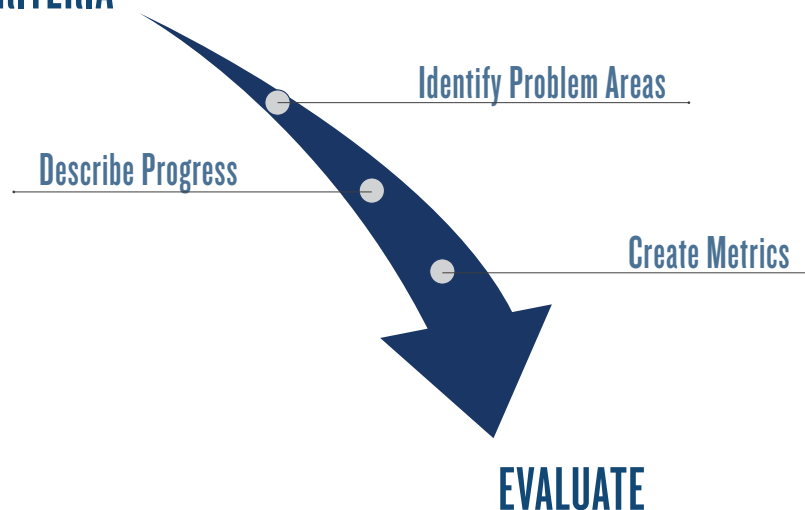
The workshop process moved from problems to progress to metrics through a series of three questions.

- 1 Identify Problem Areas: In what ways do law schools struggle with diversity?
- 2 Describe Progress: What is necessary or helpful for the progress you envision?
- 3 Create Metrics: How should we measure that progress?

LST has used this process through all four themes and the process is ongoing as of this report's release (March 2020). To date, more than 50 metrics have been considered, but only a portion of these metrics will survive to notice and comment and to the Version 1 of the LST Index. Each criterion will go through rigorous evaluation at each stage.

Figure 11

## DEVELOP CRITERIA



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## Select Criteria

This stage involves finalizing a public draft of provisional criteria. An iterative process, LST will create roughly 50 brief summaries of criteria for consideration for the LST Index and tag each by linked theme(s). For a subset of those most promising criteria, LST will develop standards, measurement tools, and timelines. Working groups of subject-matter experts from throughout legal education, the judiciary, and the practicing bar will help during this stage.

## Notice and Comment

This stage involves 60 days of public comment on the provisional criteria. To maximize public engagement, LST will establish a public comment website and solicit feedback through news stories, blog posts, listservs, direct emails, social media, and any other avenue that may reach interested people.

## Finalize Index and Point System

LST will establish an independent standards council with representation from law schools, the bench, the bar, prelaw advisors, and the public. The executive council will consider the comments, adjust the standards as appropriate, and determine the final criteria and point system. While the LST staff and other subject matter experts will advise throughout the process, the final decisions reside with the standards council, unless the LST Board of Directors overturns a decision within 30 days with a two-thirds majority vote. Once the executive council finalizes the criteria for Version 1, including evidentiary standards, the criteria will not change until a later version is released.

Once finalized, LST will announce Version 1 of the LST Index, the point values for each criterion, and the threshold schools must meet or exceed to qualify for certification. To start, school performance on the LST Index and their point totals will not be public to provide schools the opportunity to surpass the threshold without the penalty that may be associated with the appearance of slow uptake. The timeline for performance disclosure will be determined by the standards council based on the criteria selected for Version 1 of the LST Index.

## Prove Criteria

With the criteria finalized, schools will be able to take an online assessment that measures and tracks progress. The assessment will automatically update point totals as schools complete it. The assessment will ask schools for documentation (or confirmation of the information LST has about the school), and once LST verifies submissions, the LST Index will update, along with the school's official point totals. Along the way, LST will provide guidance to help schools either achieve new goals, make good on current goals, or demonstrate achievement. The guidance will be provided throughout the assessment, as well as to law school administrators directly in-person, over the phone, or over email. If a school disagrees with LST's evaluation, the school may appeal. The appeal will prompt a discussion with an LST staff member or member of the standards council. If a resolution cannot be reached, the school may escalate its appeal to the standards council, where the decision will be final.

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## Grant Certification

Certification will last as long as schools remain at or above the points threshold and the dean signs the certification agreement. There will be no charge for certification. Even before the LST Index and school point totals become public, schools may use the certification if they meet or exceed the threshold and sign the agreement. Schools that seek to comply may also voluntarily disclose current performance on their websites, provided they meet certain, to-be-defined disclosure standards related to the project.

## Interim Monitoring

Law schools can lose credit for the criteria they meet in several ways:

- 1 New data render previous data obsolete, and the new data do not qualify the school for the criterion;
- 2 Schools do not fulfill pledges;
- 3 Failure to renew policies or procedures;
- 4 Changing or reducing disclosures;
- 5 Violating the certification agreement.

Depending on the final criteria, there may be additional ways to lose credit. Appeals will be handled through the appeals process described above.

## Improve Program

As previously noted, the index and certification will not take a 360° view of a law school. This project provides a baseline vision related to four themes: access, affordability, innovation, and transparency. Accordingly, Version 1 of the LST Index, as well as later versions, may disappoint or frustrate some legal educators, administrators, and others. But over time the project will evolve and LST will remain committed to creating positive incentives that make the legal profession and society better.

Feedback for the next iteration will begin immediately after we release Version 1. While the criteria, evidentiary standards, and point system will not change after the release of a new version, help documents can be updated to reduce confusion. Feedback for future versions will be sought from law school administrators, legal educators, the bench and bar, and other subject matter experts. For example, Version 1 is likely to be light on curricular

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innovation. LST and its partners plan to convene workshops with key stakeholders on curricular innovation. Future criteria may focus on the innovation process, e.g. whether the school develops empirically-validated learning outcomes. It may also focus on incentives to restructure programs and spending in a way that makes them more accessible and affordable. The standards council will update the criteria periodically and schools that previously earned certification will receive a grace period to comply with new criteria.

LST and its strategic partners from throughout the legal profession must work to make the LST Index mean something.

## Making Markets: Hope Will Not Suffice

The LST Index will measure progress over time and lead to certification for schools that attend to significant issues in legal education. What gives the LST Index such promise is the potential for law schools to demonstrate value to university provosts, presidents, and trustees; students and alumni; employers; prospective law students; and their communities. Law schools need this path because, to date, *U.S. News & World Report* has served as *the* benchmark for law school quality and prestige.

Perhaps counterintuitively, explanations of this project have led to palpable enthusiasm among deans. LST began to discuss the project in mid-2019 with select law school deans around the country—beyond those we consulted on the structure, mechanics, and potential criteria. Sample responses included “Yes!,” “How can I help make this happen?,” “Please, please, please make this happen,” and “This could transform legal education.” These deans wanted to be judged, just not by *that* benchmark.

Not all deans will react this way, but enough have. Yet hope is not enough. LST and its strategic partners from throughout the legal profession must work to make the LST Index mean something. A market will not be made if stakeholders pay little attention. To do this, LST will work to integrate index performance on other third-party websites and seek news coverage and write columns about the schools that commit to the project and its vision. Schools that use the certification, or their intention to become certified, on their websites and other marketing materials will also advance the goal of establishing this new benchmark.

In addition to media coverage and integrations, LST and its partners will visit law schools, speak at conferences, conduct webinars, and more to teach school administrators and faculty how the LST Index works and persuade them to seek compliance with as many criteria and as quickly as practicable. LST will also recruit students, alumni, and faculty champions at law schools. These individuals will build support among key stakeholders at their law school. LST will support these individuals throughout the process.

The legal profession must demand better and support models that do so—to credit the schools that make consistent, valuable societal contributions on a range of measures. If the profession does not come together, legal education will continue captive to the whims of a for-profit company that will always prioritize its bottom line over the health of the legal profession, its members, and those it serves.



# LST'S ROLE IN REMAKING INCENTIVES



## Competition is Key

The game is mitigation, not elimination. Genuine competition will help unbind schools from the grips of a single ranking regime. The LST Reports will continue to be LST's principal means of providing students the tools they need to make informed choices about where to apply to and attend law school (if at all). It is not enough for advisors like LST to merely tell prospective students not to use the *U.S. News* rankings. Advisors must point to viable alternatives, or create them when they do not exist.

The LST Index and certification will also provide new consumer information, although its primary function will be to provide an alternative validation framework to schools so that educators and administrators have something else to shoot for and sell to their many stakeholders. Increasingly, today's generation of law school applicants (not to mention donors) care about spending money with institutions committed to social, environmental, and other impact. The more stakeholders care, the more schools will care. Accordingly, schools will want to improve their standing on any measure with currency. This means more green checks from the LST Index and more cumulative points from the assessment, each of which will push schools to improve above the certification threshold.<sup>51</sup> The point, after all, is to bend decision-making in favor of the vision that animates the project.

While law school administrators do not hold all the keys to mitigating the influence of *U.S. News*, they hold many of them. Embracing credible, alternative approaches can help to change the narrative among prelaw students, students, alumni, faculty, and the media. A rubber stamp from LST is unlikely to move the needle, but a system that is reasonable, practical, and worthwhile can.

Yet a reasonably challenging system does complicate the decision to take the LST Index assessment and build internal support among faculty, staff, and students for improvement. Fortunately, LST has not and will not create criteria in a vacuum. The project has been purposefully developed in concert with a collection of legal education's most thoughtful innovators and will provide key additional consumer information—the kind that LST can strategically disseminate through many different, competing platforms to maximize awareness and therefore effectiveness. If successful, legal education can get where it needs to go much faster.

<sup>51</sup> B Corps are a great example. With B Corps, corporations have not stopped just because they meet the minimum threshold to qualify as a B Corporation. *Improve Your Impact*, <https://bimpactassessment.net/how-it-works/improve-your-impact>. Corporations do not unlock higher levels with more points, as with LEED Certification. Yet they still seek to improve performance over time.



# CHANGE THE U.S. NEWS LAW SCHOOL RANKINGS METHODOLOGY



The *U.S. News* rankings are not going away, so we should simultaneously pursue alternatives while convincing *U.S. News* to change its methodology to help applicants make informed choices.<sup>52</sup> As implemented, the methodology rewards schools for spending as much money as possible. The faculty resources metrics count for 15% of the total ranking and include (1) expenditures per student, (2) modified expenditures per student, (3) a student-faculty ratio, and (4) library resources.<sup>53</sup> These metrics purport to measure educational quality, but do not succeed.

Instead, *U.S. News* should replace the four faculty resources metrics with an efficiency metric. An efficiency metric would reduce the incentive law schools have to spend money, while encouraging them to achieve meaningful outcomes. The result would be a higher quality ranking. At minimum, an efficiency metric should replace both expenditures-per-student metrics. However, the new metric should also replace the two other resource metrics too. The library resources component does not relate to a 21st century legal education. Additionally, the ABA Section of Legal Education determined that the student-faculty ratio is an outdated proxy for quality and no longer uses it in assessing accreditation. These metrics encourage spending without commensurate value.

## Efficiency Metric: Tuition Revenue per High-Quality Job

An efficiency metric considers how to get the most from the least. Our proposed metric incentivizes schools to derive as little revenue as possible from students while still providing access to high-quality job opportunities. It accounts for revenue from tuition collected from students and the number of long-term, full-time jobs that require bar passage or for which a J.D. is an advantage earned by graduates during a given year.

### INPUT

The total revenue from tuition and fees that the school collects from all JD students during the entire academic year.



### OUTPUT

The number of long-term, full-time bar passage required or J.D. advantage jobs obtained by graduates from that academic year.

### RELATIVE ORDERING

On this metric, a school that charged students less money is relatively better than a school that charged students more money to achieve the same number of high-quality jobs. In other words, the metric values efficiency by attaching total money spent by students to produce desirable outcomes.

A school with a large endowment would not be hurt under this metric because the expenditures that come from endowment returns would not be relevant. Likewise, schools that receive money from alternative sources such as grants, state support, or other ventures would not find that those specific revenue streams hurt them. Schools would be liberated to spend non-tuition revenue however they choose without a ranking penalty.

<sup>52</sup> In 2012, *U.S. News* changed how its methodology credits schools for job outcomes in its program rankings.

<sup>53</sup> For more details on the *U.S. News* law school rankings methodology, see Part A Section 1.

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## Selecting the Input and Output

We considered a variety of employment metrics for the output, but each option relies exclusively upon the employment data law schools must collect and publish to maintain ABA accreditation. The ABA employment data (sampled below, **Figure 13**) are easy to access and use—and subject to audit by the ABA. The output indicates the value the school provides individual graduates.

**Figure 13**

EMPLOYMENT SUMMARY FOR 2019 GRADUATES					
Employment Status	Full Time Long Term	Full Time Short Term	Part Time Long Term	Part Time Short Term	Number
Employed - Bar Passage Required	119	0	2	1	122
Employed - J.D. Advantage	10	1	1	0	12
Employed - Professional Position	1	0	0	0	1
Employed - Non-Professional Position	0	0	0	1	1
Employed - Law School/ University Funded	12	0	0	3	15
Employed - Undeterminable	0	0	0	0	0
Pursuing Graduate Degree Full Time					5
Unemployed - Start Date Deferred					1
Unemployed - Not Seeking					2
Unemployed - Seeking					6
Employment Status Unknown					2
<b>Total Graduates</b> Each graduate is counted only once in this section					167

To choose the output, we started with the conventional assumption that the bulk of students attend law school to pursue a career practicing law. Based on the categories available through the ABA employment data, we selected “Bar Passage Required” jobs that are both long term (an indefinite duration or a definite duration of 1 year or more) and full time (>35 hours per week). This is not a measurement of whether a graduate is in a position to repay his or her debt, the outcomes justify the cost of attendance, or the job is preferred by the graduate. It proxies a successful start to a legal career, i.e. becoming a member of the legal profession in more than a nominal sense. Notably, this excludes graduates in part-time or short-term positions, even if the job requires a law license.

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These graduates are underemployed. Part-time jobs are those in which the graduate works less than 35 hours per week. Short-term jobs are those that have a definite duration of less than one year.

Further, we included “J.D. Advantage” jobs that are both long term and full time, even though the category is dubious because, frankly, few jobs exist where the J.D. isn’t helpful. While some of these jobs are quite good and genuinely require a J.D. to obtain (even if not a law license), 37.5% of graduates in these jobs were seeking an additional job at the time of measurement, compared to just 7.2% of graduates in jobs that require a law license.<sup>54</sup> In part this is because schools count paralegals and jobs often filled by college graduates as J.D. Advantage. As defined, these categorizations make sense—the J.D. provides an advantage in performing the job—but it undermines the category’s value to consumers. That said, the legal profession is changing. Each year, legal services will be delivered by more and more providers who do not have or need a law license. An efficiency metric embedded in the *U.S. News* rankings methodology will impact behavior, and schools should have the flexibility to target legal services jobs of the future, even if part of the tradeoff is slightly overstating the school’s efficiency in the near term.

We also considered a variety of **input** measures, each a dollar amount, that indicate the cost to achieve the value measured by the output. For an efficiency metric based on 2019 graduates:

- 1 average amount borrowed by 2019 graduates who borrowed;
- 2 average amount borrowed by all 2019 graduates;
- 3 total tuition by 2019 graduates during the 2018-19 academic year;
- 4 total tuition by 2019 graduates over their entire time in law school;
- 5 total tuition paid during law school by all students who could have graduated in 2019 but did not due to non-transfer attrition;
- 6 total tuition paid by all JD students during the 2018-19 academic year.

Notably, these inputs are student-centric, based on how much students pay or borrow. Expenditures metrics are school-centric.

The choice among student-centric input measures is much more challenging than selecting an appropriate output measure. To start, the ABA does not at this time<sup>55</sup> require schools to publish the amount graduates borrow or the amount of tuition any relevant cohort pays for one or more academic years. However, both amount borrowed and tuition paid are readily accessible to law schools for each student it enrolls. As with the current expenditures figures, law schools can aggregate and report any of these data voluntarily to *U.S. News* each year.

<sup>54</sup> 2018 NALP National Summary Report, available at [https://www.nalp.org/uploads/SelectedFindingsClassof2018\\_FINAL.pdf](https://www.nalp.org/uploads/SelectedFindingsClassof2018_FINAL.pdf).

<sup>55</sup> We hope this will change. Part II argues that the ABA should collect and publish these data.

# CHANGE THE U.S. NEWS LAW SCHOOL RANKINGS METHODOLOGY



Students borrow for more than tuition; they borrow for books, rent, clothing, food, utilities. Schools control their tuition, but exert considerably less influence on how much money students need to borrow to live. Measures focused on the amount borrowed incentivize schools to enroll wealthy students who do not need to borrow for law school. Importantly, efficiency has little to do with how students pay—loans, savings, gifts, private scholarships—and more to do with what they pay. Aggregate tuition paid to the university<sup>56</sup> is a more direct measure for the question, which school most efficiently produces high-quality outcomes? A preference for tuition revenue over borrowing outcomes eliminates the first two input options.

The trickier question is which cohort to measure and over what time period. Students transfer in and out, leave school, and fail out. The graduate cohort does not account for those who left school, a group who this metric should measure because they paid tuition. This eliminates the third and fourth input options.

Ultimately, we chose the sixth input option. While accurately tracking each student and looking back over three to five years of records is possible for the fifth input measure, it is unnecessarily burdensome. The sixth input option smooths over this data collection headache without jeopardizing positive alignment between tuition paid and job outcomes. For example, the sixth input option penalizes rapid increases in enrollment and incentivizes rapid decreases in enrollment. While job outcomes are akin to a body of work several years in the making, the tuition revenue for all J.D. students in a given year aptly captures what students invested towards the school's overall job outcomes.

**There is no perfect answer; the choice among potential inputs and outputs comes down to our judgment about tradeoffs, consideration to a wide variety of scenarios, and the results of simulations.**

One additional choice was whether to use the number of high-quality jobs or the high-quality jobs rate for the output measure. Our goal with this metric is to reward schools that achieve better outcomes from less tuition revenue. A school that is twice the size of another school with the exact same high-quality jobs rate should not perform twice as poorly despite charging the average student the exact same amount of money. A metric utilizing raw numbers avoids that irrational penalty.

There is no perfect answer; the choice among potential inputs and outputs comes down to our judgment about tradeoffs, consideration to a wide variety of scenarios, and the results of simulations. Our proposal values a school that relies on non-tuition revenue over tuition revenue. It also values allowing schools to raise and spend money how they see fit. Gaming this metric requires more jobs, less tuition, or both.

<sup>56</sup> This is all about how much students *pay* to pursue their degree. The definition, whether defined by the ABA or *U.S. News*, should consider how law schools might try to create the appearance that students pay less than they do. For example, if the university at which a law school resides takes an automatic cut of \$5,000 from tuition from each student, that should still count because it's been defined from the student's point of view.

# CHANGE THE U.S. NEWS LAW SCHOOL RANKINGS METHODOLOGY



With a specific proposal outlined, we can turn to some likely questions and concerns from the legal academy, *U.S. News*, students, or others interested in how methodological changes would impact law school operations and student decision-making.

## **This Proposal Would Shake The Rankings Up Too Much**

*U.S. News* has a financial interest in remaining relevant. Substantial changes within the rank order risk its credibility and thus its perceived role as the benchmark for law school quality and prestige among faculty, administrators, students, and alumni. At the same time, from our conversations with the research team behind the law school (and other educational) rankings, they genuinely believe that the rankings help students make informed choices. That goal requires credibility as well. Substantial changes within the rank order open *U.S. News* to questions about how well the rankings actually help students.

Our proposal redefines what it means to do well, so a shakeup would be expected with sufficient methodological weight behind the metric. The rankings currently reward schools that spend money on priorities that have little or nothing to do with why people go to law school. The schools that spend a lot of money are different than the schools that efficiently produce graduates who obtain good jobs.

Ultimately, the efficiency metric would better align the realities students and new graduates face with a school's overall rank. It will help *U.S. News* more sensibly sort law schools and help students make more informed choices. Students should be able to assess which schools most effectively spend their tuition, whether financed through debt or not. A ranking that does not account for efficiency, but instead rewards wasteful spending, obfuscates quality rather than reveals it.

Presuming a better methodology, inertia may hold the *U.S. News* research team back. Critics cite the company's financial incentive to tinker instead of reinvent—and maybe that's true. But in the face of these incentives, the rankings team has made several recent, bold choices in education rankings in markets far more important to the bottom line than law schools. Just last year, *U.S. News* substantially changed its high school rankings methodology using consumer-focused reasoning. According to the chief data strategist, Bob Morse, the purpose was “to make the rankings easier to understand for families seeking to evaluate public high schools in their area” and to “make historic comparisons easier going forward.”<sup>57</sup> In an effort to preclude credibility concerns, the research team carefully explained its rationale behind the methodological changes.<sup>58</sup> The risk to the bottom line should not be understated. Prior to the ranking change, *U.S. News* ranked 14% of high schools, serving a market of roughly 2 million students and their families.<sup>59</sup> Law schools enrolled 112,878 JD students at the start of the 2019-20 academic year.<sup>60</sup>

<sup>57</sup> Robert Morse and Eric Brooks, *Why U.S. News Revamped the 2019 Best High Schools Rankings*, Morse Code Blog, Apr. 30, 2019, <https://www.usnews.com/education/blogs/college-rankings-blog/articles/2019-04-30/why-us-news-revamped-the-2019-best-high-schools-rankings>.

<sup>58</sup> *Id.*

<sup>59</sup> In 2018, 15.1 million students attended high school in the United States. NCES, U.S. Department of Education, <https://nces.ed.gov/fastfacts/display.asp?id=372>.

<sup>60</sup> LST Data Dashboard, National Law School Enrollment, <https://data.lawschooltransparency.com/enrollment/all/?scope=national>.

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Just one year prior, *U.S. News* made monumental changes to their annual college rankings.<sup>61</sup> *U.S. News* now accounts for social mobility and no longer factors in acceptance rate. Enrollment at the colleges and universities ranked exceeded 20 million in 2017.<sup>62</sup> The research team made these changes despite the financial risk in an effort to measure “whether schools are successful at serving all of their students.”<sup>63</sup>

That said, the new college rankings methodology did not upset the apple cart. The top 20 schools stayed roughly the same, while schools in the middle or at the bottom of the *U.S. News* pecking order shifted more than usual.<sup>64</sup> In other words, the host of methodological changes produced a list that continued to validate the elite and the wealthy. This result may or may not have been inadvertent. If *U.S. News* made other methodological adjustments to assure minimal change at the top, it strikes us as a worthy tradeoff to measure (and credit) how schools fare on social mobility. To that end, *U.S. News* could further refine the law school methodology, including the proposed efficiency metric, in an effort to avoid upsetting the law school apple cart. Our goal is not perfection, but improvement. For *U.S. News*, this may be the best way to balance its interests in financial security and helping students make informed decisions.

If the reasoning is articulated well, and supported by members of the legal community, the change we propose will resonate positively and, eventually, lead to a new normal. But that new normal will involve an incentive to efficiently get students law jobs, rather than an incentive to spend money recklessly. After the initial shakeup, subsequent movement would reflect genuine change in how law schools price their education and manage their enrollment. Those changes would elevate the schools that do well for students—the very customer *U.S. News* seeks to help.

## **This Proposal Is Only About Jobs**

Law schools make many promises to students besides gainful employment. They promise an education, bar passage, a supportive environment, a commitment to diversity, a return on investment, a path to social mobility, and more. Schools can actualize these promises more or less efficiently, thus it would be reasonable to consider additional efficiency metrics.

We chose just one metric in this proposal, but one companion frontrunner would be a ratio of total tuition revenue to the number of people who pass the bar exam. This approach introduces thorny questions, such as how to deal with graduates who decline to take the bar exam or when to measure bar performance. It also introduces fewer controls on total enrollment. But an efficiency metric based on bar passage outcomes would nonetheless tell students something meaningful about how schools price their education, and the data framework already exists.

<sup>61</sup> Robert Morse, Eric Brooks, and Matt Mason, *How U.S. News Calculated the Rankings*, Morse Code Blog, Sept. 8, 2019, <https://www.usnews.com/education/best-colleges/articles/how-us-news-calculated-the-rankings>.

<sup>62</sup> Center for Postsecondary Research at Indiana University School of Education, *The Carnegie Classification of Institutions of Higher Education, 2018 Update Facts & Figures* <http://carnegieclassifications.iu.edu/downloads/CCIHE2018-FactsFigures.pdf>.

<sup>63</sup> Scott Jaschik, *The U.S. News Rankings (Faux?) Embrace of Social Mobility*, Inside Higher Ed, Sept. 10, 2018, <https://www.insidehighered.com/admissions/article/2018/09/10/us-news-says-it-has-shifted-rankings-focus-social-mobility-has-it>.

<sup>64</sup> *Id.*



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Measuring efficiency related to supportive environments, learning outcomes, or return on investment, on the other hand, would require new data frameworks that are worthwhile to pursue. The possibility is no reason to abandon a jobs efficiency metric in the meantime.

## **This Proposal Needs A Cost Of Living Adjustment**

*U.S. News* makes cost of living adjustments to expense-related methodological components in several of its many rankings, including the law school expenditures metrics. Here is what *U.S. News* said about its cost of living adjustment to faculty compensation in its undergraduate ranking:

The regional differences in cost of living are taken from the May 16, 2019 update to the Regional Price Parities by State and Metro Area indexes from the U.S. Department of Commerce's Bureau of Economic Analysis (BEA). BEA's regional price indexes allows comparisons of buying power across the 50 states and the District of Columbia, or from one metro area to another, for a given year. Price levels are expressed as a percentage of the overall national level. The regional price indexes cover all consumption goods and services, including housing rents.<sup>65</sup>

The logic is that \$100 spent in North Carolina goes further than \$100 spent in New York, thus New York schools should not be presumed to provide more quality for that \$100 spent. With an efficiency metric, the reverse is true. A school in North Carolina that charges a student \$100 in North Carolina is effectively charging more than a New York school that charges the same amount, thus a North Carolina law school charging \$100 is less efficient than a New York school charging the same.

Ultimately, we declined to make the adjustment part of our recommendation because we do not think the case is strong enough either way. An additional step in the calculation must be justified more convincingly. That said, if LST ever publishes efficiency metrics on its own, LST plans to publish them both with and without adjustments.

<sup>65</sup> Bureau of Economic Analysis, Regional Price Parities by State and Metro Area, May 16, 2019 Release, <https://www.bea.gov/data/prices-inflation/regional-price-parities-state-and-metro-area>.



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## The Data Will Be Difficult To Verify

The ABA does not collect any tuition revenue figures from law schools. Law schools could furnish false information to *U.S. News* and it would not know without help from a third party. However, that problem is present already. The expenditures metrics present the same problem and *U.S. News* nonetheless assigns these metrics 11.25% weight in its methodology. Even when the ABA did collect these data, the ABA did not verify survey responses for *U.S. News*. Instead, law school deans pledge accuracy and ABA Standard 509 prohibits law schools from reporting false, incomplete, or misleading data, including submissions to *U.S. News*.<sup>66</sup>

The expenditure data are actually more prone to problems than tuition revenue data because the expenditure tabulations provide the opportunity for “creative” accounting. *U.S. News* does not provide or enforce accounting standards for shared expenses with the university. Stanford Law School’s then-dean, Larry Kramer, told the *New York Times* that he was considering how to work overhead expenses covered by the university into his school’s reporting.<sup>67</sup> This was his response to news that the University of Illinois College of Law had used its back-of-the-envelope market value estimate of online legal databases instead of a discounted rate.<sup>68</sup> While the latter was clearly over the line, overhead expenses covered by the university continue to be a gray area. Tuition revenue from JD students appear to lack similar opportunities that make verification (or whistleblowing) difficult, provided tuition is defined as how much a student spends.<sup>69</sup> On the other hand, if the ABA adopts our data proposals outlined later in this report, *see infra* “Necessary Data Upgrades,” the data to verify total tuition revenue will be publicly available.

## This Proposal Can Be Gamed

Law schools will game the efficiency metric as they do any other metric. To game it, a law school will help graduates find more jobs, graduate fewer students, spend less money to lower tuition, and enhance alternative revenue streams. On their face, these tactics sound great, but there is more than meets the eye.

The path to fewer graduates could include enrolling fewer 1Ls, but if a school wants to more quickly game this metric, it can also increase attrition. Aptly done, it would also benefit the bar passage rate and employment rate—each an additional factor in the *U.S. News* methodology. In practice, manipulating attrition is rather difficult to do intentionally and carries significant litigation risk. Attrition would also be held in check by the ABA Standards. Interpretation 501-1 provides that a law school that attrites more than 20% of an entering class is presumptively out of compliance with Standard 501’s requirement that the school only enroll students who appear capable of completing school and passing the bar exam.<sup>70</sup>

<sup>66</sup> Standard 509(a) provides: “All information that a law school reports, publicizes, or distributes shall be complete, accurate and not misleading to a reasonable law school student or applicant. A law school shall use due diligence in obtaining and verifying such information. Violations of these obligations may result in sanctions under Rule 15 of the Rules of Procedure for Approval of Law Schools.” ABA Standards and Rules of Procedure for Approval of Law Schools (2019-2020), <https://www.lawschooltransparency.com/documents/cites/2019-2020-aba-standards.pdf>. For more details on the ABA Standards, see Part II of this report.

<sup>67</sup> Alex Wellen, *The \$8.78 Million Maneuver*, *New York Times*, July 31, 2005, <https://www.nytimes.com/2005/07/31/us/education/the-878-million-maneuver.html>.

<sup>68</sup> *Id.*

<sup>69</sup> *Supra* note 56.

<sup>70</sup> ABA Standards, *supra* note 66 at Interpretation 501-1.

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Fewer graduates could also mean communities go under-served with legal services. The United States continues to have a serious civil justice gap and public criminal defense is woefully underfunded and understaffed. For decades, however, law schools have graduated significantly more people than there are legal jobs.<sup>71</sup> To appreciably affect justice needs, a law school would need to reduce enrollment far enough that another school would not make up the difference. We have yet to see any persuasive evidence of lower law school enrollment impacting justice needs. And with the Uniform Bar Exam, crossing state lines is easier for newly licensed graduates than ever before.

Less spending could cause educational quality to deteriorate. While more spending does not proxy a better education, too little spending may certainly be problematic. However, the ABA Standards function as a floor for quality. Standard 202(a) requires that “[t]he current and anticipated financial resources available to the law school shall be sufficient for it to operate in compliance with the Standards and to carry out its program of legal education.”<sup>72</sup> Spending cuts are also likely to undermine graduate success on the job market, eroding gains in the efficiency metric. Moreover, we just don’t think law schools will cut off their noses to spite their face given all the other incentives to maintain or increase spending and reputation by both faculty and administrators.

Finally, law schools could game how much tuition it brings in by drumming up revenue from many other sources. Wealthy schools can re-appropriate endowment funds, to the extent they are permitted. State-funded law schools can seek more state funds. All schools can seek more donations or encourage faculty to fund scholarship through grants. For these reasons, this metric advantages rich schools, public schools with greater state support, and schools with faculty or staff who do work valued by grantees, which may not align with the school’s mission and could lead to mission creep.<sup>73</sup> Yet the point is not to view this from the law school’s perspective. Alternative sources of funding that go beyond tuition are good for students and thus should be rewarded.

Perhaps the greatest risk in gaming relative tuition support is to non-JD students. If we count only JD student outcomes and tuition, we lose sight of the other students they share a classroom with, whether master’s, certification, or undergraduate students. Consider an example. A hypothetical law school’s budget last year was \$10 million and funded exclusively through tuition from 250 JD students. The budget reflects choices made when enrollment was much higher and includes a number of fixed costs from tenured faculty and facilities. This year, the school adds 250 non-JD students, maintains JD enrollment at 250 and its legal jobs rate, and charges every student \$20,000 in annual tuition instead of \$40,000. This doubles performance on the efficiency metric. The incentives worked; the school is certainly more efficient at producing JD graduates who get jobs for less tuition.

The magic of non-JD enrollment is that it can keep the budget roughly the same without affecting personnel or facilities. But at what cost? There is ample reason for concern over the quality of non-JD programs. The ABA, for example, has considered regulating non-JD programs on a number of occasions. To date, the ABA Standards create a similar moral hazard to the efficiency metric. Under ABA Standard 313, a law school can only have a non-JD program after it receives full accreditation for the JD program.<sup>74</sup> The school must demonstrate to the ABA that “the degree program will not interfere with the ability of the law school to operate in compliance with

<sup>71</sup> LST Data Dashboard, *National Jobs Report*, <https://data.lawschooltransparency.com/jobs/legal-jobs/?scope=national>.

<sup>72</sup> ABA Standards, *supra* note 66 at Standard 202.

<sup>73</sup> Of course, there is nothing to stop a school from taking funds from donors with specific agendas now.

<sup>74</sup> ABA Standards, *supra* note 66 at Standard 313.

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the Standards and to carry out its program of legal education.”<sup>75</sup> If the negative externality is born by the non-JD students, the ABA Standards are silent. Indeed, non-JD revenue will help a law school struggling with compliance under Standard 202(a).<sup>76</sup>

This is a good argument and we do not have a good answer to it other than to say that, in context, the risk is worth it. If schools exploit non-JD students, the proper remedy is through litigation and regulation, not a for-profit ranking methodology. We should continue to monitor the non-JD programs and we can never protect against all gaming, especially with such high stakes. All we can do is propose a more sensible metric to proxy quality than the current metrics, which come with their own set of (far worse) problems.

## ***Legal Education Will Improve If U.S. News Rewards Efficiency***

The faculty resources metrics reward non-sense. Schools are not better because they spend more. Arguably, they’re worse if they’re spending more because it negatively impacts a student’s return on investment. Instead, we want *U.S. News* to reward efficiency. The quality of the U.S. legal education is quite good; it delivers real educational value to people. And it keeps getting better—not because schools are spending more money, but because schools are listening to their legal communities, their alumni, and learning experts. The ABA now requires that schools establish and publish learning outcomes.<sup>77</sup> Schools have begun to figure out how to operationalize new learning outcomes research beyond the ABA’s minimum requirements.<sup>78</sup> None of this is captured by the current metrics. It is likewise not apparent how *U.S. News* or anyone could validly and reliably capture these facets of legal education in a metric that fits into a ranking methodology.

What we can capture is efficiency, provided we stipulate a desirable outcome that consumers value. That’s what *U.S. News* says it is all about. And we can capture efficiency well if we compare those outcomes to sensible inputs. The amount students spend of their own (if loaned) money is quite a sensible place to start. With this metric, we do both. As schools differentiate themselves for the quality of their education, it should show up in the marketplace. And that’s our primary goal with the new metric: help schools make the most from the least. That’s an incentive for schools that will have a positive impact on who the legal profession serves: consumers of legal services and the rule of law.

*U.S. News* has told LST in the past (paraphrased): “find us a metric to replace faculty resource metrics with to better credit educational quality, and we will consider it.” These changes would not only improve the usefulness of the *U.S. News* rankings, but would be well received by the legal community. It would also spark and reward creativity for the law schools that figure out how to find alternative revenue sources. Most importantly, it provides consumers with what they want. Students want jobs and less debt. Students do not want schools that spend more money.

<sup>75</sup> *Id.* This includes not only non-J.D. students pursuing a degree, but non-J.D. students pursuing a certificate.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at Standard 302.

<sup>78</sup> Institute for the Advancement of the American Legal System, Foundations for Practice Phase II: Learning Outcomes, <https://iaals.du.edu/projects/foundations-practice/phase-two-developing-learning-outcomes>; Holloran Center, <https://www.stthomas.edu/hollorancenter/learningoutcomesandprofessionaldevelopment/>; Delta Competencies Model, <https://www.alysancarrel.com/delta-competency-model/>; Institute for the Future of Law Practice, <https://www.futurelawpractice.org/bootcamp>.

# ENSURING MEANINGFUL PROGRESS



**W**hen we worry about the impact of *U.S. News* on law school operations and student decision making, we are not saying don't judge schools or hold them accountable to their outcomes. Rather, we are saying, judge them by something that matters, such as adherence to the system of standards like the LST Index or performance on employment, bar exam, or efficiency metrics.

Since we began to tell law school deans and other legal educators about our plans to remake law school incentives, we've heard nothing but excitement—an odd reaction from the group of people whose institutions we plan to judge. After dozens of these conversations, the reason is clear. People want to be judged by something other than a one-size-fits-all ranking that does continuous damage to the legal education system and points students in the wrong direction. Competition from the LST Reports and alternative benchmarks for success with the LST Index provide real hope to legal educators. If successful, legal education can get where it needs to go much faster.

**Competition from the LST Reports and alternative benchmarks for success with the LST Index provide real hope to legal educators.**

## END OF PART I



Part II:

# MODERNIZING LAW SCHOOL REGULATION

# MODERNIZING LAW SCHOOL REGULATION



The American Bar Association (ABA) Section of Legal Education and Admissions to the Bar (Section) is the nationally recognized accreditor of J.D. programs.<sup>79</sup> A law school in full compliance with the ABA Standards and Rules of Procedure for Approval of Law Schools (Standards)<sup>80</sup> will receive approval because ABA accreditation functions like an entitlement.<sup>81</sup> If a school can meet the accreditation criteria created by the Section's Council—the actual seat of accreditation power—the Council must accredit the school. The Council can raise the Standards in furtherance of its mission to protect students and the public, but it cannot limit the number of accredited schools.

ABA approval provides law schools considerable market value. Not only does approval promise baseline educational quality to students and the public, but it also permits graduates to sit for the bar in every U.S. jurisdiction. Students at ABA-approved law schools can finance their education through federal student loans and utilize generous federal repayment programs, like Pay As You Earn, once they graduate.<sup>82</sup> While dozens of law schools operate without ABA approval, graduates from these schools face limitations on where they can practice law<sup>83</sup> and their students are generally not eligible for federal student loans.<sup>84</sup> In a very real sense, the Standards frame what is possible in legal education in the United States.

Over the past ten years, the Council has begun to focus more on outcomes and less on inputs, such as faculty office space.<sup>85</sup> These changes reflect an important shift in priorities: moving away from accreditation that confirms how law schools have always done things and toward accreditation based on performance and protection for both consumers of legal services and of legal education. The Standards are closer to their promise now more than ever before, but the shift has some distance to go. Law school is expensive, the nature of legal services is changing rapidly, and law schools are somewhat stuck in their ways. While the current crop of law schools will continue to improve, the legal profession, consumers of legal services, and society at-large will be better off if the Council accelerates that evolution.

In a recent column in the ABA Section of Legal Education's quarterly publication, Barry Currier, the Section's outgoing managing director, discussed his vision for law school accreditation that would take recent changes to the ABA Standards to the next level.<sup>86</sup> Currier described a new accreditation system where the balance shifts even more away from input-based standards, e.g., credit hour requirements, faculty roles and responsibilities, and library materials.

<sup>79</sup> The Council for the Section of Legal Education and Admissions to the Bar (Council) provides the official approval for the law schools.

<sup>80</sup> ABA Standards, *supra* note 66.

<sup>81</sup> U.S. Department of Education, *The Database of Postsecondary Institutions and Programs*, <https://ope.ed.gov/dapip/> (last visited March 1, 2020).

<sup>82</sup> ABA-approval is only necessary for J.D. student participation in the loan program under Title IV of the Higher Education Act of 1965 if the law school is not part of a university approved by a regional accreditor, i.e. stand-alone law schools.

<sup>83</sup> 23 of 56 jurisdictions prohibit non-ABA, U.S. law school graduates from ever sitting for the bar. National Conference of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements 2020*, [http://www.ncbex.org/assets/BarAdmissionGuide/CompGuide2020\\_021820\\_Online\\_Final.pdf](http://www.ncbex.org/assets/BarAdmissionGuide/CompGuide2020_021820_Online_Final.pdf). The vast majority of the remaining jurisdictions require three or five years in practice to be eligible for admission. *Id.* Several states, including Nebraska, allow graduates to appeal to the state supreme court for permission to sit for the bar without law practice experience. *Id.* Utah requires 10 years of practice, whereas Wisconsin allows graduates to sit for the bar if they have been admitted to practice in another state even without law practice experience. *Id.*

<sup>84</sup> See U.S. Department of Education, *Accreditation Overview*, <https://www2.ed.gov/admins/finaid/accred/accreditation.html> (last visited March 1, 2020).

<sup>85</sup> Among other changes, the Council added learning outcomes and assessment standards; revised the bar passage standard; more clearly defined a measure for when schools exploit students for their tuition dollars; and removed library and facilities requirements. The Council also expanded and refined its data collection and publication procedures to the overwhelming benefit of consumers and the public.

<sup>86</sup> Barry Currier, *Moving Legal Education Regulation Forward in an I/O and Segmented Environment*, ABA Section of Legal Education Syllabus, Spring 2018, available at [https://www.americanbar.org/groups/legal\\_education/publications/syllabus\\_home/volume-49-2017-2018/syllabus-spring-2018-49-3-/moving\\_legal\\_education\\_regulation\\_forward/](https://www.americanbar.org/groups/legal_education/publications/syllabus_home/volume-49-2017-2018/syllabus-spring-2018-49-3-/moving_legal_education_regulation_forward/).

# MODERNIZING LAW SCHOOL REGULATION



What if, for example, the accreditation process looked at three or four core outcomes (non-transfer attrition, graduation rates, bar pass rates, and (maybe) job outcomes), together with one, fundamental input measure – finances, and re-designed our system beginning there?<sup>87</sup>

His idea is that schools need varying levels of oversight, depending on student outcomes and the school’s ability to stay open and maintain its legal education program.<sup>88</sup> While several additional standards would continue due to federal law, and other consumer protection standards must remain too, this would drastically overhaul how law school accreditation functions. High-performing schools would have a fast-track for continued approval; low-performing schools would receive heightened monitoring; and all other schools would be subject to periodic review.<sup>89</sup> Importantly, this accreditation framework highlights a principle of modern regulation: there are different methods for achieving respectable outcomes. This framework would also allow Section staff to operate more effectively by allowing the Section to devote more time to troubled schools and less time to schools that are not in real jeopardy of a meaningful sanction.

We believe Currier’s vision could work well in legal education, especially in light of inevitable regulatory change in the delivery of legal services. But even if the Council declines to pursue different accreditation pathways, the Standards remain rife with prescriptive standards that, if modified or eliminated by the Council, would foster innovation. The Council should additionally investigate how to expand consumer protection where legal education struggles and consumers and society pay the price.

We recognize and urge constant attention to the push and pull between regulation and innovation. Sometimes you need regulation; sometimes you need flexibility. The balance should be intentional and thoughtful. To that end, the Council should consider the current Standards through three frames:

- 1 Fewer Limits on Innovation: remove barriers to help schools meet societal needs.
- 2 More Consumer Protection: thoughtful accreditation enhancements to ensure the seal of ABA approval continues to mean something to the public.
- 3 More Transparency: more data to serve as the foundation for reform and as an impetus for change.

The sections that follow provide specific plans for these themes that would lead to more effective and innovative programs of legal education—potentially at a substantially lower price. Most importantly, these plans would bring the Standards closer to the root purpose of accreditation: protecting consumers, not institutions or their employees.

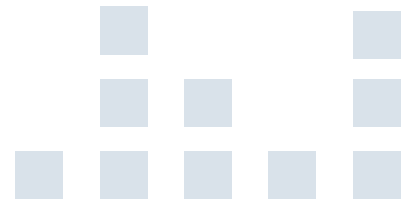
<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*



# REFRAME WHAT'S POSSIBLE



It is clear from even a cursory reading of the ABA Standards that various law school constituencies use the Standards to wage war on each other. Even if the fights make sense in principle—e.g., legal writing and clinical professors seeking equal footing to their doctrinal counterparts—the Standards should only prescribe specific input standards if required by federal law or if necessary to ensure that schools prepare “students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”<sup>90</sup>

The drafters of the 1973 Standards contemplated whether they were overly prescriptive as evidenced by variance rules introduced to permit non-compliance with one or more Standards in monitored circumstances.<sup>91</sup> Today, when a school applies for a variance, the Council will consider whether the school’s proposed course of action will be “consistent with the general purposes and objectives of the overall Standards.”<sup>92</sup> Ultimately, though perhaps implicitly, the Council asks whether the variance undermines Standard 301. The Council’s relatively recent interest in shifting away from input-based standards also demonstrates uneasiness with the prescriptive nature of many Standards.

Nonetheless, a series of Standards prescribe how an approved law school (or a school seeking approval) organizes its affairs and fulfills its stated mission and goals. These Standards presume that a school cannot achieve its core objectives, as it defines itself or as the Council defines in Standard 301,<sup>93</sup> without meeting an array of checkboxes—some of which go too far. The illustrations below do not demonstrate that law schools are wrong in how they structure themselves, but rather that baseline standards should allow competing models to try something new. One theme we find ourselves returning to is to what extent a Standard is necessary to produce a legal education deserving the ABA’s seal.

These sections include proposals that range from minor alterations to complete elimination of Standards, as well as challenges to the Council to consider fundamental shifts to interlocking standards that limit what’s possible. While not a comprehensive analysis, these proposals aim to refocus the Standards on baseline quality.

The Council’s relatively recent interest in shifting away from input-based standards also demonstrates uneasiness with the prescriptive nature of many Standards.

<sup>90</sup> ABA Standards, *supra* note 66 at Standard 301(a).

<sup>91</sup> For a more in-depth discussion, see *infra* “Variance Transparency.”

<sup>92</sup> ABA Standards, *supra* note 66 at Standard 107.

<sup>93</sup> See *id.* at Standard 301.



## ***Believe in Learning Outcomes***

Relative to the rest of higher education, including post-graduate programs, law schools are late to the game with developing and deploying learning outcomes at the credit and program level. Learning outcomes are promises made by schools to students and the public. A student who takes a class, undergoes an experience, or graduates from a program expects to develop certain knowledge and skills throughout their time learning. Employers, financiers (parents, banks, the government), and the other members of the public expect the same. The Council should modify the Standards to allow schools more flexibility in how they deliver on their educational promises.

In 2014, the Council added learning outcomes to the Standards, but the Council has not yet let go of prescriptive components that learning outcome standards should replace.<sup>94</sup> As a result, the Standards are overly burdensome for schools as they determine which learning outcomes to promise and how to deliver on those promises. One such burden stems from Standard 311 and Interpretation 311-1. Among other structural restrictions, these rules require students to earn 64 of the minimum 83 credits hours “in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.”<sup>95</sup> Math, then, is a significant barrier for schools that want to reimagine their upper-level curriculums.

Particular courses and experiences cannot count towards the 64-credit minimum under Standard 311(a). The average law school requires 88 credits to graduate, which leaves room for 24 credits of alternative and innovative law school courses throughout the entire degree program. These include field placements, non-law courses, mock trial, drafting and negotiation competitions, and journal participation.<sup>96</sup> These rules impair innovation related to delivery of learning outcomes and outright encourage the status quo. While schools may be able to creatively structure credits to get around the rules, that’s not the sort of innovation that the Standards need to encourage. Students and the public not only lose out on a potentially better legal education, but students (and taxpayers) may even pay more as a result.

**The Council should modify the Standards to allow schools more flexibility in how they deliver on their educational promises.**

**[T]he Standards are overly burdensome for schools as they determine which learning outcomes to promise and how to deliver on those promises.**

<sup>94</sup> *Id.* at Standard 302.

<sup>95</sup> *Id.* at Standard 311(a), Interpretation 311-1(b)(1).

<sup>96</sup> *Id.* at Standard 311-1.

# REFRAME WHAT'S POSSIBLE



For example, a school that wants to replace the entire 3L year with supervised field placements akin to medical or dental residency cannot do so, regardless of any processes or assessments that ensure students achieve the desired learning outcomes.<sup>97</sup> A school that can adopt a residency program could charge significantly less for the third year, cutting tuition costs by up to one-third.<sup>98</sup> Students may even earn enough from the field placement to cover living and reduced-tuition costs for the year, provided the school or student can arrange paid placements.

If, on the other hand, a law school wants to offer an interdisciplinary pathway to the J.D. to replace the 3L year, the school would need to cross-list the courses in accordance with university rules to qualify the courses for the 64-credit minimum. Cross-listed courses frequently require either a joint appointment for the faculty member teaching or team teaching with a law faculty member.<sup>99</sup> If the non-law department adequately describes and measures course learning outcomes, and if the learning outcomes advance the student's learning through the interdisciplinary pathway, a law faculty member should not be a precondition for credit. Indeed, it may undermine the purpose of relying on non-law expertise to develop lawyers for 21st century practice, especially as graduates are increasingly likely to begin their careers in a non-traditional legal roles. The Standards provide similar limitations on a law school partnering with a different university or law school to support this sort of interdisciplinary pathway, even if the partner law school is ABA accredited.<sup>100</sup> This provides particular hardship for standalone law schools. These law schools cannot fashion an interdisciplinary path unless they keep it sufficiently short or ask students to take more credits to graduate.<sup>101</sup>

One key reason to prohibit too many courses outside the law school is that the Council cannot reasonably provide extensive oversight outside of law programs. This argument deserves strong consideration, but ultimately fails for both field placement and non-law coursework. More permissive field placement could still require that law schools create processes and assessments that monitor the success of those placements for delivering learning outcomes. Indeed, Standard 304 already provides a template and tying field placements directly to learning outcomes required by Standard 302 would be a step forward for the Standards. The Council could also limit partnerships to entities regulated by accreditors authorized by the U.S. Department of Education. That may be an imperfect substitute for ABA accreditation, but with adequate consumer protections baked into the Standards, the Council would not lose its oversight credibility.

Standard 301, Standard 302, Standard 314, and Standard 315 acknowledge that learning outcomes are fundamental to high-quality legal education, but Standard 311 presupposes that the specific method of delivery determines quality and achievement.<sup>102</sup> What may appear like consumer protection has the opposite effect. Schools that carefully define and measure learning outcomes for non-traditional courses as part of program-level learning outcomes should satisfy the Standards, full stop. The Council should modify Standard 311 and Interpretation 311-1 to allow schools more flexibility in how they deliver learning outcomes.<sup>103</sup>

<sup>97</sup> *See id.*

<sup>98</sup> Medical residents do not pay tuition.

<sup>99</sup> *E.g.* University of California - Davis, *Cross-Listed Courses*, <https://registrar.ucdavis.edu/faculty-staff/scheduling-guide/cross-listed> (last visited March 1, 2020).

<sup>100</sup> ABA Standards, *supra* note 66 at Interpretation 311-1(b)(2)

<sup>101</sup> *See id.* at Standard 311(a), Interpretation 311-1(b)(2).

<sup>102</sup> *See id.* at Standard 311, Interpretation 311-1.

<sup>103</sup> Strengthening Standard 302, Standard 314, and Standard 315 may provide additional assurances to students and the public that schools take learning outcomes and assessment seriously. *See infra* "Evaluate the Learning Outcomes and Assessment Standards."



## ***Open the Definition of a Full-Time Faculty Member***

The ABA Standards envision a particular type of person fulfilling the roles and responsibilities of a full-time faculty member. Though this archetype may work fine at many ABA-approved law schools, institutions should retain more freedom to structure, attract, select, and organize faculty capable of delivering effective legal education learning outcomes. The Council must be open to different approaches if law schools are to become more accessible and affordable.

To determine the right balance between prescription and flexibility, the Council should undertake a comprehensive review of what the current Standards envision a full-time faculty member does, and what is necessary (and why) to the provision of a quality legal education. Under any reasonable revision, the Standards will not require any currently-accredited law school to change its faculty structure or composition. But new entrants may find that composing a faculty with different expectations helps them deliver a high-quality legal education at an affordable price.

The ABA-approved law school full-time faculty member fills a carefully prescribed, not to mention negotiated, role under the Standards. The definition starts off innocuously enough:

“Full-time faculty member” means an individual whose primary professional employment is with the law school, who is designated by the law school as a full-time faculty member, who devotes substantially all working time during the academic year to responsibilities described in Standard 404(a), and whose outside professional activities, other than those described in Standard 404(a), if any, do not unduly interfere with his or her responsibilities as a full-time faculty member.<sup>104</sup>

The picture is complicated by not only Standard 404(a), but also by additional standards.

Standard 404(a) describes the collective responsibility of the full-time faculty. Each member may contribute differently to the collective body, but the overall responsibilities fall into four categories: teaching, scholarship, law school governance, and public service.<sup>105</sup> Standard 404(b) requires schools to periodically evaluate whether the faculty meets these responsibilities, as well as how each individual full-time faculty member contributes.

<sup>104</sup> *Id.* at Definitions.

<sup>105</sup> *Id.* at Standard 401, Standard 402, Standard 404.



However valuable the scholarship and public service components may be for society, these are peculiar additions for minimum accreditation standards. Indeed, the star standard, Standard 301, focuses only on the teaching and school governance components in outlining the objectives of an ABA-approved program of legal education:

## **Standard 301**

- a. A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.
- b. A law school shall establish and publish learning outcomes designed to achieve these objectives.<sup>106</sup>

Perhaps without meaning to, the Standards require all law schools to adopt a research mission. Standard 401 provides that “[t]he [overall] faculty must possess a high degree of competence, as demonstrated by [among other things] scholarship.”<sup>107</sup> Standard 402 says that the “number of full-time faculty necessary depends on . . . the opportunities for full-time faculty to adequately fulfill its teaching obligations [and] conduct scholarly research.”<sup>108</sup> Standard 404 appears to provide latitude for schools to define scholarship however they see fit, but it does not permit a school to opt out entirely. Even a law library must support scholarship under Standard 601(a)(1), Standard 605, and Standard 606(a). The law school’s facilities, under Interpretation 701-1, must support faculty scholarship through “technology and technology support.”<sup>109</sup> The totality of the Standards reveal the emphasis that law schools must place on scholarship to gain and retain approved status.

Instructively, Standard 404(a) indicates the difference between staying up to date with developments in the law and conducting research and/or scholarship. Standard 402 reiterates this distinction when it prescribes that the minimum size of the full-time faculty depends on their ability “to adequately fulfill its teaching obligations” and “conduct scholarly research.”<sup>110</sup> Legal academics frequently argue that engaging in scholarly research and publication makes for better teachers. That may be so, but that is not an argument for requiring schools to adopt a research mission unless the Council establishes a quality legal education cannot be provided by anyone other than a scholar. Even if that’s true, the Standards require revision. Standard 404(a) and 404(b) provide that scholarship is only a core responsibility for the overall faculty, not any one individual faculty member.

<sup>106</sup> *Id.* at Standard 301.

<sup>107</sup> *Id.* at Standard 401.

<sup>108</sup> *Id.* at Standard 402.

<sup>109</sup> *Id.* at Interpretation 701-1.

<sup>110</sup> *Id.* at Standard 402.



Other Standards limit how schools structure their faculty too. Standard 403(a) requires that the full-time faculty teach either half of all credit hours offered by the law school or two-thirds of all student contact hours. Standard 403(a) further requires that full-time faculty teach “substantially all” of 1L courses.<sup>111</sup> The plain text of the Standards prevent an adjunct-heavy model without a variance, let alone the creation of any new school that cannot qualify for a variance until it has been fully approved, at which time the school would already have full-time faculty.<sup>112</sup> Teaching quality and commitment to students, law school management of learning outcomes and oversight of adjuncts, and academic support are not relevant. Under the Standards, what matters is how many credits or contact hours the full-time faculty provides.

The Standards also limit the development of a faculty model that utilizes professional teachers who deploy across multiple law schools. If the Standards do not outright prohibit a shared-faculty structure, they are at a minimum ambiguous. When it comes to innovation in how schools structure operations, ambiguity can be cost-prohibitive—especially when paired with status quo bias. For a consortium seeking to share 1L or upper-level faculty to minimize costs and maximize course offerings, Interpretation 402-1 disqualifies shared-faculty from counting as full-time;<sup>113</sup> Standard 403(a) requires full-time faculty to teach “substantially all” of 1L and a majority of 2L and 3L;<sup>114</sup> and Standard 311(a) and Interpretation 311-1(b)(2) together cap the credits shared faculty may teach, even if the school shares faculty with other ABA-approved law schools. Exploring a shared-faculty structure with distance education gaining traction in the Standards and among accredited schools further reveals how these rules restrict innovation.

The point of these examples is not to advocate for a particular faculty model, but to illustrate how norms across law schools impact compliance with the Standards, not to mention their content. Indeed, the rules function to stop law schools from departing from the norm. Add to these rules the requirement under Standard 405(a) that “[a] law school shall establish and maintain conditions adequate to attract and retain a competent faculty,” and a school carries substantial risk of a finding of non-compliance when departing from norms related to faculty teaching loads, pay, and structure. That is the very definition of an inappropriate and overly prescriptive accreditation standard. Standard 301(a) suffices by requiring “a rigorous program of legal education that prepares its students.”<sup>115</sup>

The subsections of Standard 405, in concert with several other standards related to security of position, appear to pose additional challenges for schools hoping to try a different faculty structure and composition. Standard 405(b) provides that a “law school shall have an established and announced policy with respect to academic

<sup>111</sup> *Id.* at Standard 403(a).

<sup>112</sup> See *infra* “Variance Transparency.”

<sup>113</sup> ABA Standards, *supra* note 66 at Interpretation 402-1 (“A full-time faculty member who is teaching an additional full-time load at another law school may not be considered as a full-time faculty member at either institution.”). The Standards are silent as to what amounts to a full teaching load, but Professor Theodore Seto reported the average teaching load is 7.94 credit hours per year at elite law schools and 11.13 credit hours per year at local/regional schools. Theodore P. Seto, *Understanding the U.S. News Law School Rankings*, 60 SMULR 493, 546 (2007), available at <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1450&context=smulr>. Seto reviewed confidential ABA data to generate these averages. Best we can tell, the range today remains similar to his 2006 figures. For our purposes, it’s the low-end of reasonable based on norms that matters. Certainly, the Council would not tell these elite schools that their average teaching load does not amount to a full teaching load; under Standard 404, schools may apportion the four core responsibilities among full-time faculty members as they see fit. Because the norms at ABA-approved law schools have shifted over the decades, what was once a full-time teaching load would now be unacceptable under the Standards if the faculty member split that teaching load between two schools

<sup>114</sup> ABA Standards, *supra* note 66 at Standard 403(a).

<sup>115</sup> *Id.* at Standards 405(a), 301(a).





freedom and tenure of which Appendix 1 herein is an example but is not obligatory.”<sup>116</sup> As best as we can tell, the Council has never fully approved a school that establishes and announces a policy of no tenure. As such, it is unknown whether the Council would approve such a school.

The history behind the Standard indicates that Standard 405 requires approved law schools to have a system of tenure.<sup>117</sup> While several key people involved in accreditation commonly state that the Standards do not require tenure, several rules beyond subsection (b) could provide the Council pause when faced with the choice to approve a school with such a policy. For example, Standard 405(a) provides the opportunity for the Council to argue that tenure is necessary to attract and retain competent faculty—especially if the Standards continue to emphasize scholarship throughout and if other ABA-approved law schools across the country offer robust tenure packages. At minimum, subsection (a) provides leverage for faculty compensation, requirements, and other goodies that increase law school costs.

Standard 203(b) provides even more trouble for the assertion that the Standards do not require tenure. According to Standard 203(b), “[e]xcept in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.”<sup>118</sup> While extraordinary circumstances are not defined in any interpretation to Standard 203, Standard 107(a)(1) provides guidance that non-compliance with the Standards in response to extraordinary circumstances:

[An emergency variance] will be for a term certain and limited to the expected duration of the extraordinary circumstances on the basis of which it was granted. It may be extended once for a further term certain, but only if the extraordinary circumstances persist and are beyond the control of the law school.<sup>119</sup>

A law school that does not have a system of tenure will be perpetually out of compliance with Standard 203(b). Additionally, Standard 405(c), Standard 405(d), and Standard 603(d) reinforce the presumption of a system of tenure in the text of Standard 405(b)—as opposed to the possibility of merely stating that no system exists. Both subsections (c) and (d) of Standard 405 grant job security protections comparable to full-time faculty to clinical faculty and legal writing teachers; Standard 603(d) provides “that a law library director shall hold a law faculty appointment with security of faculty position.”<sup>120</sup> The reinforcement is not from the text exclusively; these rights were negotiated into the Standards against the assumption that traditional, doctrinal faculty had a guaranteed system of tenure under Standard 405(b).<sup>121</sup> But for that assumption, subsections (c) and (d) of Standard 405 and Standard 603(d) would not have passed.<sup>122</sup>

<sup>116</sup> *Id.* at Standard 405(b).

<sup>117</sup> See Mary A. Lynch, *ABA Current Standards Do Require Tenure Despite Assertions Otherwise*, Best Practices for Legal Education Blog, Aug. 3, 2010, <https://bestpracticeslegaled.com/2010/08/03/aba-current-standards-do-require-tenure-despite-assertions-otherwise/> (discussing Richard K. Neumann’s comments within where Neumann described his experience on site visit teams and with the Standards Review Committee).

<sup>118</sup> ABA Standards, *supra* note 66 at Standard 203(b).

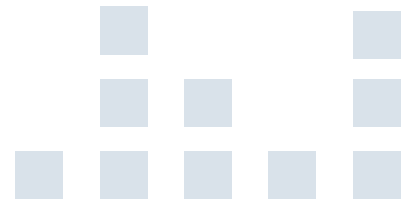
<sup>119</sup> *Id.* at Standard 107(a)(1).

<sup>120</sup> *Id.* at Standard 603(d).

<sup>121</sup> See Lynch, *supra* note XX [4th prior FN]. Lynch confirmed this in a phone conversation on February 5, 2020 with Kyle McEntee.

<sup>122</sup> *Id.*





[T]he issue for accreditation standards is not what schools should do to remain consistent with norms generated by decades of intra-school fighting and cross-school norm setting, but what schools must do in order to provide a quality program of legal education.

Finally, even the role of faculty prescribed by the Standards for law school governance warrants consideration as part of a comprehensive review of faculty standards. That the dean must be a member of the faculty is a stark example. Only in extraordinary circumstances may a school select its dean from outside a pool of law faculty candidates hired predominantly on the basis of their scholarly potential, expertise, or productivity—although the school can skirt this rule by offering the dean tenure and teaching duties. The possibility that a school might want someone with experience running a large organization to run the law school without being a member of the faculty cannot be a matter of practice for an ABA-approved law school. The idea that the faculty may veto the appointment or reappointment of the dean under Interpretation 203-1 if the “substantial majority of faculty” object allows a law school to be run for the benefit of faculty, rather than students.<sup>123</sup>

Perhaps any new law school would choose to provide faculty veto power, but it does not appear necessary for a quality legal education without a bevy of assumptions about organizational structure as prescribed in Standard 201(a). That Standard requires the dean and faculty to have “the primary responsibility and authority for planning, implementing, and administering the program of legal education of the law school.”<sup>124</sup> Drawing the line at primary responsibility and authority, rather than “involved” or “meaningfully involved,” preserves the status quo and precludes experimentation that can make legal education better, more affordable, and more accessible. Indeed, a law school that wants its legal education to remain relevant to modern legal services may find it difficult to transition a faculty largely focused on scholarship. But a law school that places a small team of learning experts in charge of the program of education—including developing, validating, and iterating on learning outcomes; establishing assessments; and supervising delivery—may find progress significantly easier to make over time.

Although inconsistent with how law schools have operated for more than a century, the group of individuals best-suited to deliver a high-quality education in and around the classroom may not be the group best-suited to manage operations. ABA-approved law schools, generally, understand the value and routinely hire non-academics for administrative positions. But the Standards nevertheless prescribe a custodial role for faculty in law school operations. As with other suggestions in this section, the issue for accreditation standards is not what schools should do to remain consistent with norms generated by decades of intra-school fighting and cross-school norm setting, but what schools must do in order to provide a quality program of legal education.

Under the Standards, full-time faculty have four core responsibilities: teaching, scholarship, law school governance, and public service. Ample reason exists to question the careful prescription by the Standards of what the faculty does for an approved law school. Providing more latitude for law schools to innovate can help to improve better learning outcomes at a better price, at least at the schools that try something new and succeed.

<sup>123</sup> ABA Standards, *supra* note 66 at Interpretation 203-1.

<sup>124</sup> *Id.* at Standard 201(a).



## Expand Distance Education and Allow Novel Structures

The Council recently made several meaningful improvements to the distance education standards. The original rules—first adopted in 2002—prohibited distance learning during 1L and limited total distance education to 12 credit hours, with a maximum of four credits per term.<sup>125</sup> The Council did not revise these requirements until 2014, which still prohibited 1L distance learning but expanded the amount of credit available to 15 hours and did away with term-based restrictions.<sup>126</sup> In 2018, the Council made its latest revision to the distance education standards.<sup>127</sup> Standard 306(e) now limits distance education to one-third of the total required credits for graduation and a maximum 10 credits during 1L.<sup>128</sup> The Council should continue to liberalize the distance education standards, as well as eliminate standards that require law schools to structure their operations in the traditional manner.

The continued prohibition of 1L distance education, although recently expanded, is the most concerning limit today. First-year distance education could not only expand opportunities for people who may or may not make the cut in law school, but it could also lower costs by allowing for different economic and geographic models. For example, imagine a wheel and spoke model in the Northeast. The law schools in Maine, New Hampshire, Rhode Island, and Vermont may all conclude that a centralized, distance education provided by one of the law schools satisfies numerous objectives for 1L better than one school in each state, with the remainder of the legal education obtained in-state and in-person. While this model would improve economies of scale for online 1L, the Standard 306(e) cap on 1L credit hours precludes this model.

There could be further problems for this model under the Standards depending on how the partner schools structure their relationship. The structure most likely to pass muster under the current Standards is an outright merger between the four schools, where three of the schools become branch campuses. Standard 312 provides a potential challenge; it requires reasonably comparable opportunities for students across all branches. Standard 106 may as well; it provides a series of requirements for separate locations and branch campuses. But only

**The Council should continue to liberalize the distance education standards, as well as eliminate standards that require law schools to structure their operations in the traditional manner.**

<sup>125</sup> 2002-2003 ABA Standards for Approval of Law Schools at Standard 306, available at [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/standardsarchive/2002\\_standards.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/2002_standards.pdf). These rules technically ban distance education for the first 28 credit hours, not 1L.

<sup>126</sup> 2014-2015 ABA Standards and Rules of Procedure for the Approval of Law Schools, available at [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_bookmarked.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.pdf).

<sup>127</sup> 2018-2019 ABA Standards and Rules of Procedure for the Approval of Law Schools, available at [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2018-2019ABASStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABASStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf).

<sup>128</sup> ABA Standards, *supra* note 66 at Standard 306(e).

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Standard 306(e) generally stands in the way, though a merger like this is likely not as attractive as an affiliation structure because three of the four law schools are a part of a larger university.

An alternative structure involves each school admitting a set of students who will eventually graduate—as schools do now. But instead of the students starting at the institution from which they will graduate, one of the four schools will enroll students from all four schools for 1L and provide their 1L education. After 1L, passing students will funnel via automatic transfer to their admitting institution. Three of the schools would provide only the upper-level curriculum. Just one of the schools (the “primary” school) would provide 1L, 2L, and 3L.

Interestingly, there do not seem to be any requirements in the Standards that a law school provide a 1L curriculum. Standard 403(a) implicitly gets the closest; it requires the full-time law faculty to “teach substantially all of the first one-third of each student’s coursework.”<sup>129</sup> But the Standards expressly permit law schools to allow transfer students and each transfer student’s 1L coursework is taught by their original school’s faculty. Rather, the challenge for the funnel model is Standard 201(a):

The dean and the faculty shall have the primary responsibility and authority for planning, implementing, and administering the program of legal education of the law school, including curriculum, methods of instruction and evaluation, admissions policies and procedures, and academic standards.<sup>130</sup>

Interestingly, there do not seem to be any requirements in the Standards that a law school provide a 1L curriculum.

Transfer students can come from any ABA-approved law school and, in some circumstances, even non-approved domestic and foreign law schools. No reasonable reading of the Standards suggests that the dean and faculty need to exercise authority over other schools’ programs of legal education. But if the fundamental model for admission, education, and graduation depends on outsourcing the 1L curriculum for every graduate to the primary school, the Council may be reluctant to say the responsibility is primary and that any of the three additional schools have authority at the primary school. The Council may even have similar hesitations at the primary school if too much responsibility and authority rests with other law schools.

<sup>129</sup> *Id.* at Standard 403(a).

<sup>130</sup> *Id.* at Standard 201(a).

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Finally, consider taking the funnel model to another level. Instead of three schools relying on the primary school to provide 1L, all four schools rely on an independent school that specializes in 1L (the “specialized” school). This likely could not happen under the current Standards. Because the specialized school does not grant a J.D., the four schools cannot count credits towards the J.D. under Standard 505, which would require the specialized school to offer a J.D.<sup>131</sup> Under the current Standard, the specialized school would be an affiliate and Interpretation 311-1(b)(2) would preclude the specialized school credits from counting towards the 64 credit minimum under Standard 311(a). Even if that rule did not apply, the ABA-approved schools would likely have an issue under Standard 403(a) and Interpretation 402-1 because the full-time faculty would be teaching a full load for multiple law schools.<sup>132</sup>

Though the challenges in this section were illustrated through a 1L distance curriculum, many of the same problems persist if these schools try to share a non-distance 1L curriculum. As with other theoretical models discussed in this report, the purpose is to not to advocate for any specific new model, but to illustrate how the Standards limit innovative approaches to achieve better outcomes, such as education for a better price.

At this point, online education at law schools is just as expensive as classroom education, if not more expensive, but we can expect technological prices to fall over time and further innovation if schools have more flexibility in faculty structure and composition. However, prices will not fall if some schools have a competitive advantage from variances and, in turn, have minimal price competition.<sup>133</sup> One key to leveling the playing field is holding online programs to the same standards as their brick and mortar counterparts. Subsections (d)(1) and (d)(2) of Standard 306 are ambiguous as to expectations,<sup>134</sup> and the Council should be careful not to hold online programs to a standard of faculty engagement that is not actually achieved at many law schools with ABA approval.

While liberalization need not be immediate, rapid progress is essential. With several law schools holding variances to exceed credit limits, the Council should be positioned within only a few years (if not sooner) to determine if the experiments work well. If distance education is good enough to use at all—that is, if it is an effective means of delivering learning outcomes—then credit limits serve only to stifle innovative progress.

**If distance education is good enough to use at all—that is, if it is an effective means of delivering learning outcomes—then credit limits serve only to stifle innovative progress.**

<sup>131</sup> See *id.* at Standard 505.

<sup>132</sup> See *id.* at Standard 403(a), Interpretation 402-1.

<sup>133</sup> See *infra* “Variance Transparency” for a discussion on how to modify the variance process for law schools.

<sup>134</sup> See ABA Standards, *supra* note 66 at Standard 306.



## Acknowledge How Law Libraries Contribute

As with the distance education standards, the library standards have meaningfully changed in the past decade. But more importantly, the very nature of libraries has changed. Twenty-first century libraries might better be described as learning commons:

Printed books still play a critical role in supporting learners, but digital technologies offer additional pathways to learning and content acquisition. Students and teachers no longer need a library simply for access. Instead, they require a place that encourages participatory learning and allows for co-construction of understanding from a variety of sources. In other words, instead of being an archive, libraries are becoming a learning commons.<sup>135</sup>

These changes describe what libraries are becoming in law schools. It is more about space, interaction, and technology than it is about research in books and microfilm. At many schools, the library has become the place to congregate and the place for (or to dump) new projects—in large part because law librarians are usually at least a decade ahead of the rest of faculty when it comes to technology and other innovation. Despite the centrality of the library as learning commons to modern legal education, the Council should modify or eliminate several standards from Chapter Six of the Standards.

The Standards indirectly define the library through several standards that outline the role of the library in the law school and the materials that must be available. Standard 601(a) focuses on the law school's program of legal education and mission.<sup>136</sup> It requires a responsive relationship between the library and key stakeholders within the school.<sup>137</sup> It also requires regular planning and assessment as to how well it advances the program, mission, and relationships.<sup>138</sup> Subsection (b) requires the law school to adequately fund the library.<sup>139</sup>

As sensible as that all sounds—the library, whatever that means, must be able to serve the law school in its mission, whatever that is—Standard 601 simply rephrases Standard 301 in the language of the traditional law school. Under Standard 301(a), a law school must “prepare[] its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.” It also needs to hire people, plan, fund, and assess towards the school's overall program of legal education.<sup>140</sup> The real question is to what extent those elements outlined explicitly for the library in Chapter 6 need to be prescribed in the Standards at all.

<sup>135</sup> Beth Holland, *21st-Century Libraries: The Learning Commons*, edutopia, Jan. 14, 2015, <https://www.edutopia.org/blog/21st-century-libraries-learning-commons-beth-holland>.

<sup>136</sup> ABA Standards, *supra* note 66 at Standard 601(a).

<sup>137</sup> *See id.*

<sup>138</sup> *See id.*

<sup>139</sup> *Id.* at Standard 601(b).

<sup>140</sup> *See id.* at Standard 301.

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Many of the current Standards reflect negotiated leverage for law library directors to fight with the law school, as well as university administrators—starting with Standard 601(b).<sup>141</sup> Standard 602 provides additional protections to the directors in this fight.<sup>142</sup> These Standards, as well as Standard 604 and Standard 605, provide management authority and cement status in the school budgetary process. Finally, Standard 603(d) provides the director a faculty appointment with security of position equal to other faculty.<sup>143</sup> None of these Standards reflect necessary prescriptions for achieving Standard 301.

With or without changes to the Standards, law libraries will continue their evolution towards learning commons and away from the 19th century. Rules like Standard 606(b) only stand in the way. This Standard prescribes an exact list of the cases, codes, treaties, and much more that a law school must purchase or provide reliable access to for compliance. Though the Standard allows for online access, Interpretation 606-1 specifies that “[a] collection that consists of a single format may violate Standard 606.”<sup>144</sup> There may be specific prescriptions that make sense to protect consumers, whether students or the public. But the Council’s determination should be based on necessity.

## Reduce Friction for New Law Schools

It is completely appropriate for the ABA Standards to define baseline quality. If the rules are empty, accreditation will not protect consumers of legal education and of legal services. On the other hand, when accreditation rules create friction for potential entrants without justification, the status quo persists and consumers lose out. Some of the Standards go beyond mere deficiency in how they balance prescription and autonomy. The Council should eliminate several restraints that toughen the road for new entrants.

Standard 102(d) and Standard 311 expressly prohibit a law school from granting non-J.D. degrees or certificates before they receive full approval.<sup>145</sup> The reasoning is straightforward: don’t bite off more than you can chew. Get a J.D. program approved and then consider others. But this process assumes a singular pathway to successful education programs. If a school wants to provide a J.D. program, its other offerings should be irrelevant if it otherwise reaches baseline quality.

Starting a new law school from the ground up with diverse program revenue could be a pathway to more accessible and affordable legal education. Today’s law school is built around the J.D. It typically runs a deficit and seeks to diversify its revenue, often through non-J.D. programs.<sup>146</sup> Tomorrow’s law schools will include many of these types of law schools, but likely not all.

<sup>141</sup> This is not a criticism of librarians. Internal stakeholder groups each carved out special protections in response to doctrinal faculty and, in some cases, toxic work environments.

<sup>142</sup> See *id.* at Standard 602.

<sup>143</sup> See *id.* at Standard 603(d).

<sup>144</sup> *Id.* at Interpretation 601-1.

<sup>145</sup> *Id.* at Standard 102(d) and Standard 313. Under Standard 102(d), “A provisionally approved law school shall not offer a post-J.D. degree program or other non-J.D. degree program . . . or seek to establish a separate location.” Standard 313 requires full approval to start a non-J.D. program.

<sup>146</sup> LST Data Dashboard, National Law School Enrollment, <https://data.lawschooltransparency.com/enrollment/all/?scope=national>. Non-J.D. programs have grown rapidly over the past decade. Between 2010 and 2019, enrollment doubled.





The difference between survival and closure for some ABA-approved law schools may come down to who creates new revenue streams and when.

The difference between survival and closure for some ABA-approved law schools may come down to who creates new revenue streams and when. Not-yet approved—perhaps not-yet conceived—law schools, on the other hand, face barriers in the current Standards. A business model that depends on a combination of B.A. in law degrees, paralegal certificates, LL.M.s, and J.D.s requires that the school start with the J.D. and only the J.D. The market for any one of these programs might not be financially sustainable at a lower price, but a faculty and staff could reasonably serve these students together, much as they do across the United States already. If the new school wants to serve multiple nations at once, Standard 102(d) provides further restraint. A university in the United States may determine that its best path to financial sustainability is to also serve Canada or Mexico. It cannot do so as an ABA-approved law school because Standard 102(d) prohibits this school from achieving provisional approval because it “offer[s] a program in a country outside the United States.”<sup>149</sup> A university in the U.S. Virgin Islands may likewise determine that the only path to financial sustainability is to also serve the British Virgin Islands. If ABA status is critical for any border school, as it is for virtually every law school in the country, these restraints may stop the university from even trying.

Standard 102(d) and Standard 311 do not only limit new law schools. Consider the Fletcher School of Law and Diplomacy at Tufts University. The Fletcher School offers an LL.M. in International Law, but no J.D.<sup>150</sup> If the school wants to add a J.D. program, the path to ABA approval is either ambiguous or prohibited by these rules because the Standards do not actually define “law school.” If the Fletcher School is a law school without a J.D., a pathway to approval does not exist. If the Fletcher School is not a law school, then the pathway would be similar to any other university opening a law school. Likely, the Council would consider factors related to the overlap in faculty, administration, and space in determining whether the Fletcher School plans to add a J.D. program to an existing law school (unacceptable under the Standards) or start a new law school (acceptable under the Standards). The overlap that would preclude approval is the very use of resources that would make this pathway attractive to a school seeking a JD program and help on costs. A similar analysis would likely apply to a school that offers a paralegal program, B.A. in law, or other degree program. Insofar that any of these schools are in fact law schools, they cannot add a J.D. and achieve ABA approval.

<sup>149</sup> ABA Standards, *supra* note 66 at Standard 102(d).

<sup>150</sup> See Master of Laws in International Law (LL.M.), Tufts University, <https://fletcher.tufts.edu/academics/masters-programs-residential/LLM> (last visited March 1, 2020).



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Finally, consider law schools that lose their ABA accreditation. Thomas Jefferson School of Law recently lost its ABA-approved status, but will remain open with California accreditation.<sup>151</sup> The school offers non-J.D. degree programs and certificates, thus if it wants to become accredited again—perhaps after it tries a new business model that allows the school to offer a quality legal education at a genuinely affordable rate—it cannot unless it abandons or freezes the non-J.D. programs, even if those are the programs that make the business model work.

On top of these advantages, currently approved law schools have an additional competitive advantage provided by the variance rules stemming from Standard 107.<sup>152</sup> ABA-approved law schools can diverge from the accreditation standards in a manner that provisionally-approved and upstart law schools cannot. While Standard 107 does not expressly prohibit these schools from receiving a variance, Standard 102(a) heavily implies that full approval is required. It states that a school must have a “reliable plan for bringing the law school into full compliance with each of the Standards within three years after receiving provisional approval.”<sup>153</sup> Where daylight exists, the school seeking full approval would need to convince a Council that is, as a group, fairly cautious.

The Council should also eliminate the prohibition against experimental variances for provisionally-approved law schools, as well as the limits on the sequence of degrees provided by a law school.

The result is new law schools must first look like old law schools to gain approval. At that point, the school can innovate through variances or diversifying revenue. This provides an uncomfortably high competitive advantage for the schools already in the club. It’s hard enough for new law schools with ABA approval to break in, even when they do things a bit differently. The University of North Texas Dallas College of Law is a prime example.<sup>154</sup> For schools that want to diverge from the norms even further, in pursuit of greater access, affordability, and innovation, it is all-but-impossible under the current Standards.

Which entity can provide a legal education does not come down to the quality of legal education, but the notion of J.D. primacy embedded in these rules. At minimum, the Council should resolve the ambiguity related to the definition of “law school” quickly; the lack of clarity stifles innovation. The Council should also eliminate the prohibition against experimental variances for provisionally-approved law schools, as well as the limits on the sequence of degrees provided by a law school. These changes would create a more fair playing field—one that can accelerate competition and push legal education to a better future.

<sup>151</sup> California Accreditation, Thomas Jefferson School of Law, <https://www.tjsl.edu/california-accreditation> (last visited March 1, 2020).

<sup>152</sup> ABA Standards, *supra* note 66 at Standard 107.

<sup>153</sup> *Id.* at Standard 102(a).

<sup>154</sup> Matthew Watkins, *How UNT-Dallas’ Grand Law School Experiment Could Be Overruled*, Texas Tribune, Aug. 23, 2016, <https://www.texastribune.org/2016/08/23/unt-dallas-wants-fix-law-school-it-may-not-get-cha/>.



In theory, the ABA Standards are all about consumer protection, but it is easy to lose sight of that core purpose when reading them. The Standards reflect decades of gamesmanship between stakeholders and an era where conformity constituted quality. As such, a stark line divides the standards that genuinely protect consumers and the standards that do so superficially. The latter were scrutinized in the previous section; we emphasized the need to rethink the overly prescriptive nature of many standards. In this section, we focus on the opportunity to improve consumer protection through the lens of legal education’s most significant challenges in 2020 (other than COVID-19).

In the past ten years, the Council made key changes to the Standards that genuinely protect consumers. Some of these changes relate to increased transparency; some govern behavior; some involve performance.<sup>155</sup> The Council approved these changes in response to the growing attention to serious problems in legal education. Many schools were abusing their positions of power over students in how they marketed their programs,<sup>156</sup> by enticing people with conditional scholarships,<sup>157</sup> and by enrolling people who faced extreme risk of not completing school or passing the bar exam.<sup>158</sup> The changes to the Standards reflect the belief that law schools should not deceive students to get them in the door, put students in a position of harm when information is withheld, or keep students enrolled for the sake of their tuition dollars.

Now, the Council should continue to assert its important function of consumer protection. But rather than proposing specific remedies to each of the problems described below, we propose that the Council convene a series of working groups, including individuals from outside of the ABA, to consider how it can use its regulatory authority to improve the state of legal education.

The Standards reflect decades of gamesmanship between stakeholders and an era where conformity constituted quality.

<sup>155</sup> The Council modified Standard 509 to eliminate several information asymmetries between institutions and their students. That standard now requires law schools to publish on their websites—and in a consistent manner—granular employment outcomes. This allows consumers to compare schools and distinguish among jobs that require a law license and those that do not; jobs that are full or part time; jobs that are long term or short term; and jobs that are funded by the law school or not. Standard 509 also requires law schools to publish conditional scholarship data and furnish these data to any applicant who receives an offer of a conditional scholarship. The Council also modified Standard 509 to more explicitly prohibit schools from providing incomplete, inaccurate, or misleading to the public. ABA Standards, *supra* note 66 at Standard 509. The Council modified Standard 301 to require each law school to publish learning outcomes that Standard 302 requires schools to establish. *Id.* at Standard 301, Standard 302. The Council added Interpretation 501-1, which states that a law school with non-transfer attrition of 20% or more is presumptively not compliant with the Standard 501 requirement that the school only admit students who appear capable of completing the degree and being admitted to the bar. *Id.* at Standard 501, Interpretation 501-1. Additionally, the Council strengthened Standard 316, which sets a minimum bar passage rate. *Id.* at Standard 316.

<sup>156</sup> See generally Kyle P. McEntee & Patrick J. Lynch, A Way Forward: Transparency at American Law Schools, 32 PACE L. REV. 1 (2012).

<sup>157</sup> This is ongoing; 42% of law schools still offer conditional scholarships. LST Data Dashboard, Conditional Scholarships, <https://data.lawschooltransparency.com/costs/conditional-scholarships/> (last visited Feb. 29, 2020).

<sup>158</sup> Law School Transparency, 2015 State of Legal Education, <https://www.lawschooltransparency.com/reform/projects/investigations/2015/>.



## ***Evaluate the Learning Outcomes and Assessment Standards***

For many in legal education, our proposed shift away from prescriptive standards may be a tough pill to swallow. The proposals reflect a desire for law schools to give new delivery methods a shot. Some will balk based on tradition, but others will do so based on a fear that the quality of legal education will diminish. Rather than an argument against allowing structural innovation, that is instead an argument in favor of confirming or strengthening the learning outcomes and assessment standards.

Learning outcomes are promises made by schools to students and the public, including employers, about what students will know or be able to do by the end of a course or degree program. Assessment is the process by which learning outcomes are measured; it's how students and the public know that a student achieved the stated learning outcomes. When the school publishes the outcomes, it communicates its promises about what kind of lawyer the school will produce. This adds accountability to the mix. If students or employers find that what the school produces is incongruent with their promises, the school should receive complaints from students, graduates, and employers alike.

For this framework to function, the school must establish, publish, and assess learning outcomes. The Standards support this framework through Standard 301 (a school must “establish and publish learning outcomes”), Standard 302 (defines baseline learning outcomes), and Standard 314 (formative and summative assessment).<sup>159</sup> Standard 315 further requires schools to consistently evaluate and, when necessary, adjust learning outcomes and assessment methods. This addition to the Standards connects the promises a school makes to consumers and what the school does through its overall program of legal education. Interpretation 315-1 explicitly indicates that employer, judge, student, and graduate surveys are appropriate means of evaluating that connection.<sup>160</sup>

It is appropriate for the Council to prescribe baseline learning outcomes, as it does in Standard 302. There need to be some contours that define the J.D. degree program and distinguish it from, for example, philosophy or history or criminal justice. But the Standards should only go so far. Where it makes sense to go further is in market failure. Where that is likely to occur, the Council ought to heighten its oversight. After all, the Council promises students and the public that approved law schools will prepare students for “effective, ethical, and responsible participation as members of the legal profession.”<sup>161</sup>

Perhaps the Standards sufficiently outline baseline learning outcomes and provides adequate oversight for the evaluation process. The Council should convene a working group to assess the circumstances in which the market is likely to fail to provide accountability and how it can fill the gap, if one exists, through regulation. If these Standards do well enough, eliminating or modifying overly prescriptive standards that dictate how schools operate will pose no problems.

<sup>159</sup> ABA Standards, *supra* note 66 at Standard 301, Standard 302, and Standard 314.

<sup>160</sup> *Id.* at Interpretation 315-1.

<sup>161</sup> *Id.* at Standard 301.



## Consider Methods for Achieving Equitable Pricing

Different students pay different prices for law school within a given school. While price disparities are not necessarily a problem, these disparities in legal education are inequitable based on the demographic patterns that emerge in national datasets on scholarship recipients and student debt.<sup>162</sup> Students with the highest LSATs and GPAs receive significantly greater discounts.<sup>163</sup> As such, the students who are least likely to complete school, pass the bar, and get a job subsidize their peers who are more likely to be lawyers. These also tend to be the students who are the most disadvantaged, whether due to race, gender, or socioeconomic status.<sup>164</sup> Unsurprisingly, these are the same students who graduate with more debt, leave the profession at higher rates, have fewer leadership opportunities, and receive lower pay. In other words, these students pay/borrow more for less.

### Merit Scholarships

Schools define merit by a student's LSAT score and undergraduate GPA—or, more specifically, by how a student's LSAT and GPA contribute to the overall class profile. Class profile statistics count for 22.5% of a school's *U.S. News* ranking.<sup>165</sup> The Council ought to provide heightened oversight to merit scholarships—not because of *U.S. News*, but because law schools charge people of color and women more for law school.<sup>166</sup>

There are three approaches the Council can take: limitations on merit scholarships, transparency, and enforcement of the diversity and inclusion standard, Standard 206. Transparency is discussed later in this report but would rely upon law schools and the market to correct the problems of disparate pricing once undeniably exposed. The diversity standard requires a law school to “demonstrate by concrete action a commitment to diversity and inclusion.”<sup>167</sup> It is not clear how a law school that charges underrepresented groups more than their majority counterparts can be said to be compliant with Standard 206. The Council should enforce it with respect to the data it collects under the transparency proposals.

More difficult would be limitations on merit scholarships, whether an outright ban or some less severe limit. The Council should begin by commissioning a legal analysis of a variety of options developed by a working group. If no reasonable option avoids price fixing, the Council should lobby Congress for an exemption under the antitrust laws. The problem of inequitable pricing is serious, and the current law should not stand in the way.

### Conditional Scholarships

A conditional scholarship is any financial aid award that depends on the student maintaining a minimum grade point average or class standing, other than that ordinarily required to remain in good academic standing. Already, the Standards require schools to publish how many students in an incoming class received these scholarships and how many lost them after the first year.<sup>168</sup> The school must also include conditional scholarship data as part of the scholarship offer letter it furnishes admitted students if the scholarship is conditional.<sup>169</sup>

<sup>162</sup> *Supra* note 1.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> U.S. News Methodology, *supra* note 8.

<sup>166</sup> *Supra* note 1.

<sup>167</sup> ABA Standards, *supra* note 66 at Standard 206.

<sup>168</sup> *Id.* at Standard 509.

<sup>169</sup> *Id.*



Conditional scholarships work for law schools because they allow schools to make offers that appear more generous than they are. Schools know that not everyone who accepts the offer will maintain the scholarship after the first year. This takes advantage of students twice over. First, students who receive the offers are likely to view themselves favorably in comparison to classmates they do not yet know, thus underestimate their chances of paying a higher price for 2L and 3L. After all, these students have managed to graduate and stand out in high school and college prior to earning admission to at least one law school. Second, schools anticipate that students won't leave after losing their scholarship. This is likely due to the sunk cost fallacy; students provide too much weight to the tuition and time spent prior to the price change. On average, schools knew the price was going to change—that's how the school can forecast its scholarship spend—but students did not. The result is that students finish school at the higher price.

The Council understands that conditional scholarships are morally dubious. That is why they agreed to publish which schools have conditional scholarships and what the rate of loss was at those schools. While transparency has succeeded in shaming some schools into curtailing or eliminating these programs, the Council ought to consider, through a working group, whether more extensive measures are appropriate and legal. As with merit scholarships, the inequitable impact warrants the Council not to let the current law stand in the way. If the law is insufficiently flexible, change it.

## ***Consider Methods for Lowering the Price of Legal Education***

Decreasing inequity will lower prices for some people and increase prices for others. But legal education costs too much for everyone. The price tag poses enormous difficulty for an aging profession that needs a pipeline of law school graduates who will not only protect and improve the rule of law, but who will also reflect society's diverse population. While signs point to fewer lawyers working differently in the future, lawyers should remain an essential part of our system of justice and private ordering, as well as an essential line of defense for abuses of power of all kinds. But our legal education system, and thus lawyers' role in the rule of law, is vulnerable when we price future contributors out of our profession. We need a pipeline of students who want and can afford to join.

There are several ways for the Council to address the cost of legal education that go beyond relaxing overly prescriptive standards (the previous section) and transparency (the next section). The Council should convene a working group to assess how to bring prices back to a sensible place. The cost of legal education should not be a secondary concern of regulators when the prices harm individuals and the nation's pipeline of new lawyers. The working group should consider a range of proposals, including gainful employment regulations based on employment rates<sup>170</sup> and/or debt-to-income ratios.<sup>171</sup> It should also consider whether gainful employment or other rules should be a minimum standard, as with bar passage rates, or should open alternative regulatory pathways. When law schools charge students as much as they do, and the legal profession has a duty to the public to produce generations of lawyers and leaders, the Council has a responsibility to step in and regulate.

<sup>170</sup> Scott F. Norberg, *J.D.s and Jobs: The Case for an ABA Accreditation Standard on Employment Outcomes*, 67 J.L.E. 1035 (2018).

<sup>171</sup> Two types, both explained here: LST Data Dashboard: National Debt-to-Income Ratio Report, <https://data.lawschooltransparency.com/costs/debt-income/>; National Debt-Service Ratio Report, <https://data.lawschooltransparency.com/costs/debt-income/?scope=repayment> (last visited Feb. 9, 2020).

# TRANSPARENCY AS A CHANGE AGENT



Transparency comes in many forms, from data to documents, but what matters most is what transparency does: It reveals. Through revelation, transparency can reduce information asymmetry to help markets, policymakers, and even decision-makers at the institutions subject to scrutiny. It exposes blind spots and signals opportunities for change. But transparency is not a final step in progress—it is an early step. Whatever transparency reveals, the value is severely limited without action because progress is not inevitable. Progress depends on reaction to revelation. Whether progress comes through standards, market adjustments, or self-correction in the face of a moral dilemma, it requires concerted effort by those in positions of influence or power.

## Necessary Data Upgrades

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

Notably, these proposals are the product of discussions with young lawyers, law students, legal academics, and leaders in various entities in the ABA. These proposals first appeared in a 2018 report by Law School Transparency and The Iowa State Bar Association.<sup>172</sup> That report was endorsed by state bar association young lawyer groups around the country, as well as by the ABA Young Lawyers Division and ABA Law Student Division. The Florida Bar Young Lawyers Division, in addition to endorsing the original report, produced its own striking report on student debt in Florida that emphasized these proposals.<sup>173</sup> The 2018 report proposals were further explored in even greater depth in a recent Florida International University Law Review article.<sup>174</sup> Both the original report and the law review article were submitted to the Council for the ABA Section of Legal Education and Admissions to the Bar in late 2018. What follows is a summary of the proposals that, once adopted, will pave the way for more accessible and affordable legal education. As a result of its primary regulator status, the Council works directly with law schools to report and retain information related to its student body, finances, and employment outcomes. In other words, the Council already has the authority to collect and require schools to publish all the data described in this section.<sup>175</sup>

<sup>172</sup> Law School Transparency (Kyle McEntee) and the Iowa State Bar Association Young Lawyers Division, *A Way Forward: Transparency in 2018*, [https://data.lawschooltransparency.com/documents/2018\\_Report.pdf](https://data.lawschooltransparency.com/documents/2018_Report.pdf).

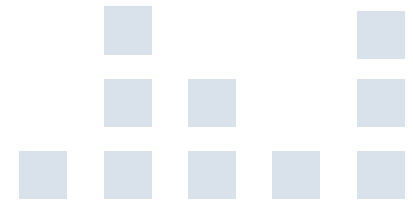
<sup>173</sup> Florida Bar Young Lawyers Division, *Increasing Law School Transparency: Tackling the Mountain of Debt faced by Young Lawyers* (2019), available at <https://flayld.org/wp-content/uploads/2019/04/YLD-Compensation-Report.pdf>.

<sup>174</sup> Kyle McEntee, *More Transparency, Please*, 13 FIU L. Rev. 465 (2019), available at <https://collections.law.fiu.edu/lawreview/vol13/iss3/7/>. This article discusses compliance costs for schools and the Section, the history of success in legal education for transparency, and factors for how to disclose the new data, e.g. whether schools must publish the data on Standard 509 reports or if spreadsheets from the Section suffice.

<sup>175</sup> Standard 104 permits the Council to collect these data “in the form, manner, and time frame” it specifies each year. ABA Standards, *supra* note 66, at Standard 104. Rule 49(b) permits the Council to publish these data when “authorized under Standard 509 or [when] . . . made public by the law school.” *Id.* at Rule 49. Standard 509(b) allows the Council to require schools to publish these data “in the form and manner and for the time frame designated by the Council.” *Id.* at Standard 509. Additionally, these data will help the Council analyze compliance with Standard 206(a). Standard 206(a) provides that “a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.” *Id.* at Standard 206.



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## Expand Data on Student Borrowing

Law students borrow significant sums of money to attend law school. Given the cost of legal education and the expected entry-level salaries, many graduates face consequential financial strain. Currently, the Council does not publish any school-level borrowing data, although the Council does collect related data as part of its annual questionnaire to law schools. Instead, the primary source of public information about student borrowing is *U.S. News*.<sup>176</sup>

Each year, about 90% of law schools voluntarily report their graduates' average amount borrowed to *U.S. News*.<sup>177</sup> Each school's average includes any graduate who borrowed at least \$1 during law school, whether they borrowed for just one semester or they borrowed the full cost of attendance each year. While an average can tell us about the entire population, it tells us little about individual students. To properly frame discussion about student borrowing, the public must be able to peer underneath the surface figures (the average amount borrowed) to see the borrower makeup. Shedding light on underlying borrowing data may stir policymakers, faculty, and administrators to think more clearly and realistically about the problem of student debt.

The best way to do this is through a frequency distribution. The following table (**Figure 14**) uses \$10,000 bands.

**Figure 14**

CLASS OF 2018 GRADUATE BORROWING, RGB SCHOOL OF LAW					
Amount Borrowed	# Graduates	\$	#	\$	#
\$0	40	\$60,000 - \$69,999	11	\$130,000 - \$139,999	9
\$1 - \$9,999	2	\$70,000 - \$79,999	1	\$140,000 - \$149,999	7
\$10,000 - \$19,999	3	\$80,000 - \$89,999	16	\$150,000 - \$159,999	3
\$20,000 - \$29,999	5	\$90,000 - \$99,999	28	\$160,000 - \$169,999	5
\$30,000 - \$39,999	7	\$100,000 - \$109,999	30	\$170,000 - \$179,999	10
\$40,000 - \$49,999	10	\$110,000 - \$119,999	18	\$180,000 - \$189,999	11
\$50,000 - \$59,999	14	\$120,000 - \$129,999	10	\$190,000 - \$199,999	15
<b>Summary Statistics</b>					
<b>Mean of Borrowers</b>	\$106,250	<b>Median of Borrowers</b>	\$104,000		

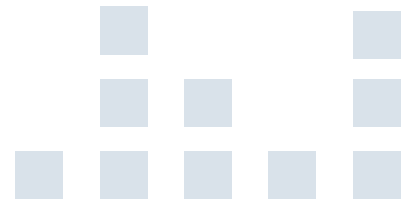
**Figure 15** (on the next page) applies the data table in graphic form (axes/data labels omitted), along with a modified box-and-whisker plot to represent the median and the interquartile range.

<sup>176</sup> *U.S. News*, Law School Graduate Debt?, <https://www.usnews.com/best-graduate-schools/top-law-schools/grad-debt-rankings> (last visited March 1, 2020).

<sup>177</sup> LST Data Dashboard, Federal Investment in Law Schools, <https://data.lawschooltransparency.com/costs/federal-investment/>.

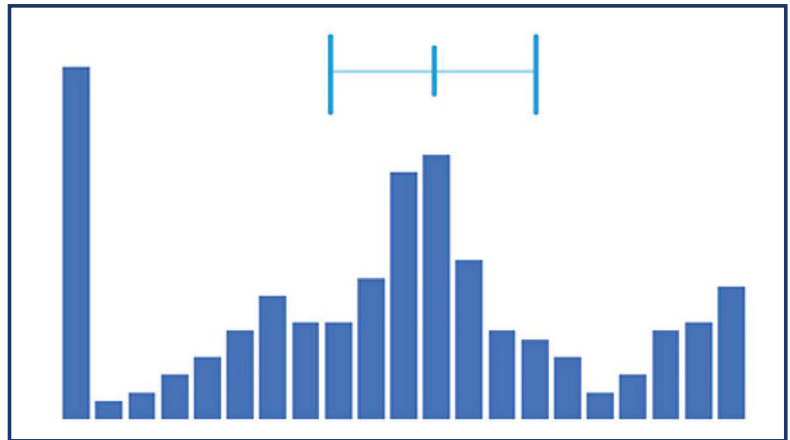


# TRANSPARENCY AS A CHANGE AGENT

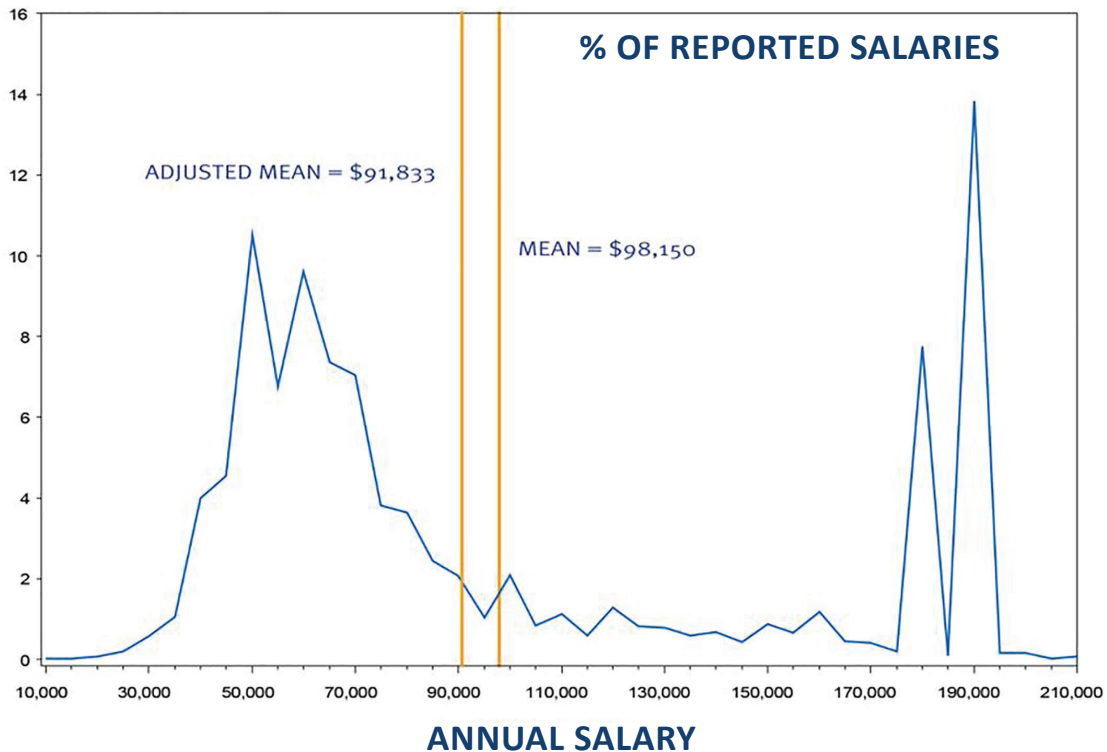


In legal education, the most famous application of a frequency distribution is NALP’s bi-modal salary distribution curve (shown below, **Figure 16**). This curve continues to shape how policymakers, researchers, consumers, and the public understand entry-level salaries. In 2018, the mean salary for reporting graduates was \$98,150.<sup>178</sup> However, very few graduates made at or near that amount.<sup>179</sup> Instead graduates starkly fell into one of two categories—\$180,000 and \$190,000 on the one side and between \$50,000 and \$70,000 on the other. This method of data presentation is impactful because readers must confront the reality of individuals that make up the averages, not just the averages themselves.

**Figure 15**



**Figure 16**



<sup>178</sup> 2018 National Summary Report, NALP, [https://data.lawschooltransparency.com/images/nalp\\_2018.pdf](https://data.lawschooltransparency.com/images/nalp_2018.pdf).

<sup>179</sup> LST Data Dashboard, Salary Outcomes, <https://data.lawschooltransparency.com/jobs/salaries/>.

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The Council should collect data on student loan borrowing outcomes for individual graduates and publish those outcomes using a frequency distribution table, including non-borrowers. This proposal poses no additional collection burden and minimal reporting burden for law schools because schools already possess graduate-by-graduate detail since the schools process all federal student loans for their students. Reporting individual records to the Council, properly anonymized in the same way as employment outcome records, would require minimal staff time and produce valuable data for public consumption.

## Expand Data on Tuition Prices and Discounts

Law schools engage in significant tuition discounting through scholarships. Although the nominal tuition price has increased significantly above inflation, it does not tell the whole story.<sup>180</sup> About 25% of students pay full price.<sup>181</sup> For the 75% receiving a discount, the discounts have shifted away from need-based discounts based on ability to pay toward merit-based discounts based on LSAT and undergraduate GPA.

The Council collects and publishes useful data related to how much students pay for their legal education. The Council currently requires schools to report and publish: tuition and fees; scholarship data by the median and interquartile range; and scholarship data by the percentage of tuition covered, e.g., what percentage of all students have a scholarship that covers up to 50% of tuition.<sup>182</sup> Moreover, the Council requires schools to report and publish whether and how often they reduce or eliminate scholarships after poor academic performance.

In other words, the Council already recognizes the potential value of publicly available price information for consumers, researchers, and the public. But with increased discounting and the shift away from need-based aid, additional clarity would add additional value. The utility of data for policymaking and decision-making depends not only on the public availability of data, but also how providers present the data. The Council can further its efforts of helping people understand the cost of legal education with frequency distribution tables for tuition paid by students using relatively narrow distribution bands. The Council should collect data on tuition paid by each enrolled individual and publish up to four frequency distributions tables per law school—one for 1L tuition paid, one for upper-level tuition paid, and a distinction for part-time and full-time as necessary.<sup>183</sup>

The Council should collect data on student loan borrowing outcomes for individual graduates and publish those outcomes using a frequency distribution table, including non-borrowers.

<sup>180</sup> See LST Data Dashboard, Net Tuition, <https://data.lawschooltransparency.com/costs/net-tuition/>.

<sup>181</sup> *Id.*

<sup>182</sup> See ABA 509 Required Disclosures, <http://www.abarequireddisclosures.org/>.

<sup>183</sup> 1Ls tend to lose conditional scholarships, whereas 2Ls and 3Ls lose them at a much lower rate. If a school ever adopts a model where they charge less for 3L, e.g. for a residency year, then this would have to change to three different years.

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Again, this proposal poses no additional collection burden and a minimal reporting burden for law schools. In fact, rather than a new style of information, this proposal merely improves upon the frequency distribution table the Section already utilizes for how much tuition students pay, described above as “scholarship data by the percentage of tuition covered.” **Figure 17** reproduces the current table from a Standard 509 Information Report from [ABArequireddisclosures.org](http://ABArequireddisclosures.org).

**Figure 17**

GRANTS AND SCHOLARSHIPS (2018-2019)						
	Total		Full Time		Part Time	
	#	%	#	%	#	%
Total # of students	718	100	718	100	0	0
Total # receiving grants	394	55	394	55	0	0
Less than 1/2 tuition	266	37	266	37	0	0
Half to full tuition	119	17	119	17	0	0
Full tuition	9	1	9	1	0	0
More than full tuition	0	0	0	0	0	0
75th Percentile grant amount			\$30,000		\$0	
50th Percentile grant amount			\$25,000		\$0	
25th Percentile grant amount			\$10,000		\$0	

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Several important, yet simple changes will help people connect tuition prices to the real lives affected by them. **Figure 18**, derived from **Figure 17**, showcases the transactional nature of tuition discounting, as opposed to a framework that treats scholarships as acts of generosity. That outdated framework restricts how consumers, policymakers, and internal decision-makers understand and act upon the information.

**Figure 18**

Annual Tuition Paid Full-Time Students	# of Students Total: 718	\$	#
\$0	9	\$24,000 - \$26,999	75
\$1 - \$2,999	0	\$27,000 - \$29,999	7
\$3,000 - \$5,999	0	\$30,000 - \$32,999	37
\$6,000 - \$8,999	0	\$33,000 - \$35,999	22
\$9,000 - \$11,999	5	\$36,000 - \$38,999	10
\$12,000 - \$14,999	2	\$39,000 - \$41,999	65
\$15,000 - \$17,999	50	\$42,000 - \$44,999	20
\$18,000 - \$20,999	60	\$45,000 - \$47,999	11
\$21,000 - \$23,999	20	\$48,000 - \$50,999	324
Mean Tuition Paid	\$39,398	Median Tuition Paid	\$25,624

**Figure 18** merely refashions how the price paid by students is communicated to the public; the burden would be negligible for law schools to report the necessary data to the Council. Every law school can account for how much its students pay. As previously noted, reporting individual records, properly anonymized in the same way as employment outcome records, would require minimal staff time and produce valuable data for public consumption. It also has the added benefit of holding law school deans accountable for public and private claims about net tuition, whether through Standard 509<sup>184</sup> or journalism.

<sup>184</sup> Standard 509, *supra* note 66.

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## Expand Data on Diversity

The Council collects rafts of data from law schools by gender yet publishes almost none of it. These categories include the number of students in the first-year class, the number of applicants, the number of admitted applicants, the number of graduates, the number of transfers, and the number attrited. The Council should publish these datasets to advance its efforts to diversify the legal profession and promote fairness. It can further these efforts by collecting and publishing gender data related to scholarship amounts, conditional scholarships, and first-year class profiles. The Council already collects these data from schools without regard to gender.

For both gender and race/ethnicity, the public would also benefit from frequency distribution tables for tuition prices and student borrowing outcomes by race/ethnicity and gender. Prospective students especially would benefit from seeing which schools match their words with their actions.

The Council does a much better job at publishing the race/ethnicity data it collects each year compared to gender data.

It publishes breakdowns by race/ethnicity for the number of graduates, the number enrolled by the year in school, the number of transfers, and the number attrited.

However, as with gender, the Council does not, but should, publish the data it collects by race/ethnicity for the number of applicants, offered applicants, and enrollees (first-year class).

For both gender and race/ethnicity, the public would also benefit from frequency distribution tables for tuition prices and student borrowing outcomes by race/ethnicity and gender. Prospective students especially would benefit from seeing which schools match their words with their actions.

Most of this proposal involves the Council making public data it already collects from law schools. For the data the Council does not yet collect by gender or race/ethnicity, this proposal poses minimal burden. Law schools already classify every student and graduate by gender and race/ethnicity. And law schools already possess individual, organized records for each of the proposed data categories. Matching these two datasets—to the extent law schools do not do so already—would require minimal staff time, produce valuable data for public consumption, and help decision-makers and policymakers meet diversity objectives. Together and apart, more transparent diversity data may illuminate unknown problems and explain known ones, as well as help consumers more clearly understand their bargaining position and make informed choices.

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## *Open Access to Law School Data*

There are two levels of open law school data: (1) public access to data through spreadsheets on the Section's website and (2) consumer access to data through a variety of reports required by Standard 509. The first level is the baseline expectation for data areas covered by Standard 509(b) and reaches, at minimum, researchers, policymakers, and journalists. The second level should require the Council to overcome a presumption of disclosure to consumers on law school websites in order to forego transparency.

Open data enable researchers and others to produce new information by combining datasets. The Section's websites ably contextualize the data by publishing definitions, survey instruments, and guidance memos. Open data also allow problems to be identified earlier and systematically, instead of by anecdote. Access has enhanced data integrity since the Council began to publish spreadsheets with school-level employment data for the class of 2011. Since that time, third parties have caught and reported errors, usually before legal and mainstream press stories. In the early years, schools and the Section staff made innocent mistakes that would not have been caught in a timely fashion, if at all. There are fewer mistakes today in employment data as the Section staff has refined its pre-release process.

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

Consumer harm is the key to overcoming the presumption of disclosure. The above data proposals only concern data pre-authorized for collection and publication by the Council under Standard 104 and Standard 509; these datasets will also help students understand important financial details, their bargaining power with schools, and where schools' priorities lie. However, these proposals add substantially to what a consumer is asked to mine through and understand. The additions may prove to be so overwhelming that consumers ignore important information, making them worse off.

**Access has enhanced data integrity since the Council began to publish spreadsheets with school-level employment data for the class of 2011.**

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Each law school already publishes three reports prescribed by the Council, as well as “current information on refund policies; curricular offerings, academic calendar, and academic requirements; and policies regarding transfer of credit earned at another institution, including a list of institutions with which the law school has established articulation agreements” in a “readable and comprehensible manner.”<sup>185</sup> These reports include:

- 1 The Standard 509 Information Report details a variety of statistics that aid students figuring out when to apply, whether they can get in, how much it costs, how diverse the student body is, and at what rate students complete school.<sup>186</sup>
- 2 The Employment Summary Report includes graduate employment data.<sup>187</sup>
- 3 The Bar Passage Outcomes Report details bar exam outcomes for two different measurement periods.<sup>188</sup>

[T]he Council should consider consumer disclosure reports with a fresh look, and include prelaw students, prelaw advisors, current students, young lawyers, and consumer advocates heavily in the process.

Fear of information overload, however, should only be used as justification to withhold information after alternative presentation formats are dutifully explored. That said, this report does not take a position on whether some or all of these data proposals should be part of required consumer disclosures. Instead, the Council should consider consumer disclosure reports with a fresh look, and include prelaw students, prelaw advisors, current students, young lawyers, and consumer advocates heavily in the process.

On balance, the value of public data will outweigh the costs of reporting and collecting for publication on the Section websites. Informed policy choices require a diversity of information and voices. What these measures reveal can contribute to change. Whether it amounts to progress will come down to the choices made by regulators, schools, and consumers. The problems facing legal education are as immense as they are important and the foundation for addressing them will be high-quality, thoughtfully presented data. Clarity is in order.

<sup>185</sup> American Bar Association, Managing Director’s Guidance Memo (2019), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/guidance-memo-509-december-2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/guidance-memo-509-december-2019.pdf).

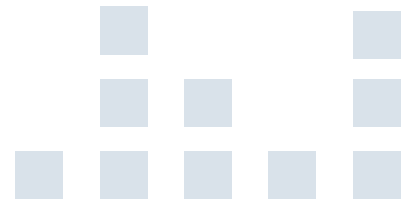
<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* Law schools report and publish graduate performance on the bar exam for first-time performance (the first-time pass rate) and performance within two years of graduation (ultimate pass rate).



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## Variance Transparency

ABA-approved law schools must be 100% compliant with the ABA Standards.<sup>189</sup> Despite this all-or-nothing approach, the Standards have a permissive structure for schools that already achieved full approval but have fallen out of compliance for one or more reasons. The Standards permit schools to submit “a reliable plan to bring the law school into compliance with the Standards” to avoid sanctions for non-compliance.<sup>190</sup> To lose its approved status, the Council must withdraw approval from the non-compliant law school.<sup>191</sup>

Schools can also obtain permission (a “variance”) from the Council to be out of compliance with the Standards in two circumstances. The “extraordinary circumstances” variance permits short-term non-compliance when compliance would “constitute extreme hardship.”<sup>192</sup> The “experimental” variance allows a school to be out of compliance if there is the “potential to improve or advance the state of legal education.”<sup>193</sup> The Council can approve either variance only if the variance is “consistent with the general purposes and objectives of the overall Standards” and the benefits outweigh the harm to students or the program.<sup>194</sup> Importantly, the Council grants variances to specific law schools—not generally—that apply for and are granted variances consistent with these caveats. In many cases, these variances provide a competitive advantage to the recipient.

Law schools use experimental variances to test new ideas that otherwise run afoul of the Standards. Recent variance requests concern online education, new admissions tests, and alternative faculty composition for the 1L curriculum. These experiments may (or have) touched on access, affordability, and curricular change. Under the current Standards, an experimental variance must first be for a certain term. The Council may extend the term once for

**[T]he Standards have a permissive structure for schools that already achieved full approval but have fallen out of compliance for one or more reasons.**

<sup>189</sup> ABA Standards, *supra* note 66 at Standard 101, Standard 102, and Standard 103.

<sup>190</sup> *Id.* at Rule 15.

<sup>191</sup> *Id.* at Standard 103. Although several law schools have lost their accreditation in the past two years, losing accreditation has traditionally been very difficult.

<sup>192</sup> *Id.* at Standard 107.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

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an additional defined term or an “indefinite” term.<sup>195</sup> The Council added the indefinite option in August 2014.<sup>196</sup> Previously, the Standards included a limiting provision that said, “As a general rule, the duration of a variance should not exceed three years.”<sup>197</sup>

The temptation for the indefinite option is clear. Law schools that invest substantially in, for example, online education program curriculum development and platforms, want to know that they can operate the program longer than three or six years. If a school can show that its experiment works consistent with the caveats required under the Standards, the school should not have to stop. For the Council, a variance does not require changes to the Standards, which require a fairly extensive process.<sup>198</sup>

However, the availability for an indefinite variance sets up a track for different schools to have different rules applied to them. This may raise questions under federal regulations promulgated by the United States Department of Education to ensure consistency in decision-making.<sup>199</sup> But legal issues aside, a relatively inaccessible alternative path for law schools does not meet the Standards’ prescribed goal of improving or advancing the state of legal education. The indefinite variance only expands the ABA-provided competitive advantage that the recipients have through their variance.

What is a win for the school and a win for the Council is a loss for innovation. This process fails legal education and its consumers—whether students, employers, or clients—in several ways. First, other schools cannot take advantage of the innovation without going through the entire variance process, even though the indefinite variance indicates that the school’s non-compliance is “consistent with the general purposes and objectives of the overall Standards”<sup>200</sup> and has demonstrably worked. Second, other schools cannot take advantage of the innovation unless the holder of the variance voluntarily makes its innovation public, as William Mitchell College of Law did after it received its variance for distance education.<sup>201</sup>

<sup>195</sup> *Id.*

<sup>196</sup> Compare 2013-2014 ABA Standards and Rules of Procedure for Approval of Law Schools, at Standard 802, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2013\\_2014\\_final\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_body.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.pdf) with 2014-2015 ABA Standards and Rules of Procedure for Approval of Law Schools, at Standard 107, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_bookmarked.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.pdf). For all years prior to the 2014–15 ABA Standards, the variance Standard was Standard 802. See ABA Standards Archive, [https://www.americanbar.org/groups/legal\\_education/resources/standards/standards\\_archives/](https://www.americanbar.org/groups/legal_education/resources/standards/standards_archives/). From 1996 through August 2014, the Standards allowed the Council to set “time limits [the Council] considers appropriate.” See *id.* From 1973, when the Council first adopted a variance process, through 1995, the ABA Standards permitted the Council to set “such conditions or qualifications as [the Council] deems appropriate.” See *id.*

<sup>197</sup> 2013-2014 ABA Standards and Rules of Procedure for Approval of Law Schools, at Standard 802, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2013\\_2014\\_final\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_body.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.pdf); see ABA Standards Archive, *supra* note XX [immediately prior FN].

<sup>198</sup> See ABA Standards, *supra* note 66 at Rule 50, Rule 51.

<sup>199</sup> 34 C.F.R. § 602.18 (effective July 1, 2020). The concern stems from subsection (c) of the regulations that go into effect on July 1, 2020. The Department of Education intends subsection (c) to provide a safe harbor for schools hoping to innovate, but (c)(2) also requires that “The agency sets and applies equivalent goals and metrics for assessing the performance of institutions or programs.” This may provide sufficient room for the Council to allow indefinite variances, but the regulations are not clear.

<sup>200</sup> ABA Standards, *supra* note 66 at Standard 107.

<sup>201</sup> Eric S. Janus, Gregory M. Duhl, & Simon Canick, *William Mitchell College of Law’s Hybrid Program for J.D. Study: Answering the Call for Innovation*, *The Bar Examiner*, Vol. 83, No. 3 (Sept. 2014), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2502914](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2502914).

# TRANSPARENCY AS A CHANGE AGENT



The ABA's seal of approval means something, in part, because its criteria appear transparent and evenly enforced. To this end, we propose several changes to the variance process. The full variance request and approval or denial should be public, including any information that schools use to justify the creation and continuation of any variance to the Council. Under Rule 48, the Council must publish notice that a school applied for a variance.<sup>202</sup> Under the same rule, the Council must also publish its decision to grant or deny the variance.<sup>203</sup> These notices, which indicate that a school wants to be or is presently out of compliance, do not go far enough. The problem is not that the Council permits variances, but that consumers do not know how or why a law school is permissively out of compliance. Neither the school nor the Council are accountable.

When a law school seeks an experimental variance, its application must describe what changes the variance will permit, which Standards are at issue, why the school deserves the Council's permission, and how it meets its burden of proof.<sup>204</sup> These applications should be published. The Council should then publish its explanation as to why the variance is justified or not. When sufficient time has passed to evaluate a granted variance, the school and Council should release a joint report that lays out what the school did with its experimental variance and assess the success. If the variance is proven effective, the Council should permit other schools to apply immediately with a lower burden of proof. This is similar to FDA procedures outlined for generic drugs under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act and medical devices under section 510(k).<sup>205</sup> Additionally, an effective variance should trigger procedures to evaluate the need for the relevant Standard(s) going forward.

More variance transparency will enable other schools to innovate and inform the debate as to what standards are unnecessarily restrictive of innovation. Over time, the applications and responses will create a repository of ideas that can advance legal education. It will also hold schools and the Council accountable for the decision to contravene public standards. Not only will these new processes meet the stated goals of the Standard, but it will also help to ensure that ABA-approval functions as a baseline promise of educational quality, not prescriptive standards that reinforce tradition.

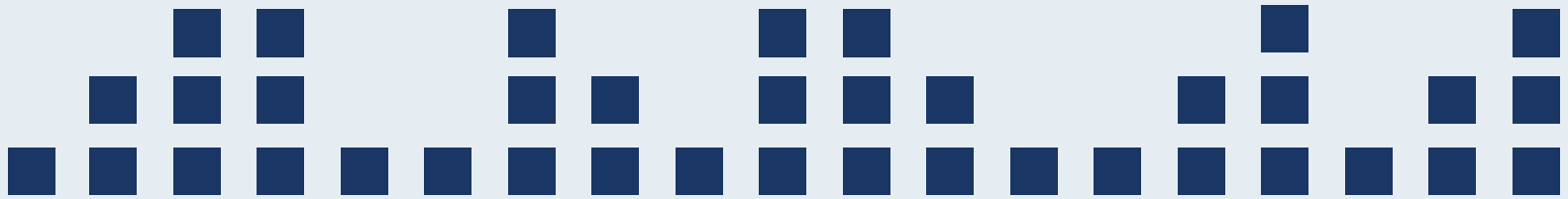
**The problem is not that the Council permits variances, but that consumers do not know how or why a law school is permissively out of compliance. Neither the school nor the Council are accountable.**

<sup>202</sup> *Id.* at Rule 48.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* at Rule 28.

<sup>205</sup> Carmago, A Guide to the 505(b)(2) Regulatory Pathway, <https://camargopharma.com/what-is-505b2>; U.S. Food & Drug Administration, 510(k) Clearances, <https://www.fda.gov/medical-devices/device-approvals-denials-and-clearances/510k-clearances>.

The logo for Law School Transparency (LST) features the letters 'LST' in a bold, orange, sans-serif font. To the right of the letters is a vertical orange bar, and to the left of the bar are four vertical bars of varying heights, resembling a bar chart.

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