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A Way Forward: Transparency at American Law Schools*

Kyle P. McEntee† and Patrick J. Lynch††

Introduction

A lot has been happening lately in the realm of American legal education. Many recent law school graduates are angry[1] and desperate,[2]

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* This Article is similar to Law School Transparency's original white paper, available at http://lawschooltransparency.com/documents/LST_White_Paper_April_2010.pdf. The original paper set forth an exposé of the available law school employment information and proposed a way for law schools to voluntarily release better information. This Article updates descriptions of the current employment information, explains the recent reforms at the ABA Section of Legal Education that followed from the original paper, and offers a new proposal for the Section of Legal Education to adopt for the betterment of the legal profession.

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1. Leslie Kwoh, *Facing Bleak Job Prospects, Student Loans, N.J. Law School Grads Wonder if it Was Worth it*, N.J. STAR-LEDGER (updated Aug. 16, 2010), http://www.nj.com/news/index.ssf/2010/08/facing_bleak_job_prospects_stu.html (interviewing two so-called "scambloggers," recent graduates saddled with debt and frustrated with what one labels the "Ponzi scheme" of American legal education). *See also* Lucille A. Jewel, *You're Doing it Wrong: How the Anti-Law School Scam Blogging Movement Can Shape the Legal Profession*, 12 MINN. J.L. SCI. & TECH. 239 (2011) (documenting the rise and impact of the scambloggers, arguing that their shock-value approach to raising awareness will strengthen the legal profession despite their existence outside of the mainstream).

2. Debra Cassens Weiss, *Law School Hunger Striker Ends Fast; Eyewitness Says She Is Weak, Fatigued and Thinner*, A.B.A. J. (Aug. 31, 2010, 9:25 AM), http://www.abajournal.com/news/article/law_school_hunger_striker_ends_fast_editor_sa

some legal academics are outraged,[3] and both legal[4] and popular media[5] have become a battleground for debating the value of the current legal education model and the lack of law school transparency. Among all of the drama, a chorus of voices has been calling for law schools to be more transparent about job prospects.[6] This pressure has stirred reforms at

ys_she_is_weak_fatigued_and_th/. Emily Friedman, *Unemployed Law School Student Pens Letter to Dean Asking for His Tuition Money Back*, ABCNEWS.COM (Oct. 21, 2010), http://abcnews.go.com/Business/unemployed-boston-college-law-student-tuition-back /story?id=11937494 (describing a soon-to-graduate law student's offer to drop out of school and avoid obtaining a law degree in exchange for a refund); Stephanie Landsman, *Law Degree, Never Used, for Sale on eBay*, CNBC (Jan. 5, 2011, 3:24 PM), http://www.cnbc.com/id/40930163.

3. Paul Campos, *Served: How Law Schools Completely Misrepresent Their Job Numbers*, NEW REPUBLIC (Apr. 25, 2011, 12:00 AM), http://www.tnr.com/article/87251/law-school-employment-harvard-yale-georgetown; Debra Cassens Weiss, *Law Dean Says Schools 'Exploiting' Students Who Don't Succeed,* A.B.A. J. (Jan. 20, 2009, 9:27 AM), http://www.abajournal.com/news/article/law_dean_says_schools_exploiting_students_who_dont_succeed; Jason M. Dolin, *Law Schools: Why Faculties Fight Change*, COLUMBUS B. LAW. Q., Spring 2011, at 14; William D. Henderson & Andrew P. Morriss, *What Law School Rankings Don't Say About Costly Choices*, NAT'L L. J. (Apr. 16, 2008), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005508485. Paul Campos also began blogging anonymously. INSIDE L. SCH. SCAM, http://insidethelawschoolscam.blogspot.com (last visited Dec. 27, 2011). His originally-anonymous blog garnered explosive commentary among law school faculty and significant media coverage in its first two weeks of operation. *See* Paul L. Caron, *Anonymous Law Prof Behind Law School Scam Blog Outs Himself: Paul Campos*, TAXPROF BLOG (Aug. 20, 2011, 4:07:29 PM), http://taxprof.typepad.com/taxprof_blog/2011/08/anonymous-law-prof.html.

4. *See generally* David Lat, *Non-Sequiturs: 12.22.11*, ABOVE LAW (Oct. 29, 2011, 5:14 PM), http://abovethelaw.com/tag/law-school-transparency.

5. David Segal, *Law School Economics: Ka-Ching!*, N. Y. TIMES, July 16, 2011, at BU1; Lane Greene, *Trouble With the Law*, ECONOMIST, Nov. 13, 2010, at 78.

6. In addition to Above the Law, a number of law school faculty cited throughout this Article, and legal and popular journalists, there has been significant pressure from United States Senators Barbara Boxer and Chuck Grassley, 2010-2011 ABA President Stephen Zack, the ABA Young Lawyers Division, various student and state bar association presidents, scambloggers, and *U.S. News & World Report*. *See* Jewel, *supra* note 1; ABANOW, *Law School Transparency Needed*, YOUTUBE (Feb. 4, 2011), http://www.youtube.com/watch?v=20MDvWzTQOc; Bill Hebert, *What Is the Value of a Law Degree? Part 2*, CAL. B. J. (Mar. 2011), http://www.calbarjournal.com/March2011/Opinion/FromthePresident.aspx; Kwoh, *supra* note 1; Robert Morse, *U.S. News Urges Law School Deans to Improve Employment Data*, U.S. NEWS & WORLD REP. (Mar, 9, 2011), http://www.usnews.com/education/blogs/college-rankings-blog/2011/03/09/us-news-urges-law-school-deans-to-improve-employment-data; *SBA President Coalition Endorses Ideas Behind New Bill*, LAW SCH. TRANSPARENCY (May 18, 2011, 8:15 AM), http://www.lawschooltransparency.com/2011/05/sba-president-coalition-endorses-ideas-behind-new-bill/; Karen Sloan, *ABA May Join Push for Law School Transparency*, NAT'L L. J. (Oct. 19, 2010), http://www.law.com/jsp/article.jsp?id=1202473544557; Karen

individual law schools and prompted the American Bar Association (ABA) Section of Legal Education & Admissions to the Bar ("Section of Legal Education") to undertake serious efforts to more carefully regulate the collection and presentation of employment data at ABA-approved law schools.[7] Additional pressure has come from a flurry of class action lawsuits alleging that schools have misrepresented employment outcomes, which stands to make schools think twice about how they advertise their programs to prospective law students ("prospectives").[8] Taken together, the events over the last two years are forcing the legal education community, its regulators, and various other stakeholders to reassess legal education from numerous angles.[9]

One reason for the outcry is the serious financial hurdle for people wishing to enter the legal profession in the United States or obtain a J.D. for other purposes. Many graduates struggle to make their monthly

Sloan, *ABA's Stance on Law School Accreditation Transparency Fails to Satisfy Senator*, NAT'L L. J. (Aug. 11, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202510863436; Karen Sloan, *Sen. Boxer Joins Debate Over Law School Transparency*, NAT'L L. J. (Mar. 31, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202488733307.

7. For coverage of the Section of Legal Education's efforts to improve law school transparency, *see ABA Watch*, LAW SCH. TRANSPARENCY, http://www.lawschooltransparency.com/category/americ\an-bar-association/aba-watch/ (last visited Dec. 28, 2011). ABA-approved law schools, as distinguished from state-approved law schools and the various alternative-to-education programs such as apprenticeships, guard entry to the legal profession. This Article limits discussion to the responsibilities of ABA-approved law schools and their accrediting agency, the Section of Legal Education. The Section of Legal Education, via the Department of Education, has the authority to accredit, and therefore regulate, law schools. Section of Legal Educ. & Admissions to the Bar, *About Us*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_education/about_us.html (last visited Dec. 28, 2011). Within the Section, three separate committees (Accreditation, Standards Review, and Questionnaire) all work to promulgate and enforce accreditation standards that law schools must meet to obtain and retain ABA approval. *Id*. Despite the term "ABA-approved," the Section of Legal Education operates independently from the ABA. *Id*.

8. Patrick G. Lee, *Law Grads Sue Alma Maters for Millions in Tuition Refunds*, WALL ST. J. L. BLOG (Aug. 10, 2011, 3:56 PM), http://blogs.wsj.com/law/2011/08/10/law-grads-sue-alma-maters-for-millions-in-tuition-refunds/ (discussing class action lawsuits filed against three separate law schools).

9. In this Article, we focus on how the relationship between prospective law students and law schools has been (and needs to continue to be) reassessed. However, there has also been increased heat on the relationship between law schools and their current students, specifically how well the schools prepare students for practice. We think these trust issues are interrelated, and that transparency in employment reporting is an essential element in fixing legal education.

payments, even when they avoid default.[10] The average 2010 law school graduate had $98,055 in law school debt,[11] compared to $16,000 in 1987.[12] This figure is likely to continue rising until the current model of legal education in the United States undergoes substantial change.[13] To make the situation even more worrisome for the legal profession and

10. According to FinAid.org, a graduate should make $138,000 annually to repay $100,000 without enduring financial hardship, or $92,000 annually to repay the debt with financial difficulty. *Loan Calculator*, FINAID, http://www.finaid.org/calculators/loanpayments.phtml (last visited Dec. 28, 2011). We calculated these figures using a loan balance of $100,000, an interest rate of 6.8%, no loan fees, and a ten-year loan term. If we change the loan term to thirty years, the borrower needs to make $78,000 annually to repay without financial hardship and $52,000 annually to repay with financial difficulty. Federal Stafford loans have a fixed interest rate of 6.8%, but are limited to $20,500 per year. *Student Loans*, FINAID, http://www.finaid.org/loans/studentloan.phtml (last visited Dec. 28, 2011). Federal PLUS loans are available for additional needs, but bear a fixed rate of 8.5%. *Id*. Jobs that allow repayment of debt without financial hardship are unavailable to the vast majority of graduates. Starting salaries tend to follow a bimodal distribution. *See Salary Distribution Curve*, NAT'L ASS'N L. PLACEMENT, http://www.nalp.org/salarydistrib (last visited Dec. 28, 2011). For the Class of 2010, there is one peak from $40,000 to $65,000, accounting for nearly half of reported salaries, and another distinct peak at $160,000. *Id.* Just over 51% of employed graduates from the Class of 2010 reported their starting salary. *Class of 2010 National Summary Report*, NAT'L ASS'N L. PLACEMENT, http://www.nalp.org/uploads/NationalSummaryChartforSchools2010.pdf (last visited Dec. 28, 2011). This bimodal distribution means that very few graduates make the mean salary of $84,111. The adjusted mean for all reported salaries was $77,333 (nearly half of what FinAid.org suggests for $100,000 of debt for a ten-year loan period). High salaries may await some graduates in the future, but loans do not wait for high salaries—they come due no matter what.

11. *Class of 2009 – U.S. News Spreadsheet*, LAW SCH. TRANSPARENCY, http://lawschooltransparency.com/wp-content/uploads/2011/04/Class-of-2009-US-News.xls (last visited Dec. 28, 2011) [hereinafter *Class of 2009 Spreadsheet*]. This spreadsheet includes data about law schools available in the *U.S. News & World Report* ("*U.S. News*"). Although the employment data is about the Class of 2009, the debt data is about the Class of 2010. $98,055 is the weighted average. The non-weighed average for the Class of 2010 is $92,640. Of the 193 schools reporting the average indebtedness for the Class of 2010, eighty-eight schools (45.5%) averaged over $100,000. *Id*. This is nearly double the total for the Class of 2009. *Class of 2010 – U.S. News Spreadsheet*, LAW SCH. TRANSPARENCY, http://www.lawschooltransparency.com/wp-content/uploads/2010/06/2010-US-News.xls (last visited Dec. 28, 2011).

12. COMM. ON LEGAL EDUC. & ADMISSION TO THE BAR, N.Y. CITY BAR ASS'N, LAW SCHOOL DEBT AND THE PRACTICE OF LAW 3, *available at* www.abcny.org/pdf/report/lawSchoolDebt.pdf (last visited Jan. 3, 2012). Using 3% annual inflation from 1987-2010, $16,000 in 1987-dollars equals $31,577 in 2010-dollars. This is a 210% real-dollar increase from 1987-2010. *Class of 2009 Spreadsheet*, *supra* note 11.

13. Leigh Jones, *Salary Raises Dwarfed by Law School Tuition Hikes*, N.J. L.J., Feb. 6, 2006, at 55 (reporting data from NALP showing a 130% increase in private school tuition and a 267% increase in public law school tuition from 1990 to 2005).

taxpayers, the recent recession has exacerbated the distance between the cost of a legal education and the expected earnings of a law school graduate.[14] But despite a disconnect between cost and expected value (which has been out of whack longer than the country has been in a recession), roughly fifty thousand law students still began investing in their legal education in 2011.[15] Why do people appear to be making unreasonable decisions?

Prospectives, but not law schools, lack the information they need to make a meaningful decision about whether and where to earn a J.D. Although correcting this information asymmetry would constitute an important step in helping prospectives make informed decisions, market correction requires much deeper reform than adjusting the quality of information available for public consumption. The market for law degrees has been distorted by easy financing and a societal misperception of the legal profession. Every school understands that it can get away with raising tuition because the school-set "cost of attendance" becomes the upper limit on the federal loans a student at that school can receive each year.[16] Moreover, there is a culturally embedded view that law school is a "magic ticket" to financial security. From television and fiction novels,[17] to proud parents and encouraging friends, American culture has conditioned a widespread belief that law school is a solid decision. This belief persists even as the legal market sinks and law school graduates are vocal about their struggle to find jobs and fulfill loan obligations. These distortions undermine reasoned analysis by prospective law students, and all solutions aiming to improve decision-making need to take these distortions into consideration.

14. Herwig J. Schlunk, *Mamas Don't Let Your Babies Grow Up to Be… Lawyers* (Vanderbilt Law & Econ. Working Paper Grp., Working Paper No. 09-29, 2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1497044.

15. Section of Legal Educ. & Admissions to the Bar, AM. BAR ASS'N, *Enrollment & Degrees Awarded, 1963-2010*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/stats_1.authcheckdam.pdf (last visited Feb. 18, 2012) [hereinafter Enrollment Chart].

16. *Calculating Costs and Financial Need*, GRADLOANS.COM, http://www.gradloans.com/graduate-financial-aid/costs.php (last visited Jan. 4, 2012).

17. *E.g.*, Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 11 AM. B. FOUND. RES. J. 281, 281 (1986). Popular culture may not portray lawyers in the best light, but dramatizations of legal struggles and court battles have played an important role in shaping (or maintaining) public perception about the legal profession.

A. *An Evolving Investment*

Law school has always been an investment in a person's future. But at its current price law school is also a traditional investment—one where the buyer reasonably expects pecuniary gain from the services. The services offered by a law school are a combination of educational instruction, professional training, and access to the legal job market. As a traditional investment, evaluating cost and return for each service is essential to proper valuation. And just like traditional investors are not guaranteed a return, law school graduates are not entitled to high paying jobs. They are, however, entitled to information that allows them to evaluate the riskiness of their investment and to understand what awaits them post-graduation.

It is not enough to ensure that investors are not misled; they need to have a meaningful opportunity to make an informed decision.[18] This straddles the line between consumer protection and personal responsibility. Consumers are not blameless when they make a decision without meaningful information, but given the almost-necessity of law school to become a lawyer in the United States and pervasive attitudes about the value of a law degree, it is myopic to suggest that caveat emptor apply to prospective law students.

B. *Consumer Protection*

Many rules govern traditional investments to protect unsophisticated or uninformed consumers from wrongdoing and to help them ascertain a proper valuation. We all want to believe that schools are altruistic and that they do not need regulation, but education is big

18. This philosophy is similar to the approach of the Securities and Exchange Commission (SEC) and the Food and Drug Administration (FDA). *See Cosmetic Labeling & Label Claims Overview*, U.S. FOOD & DRUG ADMIN. (Apr. 25, 2006), http://www.fda.gov/Cosmetics/CosmeticLabelingLabelClaims/default.htm (expounding that "[t]hese laws and their related regulations are intended to protect consumers from health hazards and deceptive practices and to help consumers make informed decisions regarding product purchase."); *The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation*, U.S. SEC. & EXCHANGE COMMISSION, http://www.sec.gov/about/whatwedo.shtml (last modified Oct. 24, 2011) (explaining that "[t]he laws and rules that govern the securities industry in the U.S. derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it.").

business and law schools are sophisticated suppliers that advertise their services to unsophisticated consumers who lack substantial bargaining power. In particular, schools enjoy significant advantages over these consumers thanks to the information asymmetry regarding job statistics.[19]

In other words, schools are fully aware of just how *unaware* prospectives are. Schools understand how the targeted consumers will interpret the limited information they can access; how their optimism about the future colors their inability to notice the sometimes significant gaps in information; how optimism bias reduces their ability to consider the consequences of not ending up at the top of the class; and how people are influenced by the very strong, culturally-embedded view about the innate value of attending law school and becoming a lawyer.

Higher education has long been an industry targeted by consumer protection rules.[20] Accreditation's core purpose is to protect students by ensuring quality. In the past accreditation primarily aimed to protect educational and training quality.[21] As law school has evolved into a traditional investment, however, the Section of Legal Education has expanded the scope of protection to help prospectives make decisions on an informed basis.

In 1992, the MacCrate Report recommended that law school accreditation standards should require the provision of employment information to allow prospectives to make an informed decision.[22] Part of this suggestion stemmed from the belief that law schools were not fulfilling their duties to the legal profession. Four years later, the Section of Legal Education adopted Interpretation 509-1 to ABA Standard 509.[23]

19. *See infra* Part II.

20. *See History of Accreditation*, ACCREDITING COUNCIL INDEP. CS. & SCHS., http://www.acics.org/accreditation/content.aspx?id=2258 (last visited Jan. 4, 2012).

21. *Id*.

22. The MacCrate Report—the product of an ABA-commissioned task force for improving legal education chaired by Robert MacCrate—underscored "the need for informed choice." SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, at xi, 227-32 (1992) [hereinafter MACCRATE REPORT].

23. At publication, the "[o]pinions expressed in [the MacCrate] Report [were] not to be deemed to represent the views of the [ABA] or the Section [of Legal Education] unless and until adopted pursuant to their Bylaws." *Id*. at ii. However, "Interpretation 509-1 to Standard 509, which pertains to Basic Consumer Information, was adopted in August 1996 to prescribe expressly that 'placement rates and bar passage data' are to be published by every accredited law school." Robert MacCrate, *Yesterday, Today and*

This was its first foray into requiring law schools to share information about the employment outcomes of graduates. Over time the shortcomings of Standard 509 have become apparent, and the Section of Legal Education is once again reimagining how it needs to protect consumers.[24] These efforts focus on restoring the breaking trust relationship between law schools and its graduates and the legal profession.

C. *Consumer Behavior*

Despite the damage being done to these other relationships, prospective law students still behave in a manner consistent with having faith in the programs that accept them. Truth be told, the trust relationship between law schools and prospectives should be breaking more.[25] Schools continue to fill entire matriculating classes each year

Tomorrow: Building the Continuum of Legal Education and Professional Development, 10 CLINICAL L. REV. 805, 819 (2004). On this topic, the MacCrate Report discusses "the perceived lack of adequate information," and states that "prospective law students generally are not knowledgeable about the profession, [including] . . . different paths for entry into the profession." MACCRATE REPORT, *supra* note 22, at 228-29. The MacCrate Report prescribed responsibility to educate prospective law students to the Section of Legal Education and individual law schools. *See id.* at 229; SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, 2011-2012 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 40-41 (2011) [hereinafter ABA STANDARDS FOR APPROVAL AND RULES OF PROCEDURE], *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_chapter5.pdf. Per ABA Standard 509, the Section of Legal Education recognizes law schools' obligation to provide "basic consumer information" to prospective law students. *Id.* It does not matter to whom the law schools report this information, but it must be both "fair and accurate" and "reflective of actual practice." *Id*. at 41-42.

24. We demonstrate Standard 509's shortcomings in Part III, *infra*, where we discuss how the standard allows schools to hide undesirable outcomes in the aggregate, painting a rosier picture of the employment market and misleading (perhaps intentionally) prospectives. In addition to reimagining Standard 509, the Section of Legal Education's Standards Review Committee has been working to reform many of the other accreditation standards. *See* SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, REPORT OF THE OUTCOME MEASURES COMMITTEE (2008), *available at* http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf.

25. This does not mean that law schools are all involved in one huge scam where they collude behind closed doors to generate misinformation about legal education and the health of the profession. But, even when parties in a transaction for a traditional investment are not scamming each other, consumer protection plays a crucial role in guarding against wrongdoing for cases at the margins. For law school, what sounds like a scam in many cases is really some combination of rent-seeking by various law school

because of easy financing, social distortion, and a lack of meaningful information. Of these three intertwined problems, the lack of information is the simplest distortion to correct. Yet law schools have been reticent to voluntarily disclose more employment information, offering up a number of justifications as to why they can simultaneously acknowledge there is a problem and not do anything about it.[26]

Despite schools' resistance to sharing important information, the events of the past two years have made it clear that the legal profession is serious about bringing transparency to law schools.[27] Employment transparency is not the magic elixir for legal education's woes and the debate will continue to broaden. As expected, there has recently been a renewed focus on the responsibility of schools to add sufficient value to the profession and students' careers beyond job placement.[28] Law schools, individually and collectively, need to be better at educating prospective law students about the profession and how different law schools fit different goals.[29] Stopping schools from misleading prospectives is not enough; instead, schools also need to actively engage in informing prospectives about the major decision they are making. Schools owe this duty to inform prospectives to the profession and to those who depend on the profession every day.

stakeholders, the perpetual flow of students willing to pay whatever tuition schools ask them to pay, and an institutional collective action problem that has long undermined even earnest attempts at legal education reform from within the law school academy.

26. In 2010, we (via Law School Transparency) asked law schools to voluntarily share the employment data they already collect and report to NALP every year. Of the 199 ABA-approved law schools at the time, 187 did not respond, ten declined, and one agreed but later reversed its decision. Despite the low response rate, the justifications provided in the responses are illuminating. *See* KYLE P. MCENTEE, PATRICK J. LYNCH & NATALIE J. REYES, LAW SCHOOL TRANSPARENCY REPORTS: THE INITIAL REQUEST (2010), *available at* http://www.lawschooltransparency.com/electronic_reports/Initial_Request_Report.pdf (documenting the responses of eleven law schools who responded to a request to voluntarily comply with a new reporting standard sent out in July 2010).

27. This includes an onslaught of people asking what the ABA and Section of Legal Education are doing to remedy a situation that schools refuse to remedy on their own. *See* sources cited *supra* notes 6-7.

28. Bradley T. Borden & Robert J. Rhee, *The Law School Firm*, 63 S.C. L. REV. (forthcoming 2011), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1906797.

29. *See* sources cited *supra* note 23. *See also* sources cited *infra* note 36.

D. *Helping the Decision Process*

In August 2011, the Section of Legal Education finalized a new employment presentation standard and also made the decision to enter the business of collecting graduate-level data from law schools.[30] The new presentation standard greatly reduces the misleading nature of the employment statistics that the Section of Legal Education publishes.[31] Starting this year, the Section of Legal Education will begin publishing employment statistics that describe various job characteristics and salary information.[32] This aims to address the provision of misleading statistics. Meanwhile, the new collection standard will enable the Section of Legal Education to fulfill its accreditation obligations by limiting the opportunity for fraud and enabling auditing where such auditing is shown to be necessary.[33] The decision to collect graduate-level data has the potential to improve information symmetry substantially. In addition to these changes, the forthcoming revised Standard 509, which expands the basic consumer information that schools must present in "a fair and accurate manner" "reflective of actual practice,"[34] provides some modicum of control over how schools present employment statistics elsewhere, including school websites.

But are the reforms sufficient given the enormity of the underlying problem? Or are the present reforms inadequately treating the symptoms of a greater problem? The answer is somewhere in the middle: the presently adopted reforms are encouraging but insufficient, and can only do so much to advance legal education in the twenty-first century.

The Section of Legal Education's reforms will address the wildly

30. This business has historically been the responsibility of NALP. *See infra* Part II.C.1.

31. *ABA Reforms Disclosure*, LAW SCH. TRANSPARENCY (June 11, 2011, 6:03 PM), http://www.lawschooltransparency.com/2011/06/aba-reforms-disclosure/.

32. *See id*.

33. *See* Memorandum from Hulett H. Askew, Consultant on Legal Educ., and Arthur R. Gaudio, Chair, Questionnaire Comm., Am. Bar Ass'n, to Law Sch. Deans and Career Servs. Officers (July 27, 2011), *available at* http://lawschooltransparency.com/documents/2011-07-27-AskewGaudio-to-LawSchools.pdf.

34. Memorandum from the Standard 509 (Consumer Info) Subcomm. to the Standards Review Comm., Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass'n (Mar. 14, 2011) [hereinafter Standard 509 Memorandum], *available at* http://apps.americanbar.org/legaled/committees/Standards%20Review%20documents/April%202011%20Meeting/Report%20of%20Subcommittee%20on%20Consumer%20Information.pdf.

misleading statistics that appear in sources like the *Official Guide to Law Schools*, the *U.S. News & World Report* ("*U.S. News*"), and schools' recruiting materials. However, the reforms do not go far enough to help prospectives make informed decisions—a very basic responsibility the Section, in its accreditation role, owes prospectives and the profession. Because it is so engrained that law is a lucrative, can't-go-wrong profession, merely reducing the amount of misleading information in the public domain will not alone create the informed decision-making needed to actually enhance market pressure on law schools.[35]

If our profession seeks law schools that have informed students, that are more responsive to hiring needs with their curricula, that operate at reasonable costs, and that add value commensurate with costs, then increased market pressure is an essential mode for achieving these goals. The Section of Legal Education must go further to help prospectives make informed decisions through both a heightened data presentation standard and through initiatives that improve understanding. In other words, the duty that the Section of Legal Education owes to all legal education stakeholders includes further breaking down the information asymmetry that law schools enjoy.

E. *A Way Forward*

All told, there is a flaw in the law school decision process. During this process, a prospective's internal cost calculus and penchant for risk inform the measurement and significance of the factors important to the prospective. Without meaningful information, factors may go unanalyzed, under-analyzed, or wrongly analyzed. Prospectives especially care about the educations they receive, quality of life, location, and job opportunities. However, what is often missing is due consideration to whether the assumptions they have about the legal profession are accurate. Against a backdrop of social distortion, the lack of meaningful information about important factors greatly damages the quality of the decision process.[36]

35. The ABA warned prospective students that law school might not provide financial security in November 2009. *See* AM. BAR ASS'N COMM'N ON THE IMPACT OF THE ECON. CRISES ON THE PROFESSION & LEGAL NEEDS, THE VALUE PROPOSITION OF ATTENDING LAW SCHOOL (2009), *available at* http://www.americanbar.org/content/dam/aba/migrated/lsd/legaled/value.authcheckdam.pdf.

36. Beyond the misperception, which will take years to adjust, it is extremely

This Article analyzes the adequacy of reform by focusing predominately on how well prospectives can make informed decisions about investing in a legal education. The availability of quality information is an essential element to making an informed decision to attend law school. Nevertheless, making this information available is only the first step to prospectives making more informed decisions. Prospectives also must have timely access to the information, understand the informational content and appropriate uses of the information, and act rationally on the information. This first step will lead to better access, understanding, and, eventually, behavior.

To determine how adequate reform has been, this Article analyzes the tools prospectives use to answer questions about the employment outcomes immediately[37] following graduation ("post-graduation outcomes"[38]) and the effect on these tools of the Section of Legal Education's forthcoming requirements for higher quality information. We argue that even with the Section of Legal Education's reforms, the available tools will still inadequately serve prospective students striving to take a detailed, holistic look at the diverse employment opportunities at different law schools. That is, prospectives rarely make informed decisions now and will still have great difficulty making them in the future.

difficult to determine how one school's offerings compare to another, especially when trying to weigh various factors. Judge Richard Posner argues that rankings are a cheap method that is appropriate for unimportant decisions. Richard A. Posner, *Law School Rankings*, 81 IND. L.J. 13, 13 (2006). He expects rational students to invest the time researching school characteristics, rather than relying on rankings. *Id*. Yet he also recognizes that, due to the volume of schools, this task is difficult and rough measures to determine which schools to research further are useful. *Id*. Comparing every factor across schools is also time-consuming and costly, if not impossible due to the lack of meaningful information for some of the most important factors. As a consequence, prospectives tend to rely on the yearly *U.S. News* rankings when making their decisions. What follows is simultaneously unsurprising and shocking: law schools are also enormously influenced by the *U.S. News* rankings. In addition to the lack of employment information, in many cases prospectives also lack meaningful information about scholarship offers, a crucial factor in many prospectives' decisions. David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES, May 1, 2011, at BU1.

37. This adjective refers to outcomes at graduation and outcomes at nine months after graduation. This is consistent with the current post-graduation outcome reporting standards of NALP, *U.S. News*, and the Section of Legal Education. *See infra* Part II.C.1.

38. Professor Morriss and Professor Henderson use this term in a similar fashion. *See* Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 IND. L.J. 791, 795 (2008).

The present debate centers on how much information prospectives have, how much information prospectives need to be adequately informed, and how best to achieve that level of disclosure. Part I of this Article analyzes the barriers to an informed decision, where prospectives may go wrong on their journey towards an informed decision, and whether prospectives should believe they have made an informed decision. Part II describes the criteria we use to evaluate any proposal for new standards for the presentation of employment information. Finally, in Part III, we outline a way forward that balances the legitimate interests of all legal education stakeholders and construct "The LST Proposal."

This contribution expands the Section of Legal Education's presentation standard by using only data collected under its new collection standard.[39] The proposal pairs a national salary database with school-by-school, disaggregated employment information. This extends the depth of data available for public consumption without affronting legitimate cost and privacy concerns to allow prospectives to find the school that best matches their career objectives. Although just a first step in aiding prospective law students to make informed decisions—steps are needed to ensure access to and understanding of new employment information—a decision by the Section of Legal Education to adopt the LST Proposal would do much more than reduce the number of mislead prospective law students; it would also enable them to understand the impact of different degrees on their careers.

I. Do Prospectives Make Informed Decisions?

We begin answering this question by first looking more closely at the structure of a prospective's decision-making process. In this Part we consider a series of questions a typical prospective might ask, looking at how she tries to become adequately informed about her decision to attend law school. On the one hand we have a consumer looking to invest in an expensive set of services, including access to the profession. On the other hand we have the suppliers of those services controlling entry into the legal profession while firmly on the advantageous side of an information asymmetry. This situation shapes our legal profession, and understanding it is best done by looking to the application process to step into the shoes of a young prospective law student as she considers

39. *See* Standard 509 Memorandum, *supra* note 34.

whether to invest in law school.

Choosing whether and where to attend law school screams for in-depth analysis.[40] But when does a prospective's due diligence move her decision from mere choice to informed choice? When is the analysis good enough for her to act? Many prospective law students care about these questions, and they are not alone. Legal academics, journalists, and lawyers have spoken out for prospectives to take care in their decision-making process, tacitly recognizing the importance of making an informed decision. But why are so many worried that prospectives are not making informed decisions? Roughly fifty thousand people make this decision each year,[41] and presumably almost all of them would claim they were making an informed decision at the time. Is the intuition correct that many of these law students should not consider themselves well informed? Or are people merely reacting to one of the worst legal markets in history?

In order to make sense of these concerns, we build a model that describes the personalized decision process, and use it to point out where in their process prospectives may go wrong. This takes our model to its limits. We cannot broadly show that prospective law students are inadequately informed. Adequacy, at least as we intend to use it, is a subjective evaluation. What we can do, however, is show where prospectives can run into problems with the available information, and conclude with a judgment that few reasonable observers could look at our analysis and believe that they would be adequately informed about post-graduation outcomes if making the decision to attend law school. Prospectives, recognizing that past prospectives were not as informed as

40. Professor Henderson warns that prospectives are not *homo economicus*:

> The modal student entering law school is not *homo economicus*. Rather, he or she is young, inexperienced, and overly impressed with branding—largely through *U.S. News*—and the opinions of peers. IQ does not shield the young from overconfidence and the reflexive desire to impress others through the acquisition of positional goods. Indeed, sometimes intelligence in the absence of commonsense can make matters worse.

Bill Henderson, *Drawing the Right Lessons from the Bleak Entry-Level Legal Job Market*, EMPIRICAL LEGAL STUD. BLOG (Sept. 3 2009, 1:48 AM), http://www.elsblog.org/the_empirical_legal_studi/2009/09/drawing-the-right-lessions-from-the-bleak-entry-level-legal-job-market.html (emphasis added).

41. Enrollment Chart, s*upra* note 15.

they should have thought, may react by retooling their analyses and reconciling the common intuition with informed behavior.

To start out, imagine you are a law school applicant, seeking to make an informed decision as to which law school to attend (or whether to attend at all). On what will you base your decision? What information do you need to know? How can you be sure you have accurate information? The last question in particular is something worth pondering, for the vast majority of prospective law students can only gain access to the answer after it is too late.

A. *What Is an Informed Decision?*

To illustrate the journey an applicant takes, we consider the questions a reasonable prospective will ask. Assume we have a very talented, intelligent singer-songwriter who we will call "Taylor" or "T." Taylor, after enjoying a successful career as a prominent contemporary American country star, decides that she really wants to become a lawyer. What would she need to know? Such a decision necessarily involves asking some serious and reasonable questions that go beyond the advisability of leaving behind a successful career and foregoing three years of additional creative development just to earn a J.D. and have a chance at entering the legal profession. The questions explored in this Article are similarly reasonable for the fifty thousand young college graduates and working professionals who actually forego other opportunities to embark on this particular path each year. But before considering the questions T may ask and what she will use to answer them, we will describe our model for discussing when information constitutes adequate information.

First, imagine a scale that encompasses T's acquired knowledge about a particular question or situation. An "L" on the scale represents the total information T acquired. If T has acquired no information, she has a total information deficit. This marks the left-most point on the information scale. If T has acquired perfect information, L is instead on the far right of the scale (**Figure 1** below). The more useful that T believes the included information is to the decision, the further right on the scale L belongs.

Of course, perfect information is not necessary to make an informed decision; at some point along the scale T possesses adequate information and T can be said to have made an informed decision. Adequate

information refers to a point ("A") on the scale where T's need for information overcomes T's individual tolerance for a lack of perfect information. The location of A depends on T's internal cost calculus and penchant for risk. Some prospectives are more risk-averse than others, while others may still be capable of paying the historically high costs of tuition up front without having to consider the same level of financial burden.

Figure 1

Consequently, whether T makes an informed decision about which law school to attend (or to attend one at all) depends on the information T acquires about her selection factors. T's ability to parse, understand, and organize the acquired information, with consideration to T's objectives and risk averseness, ultimately affects what T decides. But for this analysis to happen, T must determine what information, and how much information, is available about the selection factors.

T will ask questions requesting information that is valuable to understanding each choice's offerings for a specific factor. The amount of information that T obtains will determine how informed she is as to that factor. However, this analysis matters beyond whether T crosses the A threshold. How far above or below that threshold, and how important it is to cross that threshold for a particular factor, is pertinent to T's analysis. Having near-perfect information about some factors and a near-total deficit about others may still allow her to make an informed decision. Ultimately, Taylor will consider all that she knows and does not know and decide what to do—for better or worse.

B. *Theoretical Limitations on Informed Decisions*

Various epistemic breakdowns cause information deficits during T's information acquisition process. However, whether T is aware of these deficits and correspondingly adjusts L depends on T as an individual. Where a question is a request for information, an answer is

the presentation of information. Accordingly, problems may arise with both the questions T asks and the information T uses to answer. In this Article, we analyze the problems as they affect one specific selection factor: post-graduation outcomes. Our analysis concerns whether the available post-graduation outcome information can adequately instruct T as to the likely post-graduation consequences of T's decision.

To start, the questions T asks about post-graduation outcomes may not be the correct questions to ask. While each prospective should ask questions he or she believes are valuable, the available information may affect which questions that T believes are relevant, causing T to think she knows more than she does. Notably, the *U.S. News* ranks law schools ordinally from 1 to 143, plus one additional, unranked tier.[42] Should prospectives seek the rank of each school they consider? Many law school deans and scholars argue they should not. But in reality students do ask this question, in part because these rankings are pervasive. Even the information schools provide on their websites shape—for better or worse—what information prospectives believe is relevant. If T asks too many wrong questions, T may unwittingly be confused as to the probable consequences of deciding to attend a particular school.

Four major hang-ups may limit T's progress while she seeks information to answer questions (regardless of whether they are relevant). First, there may be a problem with statements used to answer questions. While information can be useful regardless of its truth-value,[43] a statement's utility depends on T's ability to determine that it is either true or false. Discovering what the statement attempts to convey about the world will pose problems if it is incoherent or ambiguous. That is, the statement "this (indicating) is on fire" conveys information if and only if the truth or falsity of the statement is evaluable. T cannot evaluate an incoherent or ambiguous statement without clarification. Second, if T has doubt about the information's truth or falsity, T may not trust the statement, and will thus be unsure about what exactly it is that she has

42. *Best Law Schools Ranked in 2011*, U.S. NEWS & WORLD REP., http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/lawrankings (last visited Jan. 4, 2012). In 2011, there were three schools tied at 143, thus a total of 145 schools were ranked. *Id*.

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

discovered. In either case, what the statement means to T's answer is unsettled, thus hindering T's information acquisition progress because the statement is currently unusable (or less usable).

The third problem concerns how T uses the information. The key here is that, while T may determine that some information is true, the questions T asks limit the information's qualified uses. This is a test as to the quality of the connection between the answer sought (whatever it is) and the information used to support that answer (whatever T uses). Among other things, information may be incomplete, unrepresentative, or statistically insignificant. Saying that information is incomplete, for example, does not say something about the information content. This would misunderstand the distinction between information as some statement that can be true or false, and T's use of the information. The former application wrongly judges the substance of the information content. The latter application, however, emphasizes that how well information serves T depends on what T asked. Saying that information is incomplete points to some measure of inadequacy for T's project of answering a question. Information is only incomplete because some question determined that a certain use was not enough.

While it would be interesting to determine exactly what makes information relevant, this Article limits the analysis to T. That is, information is relevant when T believes the information answers the question. However, this leads us to the fourth problem: T is not perfect. T may wrongly determine the truth-value of any of the three abovementioned problems, which may lead to undesirable outcomes. She may wrongly believe that (1) a statement is information, when it is not; (2) a source is trustworthy, when it is not; or (3) she used the information correctly, when she did not.

It also matters whether the information actually proves true when T believes it to be true. Consider the question "When did the American Civil War happen?" Imagine T determines, after reading a history book, that "the American Civil War happened in the seventeenth century" is true. T has unwittingly determined something false. The problem is not that the statement "the American Civil War happened in the seventeenth century" is false, but that it is false while T believes it to be true. Although T has no clue that the war happened in the nineteenth century, unless we include a prong for T's ability to connect facts to information, we would consider T informed. Considering her informed runs counter to our intuition about what it means to make an informed decision. This problem creeps up both when T is simply mistaken, and when T lacks the ability to use the available information rationally.

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

C. *Real Limitations on Informed Decisions*

Many of the problems prospectives face while acquiring information concern T's use of information and T's potentially mistaken beliefs. We built a model in Part I.A that captures how prospectives do a multi-factor balancing test to decide which law school to attend, showing how a decision moves from mere choice to informed choice. In this Section we consider some common questions that prospectives ask (or should ask) about post-graduation outcomes, as well as how prospectives try to answer these questions using existing tools. But first, what motivates T to care so much about job prospects?

Numerous reasons could shape T's desire for certain professional opportunities. Expected debt, expected pay, practice area interests, exit opportunities, desire to help people, and prestige are all relevant to T's inquiry.[44] These reasons cause prospectives to ask questions about what jobs are open to graduates from different law schools. To help answer these questions, a number of reputable sources offer tools, and each provides considerable information about job prospects. Nevertheless, the realm of questions that these tools should be used to answer could cause T to reevaluate her placement of L.

Before we discuss common problems prospectives face deciphering and using the available employment information, we should highlight a persistent issue with the data this information represents. Post-graduation outcomes are necessarily single data points[45] that reflect

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

45. This applies to people who take multiple jobs as well, because there is still just

the conclusive end to a complicated process. This process is special for each law student, and the end reflects unknown choices students make along the way. The Part I.A decision model applies to the decision to take one job over another, and predictably, the results may be largely unpredictable because more goes into deciding which job to take than choosing what would commonly be considered the best available job. Plausibly, a graduate from a top law school at the top of the class may want and choose to work for a parent's small private practice, where the name of the law school, grades, and other factors are irrelevant. While this appears like the graduate could "do better," the outcome was still the most desirable to the graduate. Simply put, outcomes may not reflect the opportunities available to a particular graduate due to self-selection away from or towards certain jobs.[46] Private, often hidden narratives accompany each outcome, precluding a genuine understanding of each graduate's decision.

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

1. Data Collection

Any discussion about data collection begins with NALP's relationship to its member law schools. For the past thirty-seven years, NALP has collected post-graduation outcome data from these schools in great detail.[47] In 2011, 192 schools provided NALP with data about each class of 2010 graduate based on each graduate's status on February 15, 2011.[48]

one graduate.

46. Among other things, this includes to whom law students choose to send resumes and bid on during on-campus interviewing ("OCI"). It does not simply include job offers from which a student made their selection.

47. Karen Sloan, *A Fight Breaks Out Between ABA, NALP Over Jobs Data*, NAT'L L. J. (Aug. 9, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202510383470.

48. Press Release, Nat'l Ass'n for Law Placement, Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s: Longstanding Employment Patterns Interrupted (June 1, 2011), *available at* http://www.nalp.org/2010selectedfindingsrelease. NALP, the

Using NALP's survey, often through Symplicity or a similar web interface, career services officers go to great efforts to collect data from graduates.[49] In addition to asking (and re-asking) graduates to fill out the survey, the career services officers play detective and seek data from reliable sources to fill in any gaps.[50] Once NALP receives the data, its researchers cleanse the data and provide report summaries to each school within three months.[51]

These data form the basis for most of the employment information available to prospectives. The categories for which NALP collects are numerous. For example, if the graduate is employed at a law firm, NALP asks how large the law firm is, whether it is a branch office or the headquarters, and what type of law firm job the graduate does.[52] For employed graduates, NALP requests whether the graduate is still looking for employment elsewhere and what the expected job duration is (temporary or permanent).[53] NALP also inquires about each graduate's race/ethnicity, gender, age, disability status, program type at graduation (full-time or part-time), special job funding, job offer timing, annual starting salary, and source of job.[54]

Although NALP annually publishes the aggregate and average information from all law schools, all graduate-level data and each school's report summary are confidential.[55] NALP only reports publicly

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Section of Legal Education, and *U.S. News* measure degrees granted between September 1 and August 31 of the appropriate period.

49. *See Guidelines for Surveying Your Graduates and Compiling Your Data… Tips from the Trenches*, NAT'L ASS'N L. PLACEMENT, http://nalp.org/uploads/ERSS/Erssguidelines10.pdf (last visited Jan. 4, 2012).

50. *See Graduate Survey Form—Class of 2010 NALP Employment Report and Salary Survey*, NAT'L ASS'N L. PLACEMENT (2010), http://nalp.org/uploads/gradsurvey_and_inst_20101.pdf.

51. See *Before You Hit Send…*, NAT'L ASS'N L. PLACEMENT, http://www.nalp.org/uploads/ERSS/Before_you_hit_send_2010.pdf (last visited Jan. 4, 2012).

52. *Graduate Survey Form*, *supra* note 50, at 2.

53. *Id*.

54. *Id*.

55. *See id*. at 3-4. Specifically, the survey provides:

> Your law school and NALP respect your expectations concerning confidentiality of these data. The responses provided on the enclosed survey will *not* be submitted directly to NALP. Data submitted to NALP will be recoded by your school and will not include any information identifying you as an individual. Moreover, you can be certain that *NALP treats all information in a highly confidential manner*. No information that could be associated with a specific

about the entry-level hiring market as a whole, not about schools' comparative performances.[56] NALP purports that these data from law schools, in the aggregate, provide a picture of the entry-level hiring market. It does this, though it also homogenizes what is demonstrably an entry-level market subjugated to at least some horizontal inequity. Prestige and school location often dictate opportunities available to students, and the NALP reports do not show where these placement disparities occur. While NALP is bound by confidentiality agreements and cannot release any school-specific data or information, the same is not true for the schools.

Unlike NALP, the Section of Legal Education and *U.S. News* have never before collected data about individual graduates. Instead, they collect and publish data about entire graduating classes.[57] For the 2010 ABA Annual Questionnaire ("ABA Questionnaire" or "Questionnaire"), there were four question categories under the placement rate section: graduate status, type of employment, type of job, and geographical location.[58] For each placement rate question, the Section of Legal Education requests both percentages and total numbers for the category related to the question.[59]

> individual or school is released—only aggregates and averages are published.

Id. at 3 (emphasis in original).

56. *See generally Class of 2010*, NAT'L ASS'N L. PLACEMENT, http://www.nalp.org/classof2010 (last visited Jan. 5, 2012) (providing studies and reports that only discuss trends in aggregated data).

57. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, ABA 2010 ANNUAL QUESTIONNAIRE (2010) (on file with Authors) [hereinafter ABA QUESTIONNAIRE]. This is not the most recent ABA Questionnaire; the 2011 Annual Questionnaire collects data from individual graduates, but the information drawn from these data will not be available until after this Article is published. The Section of Legal Education annually publishes the results of each ABA questionnaire, albeit 1.5 years after it has been reported. *See* note 83 and accompanying text (information for the class of 2009). The Section of Legal Education published the results of each school's 2010 ABA Questionnaire in the Official Guide. Official Guide to ABA-Approved Law Schools, http://officialguide.lsac.org ("The data collected by the [Section of Legal Education] and published on this website.") (last visited Aug. 13, 2011). *See also* U.S. NEWS & WORLD REPORT, 2011 U.S. NEWS LAW SCHOOLS STATISTICAL SURVEY qs. 157-63, 169-96 (2011) (on file with Authors) [hereinafter U.S. NEWS SURVEY].

58. ABA QUESTIONNAIRE, *supra* note 57, at 17-19. We discuss the 2010 ABA Questionnaire because the information available as of publication relies on this Questionnaire. However, the 2011 and 2012 Questionnaires substantially differ from 2010. *See infra* Part I.C.4.

59. ABA QUESTIONNAIRE, *supra* note 57, at 5.

First, the ABA Questionnaire requests employment status (known or unknown) of the school's graduates for the relevant period.[60] Next, the Questionnaire requests a breakdown of those graduates whose status is known: total known to be employed; total enrolled in a full-time degree program; total unemployed and seeking work; and total unemployed and not seeking work.[61] Finally, the Questionnaire requires three different breakdowns about every graduate known to be employed, each denoting something different about a graduate's outcome: type of employment,[62] type of job,[63] and geographical location.[64] For type of employment, the only consideration is the kind of employer, rather than the type of job.[65] The type of job breakdown attempts to broadly capture that information.

U.S. News collects data in the same categories as the ABA Questionnaire, for the same period.[66] But *U.S. News* goes further than the Section of Legal Education's and NALP's requirements, also asking schools to provide data about placement rates at graduation.[67] Unlike the

60. *Id*. at 18.

61. *Id*. Both part-time and full-time employees are included in the total number of students "known to be employed" category. *Id*. at 5.

62. The categories are "law firms (all jobs, legal and non-legal), business and industry (all jobs, legal and non-legal), public interest (all jobs, legal and non-legal), government (all jobs, legal and non-legal), judicial clerkships, and academia (all jobs, legal and non-legal)."*Id*.

63. These are grouped into five separate categories. The categories span employment in which "[b]ar [a]dmission [is] required/anticipated," or a "J.D [is] preferred, [or a] law degree enhances position," to more general concepts as "[p]rofessional other," "[n]on-professional other," or "[u]nknown." *Id*. at 18. Each category is further broken down into the total number by distinguishing between full-time and part-time positions (with the total equaling 100%). *Id*.

64. The categories include jobs located within the law school's state, outside of that particular state, outside of the United States, and in unknown locations. *Id.* at 19. The *U.S. News* survey also asks for the total number of states where graduates are employed. *Id*.

65. *Id*. at 5.

66. *See generally* U.S. NEWS SURVEY, *supra* note 57. One slight change is that *U.S. News* also collects the "[p]ercent employed in a judicial clerkship by an Article III federal judge." *Id*. at q. 176.

67. *See id.* at qs. 150-63. *U.S. News* only requests numbers at graduation for the employment status unknown and known categories, as well as the employment subcategories for graduates whose status is known. *Id.* The "at graduation" employment rate has been criticized on a number of grounds, but none more than how the decision of whether to report the rate at all is a game law schools play to move up the *U.S. News* rankings. *See* Bill Henderson & Andrew Morriss, *Data on the "Employed at Graduation" U.S. News Input*, EMPIRICAL LEGAL STUD. BLOG (Mar. 11 2011, 12:10 AM), http://www.elsblog.org/the_empirical_legal_studi/2011/03/data-on-employed-at-graduati

nine-month rate, this rate aims to provide a picture of how successful a school's graduates are in securing employment prior to passing the bar.

U.S. News also provides the only standardized mechanism for reporting salary data. It requests starting salary quartiles for graduates employed full-time in private sector jobs.[68] To determine how useful the salary figures are, *U.S. News* requests the percentage of all graduates employed full-time in private sector jobs that reported salary data.[69] Additionally, *U.S. News* requests the median salary for graduates employed in full-time, public service jobs, including any branch of government, judicial clerkships, academic posts, and nonprofit organizations.[70] Finally, *U.S. News* collects the percentage of graduates known to be employed in each geographical (census) region.[71] After compiling the supplied data, *U.S. News* publishes the latest data in April, about twenty-three months after graduation.[72]

In addition to law schools providing data about graduates to external bodies, other parties publicly release graduate employment data and information. Some law firms list their first-year associates with school attended and graduation year on their websites.[73] Many large law firms also release employment outcomes to the *National Law Journal* ("*NLJ*") in a survey each year.[74] Meanwhile, graduates voluntarily provide data points on websites like Martindale[75] and LinkedIn,[76] where

on-us-news-rankings-input-.html.

68. U.S. NEWS SURVEY, *supra* note 57, at qs. 164-66.

69. *Id*. at q. 167. As we shall see, differences in salary reporting rates are a significant concern for identifying where prospectives may go wrong during their decision process. *See infra* Part II.C.2.e.

70. U.S. NEWS SURVEY, *supra* note 57, at q. 168.

71. *Id*. at qs. 186-96.

72. Bob Morse, *Our New Grad School Rankings Are Online*, U.S. NEWS & WORLD REP. (Apr. 23, 2009), http://www.usnews.com/blogs/college-rankings-blog/2009/04/23/our-new-grad-school-rankings-are-online.html. Although the rankings are published in the May issue of *U.S. News & World Report*, the online version is published in April. *Id*.

73. *See, e.g.*, HUGHES HUBBARD & REED LLP, http://www.hugheshubbard.com/ (last visited Jan. 5, 2012).

74. *NLJ 250 Methodology*, NAT'L L. J., (Nov. 10, 2008), *available at* http://www.law.com/jsp/article.jsp?id=1202425892561. With this data, *The National Law Journal* releases some school-specific employment information. *See infra* note 107 and accompanying text.

75. *See* MARTINDALE, www.martindale.com (last visited Jan. 5, 2012). Martindale has been used for studies of entry-level hiring, indicating that it is viewed as a large enough sample size despite being entirely self-reported. *See, e.g.*, Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 LAW & POL'Y INT'L BUS. 1093, 1142 n.188 (2000) (utilizing Martindale to cull data on foreign

they self-identify with their employer, school, and graduation year. Law Clerk Addict—via chambers, law school administrators, and anonymous tipsters[77]—provides federal clerkship placement information about each Article III court, by school, though not by graduating class year.[78] Finally, anecdotes from graduates, friends or family, and media outlets provide data, either formally or informally, that prospectives can use to supplement other acquired information.

2. A Journey for Predicting Outcomes

To illustrate the manner in which prospectives seek information about job prospects, it helps to go back to Taylor, our hypothetical prospective, and follow her on her journey. Like many prospectives, T will start considering schools based on her LSAT, her GPA, and geography. T seeks to find what happened to the graduates at these schools because she wants to go to law school to obtain a legal job. If T cannot find a school that she can get into that reasonably enables her to reach her career objectives and pay back her inevitable loans, then T may reevaluate her options, including whether it is in her best interests to attend law school at all.

In this Section, we look at questions that we might expect a reasonably diligent prospective to ask about the law schools she is considering. The first question is quite basic; it merely asks what graduates do after law school. As we will see, when T looks to answer this question, she gets vague employment rates that do not depict anything meaningfully. The questions that follow are more nuanced and reflect T coming to understand that the information she uses to answer her questions is often incomplete while appearing comprehensive. Ultimately, this puts T in a difficult situation. How she reacts will depend, among other things, on what she thought about legal education prior to seeking the information she needs to make an informed decision.

graduates holding American LL.M. degrees who work at United States law firms).

76. LINKEDIN, http://www.linkedin.com (last visited Jan. 5, 2012).

77. *See, e.g.*, *Federal Judges Hiring Activity: 2011-12 Clerkship* Season, LAW CLERK ADDICT, http://www.lawclerkaddict.com/hiring (last visited Jan. 5, 2012).

78. *E.g.*, *Southern District of New York*, LAW CLERK ADDICT, http://www.lawclerkaddict.com/district/sdny (last visited Jan. 5, 2012).

a. *What Do Graduates of Law School X Do? ("Q1")*

Q1 is a very basic question to ask, even though the answer and process for answering it are not basic. One trouble is figuring out which sources to use and what information to rely upon. Another is the desire to use information to predict the future. While the past is not necessarily indicative of the future, examining the outcomes of recent graduating classes should give her some idea of what to expect, barring any major changes to the entry-level legal market.[79] Even where major changes do call into question the reliability of information about past graduating classes, T can hypothesize about how particular schools will react within the market. The goal, of course, will be to find some value in older information in light of new challenges.

Throughout this Section, we focus on the standardized delivery mechanisms for employment information. Some law schools offer information on their websites that exceed the information available in the *Official Guide*, *U.S. News*, and the *NLJ*. Most schools, however, seldom offer more information; in some cases, they even offer *less*.

Now, if one of T's options is New York Law School (NYLS), T might start with the most recent *Official Guide to Law Schools* to answer Q1.[80] Here is what T sees in the *Official Guide*:

79. The Section of Legal Education only requires that schools provide information about past graduating classes. *See supra* Part II.C.1. It also recognizes that previous outcomes are useful for making a decision. *See also* ABA STANDARDS FOR APPROVAL AND RULES OF PROCEDURE, *supra* note 23.

80. If T wanted to know that certain schools' placement followed certain trends, T might consult previous *Official Guides* to identify trends. Additionally, for a fee, *U.S. News* provides employment summaries. *See Best Law Schools Ranked in 2011*, *supra* note 42.While the *U.S. News* summaries provide more information than the ABA summaries, much of *U.S. News*'s information is redundant. *Id.* Although particular percentages vary, the questions listed under "Areas of Legal Practice" in the *U.S. News* survey rely on the same request from law schools that the Section of Legal Education makes. In fact, *U.S. News* notes just before the questions begin, "2010 ABA Questionnaire Reference: Part I, Section 7, Question 25B." *See* U.S. NEWS SURVEY, *supra* note 57.

	Total Graduates	Percentage
Employment Status Known	412	93.8
Employment Status Unknown	27	6.2
Employed	364	88.3
Pursuing Graduate Degrees	19	4.6
Unemployment (seeking, not seeking, studying for the bar)	24	5.8

Type of Employment		
In law firms	162	44.5
In business and industry	84	23.1
In government	29	8.0
In public interest	57	15.7
As judicial clerks	12	3.3
In academia	11	3.0
Subtotal	355	97.3
Mysteriously Missing[81]	9	2.7
Employed	364	88.3

It reveals that NYLS tracked down the employment status of 93.8% (412/439) of its class of 2009 graduates nine months after graduation.[82] Unfortunately, these data are not easily understandable as they are presented. That it is not obvious what the percentages mean is just the first of many problems prospectives face in understanding a school's

81. These data do not account for nine graduates who NYLS determined to be employed. What happened to these individuals? The ABA Questionnaire provides a clear answer that T will, once more, not find in the *Official Guide*. Schools utilize an "unknown" category for graduates that "did not indicate type of employment." ABA QUESTIONNAIRE, *supra* note 57, at 5. Yet again, unless T knows that she should inquire further, she will not seek out the instructions necessary to understand the data the *Official Guide* presents to prospectives because it appears self-explanatory.

82. LAW SCH. ADMISSIONS COUNCIL & SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, *Official ABA Data for New York Law School*, *in* ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS: 2012 EDITION 509 (2012).

employment information. The following table illustrates these graduates' employment status more clearly.[83]

	Total Graduates	Percentage of Known	Percentage of Entire Class
Employed	364	88.3	82.9
Pursuing Graduate Degrees	19	4.6	4.3
Unemployed[84]	24	5.8	5.5
Subtotal	407	98.8	92.7
Mysteriously Missing	5	1.2	1.1
Employment Status Known	412	100.0	93.7

These numbers do not account for five graduates for whom NYLS knew the employment status. It is unclear what the employment status of these 5 graduates is, and also unclear why NYLS did not categorize these graduates as employed, pursuing a graduate degree, or unemployed because these categories are exhaustive. This is a common problem with data in the *Official Guide*, so NYLS is among a large number of schools that make this mistake.[85] Both the Law School Admissions Council ("LSAC") and Section Legal Education disclaim any warranty as to the accuracy of the data submitted by law schools, so nobody corrects even basic arithmetic errors.[86] Nevertheless, T can still determine the employment status for 92.7% of NYLS's 2009 graduates.

The *Official Guide* further breaks the 82.9% of employed graduates into employment type, although the fact that 364 graduates is the denominator for the percentage is not terribly apparent from the *Official Guide*.[87]

83. *Id*.

84. This encompasses those seeking employment, those not seeking employment, as well as those studying for the bar. *Id*.

85. *See generally* ABA-LSAC OFFICIAL GUIDE, *supra* note 82.

86. *See id*. at app. b, 872 ("Neither the ABA nor LSAC conducts an audit to verify the accuracy of the information submitted by the law schools.").

87. *Official ABA Data for New York Law School*, *supra* note 82, at 509.

	Total Graduates	Percentage of Known	Percentage of Entire Class
In law firms	162	44.5	36.9
In business and industry	84	23.1	19.1
In government	29	8.0	6.6
In public interest	57	15.7	13.0
As judicial clerks	12	3.3	2.7
In academia	11	3.0	2.5
Subtotal	355	97.3	80.8
Mysteriously Missing[88]	9	2.7	2.0
Employed	364	88.3	82.9

Though on the surface the employment type categories seem to do a good job of sorting past outcomes for T and her future classmates, closer inspection reveals a number of issues.[89] These classifications reflect the type of employer that employs the graduate; it does not reflect the type of job the graduate has with the employer.[90] (For this reason, we refer to "employment type" as "employer type.") Readers of the *Official Guide*, *U.S. News*, and school websites that see employer type statistics are not told about this "feature" directly; discovering the peculiarity requires digging around and context clues.[91] But unless they know to look, reasonable readers assume law school graduates go on to be lawyers and that this is what these categories show.

88. These data do not account for nine graduates who NYLS determined to be employed. What happened to these individuals? The ABA Questionnaire provides a clear answer that T will, once more, not find in the *Official Guide*. Schools utilize an "unknown" category for graduates that "did not indicate type of employment." ABA QUESTIONNAIRE, *supra* note 57, at 5. Yet again, unless T knows that she should inquire further, she will not seek out the instructions necessary to understand the data the *Official Guide* presents to prospectives because it appears self-explanatory. *See supra* note 82 and accompanying text.

89. NALP appears to agree because it collects far more data from law schools for its goal of understanding the legal profession entry-level hiring market. *See supra* Part II.C.1.

90. ABA QUESTIONNAIRE, *supra* note 57, at 5.

91. Readers might find it in the ABA Questionnaire, buried within the Section of Legal Education's website, the NALP survey, or in the legions of news stories and blog posts belaboring how misleading these categories are when not paired with insight into job characteristics.

At this point, T only knows what kind of employer 80.8% of the class has a job with. But by asking Q1, T imports value on the job she can expect to secure, especially as it pertains to the price she would pay to attend a school. The qualified uses of the employment status and employer type with respect to this question are very basic, painting only a vague picture of what her job prospects would look like if she attended NYLS. Consequently, her examination of the ABA summaries raises a few clarifying questions. First, what kind of jobs do these graduates do for these employers? Second, are some jobs available to only some of the students in the graduating class? Unfortunately, this is where T must move on entirely to a new source of information.

b. *So Really, What Kind of Jobs Do Graduates Get? ("Q2")*

When NYLS reports 44.5% in "law firms," this means 44.5% of their employed graduates work as an attorney, law clerk, paralegal, or administrator. Without access to the underlying data, T cannot evaluate which jobs graduates take in law firms, and she risks improperly using the available information. For example, a prospective who wants a law school that is committed to developing public interest lawyers may treat the public interest percentage as indicative of the school's outward and inward attitude towards legal aid, as well as their achievement with fostering connections and funneling graduates to these jobs.[92] But if those who go off to do public interest work turn out to be community organizers, or some other non-attorney position, reliance on the public interest percentage would be unwarranted, though not necessarily inconsistent with the school's mission. Still, the prospectives cannot make this determination.

While the employer type categories seem harmless enough, they do not intuitively describe a considerable number of law school graduates. According to NALP, 8.7% of all law school graduates from the class of 2009 listed as working at law firms were not attorneys.[93] The

92. *E.g.*, Rolark, *Re: Best Public Interest Law Schools*, Posting to *Best Public Interest Law Schools*, TOP L. SCHS. (Mar. 1, 2010, 5:11 PM), http://www.top-law-schools.com/forums/viewtopic.php?f=1&t=109531#p2647558; Najumobi, *Re: Mich vs. UVA vs. GULC for Public Interest*, Posting to *Mich vs. UVA vs. GULC for Public Interest*, TOP L. SCHS. (Dec. 31, 2009, 12:01 pm), http://www.top-law-schools.com/forums/viewtopic.php?f=1&t=101763#p2360569.

93. *Class of 2009 National Summary Report*, NAT'L ASS'N L. PLACEMENT, 2, http://nalp.org/uploads/NatlSummaryChartClassof09.pdf (last visited Jan. 5, 2012).

percentage may seem small and insignificant, but it is not spread evenly across all ABA-approved law schools. To learn this, we only have *U.S. News* to look to, although we make the *U.S. News* data available on LawSchoolTransparency.com too.

For example, Cornell University Law School had at most two graduates in the class of 2009 who worked in non-attorney positions.[94] On the contrary, 75% of employed 2009 NYLS graduates were attorneys.[95] This means that between 0% and 19.5% of NYLS's graduates employed by law firms were non-attorneys.[96] To make matters worse, 54.7% of employed 2009 NYLS graduates were in full-time attorney positions.[97] This means T does not know if *any* of 2009 NYLS graduates were full-time attorneys at law firms.[98] While she now has more information than when she started asking questions, T cannot determine a more precise value from the available data.

U.S. News is currently the only standardized source of school-specific employment data that describes job characteristics beyond the type of employer. For a fee, *U.S. News* provides data on whether the jobs are full time and what sort of credentials the jobs require.[99] It is a cruel irony that the Section of Legal Education requires students to fork over money to the much-maligned *U.S. News* to learn these basic facts, which the Section of Legal Education has collected for years anyway.

Despite these job characteristic statistics being useful, their qualified uses as to Q2 are quite limited. For NYLS, the *U.S. News*-provided job characteristic statistics allowed T to learn a bit about the employment rate and the employer type rates. T found that she could only guess as to how many law firms are employing NYLS graduates as attorneys. That these rates require patchwork effort is neither obvious nor trivial. T only knew to wonder about whether those employed by law firms were attorneys because NALP's *Nat'l Summary Report*

94. *Class of 2009 Spreadsheet*, *supra* note 11. We are using the LST spreadsheet, which includes data gathered from *U.S. News*, because *U.S. News* charges for access to this information.

95. *Id*.

96. This is derived from law firms employing between zero and fifteen of the 162 graduates as non-attorneys. *Official ABA Data for New York Law School*, *supra* note 82, at 509.

97. *Class of 2009 Spreadsheet*, *supra* note 11.

98. However unlikely, the 55.6% of employed graduates not known to be working at a law firm could include every graduate working in a full-time attorney position (54.7%).

99. *See supra* text accompanying note 94.

demonstrates the considerable percentage of graduates working non-attorney jobs. And even after T did backflips to figure out the range of full-time attorneys at law firms for NYLS graduates, T still does not know with reasonable certainty what kind of jobs NYLS graduates really obtained post-graduation.

T cannot answer Q2 well because both the employer type and job characteristic categories use the same denominator, rather than making job characteristics a subcategory of employer type. Ultimately, we have a failure to appropriately group together similar jobs. Working as an in-house counsel is much more like working as a junior associate than a paralegal, even if the junior associate and paralegal work in the same office. Nevertheless, both the Section of Legal Education and *U.S. News* group in-house counsel with short-order cooks at Waffle House.[100]

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

An enormous range of opportunities are available to law school graduates, and placement summaries that contextualize the entire class by aggregating individual graduates—even when accurate—fail to convey the nuances of these opportunities. Percentages do not tell T about the individual stories. T is concerned with how *she* will fare by attending NYLS, not the graduating class as a whole. Knowledge of prior classes facilitates T's journey towards predicting her own outcome—or at least her chances of achieving certain outcomes.

One nuance lost in most of the available employment statistics is the amount of competition associated with attaining particular jobs within the categories. Q3 draws out T's appropriate concern that some jobs are only available to some graduates. If a prospective's opportunities are limited relative to her peers at NYLS, then it will be important to know which jobs are available to which graduates. When T has more specific categories that describe the outcomes, T will have a better handle as to the opportunities available throughout the class, provided that the new categories actually serve some additional function. Two available tools impart additional information about some of the most competitive jobs by isolating the employer type statistics. The most

100. *See* ABA QUESTIONNAIRE, *supra* note 57, at 5 (defining the "business and industry" category as including "all jobs, legal and non-legal"); U.S. NEWS SURVEY, *supra* note 57, at q. 170 (same).

competitive jobs are clerking for Article III courts and lawyering at the largest United States-based law firms.

Article III clerkships are among the most competitive legal positions available.[101] The *U.S. News* provides a table of clerkship placement percentages for every ABA-approved school, including Article III clerkships.[102] This table distills the "employed as judicial clerks" category into two subcategories.[103] The first is the percentage of the entire graduating class who obtained a judicial clerkship.[104] The second is the percentage of the entire graduating class who obtained an Article III clerkship.[105]

Likewise, large law firms are also among the most competitive legal positions available.[106] These positions also tend to be among the highest paying jobs. Since 2005, the *NLJ* has provided a list of the law schools that place the most graduates in attorney positions at the 250 largest United States-based law firms ("NLJ 250").[107] However, the

101. *Guide to Judicial Clerkships*, IND. U. ROBERT H. MCKINNEY SCH. LAW, http://indylaw.indiana.edu/career/judicialclerkship.htm (last visited Jan. 5, 2012). This is not the only other kind of clerkship. There are also administrative and international clerks, as well as other federal clerkships that are non-Article III. *What Kinds of Clerkships Are There and What Are the Duties?*, U. WIS. L. SCH., http://www.law.wisc.edu/career/WhatKindsofClerkshipsAreThere.htm (last visited Jan. 5, 2012). Some non-Article III clerkships—like state supreme courts—are just as difficult, if not more difficult, than some Article III clerkships. *See Guide to Judicial Clerkships*, *supra*.

102. *Whose 2009 Graduates Are Most Likely to Be Employed as Federal Judicial Clerks with Article III Federal Judges?*, U.S. NEWS & WORLD REP., http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-lawschools/article_iii_clerks (last visited Jan. 6, 2012).

103. *Id*.

104. *Id.*

105. *Id*.

106. Boutique law firms are also very competitive, with some paying New York City market rates. Maureen Tkacik, *Top NY Boutique Law Firm Boosts First-Year Pay*, CRAIN'S N.Y. BUS. (Feb. 7, 2007, 3:29 PM), http://crainsnewyork.com/article/20070207/FREE/70207013. Additionally, the NLJ 250 does not include large, prestigious internationally based firms. *NLJ 250 Methodology*, *supra* note 74. Elite public interest, clerkship, and governmental positions are very competitive as well. Moreover, not all NLJ 250 firms are equally competitive or attractive. There are NLJ 250 firm offices all across the United States and around the world; and the opportunity to land a job at a certain firm varies by, among other things, law school attended, GPA achieved, and personal connection to the city.

107. *See* Leigh Jones, *Hiring from Top Schools Steady in '08*, NAT'L L.J., Feb. 23, 2009, at S1 [hereinafter *Hiring Steady in '08*] (charting the placements for the Class of 2008); Leigh Jones, *Hiring More Deeply into Top Schools*, NAT'L L.J., Apr. 14, 2008, at S1 (charting placements for the Class of 2007); *Employment Trends for Law School*

number of schools on these lists varies by year. In 2005, the *NLJ* provided data for the top one hundred schools. In 2006, 2007, and 2008, the *NLJ* provided data for the top twenty schools. In 2009 and 2010, the *NLJ* provided data for the top fifty schools. Together, the *U.S. News* clerkship table and the *NLJ* charts provide an important step for resolving the meaning of two employer type categories because each increases the amount of available, specific, and useful information about law school graduates. But despite the promise of these two tools, they are not very useful for answering Q3 for most prospectives, except for showing which jobs certain schools' graduates do not attain year to year.[108]

The Article III clerkship table is most useful for prospectives who consider schools like Yale and Stanford, where 26.1% and 22.9% of the 2009 graduating class, respectively, clerked for an Article III court during the 2009-2010 term.[109] Across all ABA-approved law schools, however, this metric only provides information about a very small percentage of the graduating class. During the 2009-2010 term, an average of 2.5% of 2009 ABA-approved law school graduates clerked for Article III judges.[110] The median percentage was 1.5%.[111] Unfortunately, these are inflated numbers because some schools (rather clearly) misreported their clerkship placement numbers.

The NLJ 250 charts are likewise less useful for prospectives considering schools further down the rankings. If a school places less

Grads, NAT'L L.J. (Apr. 14, 2008), http://pdfserver.amlaw.com/nlj/20080414employment_trends.pdf (charting placements for the Class of 2005); *Go-To Law Schools*, NAT'L L.J. (Feb. 22, 2010), http://pdfserver.amlaw.com/nlj/law%20schools_charts_page12.pdf (charting placements for the Class of 2009); Leigh Jones, *The Go-To Schools*, NAT'L L.J. (Jan. 15, 2007), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1168423325385 (charting placements for the Class of 2006); *Law Schools Report*, NAT'L L.J. (Feb. 28, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202483173162 (charting placements for the Class of 2010); *2008 NLJ 250 Chart*, NAT'L L.J., http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202425778391 (last visited Jan. 14, 2012). *See also NLJ 250 Methodology*, *supra* note 74.

108. For example, none of the NLJ 250 Charts provide explicit information about NYLS graduates because NYLS does not place enough graduates in these firms. *See* sources cited *supra* note 107.

109. *Whose 2009 Graduates Are Most Likely to Be Employed as Federal Judicial Clerks with Article III Federal Judges?*, *supra* note 102.

110. For example, University of Washington Law School reported that 18% of their employed graduates were participating in Article III clerkships. *Id*. We alerted the school to this error, but the Assistant Dean of Career Services, to our knowledge as of this Article's publication, has declined to remedy this obvious oversight.

111. *Id*.

than 10.57% of its 2010 graduating class in NLJ 250 firms, the NLJ 250 charts reveal only that the school struggled to place its graduates in these competitive jobs. When the percentage is so low, the most relevant question is "where do the other graduates work?" The next sensible question is whether those graduates are in jobs that enable them to fulfill their loan obligations.

We do not want to underestimate how useful the NLJ 250 charts are for schools that provide ample opportunities at these larger law firms. However, only four schools placed at least half of their 2010 graduating class in NLJ 250 firms, down from twelve schools in both 2008 and 2009.[112] If the proportion of the class that goes to the largest firms, as it reflects graduate competitiveness and large salaries, concerns a prospective, this sort of information substantially supports an evaluation about competitiveness in the first-year legal market, including whether the jobs many indebted graduates covet are available to all students graduating from a school. In this economy, it appears that few, if any, schools afford such a luxury to their graduates.

The NLJ 250 charts are not without weakness, as examining Yale Law School's NLJ 250 placement over the years yields an unexpected result. Since 2005, Yale has never ranked better than fourteen in NLJ 250 placement.[113] In 2008, Yale did not even appear in the top twenty.[114] This result is unexpected because Yale graduates are widely considered among the very most competitive law school graduates in an array of job categories, especially Article III clerkships.[115] We can remedy this unintuitive result by combining the percentage of graduates employed in Article III clerkships with the percentage of graduates employed at NLJ 250 firms. The total reflects the percentage of the class that worked either for an Article III judge or for an NLJ 250 firm.

In 2009, seventeen schools placed more graduates in NLJ 250 firms than Yale.[116] Aggregating Yale's NLJ 250 firm (35.3%) and Article III clerkship (26.1%) placement percentages yields a substantially more intuitive result. Yale ranks eighth with 61.4% working in the NLJ 250

112. *See Hiring Steady in '08*, *supra* note 107; *The Go-To Law Schools*, *supra* note 107; *Law Schools Report*, *supra* note 107.

113. *See* sources cited *supra* note 107.

114. *Hiring Steady in '08*, *supra* note 107.

115. *Whose 2009 Graduates Are Most Likely to Be Employed as Federal Judicial Clerks with Article III Federal Judges?*, *supra* note 102.

116. *The Go-To Law Schools*, *supra* note 107.

firms or Article III clerkships. We do not want to overemphasize movements up and down this derivative tool (the "Aggregation Tool"), but Yale's movement illustrates how T may misuse the NLJ 250 firm placement rankings and percentages. If T relied only on the NLJ 250 percentages and the assumption that NLJ 250 firms are, by definition, competitive, she would possess incomplete information about how competitive Yale's graduates are in the legal marketplace.

An additional problem with how T may use the Aggregation Tool is that it requires that an individual graduate exists in a vacuum. It assumes that she is a competitive graduate because one of the two jobs is available to her. However, it is unclear how this would work in practice because there is a limited supply of NLJ 250 firm jobs and clerkships. Imagine that 90% of Law School X's 2L class worked for an NLJ 250 firm during their 2L summer, 30% of whom will apply for and receive clerkships. Each 2L received an offer for permanent employment from the NLJ 250 firm and each decided to accept, declining the clerkship opportunity. Law firms anticipate that some 2L offerees will not accept the offer to begin work shortly after graduation for many reasons, including their 2L offerees accepting clerkships. While it does not follow that each firm that offered one of these 2Ls a job overextended offers, it is plausible that some firms did because many firms expect less than 100% yield from the 2L summer offers. Although firms may make room for the competitive graduates who would have otherwise clerked, it is a safe assumption that NLJ 250 firm placement is closer to a zero sum game than not.[117] It is unclear whether this means that Law School X's graduates without clerkship offers, for whatever reason, are forced out by their more competitive classmates who would have otherwise clerked, or if those would-be clerks instead force other schools' graduates back into the legal marketplace. What is clear, however, is that some shuffling will have to take place. Unless a finite group of graduates is aggregately labeled "competitive," Law School X's 2Ls affect the market. For the Aggregate Tool, this means aggregate percentages, while indicative of a minimum percentage of the class with a competitive job, do not reflect any single graduate being able to obtain another competitive job.[118]

117. This is, of course, assuming firms attempt to hire as many associates as their projected needs have dictated.

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

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

It is easy to compare schools using the data supplied in the *Official Guide* and by *U.S. News*. Although the employer type categories use the number of graduates known to be employed as the denominator, it is simple even if not obvious for readers to use the percent whose employment status is known to find the percentage of the entire class the employer type percentages actually represent. Yet T is still not going to be very happy. She does not learn enough by knowing that 90% of all graduates are employed after nine months, or that one school has 45% of graduates at law firms and another has 52%. She sensibly seeks to answer Q1 by filling in the information gaps she identifies.

The goal will be, of course, to find any and all data that enable T to clearly see what students did in the past. One important precaution T must take is controlling for class size. This does not need to be scientific, but she should generally be aware that large graduating classes might affect the results of her search. Large graduating classes can create large alumni networks, but may also create saturated markets and pockets of unrepresentative outcomes. Unrepresentative outcomes will be problematic whenever examining anecdotes.

School websites are a reasonable place to begin. Schools often provide the information we have so far discussed, but sometimes they provide more information, like salaries, geographic dispersal, specific outcomes, and anything else they wish to convey to their target audience.[119] Some schools provide graduate profiles so that prospectives can see the successes of individual past graduates, although this is inherently misleading when it is designed to show that *you* can be one of the typically extraordinary results.[120] Others provide broad data about entire graduating classes to their prospective students, including employer name and office location.[121] Indeed, schools that provide this

119. For example, if a school targets its in-state applicants with a mission to train the state's future lawyers, it is advantageous for this school to show how this is the case. *See* Larry Dessem, *Welcome to MU Law*, U. MO. SCH. Law, http://law.missouri.edu/about / (last visited Jan. 10, 2012) (explaining that the school's "graduates are found in every county of Missouri.").

120. *See, e.g.*, *Alumni Profiles*, VT. L. SCH., http://www.vermontlaw.edu/Career_Paths/Alumni_Profiles.htm (last visited Jan. 11, 2012).

121. "On March 14th, 2008, at Admitted Students Day, Vanderbilt's admissions office released a list of where, and with whom, 196 of the 223 [Class of 2007] graduates were employed." *Vanderbilt Class of 2007 Uncertified List*, LAW SCH. TRANSPARENCY,

sort of data are the exception. Usually if schools provide lists of employers, they are either lists of firms that interview on campus[122] or lists of firms that have hired from the school in the recent past.[123] The main issue here is that it does not follow from employers interviewing students that those students work for those employers, especially when the school is in a major market where the firms attend at minimal expense to interview the very top of the class.[124] Another issue is that listing employers that have hired from the school in the past does not tell prospectives how often or over what period the list was accumulated.[125]

Moving away from school-generated information, T may consider websites like LinkedIn and Martindale to gather data about the specific outcomes of graduates. If T can determine that the graduate obtained the job within nine months and reported it to the school, she can begin to patch together the data that underlie the school-reported percentages. For example, if T learns that a 2010 graduate works as an attorney for a litigation boutique in San Francisco, T can determine that one of the outcomes in the "employed in a law firm" category required a J.D. for a particular kind of job. The more data T acquires in this manner, the better the picture she can paint. But this data is difficult to parse. On LinkedIn,[126] T must contend with private profiles and graduates choosing to provide their graduation years.

http://www.lawschooltransparency.com/2009/05/vanderbilt-class-of-2007-numbers/ (last updated May 3, 2010). Duke also provided its admitted students a list of its class of 2007 employed graduates. *Duke Class of 2007 Uncertified List*, LAW SCH. TRANSPARENCY (July 4, 2009, 4:51 PM), http://lawschooltransparency.com/2009/07/duke-class-of-2007-numbers/. However, we cannot track down the original list. Instead, LST provides a spreadsheet created by a Duke-admitted student derived from the raw data. *Duke Class of 2007 Spreadsheet*, LAW SCH. TRANSPARENCY, http://www.lawschooltransparency.com/wp-content/uploads/2009/07/Duke_2007_Grad_Original.xls (last visited Jan. 11, 2012).

122. *See, e.g.*, *OCI Employers, Fall 2008*, SANTA CLARA L., http://law.scu.edu/careers/file/OCI_Emplyers_Fall_08.pdf (last visited Jan. 14, 2012).

123. *See, e.g.*, *Employment Statistics*, HOFSTRA U. SCH. LAW, http://law.hofstra.edu/StudentLife/CareerServices/careerservices_employment_statistics.html (last visited Jan. 12, 2012) (listing "selected" employers that hired 2008-2010 graduates).

124. Prospectives can search the NALP database to find how many NALP members interviewed at each school. *NALP Directory of Legal Employers*, NAT'L ASS'N L. PLACEMENT, http://nalpdirectory.com/dledir_search_advanced.asp (last visited Jan. 13, 2012).

125. *Employment Statistics*, *supra* note 123.

126. Martindale and LinkedIn have similar issues. The available data is much greater on Martindale, but even more difficult to navigate despite no private profiles. *See generally Advances Search for Lawyers, Law Firms and Organizations*, MARTINDALE, http://www.martindale.com/Find-Lawyers-and-Law-Firms.aspx (last visited Jan. 13,

Beyond relying on anecdotal data to patch together what happened to the rest of the class, T may also try to find proxies for desirable post-graduation outcomes. Most pervasive are the *U.S. News* composite rankings.[127] The intuition is that the higher a school ranks, the better that school's graduates fare in the job market compared to schools ranked lower. Empirical research suggests that the students who attend roughly the bottom 75% of the law school hierarchy engage "in a calculation that asks whether a marginally higher *U.S. News* ranking is worth higher tuition," where worth has to do with the "wide array of employment opportunities."[128]

For many, the most desirable post-graduation outcomes—and the signal for a "wide array of employment opportunities"—are the high-paying, large law firm jobs and modest-paying, prestigious Article III clerkships. For these outcomes, the NLJ charts and Article III clerkship rankings provide a practical measure of a school's ability to place graduates in coveted jobs. Compared to NLJ 250 charts and Article III clerkship rankings, *U.S. News* rankings do a good job of predicting top performing schools.

But once we move beyond the top fifteen or twenty schools, it is hard to see why anybody should think there is a relationship between a school's rank and their post-graduation opportunities—at least one that is strong enough to warrant choosing the number forty-six school over number fifty-six on that basis. The *U.S. News* rankings may separate tiers well enough, but distinguishing within the tiers is a fool's game. In light of the rankings being a reliable proxy for so few schools, and the availability of reliable information about two classes of competitive jobs, the *U.S. News* rankings only distract sound decision-making. Unfortunately prospectives do use the rankings in this way, and some of the blame falls squarely on the lack of quality information to answer the questions T considered in this Part.

2012). Martindale enables searching by "Years in Practice," which narrows the field a bit, but cannot account for people who have already left their first job. *Id*. Firms also sometimes underreport attorneys to Martindale. Michael Joel Sullivan, *Methodology*, CALVIN C., http://www.calvin.edu/admin/csr/students/sullivan/law/method.htm (last visited Jan. 13, 2012). Additionally, sometimes attorneys appear twice. *Id*. Other anecdotes may also be found in popular media, law blogs, and old-fashion networking.

127. Morriss & Henderson, *supra* note 38, at 792.

128. *Id*. at 796. This is not to say that prospectives function indiscriminately, but conversations with current and prospective law students demonstrate how important the rankings were to their final decisions because they think it says something about post-graduation outcomes.

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

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

The *Official Guide* provides a short breakdown of where employed graduates have obtained work.[129] For NYLS:

	Total Graduates	Percentage of Employed	Percentage of Entire Class
Employed in New York	275	75.5	62.6
Employed in Foreign Countries	5	1.4	1.1

The *Official Guide* also discloses the fact that graduates work in twelve other states.[130] With help from the total class size and percentage employed in New York, T can use the total states data to get a loose picture of where NYLS's graduates work following law school. However, the qualified uses for this information are limited. While at least seventeen graduates (3.9%) worked outside of New York,[131] T should not try to infer more. But if T were to subscribe to *U.S. News*, T has more data to work with. *U.S. News* provides subscribers with a percentage breakdown of where graduates work by census region.[132] This

129. *Official ABA Data for New York Law School*, *supra* note 82, at 509.

130. *Id*.

131. Seventeen graduates employed in other states plus five employed in foreign countries, yields twenty-two. *Id*.

132. *Class of 2009 Spreadsheet*, *supra* note 11.

enables T to more precisely determine the geographical dispersal of NYLS's graduates after graduation.

Yet location only means so much. On the one hand, which jobs graduates take across the country matters, as the motivation behind Q4 is the ability to find desirable work nationally—or at least to find work somewhere other than the school's home market.[133] Perhaps somebody in the bottom 10% leaves New York because the only job he can find is back in Philadelphia working for a bakery. On the other hand, the salary people make matters too. If T cannot tie job, location, and salary together, T must make an educated guess as to her ability to be better off than if she does not attend law school. Compared to other industries, first-year salary information is relatively accessible.[134] Many firms that belong to NALP annually provide salary data for the NALP Directory.[135] If T can identify graduates working for NALP employers, she stands a good chance of identifying their salaries. The issue is still identifying those employers, but at least some data are available about employers, though these employers tend to be large firms.

Another resource that is non-school specific is NALP's annual report.[136] These reports can be useful at times, but do not answer many of T's questions regarding specific law schools. On the other hand, the reports do help prospectives understand the distribution of salaries and how gender and race might affect starting salaries at different jobs. For more information on salaries by demographic, employer type, and job type, NALP's *Job's & J.D.'s* provides insight into how salaries vary

133. *E.g.* Hiphoppopotamus, *BU… National Placement? CA Specifically…*, TOP L. SCHS. (Jan. 26, 2008, 2:06 PM), http://www.top-law-schools.com/forums/viewtopic.php?f=7&t=23551.

134. *See, e.g.*, *Firm Salaries & Other Statistics Charts*, FINDLAW, http://www.infirmation.com/shared/insider/payscale.tcl (last visited Jan. 13, 2012); *Greedy Associates Boards*, INFIRMATION, http://www.infirmation.com/bboard/clubs-top.tcl (last visited Jan. 13, 2012).

135. *See* NAT'L ASS'N L. PLACEMENT DIRECTORY, http://nalpdirectory.com/index.asp (last visited Jan. 13, 2012). Prospectives can access salary information by searching the directory by employer. *Advanced Search*, NAT'L ASS'N L. PLACEMENT DIRECTORY, http://nalpdirectory.com/dledir_search_advanced.asp (last visited Jan. 13, 2012) (select "Entry Level" for the "Salary For" category and enter "1" for "Minimum Salary Expected" to find *all* employers that report entry-level salaries).

136. The list of the annual reports is available at NALP's website. *Recent Graduates*, NAT'L ASS'N L. PLACEMENT, http://www.nalp.org/recentgraduates (last visited Jan. 13, 2012).

around the country.[137] By and large, this is of little use for choosing among law schools.

As for school-specific salary information, *U.S. News* provides private and public sector salary data to subscribers.[138] The twenty-fifth, fiftieth, and seventy-fifth percentile private sector salaries aim to demonstrate how salaries throughout a class compare. In order to show how much of the class the percentiles capture, *U.S. News* also reports the "[p]ercent in the private sector who reported salary information."[139]

NYLS's median salary of $160,000 looks great until you consider that the median represents only a very small slice of the class.[140] This slice represents merely sixty-nine graduates, or *at most* 15.7% of the class.[141] Accordingly, somewhere near 8% of the class made $160,000, with a $100,000 drop to the next quartile.[142] If we thought these salaries were representative, the low turnout would not matter so much. The twenty-fifth percentile salary figure puts NYLS in about the fifty-fifth percentile of schools reporting to *U.S. News*, while the median and seventy-fifth percentile figures put NYLS at the very top.[143] Whether the salary illusion is why the average 2010 NYLS graduate had $119,437 in debt is up to the reader to infer (and to a court to judge), but this level of indebtedness puts NYLS in the eighty-fourth percentile.[144]

137. *See* NAT'L ASS'N FOR LAW PLACEMENT, JOBS & J.D.'S: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2009 (2010) [hereinafter JOBS & J.D.'S 2009].

138. For the *U.S. News* rankings available in March 2011, *U.S. News* provides information about the class of 2009. *Class of 2009 Spreadsheet*, *supra* note 11.

139. *Id*.

140. *Id*. At least NYLS reported the percentage of the class reporting, even if it is very small. Hofstra Law promoted its salary data without reporting percentages. *Employment Statistics*, *supra* note 123 (the most current rendition of the website explains one table of numbers as representing "those members of the Class of 2010 for whom we have *both* employment information and salary data.") (emphasis added).

141. *Salaries Known for New York Law School*, LAW SCH. TRANSPARENCY, http://www.lawschooltransparency.com/clearinghouse/?school=newyork (last visited Jan. 13, 2012). At most, 15.7% of the entire class is represented by the quartiles. *Id*. However, NYLS has a substantial number of graduates employed in part-time jobs. *Id*. The salary quartiles are supposed to represent graduates known to be employed full-time in private practice or in business & industry. As such, we need to know what percentage of that group (15.7% of the entire class) is actually employed full-time. If only two-thirds, a conservative estimate, then roughly 5% of the class makes the median salary.

142. *Id*.

143. *Class of 2009 Spreadsheet*, *supra* note 11.

144. *Id*.

3. Should T Consider Herself Informed about Post-Graduation Outcomes?

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

The tools prospectives rely upon present many opportunities to misuse information because the tools do not meaningfully answer common questions like Q1-Q5. Temptation to use available information beyond its qualified uses arises from most prospectives' status as uninformed consumers of law degrees, at least as it pertains to post-graduation outcomes tied to particular schools. Irrespective of the lack of knowledge about job prospects, prospectives often do not fully grasp the costs they are assuming by taking out loans and foregoing three years of income. Some of this is due to the ease with which they can obtain funding through federally-backed student loans and sometimes also a lack of experience handling personal finances. Nor are schools quick to dispel the dreams many applicants have had since childhood about fulfilling the celebrated role of the lawyer as hero who sweeps in to squash discrimination and obtain justice.[145] It is easy to be less skeptical of the available information because the product is education-related; but as we have shown, the information is not as complete or useful as it seems.[146] Between prospectives' thirst for answers and not knowing what to look for while answering, prospectives will likely put L further right on Figure 1 than they should. That is, prospectives will think they are more informed than they are.

Some prospectives may realize they use information for non-qualified uses and just not care. Others may not realize it, but would not care even if they did. However, we think that the vast majority of

145. See, for example, practically every closing argument made by fictional Manhattan ADA Jack McCoy in the *Law & Order* television series, 1994-2010.

146. *See supra* Part II.C.2.

prospectives look more like T in seeking out answers to Q1-Q5 than the type of person who will actively ignore quality information put before them. When there is no reliable information it is understandable that prospectives rely on proxies for employment outcomes like the *U.S. News* rankings, but when presented with more facts it becomes easier to start asking more questions. With more appropriate definitions about job characteristics and greater awareness about the many lurking ambiguities in the information, we expect that T would change her beliefs about the proper use of the information she acquired. At the very least, she will reevaluate the risks associated with matriculation at Law School X to see if the risks are too much to handle. And even where prospectives do not individually follow such a quest for the truth, enterprising individuals will develop derivative tools to help explain the data in a way prospectives can understand.

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

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

undertake to improve. The good news is that the Section of Legal Education has already begun.

4. Section of Legal Education Reforms

Over the past two years, the Section of Legal Education has responded to concerns about the misleading nature of employment statistics by embarking on a number of new initiatives. These initiatives aim to increase what individual law schools must disclose on their websites. They also mandate that schools report certain employment data directly to the ABA, to be published in the *Official Guide*.

The first such initiative came to light in 2010, when the Standards Review Committee revealed it had appointed a special subcommittee to review and draft revisions to Standard 509.[147] To date, Standard 509 has not been modified, though the subcommittee has made several proposals.[148] The Section of Legal Education also recently announced that the committee should "draft a new standard that provides for specific and severe penalties for the intentional misreporting of placement data, including possible monetary fines and loss of accreditation."[149]

Separate from the Standards Review Committee's efforts to regulate direct disclosures, the Section of Legal Education's Questionnaire Committee has also taken action. In November 2010, this committee announced a special hearing to look into assertions that the employment data reported by law schools is "incomplete, that it's difficult to understand, that it's not uniformly reported, that it's inaccurate, and even that it's misleading."[150] Law school representatives, recent graduates, and leaders of nonprofit organizations including NALP

147. *Introduction to the A.B.A.'s Initiatives on Law School Transparency*, LAW SCH. TRANSPARENCY (Nov. 11, 2011, 4:40 PM), http://www.lawschooltransparency.com/2010/11/introduction-to-the-abas-initiatives-on-law-school-transparency/. Part of the directive to the new subcommittee, issued by then-chair Donald Polden, Dean of Santa Clara School of Law, was for each subcommittee member to read an earlier draft of this Article. Dean Polden thought it was important to first inform committee members of the current state of employment information prior to attempting any revisions.

148. Standard 509 Memorandum, *supra* note 34.

149. Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass'n, *ABA Section of Legal Education and Admissions to the Bar Update on Job Placement Data*, ABANOW (Oct. 17, 2011), http://www.abanow.org/2011/10/aba-section-of-legal-education-and-admissions-to-the-bar-update-on-job-placement-data/.

150. Letter from Arthur R. Gaudio to Authors (Nov. 2010) (on file with Authors).

and LST were invited to speak at the hearing. Following the hearing, the committee endeavored to develop a new collection standard. The committee's results consist of changes to the annual Questionnaire, which all ABA-approved law schools must fill out and submit each year. Once in hand, some or all of the data will be provided to consumers in the *Official Guide*.[151]

The Section of Legal Education plans to implement the Questionnaire Committee's reforms in two phases.[152] The committee alleges that these phases are necessary because some definitions, which were created by NALP and used by the committee for years, are not suitable.[153] These definitions include whether the job requires bar passage, prefers a J.D., is professional (non-law), or is non-professional, as well as whether the job is full or part time.

Despite the failure of the Questionnaire Committee to require that schools disclose critical information during the first phase,[154] things are headed in the right direction. In the rest of this Section, we describe broadly the information landscape of the near future if nothing substantially changes. This is a best case scenario based on public commitments made by committee members in the Section of Legal Education. The two phases together with a revised Standard 509 will make it more difficult for law schools to mislead prospectives. Importantly, the new presentation standards describe graduate outcomes beyond the old "a job is a job" requirement.

Once Standard 509 is amended, each school will be required to display the same chart for the last three years on their websites.[155] Each

151. What the Section of Legal Education shares in the *Official Guide* is not necessarily coextensive with what the Section collects. For many years, the Section has collected data about legal employment rates from schools. (These job characteristics are described previously. *See supra* note 62.) However, the section has never published this information, instead choosing only to report the basic employment rate. *See supra* Part II.C.2.b.

152. Debra Cassens Weiss, *A Long, Hot Summer: Section to Pose New Questions About Law Grad Employment*, A.B.A. J. (Nov. 1, 2011, 12:40 AM), http://www.abajournal.com/magazine/article/long_hot_summer_section_to_pose_new_questions_about_law_grad_employment/.

153. Karen Sloan, *ABA Stalls on Honing Law Schools' Jobs Placements Reports*, NAT'L L. J. (Sept. 28, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202517186028.

154. Kyle McEntee & Patrick J. Lynch, *ABA Should Make Law Schools Provide Better Job Statistics Now*, NAT'L L. J. (Sept. 22, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202516512301.

155. Standard 509 Memorandum, *supra* note 34.

chart aims to exhibit the outcomes of the entire graduating class as of the first February 15th following graduation. There are two classes of categories on the chart: employment status and employment type.

The employment status class divides all graduates into four exhaustive categories: employed, pursuing a graduate degree full-time, unemployed, and employment status unknown. The chart then breaks "employed graduates" into two subcategories. First, this category divides all employed graduates into four exhaustive kinds of employment: full-time long-term, full-time short-term, part-time long-term, and part-time short-term. Second, it breaks all employed graduates into exhaustive categories based on the credentials required (or preferred) to do the job: bar passage required, J.D. Advantage, other professional, or non-professional. It then further breaks each of those categories into (the same) four exhaustive kinds of employment: full-time long-term, full-time short-term, part-time long-term, and part-time short-term.

The employment type class breaks all employed graduates into six exhaustive categories based on the type of employer: law firms, business & industry, government, public interest, judicial clerkships, and academic. Of those categories, the law firm and judicial clerkships categories are further broken down by type. The law firms are disaggregated by size and the clerkships are disaggregated by level of government (state or federal).

Finally, salaries will accompany each category (except solo practitioners) of full-time, employed graduates whenever there are at least five salaries reported in a given category. These salaries will be reported with a twenty-fifth, fiftieth, and seventy-fifth percentile, as well as the number of salaries used to create these salary quartiles. There is also a space for schools to report the total number of jobs they funded.

The information available in the *Official Guide* about each school will be quite different, despite a number of overlaps. The overlaps include the two classes of categories on the abovementioned chart, employment status and employment type, as well as the number of jobs obtained by graduates that were funded in part by the law school or university.[156]

The *Official Guide* will not, however, include individual school salary information. Instead, the *Official Guide* will indicate the three

156. Memorandum from Dean Art Gaudio, Chair, Questionnaire Comm. to the Council of the Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass'n 22-28 (June 3, 2011), *available at* http://www.lawschooltransparency.com/documents/Council_Recommendation-QComm-6-11-2011.pdf.

states where the most graduates are employed and number employed in each. With that information, prospectives can then look at state-specific salary information that is based on graduates reporting from all law schools. For example, if a school placed most of its graduates in California, with a quarter of the school's graduates in large law firms of 251+ attorneys (not necessarily in California), prospectives will see what those graduates probably made (as a range) if they were employed in California. If Arizona was the second most common destination, then prospectives would see what those graduates made if they were employed in that state.

Except in cases of logical necessity, like if all graduates were employed in just one state, there is no connection between the jobs obtained and the location of those jobs. This of course greatly limits the usefulness of the state-specific salary information, though it does have the benefit of being more representative because it includes salary data from all law school graduates, not just graduates of a single school. However, this is what the law school-specific salary information provides prospectives. The tools will be best used together.

Going back to the model discussed in Part I.A, where will our hypothetical prospective law student find herself once these new reporting requirements are in place? Compared to prior years, the information is much less misleading. However, she will still struggle to answer questions like, "what is the best school for me to go to if I want to be a public defender in rural Ohio?" The information only paints a broad picture of a law school's placement, which means it is still very difficult to distinguish among schools to figure out which best meets her career objectives. She is still unable to make an informed determination as to whether to invest in a law degree. If she and the other fifty thousand or so new law students are to be able to make informed decisions in the coming years, we will need a more robust presentation standard that adds genuinely useful information to the public domain, rather than solely reducing the amount of bad information.

II. Criteria for an Adequate Presentation Standard

Taking into consideration the Section of Legal Education's proposals over the past year, there are three criteria that are necessary for an adequate presentation standard—one that helps prospectives

understand how different schools meet their career objectives.[157] The first is the need for the currently available information to be disaggregated. The second is that the data must demonstrate the economic value of a school's J.D. program. Finally, the data must be released in a timely manner. These criteria aim to expose standards that only facially satisfy the outcry for more law school transparency. In crafting a new standard, these three requirements must be balanced against legitimate cost and privacy concerns which serve to limit the amount of data that should be made accessible to prospectives.

A. *Disaggregate the Current Information*

The most serious handicap of the current presentation standard is that graduate outcomes are hidden in aggregate form. For prospectives seeking to make an informed decision (and law schools seeking to fulfill their educational responsibilities) the new standard must provide an accurate picture of the entry-level job market for each school. To do this, any new standard must characterize the jobs graduates obtain beyond "a job is a job." This includes the nature of the jobs graduates obtain, with whom the graduates are employed, and the locations of these jobs. Moreover, it must be clear which job characteristics are bundled together. For example, prospectives must be able to see whether those working in "business and industry" are lawyers or non-professionals. Finally, where there are unavoidable gaps in the information—caused, for example, by a non-responding graduate—the gaps must be clearly visible to limit unjustified extrapolation.

B. *Demonstrate the Economic Value of a School's J.D.*

While disaggregating the current information to produce graduate-level detail allows for rough estimates of economic value, starting salaries are essential to understanding the value of a law school degree. Despite this, the Section of Legal Education has not considered salaries to be basic consumer information until very recently. This lack of transparency has been detrimental to sound decision making,

157. *See generally* Memorandum from Kyle P. McEntee, Exec. Dir., Law Sch. Transparency, to Standards Review Comm., Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass'n (Apr. 2, 2011), *available at* https://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/20110330_comment_general_kyle_mcentee.pdf.

especially for those prospectives pursuing a legal education out of a desire for financial security. Of course, not everyone approaches law school for attractive financial prospects. However, almost all will pay an enormous amount of money for the privilege to earn a J.D., whatever their reasons for attending. For 84% of law school graduates, it is difficult to separate the question of "how much will I make?" or "should I go to law school?" from "how much will my monthly loan payments be right after I graduate?"[158] Likewise, it is difficult to think about the salary a graduate earns separate from where that graduate lives and works.

The ability to repay financial obligations is complex. Debt repayment is certainly not where a prospective's analysis should end when considering whether to finance a legal education. But there is still a bottom line: for a graduate with $40,000 of taxable income and $100,000 in student loans, she will have between $15,000 and $20,000 to live on after taxes and loan payments. Depending on where she wants to work and how she wants to live her life, this may be suitable, but she cannot have a reasonable idea without having some way to estimate prospective earnings and where those earnings may be earned.

C. *Be Available for Public Consumption in a Timely Manner*

A major hindrance to the ability of law school consumers to determine value is the serious time lag between the results of a specific graduating class and the disclosure of those results to the public. Once the Section of Legal Education possesses the employment data, it should publish information as quickly as possible. There must of course be ample time built in between collection and presentation to cleanse the data, as NALP has done for many years. But it is not acceptable that the class of 2009 graduated in May 2009 and that the Section of Legal Education did not collect class of 2009 employment data until the end of 2010, almost eighteen months later. Even worse, the data that was due on October 31, 2010 was not available to the public until the middle of 2011—more than two years after those individuals graduated and well after the admissions cycle for most members of the prospective class of 2011 had concluded. Consumers must have access to employment information in a timely fashion, allowing only for necessary delays to cleanse (and perhaps audit) the underlying data.

158. *See generally Class of 2009 Spreadsheet*, *supra* note 11.

III. A Way Forward

As we have demonstrated in this Article, prospective law students are in a bit of a hole. Many believe that they make informed decisions each year when in reality they do not; rather, prospectives are far worse informed about their investments than consumers of far less risky investments, for example people purchasing penny stocks or consumers applying for new credit cards. If all legal education stakeholders (including practicing members of the profession, not just law school administrators) believed it was in their own best interest to get as much information as possible to prospectives, the issue would not be *what to include in the disclosure standards*, but rather *how to do it*. But the reality is that various stakeholders do object to substantially increasing transparency on various grounds, perhaps in an attempt to marginalize the debate to prevent the discussion from moving forward.[159]

Law schools are keenly aware of what prospectives want to see to justify the decision to attend, but this is not the same as what prospectives need to know. We need to ask, what do we expect a reasonably diligent prospective to wonder about in determining her chances of meeting her career objectives by attending Law School X? The most pervasive aspects of these questions go to the ability to fulfill loan obligations and to particular job characteristics which communicate value, such as the difficulty of obtaining a job, location, salary, permanency, and professional growth opportunities. Importantly, prospectives ask these questions on a school-by-school basis; otherwise they cannot determine how one school places compared to others.

Existing tools largely fail to answer these questions. The tools often provide incomplete or unrepresentative information, offer proxies in place of substantive information, and gloss over serious gaps that go unnoticed by even careful observers. The result is a perpetual flow of information that fails to show the full picture, leaving tens of thousands of prospectives guessing or otherwise believing that they know what job prospects look like when they do not.

159. Some stakeholders understand the situation and prefer the status quo. However, we expect that many people in the legal profession who are ambivalent to (or against) increased transparency would support efforts to inform prospective students, were they to fully understand the current situation. Prospectives constitute, after all, close to 100% of all future law students, graduates, attorneys, hiring partners, judges and law school faculty—not to mention a substantial number of political leaders at various levels of government. It is not unthinkable to suppose the people who currently hold these positions would want the very best for their eventual successors.

Our goals are modest. We want to increase the quality of information that flows from law schools to prospective law students in an economical, responsible fashion. This is best done through taking the data that law schools already collect and considering how to best present it to prospectives in a way that will enable them to be informed.

The reporting and presentation standards are now evolving.[160] As the Section of Legal Education begins to collect granular employment data from law schools, it will have the freedom to share better information for public consumption. But the Section of Legal Education would be mistaken to limit the presentation of employment data to aggregated figures. Rather, the Section of Legal Education should adjust its focus from reducing the provision of misleading information to expanding the provision of quality information that consumers need to make an informed decision.

Adjusting the presentation of employment data is a relatively easy and reasonable change, so long as the Section of Legal Education has the data. A new presentation standard must be based on what a prospective needs to know as she seeks to match her career objectives to the most appropriate law school (if any, with due consideration to the cost of attendance and the possibility that the wisest choice might be to not attend law school at all). She is interested in understanding each individual graduate's narrative, especially outcome-based details about job characteristics.

But when it comes to implementing a realistic standard, things like cost, privacy, and impediments to understanding the employment picture all matter. This ability to intelligently utilize the data being disclosed is particularly important. The Section of Legal Education's presentation of the data it collects needs to be tailored to the consumer in a way that recognizes broad social conditioning—in that lawyers are seen as financially secure or powerful—and individual optimism bias. The appropriate kind of presentation, including whether the method of presentation genuinely aids rather than confuses readers, must balance the opportunity for prospectives to make informed decisions against the legitimate burdens faced by law schools and law school graduates.

In this Part we put forth the LST Proposal—a new presentation standard that provides enough employment data for prospectives to become adequately informed about the entry-level job market. This proposal is not wildly different than the reforms adopted by the Council

160. *See supra* Part II.C.4.

of the Section of Legal Education in 2011 and the pending changes to Standard 509 (together, the "Section Reforms"), though it greatly diverges in what it accomplishes. Rather than merely reducing the proliferation of misleading employment statistics, the LST Proposal increases prospectives' opportunities to make informed decisions by balancing three competing, legitimate interests: the need for prospectives to access information about job prospects, the need for graduates and employers to retain privacy over data such as starting salaries, and the financial and time constraints each school has in collecting and reporting the post-graduation outcomes.

Because our approach is consumer-focused, consumer use is secondarily important to the free flow of information. Nevertheless, our proposed presentation standard opens the door for the useful consumption of employment data by prospectives, academics, and other interested parties. These benefits will come without marginal collection costs for the schools and without any privacy norm violations. The proposal will aid prospectives in finding the school that, for the price, best meets their career objectives.

A. *The LST Proposal*

The LST Proposal was born out of discussions at the Section of Legal Education Questionnaire Committee's December 2010 hearing on the reporting of job placement statistics.[161] This proposal has been modified over the previous year to incorporate suggestions and concerns raised by various stakeholders, and is part of an effort to provide a solution that balances interests while still following the three tenets of a successful disclosure policy described in Part II: disaggregation, displaying value, and prompt disclosure to the consumer.

The LST Proposal is designed for the Section of Legal Education to implement. However, the Section of Legal Education is not uniquely positioned to adopt this presentation standard. Any organization that collects the requisite underlying data would be capable of presenting data according to the LST Proposal. We focus on the Section of Legal Education in part because it has decided to collect employment data from

161. Kyle McEntee, *Questionnaire Committee Hearing Recap*, LAW SCH. TRANSPARENCY (Dec. 23, 2010, 7:50 PM), http://www.lawschooltransparency.com/questionnaire-committee-hearing-recap.

law schools and to present these data (albeit it in a different form) for public consumption.[162]

Our proposal can and should co-exist with the Section Reforms. Collectively, the LST Proposal and the Section Reforms provide prospectives an overview of the employment opportunities at various schools and allow a detailed, holistic view for those students who wish to delve deeper. We are hopeful that implementing the LST Proposal in addition to the Section Reforms would result in more informed decisions and a more efficient allocation of students to the schools that best meet their career and educational objectives. After all, it is not enough to make the statistics less misleading; the presentation must also help prospectives make their investment choice on an informed basis.

The LST Proposal has two core elements: the "Job Outcome List" and the "National Salary Database." The Job Outcome List presents employment data by individual school. The National Salary Database presents salary data by location, using data contributed by all law schools. The Section of Legal Education already plans to collect all relevant data from law schools beginning in February 2012 for the Class of 2011. As such, the LST Proposal introduces no marginal collection costs for law schools above what the Section of Legal Education has already decided to impose on them in its accreditation capacity.

1. Job Outcome List

The Section of Legal Education would make a Job Outcome List publicly available for every ABA-approved law school. As an example, Law School X had 191 graduates in the Class of 2009, so its list would include 191 entries—one entry (row) per graduate. Each entry includes data for the following components (columns), filled out as known and applicable (if at all):

- Employment Status
- Employer Type and Subtype
- Job Type

162. This Article contemplates changes that the Section of Legal Education finalized prior to September 8, 2011. However, regulatory developments may eventually scale back the level of reforms, making our call for transparency even more urgent.

- Full Time or Part Time
- Long Term or Short Term
- Job Location
- Whether the Graduate Received Special Funding
- Job Source
- Offer Timing

These components and the data types are all based on generally-accepted NALP definitions, although the definitions and term names may change slightly in the coming months. The end result is a sortable list for every ABA-approved law school that includes every graduate from the graduating class, including empty entries for unknown outcomes.

a. *Employment Status*

A graduate may be "**Employed**," "**Unemployed**," "**Degree Program**," or "**Unknown**." A graduate's employment status is "**Employed**" if the graduate has any job. This includes, but is not limited to, temporary positions, unpaid positions, and permanent positions. Later components will capture these job characteristics. The remaining components of the Job Outcome List require data only if the graduate has a job.

A graduate's employment status is "**Unemployed**" if the graduate does not have a job of any kind and is not enrolled in a full-time degree program. This includes graduates who are seeking work, not seeking work, and studying full-time for the bar. A graduate's employment status is "**Degree Program**" if the graduate is pursuing a degree full-time. A graduate's employment status is "**Unknown**" if the graduate could not be tracked down or reliably described by somebody who would reasonably know.

b. *Employer Type and Subtype*

Many law schools already extol the virtues of how a law degree provides graduates immediate opportunities in all aspects of society; this

component proves it by identifying the graduates who choose to pursue unique career trajectories and the frequency with which graduates decide to pursue them.

Employed graduates work at the following employer types: "**Law Firm**," "**Business & Industry**," "**Government**," "**Public Interest**," or "**Academia**." If the law school cannot determine a graduate's employer type from a reliable source, they record this component as "**Unknown**." Jobs qualify for each type regardless of whether they are legal or non-legal because these describe the employer rather than the job. Each employer type, other than "**Academia**" and "**Unknown**," also has a subtype that further describes the type of employer.[163]

c. *Job Type*

Although law school builds skills that are useful outside of the legal profession, most people attend law school to become lawyers. In fact, the most common charge against the employment reporting standard prior to the Section Reforms was that the employment rate did not distinguish between legal and non-legal positions and did not make it clear that many of the jobs were not in fact tied to the earning of a J.D.[164] This is not to say that there are not good reasons to go to law school and choose to do something other than practice law. It takes little effort to summon valid reasons. Fortunately, by showing the type of job graduates

163. **Law Firm**: Solo, 2-10 Attorneys, 11-25 Attorneys, 51-100 Attorneys, 101-250 Attorneys, 251-500 Attorneys, 501+ Attorneys, and Unknown Size. **Business & Industry**: Legal Temporary Agency, Accounting Firm, Investment Banking or Financial Institution, Entertainment/Sports Management Company, Insurance Company, Management Consulting Firm, Publishing House, Technology/E-commerce Company, Trade Association or Political Campaign, Other, and Unknown Subtype. **Government**: Federal (Clerkship), Federal (Military), Federal (Other), State (Clerkship), State (Other), Local (Clerkship), Local (Other), Other, and Unknown Subtype. **Public Interest**: Public Defender, Community Education/Organization, Civil Legal Services, Political/Advocacy, Other, and Unknown Subtype.

164. This is also one of the chief complaints alleged in one of the recent proposed class actions. *See* Complaint at ¶ 4, Alaburda v. Thomas Jefferson Sch. of Law, No. 37-2011-00091898-CU-FR-CTL (Cal. Super. Ct. S.D. County May 26, 2011), 2011 WL 2109327 (alleging that "TJSL misleads students by advertising post-graduation employment rates that typically exceed 70 percent, and that topped 90 percent in 2010. TJSL, though, conceals the fact that these figures include part time employment, as well as non law-related positions . . . . Prospective students are led to believe that they will be hired as full time professionals in the legal profession when they graduate, even though that is frequently not the case.").

are taking with specific (sub)types of employers, prospectives can get a much better feel for what past graduates were able to do right out of law school.

Employed graduates work in the following job types: "**Bar Passage Required**," "**J.D. Preferred**," "**Other Professional**," or "**Non-Professional**." If the law school cannot determine a graduate's job type from a reliable source, they record this component as "**Unknown**."

d. *Full Time or Part Time*

As with job type and employer subtypes, the designation of post-graduation outcomes as either full-time or part-time explains something that current tools often miss.[165] Knowing whether a position is part-time tells a prospective more about the entry-level job market for a particular school's graduate, especially when presented alongside the other components. This component, coupled with the school-funding component, helps distinguish positions with nonprofit organizations that are commonly stopgaps for graduates unable to find full-time, permanent employment soon after graduation.

Employed graduates work in the following job types: "**Full-Time**" or "**Part-Time**." If the law school cannot determine the hours a graduate will work for her job from a reliable source, they record this component as "**Unknown**."

e. *Long Term or Short Term*

Prospectives also value jobs that are short term differently than they do long-term jobs. This has been an increasingly relevant component over the last few years as graduates struggle to find jobs with (some) job security. Long-term jobs, i.e., those that are indefinite, tend to be better for career advancement within the legal profession.[166]

Employed graduates either obtained a short-term job, labeled as "**Short Term**," or a long-term one, labeled "**Long Term**." As with the

165. Press Release, Kurzon Strauss LLP, Lawsuits Seek to Reform Reporting of Post-Graduate Employment Data (Aug. 10, 2011) (on file with Authors) (alleging that "law schools, including NYLS and Thomas Cooley, misrepresent their graduates' employment prospects by misclassifying graduates who have only secured temporary or part-time employment as being 'fully' employed.").

166. This statement excludes judicial clerkships and some other government appointments. As it turns out, the most probable definition for "long term" is over one year, thus these sorts of appointments will be swept into this definition.

other components in the LST Proposal, the definitions for these labels may change over time as a consensus is reached as to what makes a job temporary or permanent. If the law school cannot determine a job's expected duration from a reliable source, they record this component as "**Unknown**."

f. *Job Location*

The job location component answers one of the most basic questions prospectives ask: where do graduates work? Many schools offer a breakdown of where their graduates go, but seldom do they go further than describing the region or state aggregate figures. This component allows prospectives to see with greater clarity just how many graduates work in different markets, illustrating a school's network or over/under-abundance in certain locations.[167] Employed graduates work in a city, state, [168] and country. If the law school cannot determine where a graduate works from a reliable source, they record this component as "**Unknown**."

g. *Whether the Graduate Received Special Funding*

This component distinguishes jobs based on who pays the graduate to work. Although most employees (non-lawyers and lawyers alike) are paid directly by their employer, the entry-level job market for law school graduates currently operates with an interesting wrinkle. Many law schools now provide graduates modest stipends to temporarily volunteer at nonprofits or government offices while networking and searching for permanent employment. Such school-funded bridge programs help graduates gain experience and network while they await permanent job openings or their bar exam results. Some law schools have been doing this since before the recent economic downturn, but many more are now realizing the benefits of spending to give graduates on-the-job training when the employers do not have the means or desire to pay.

Some criticize these programs because they have direct consequences on the substance of what schools report about post-

167. Martindale and LinkedIn serve students and graduates in this way already, but on a less systematic basis.

168. If the country is divided into regions, provinces, or any other entity that parallels a state, record it under "State."

graduation outcomes.[169] These commenters rightfully point out that these programs boost the "employed at graduation" and "employed at nine months" figures. This is even more problematic because, by and large, information about school-funded job programs is unavailable. While the reporting standards do provide schools an incentive to create these programs, they also provide professional growth opportunities that graduates would not otherwise have. With this in mind, this component will allow prospectives to understand what kind of jobs graduates obtained through these bridge programs, while also maintaining an incentive to create the programs—insofar that schools need a reward for helping graduates.

Employed graduates either receive school funding, and it is "**School-funded**," or they do not and the entry should be blank for this component.

h. *Job Source*

Graduates obtain their jobs in a number of ways. For years, NALP has collected data on this topic and provided it about the entire entry-level market. Schools rarely share their data on how graduates obtain jobs to prospectives even though they are not required to keep it private. This is unfortunate. Knowing how students at a particular school find a job provides a useful picture about the school's place in the entry-level market. For example, roughly 16.5% of graduates reported getting their job through OCI.[170] This provides reinforcement for the age-old advice that few people are simply handed jobs through OCI. Knowing what percentage of a class found jobs through OCI will affect prospectives' perceptions during the often-frustrating job search.

Employed graduates find their jobs through the following: "**Fall OCI**," "**Spring OCI**," "**Pre-Law School Employer**," "**Job Fair**," "**School Job Posting**," "**Referral**," "**Commercial Job Posting**," "**Targeted Contact/Networking**," "**Temporary Placement Agency**," "**Legal Search Consultant**," "**Started Own Practice/Business**," or "**Other**" source. If the law school cannot determine where a graduate

169. *See* Kashmir Hill, *The Secret to '100% Employed at Graduation': Duke's Bridge to Practice*, ABOVE LAW (June 10, 2010, 10:40 AM), http://abovethelaw.com/2010/06/the-secret-to-100-employed-at-graduation-dukes-bridge-to-practice/.

170. *Class of 2009 National Summary Report*, *supra* note 93. This uses only numbers from NALP-reporting law schools, which includes over 96% of ABA-approved law school graduates.

works from a reliable source, they record this component as "**Unknown**."

i. *Offer Timing*

Roughly 49% of 2009 graduates secured the job they held as of February 15 before graduation.[171] Yet, law schools reported an average of 68% of graduates employed at graduation.[172] This disparity can be explained in a few ways. First, not all law schools reported at-graduation employment data to *U.S. News*.[173] If all law schools decided to report the rate to *U.S. News*, the average would have been much lower. Second, the NALP rate reflects when the graduate obtained the job they held as of February 15. Graduates who are employed temporarily by their law schools in research positions are reflected in the *U.S. News* rate, but not the NALP rate because the job was not held a few months later. As with the job source component, understanding that not all graduates obtain a job before graduation, besides adding clarity to the entry-level hiring market, might make the prospective less frustrated during the often-frustrating job search.

Employed graduates who receive offers before graduation should have their timing of offer listed as "**Before Graduation**." Employed graduates who receive offers after passing the bar exam should be listed as "**After Bar Results**." Everyone who receives in between these two time periods count as "**After graduation but before bar results**." If the law school cannot determine where a graduate works from a reliable source, they record this component as "**Unknown**."

2. National Salary Database

The Job Outcome List is useful in its own right, but alone it has a sizeable limit because it only indirectly instructs on economic value. The list does not include the salaries each school will already be required to report to the Section of Legal Education beginning next year (be it a number, zero, n/a, or unknown). While this protects the privacy of individual graduates and employers, some indicator of short-term financial return is required to properly value a law degree. One way to do

171. *Id*.
172. *Class of 2009 Spreadsheet*, *supra* note 11.
173. *See id*.

this without violating privacy norms is to contribute each individual salary datum from every ABA-law school graduate, along with the graduate's other data, to a single database.

The result is the second element of the LST Proposal: the National Salary Database. This is a public, national database of job outcomes and salaries organized by job characteristics and location. The database provides statistically significant salary information and provides a picture of entry-level hiring that is more granular than what NALP produces. Despite the lack of specific salaries, prospectives can develop a concrete idea of graduate compensation by employer type, job type, and location, without any disconnect among these crucial job characteristics. For example, the National Salary Database would provide salary ranges and percentiles for full-time attorney positions at law firms in Seattle. However, creating a national database does not necessarily advance the ball any further than what NALP already accomplishes each year with its *Jobs & J.D.'s* publication.[174] What makes the LST Proposal meaningful is the combination of the database with each school's Job Outcome List. Pairing a national salary database with school-by-school, disaggregated employment information allows prospectives to understand the complexity of the school's post-graduation outcomes, including entry-level salaries. The database (like NALP's[175]) provides salaries for cross-sections of law school graduates wherever the sample size is sufficiently large (five graduates for median and mean salary, ten graduates for additional salary information). The cross-sections are created by using the factors that many prospectives consider to be part of their career objectives: employer type, location, and key job characteristics. In the end, the database provides an indicator of the short-term economic value attained with each school's J.D., including the relative purchasing power of different salaries in different locations.

An example will help demonstrate how the two parts of the proposal work in tandem. All salaries in this example come from NALP's *Jobs & J.D.'s*. Take salary information for California and San Diego, California. Among the roughly forty-five thousand class of 2009

174. This is only partially true. If the Section of Legal Education were to create a national salary database, it would be freely available to prospectives. NALP, in contrast, charges a substantial fee for the publication. *See Jobs & JDs: Employment and Salaries of New Law Graduates—Class of 2010*, NAT'L ASS'N L. PLACEMENT, http://www.nalp.org/productdetail/?productID=145 (last visited Jan. 14, 2012) (listing the 2011 publication at a price of $90.00 for non-members).

175. JOBS & J.D.'S 2009, *supra* note 137, at 81.

graduates across all ABA-approved law schools, 136 graduates who reported a salary data to NALP were working as full-time attorneys for law firms in San Diego.[176] 1715 graduates reported a salary in the cross-section category for all of California.[177]

The National Salary Database presents the aggregated salary data in accessible form. Because *Jobs & J.D.'s* does not include salary-specific information for each law firm size for San Diego, we have marked an "x" for each cell that would include a salary figure.[178] For full-time attorneys at law firms of various sizes in San Diego:

Firm Size (attys)	10th Perc.	25th Perc.	50th Perc.	75th Perc.	90th Perc.	Mean	#*
2-10	x	x	x	x	x	x	21
11-25			x			x	9
25-50			x			x	7
51-100			x			x	7
101-250	x	x	x	x	x	x	13
251+	x	x	x	x	x	x	79
All Sizes	$41,600	$65,000	$135,000	$160,000	$160,000	$113,594	136

* Total number of graduates reporting a salary in this category.

176. *Id.* at 87.

177. *Id.* at 80.

178. When there are at least five graduates in the category, we included the median and mean salary. When there are at least ten graduates in the category, we also included the other salary information. We derived the number of graduates from the proportions for California as a whole. Those proportions are available on the California salary table.

Compare to full-time attorneys at law firms of various sizes in California:

Firm Size (attys)	10th Perc.	25th Perc.	50th Perc.	75th Perc.	90th Perc.	Mean	#*
2-10	$36,000	$52,000	$62,400	$72,000	$100,000	$62,526	268
11-25	$45,000	$60,000	$70,000	$80,000	$135,000	$77,096	113
25-50	$50,000	$70,000	$78,000	$95,000	$130,000	$83,152	83
51-100	$62,500	$79,000	$90,000	$135,000	$160,000	$105,449	89
101-250	$85,000	$100,000	$145,000	$160,000	$160,000	$135,171	161
251+	$140,000	$160,000	$160,000	$160,000	$160,000	$156,904	995
All Sizes	$52,000	$85,000	$160,000	$160,000	$160,000	$128,474	1715

* Total number of graduates reporting a salary in this category

These tables demonstrate how all ABA-approved graduates fared for these cross-sections. Of course, prospectives interested in Law School X care how the school's graduates actually fared. If we had Law School X's Job Outcome List, we would know that four graduates found full-time attorney positions at law firms in San Diego. Ninety found this kind of work in California. We would also know that two of the San Diego-bound graduates and sixty-seven California-bound graduates reported a salary.

In the interest of space, we will only focus on the four in San Diego: DG-A, DG-B, DG-C, and DG-D. Each of these Law School X graduates is listed on the Job Outcome List as a full-time attorney at a law firm in San Diego. DG-A's law firm has 2-10 attorneys; DG-B's law firm has 51-100 attorneys; DG-C's law firm has 101-250 attorneys; DG-D's law firm has 251+ attorneys. With the National Salary Database, we can estimate the salaries for the two graduates who did not contribute salary data. For the two graduates that did contribute salary data (DG-C: $160,000; DG-D: $160,000), we see that, even though we do not know how much they made from looking at the Job Outcome List (because individual salary data are not revealed), the salaries they provided are commensurate with the salary estimations generated by the National Salary Database.

Making the connections between salary and outcomes is less accessible in cities that do not have as many law school graduates. For example, suppose that a San Francisco suburb, Concord, had fifteen ABA-approved law school graduates listed in various 2009 Job Outcome lists, but only three contributed salary data. In this case, there would be no salary information for Concord. This does not mean that there is no salary information for jobs in Concord, however. If the database ties cities to counties, metro-areas, states, census regions, and countries, it could provide the narrowest salary picture with statistically-significant information. In this case it would be for Contra Costa County or the Bay Area, and would include the three graduates' salaries. Alternatively, the categories could also carve certain locations out of a larger geographical area. For example, one category might be 2-10 attorney law firms in California excluding all major metro areas. This would be desirable for prospectives looking to practice in rural areas or in states where there is a significant difference between the types of jobs in different cities. The possibilities hinge only on having large enough datasets. These datasets may be expanded to include more than just the most recent graduating class with available employment data. In that case, the Law School X Job Outcome List for the class of 2009 would match their placement record to salaries from all ABA-approved law school graduates from, for example, 2007-2009.[179] This triples the number of salaries in the National Salary Database.

B. *Evaluating the LST Proposal*

In Part II, we outlined three criteria that we use to evaluate whether the Section of Legal Education reforms sufficiently address the consumer problems. The new presentation standard must disaggregate the currently available information to be disaggregated, demonstrate the economic value of a school's J.D. program, and be available to prospectives in a timely manner. This last criterion depends on the organization implementing the proposal, thus we will not address it except to say that the time between when the Section of Legal Education receives the data and presents it should only be a matter of cleansing the available data to ensure consistency and a lack of mistakes.

179. This requires the Section of Legal Education to obtain employment data from NALP. Fortunately, NALP has all of the data that would be required to make this work.

The most important aspect of the LST Proposal is how far it disaggregates the basic employment rate ("a job is a job") without violating privacy norms. We have found that the best way to achieve this is by presenting data in graduate-level detail—the very data that the Section of Legal Education has decided to collect for accreditation purposes. This kind of detail allows prospectives to know the challenges they face for achieving their educational and career objectives, which will help them maximize the value of their time spent in law school. As the MacCrate Report emphasized, where helping prospectives make an informed decision is the goal it is imperative that prospectives actually have the opportunity to understand what graduates do. Informing them that 45% of graduates work at law firms, 30% of graduates work part-time, 50% have temporary positions, and 60% work in California has remarkably less meaning until you know how/if these characteristics overlap. Was someone working part-time at a law firm? Are the part-time graduates wholly encompassed in the temporary category? In the law firm category? In California? In school-funded jobs? In many situations the composite picture of individuals' outcomes is worth substantially more than just the sum of its parts.

The sort of granularity that the LST Proposal offers respects school regionality and encourages schools to develop their placement niches. Whether this niche is in a particular region or city, or in local public defender offices, this feature publicizes each school's unique placement ability. Displaying where all graduates go post-graduation can help match students to the right programs, minimizing the effect of national rankings on student decision-making. The choice then becomes less about what a school ranks each year in *U.S. News* and more about how each school can help a student achieve her goals. If it is clearer where a school fits into the legal hiring market, schools will be encouraged to adapt and innovate, and may even be able to reduce costs as schools tailor their educations to employer needs.

The biggest shortcomings of the LST Proposal are its narrow focus on job status nine months after graduation and its lack of input components regarding past work history, both of which fail to fully demonstrate the value of a J.D. The value-added criterion cannot be satisfied by looking only at the first job out of law school. A graduate's starting salary is only part of the economic value a graduate can derive from the degree; some graduates (notably solo practitioners and those with contingency-based salaries) may see a sharp upward trend in their earning power over the first few years. And some graduates who have

not found a legal position by the February 15th deadline will land something soon afterward, yet they will appear in employment statistics as having a non-legal first job along with the other 40% of graduates who are now failing to find work in the legal profession.[180] On the other hand, others who obtain a legal job out of law school will leave the profession soon after entering it.

However, the first job, and its specific characteristics including salary, makes a good place to begin demonstrating the economic value of a school's law degree. It is also the least costly opportunity to assemble a comprehensive picture of a graduating class. Considering that work experience matters more and more as a lawyer progresses in her career, the first job affects the opportunities later available to law school graduates.

While it is difficult to generalize about career trajectories following law school, they all necessarily include the first job. In this sense the Job Outcomes List standardizes how all law school graduates "took off." A related concern is that one particular class year does not represent where most of a school's graduates start their careers. Schools are especially inclined to believe this now as more and more of their graduates struggle to find legal work. The current employment information does not necessarily show the changes over the last few years because the employment rates include all jobs. With the level of transparency the LST Proposal achieves, the differences from year to year are more pronounced. This may cause unnecessary alarm among prospectives; or in the alternative, it might create the right amount of alarm because the entry-level legal hiring market may never return to pre-recession levels.

In either case the source of concern is the relative ability to recruit prospectives, and fear of a negative reaction is not enough of a reason to maintain law school opacity. For example, schools may dislike having to share that so many graduates worked in temporary jobs with a nonprofit that are funded by the school. Over time, if this is not the norm, the information will eventually be more representative. But for schools that determine this baseline does not accurately reflect the value of their programs today, they are always free to provide additional information to

180. That is not, unfortunately, a typo. About 60% of 2010 law school graduates had jobs, as of February 15, 2010, that required bar passage. *See Class of 2010 National Summary Report*, *supra* note 10.

prospective law students.[181] For example, the school may want to share the success rate of bridge programs in helping graduates obtain jobs.

The LST Proposal is not an enormous departure from the Section Reforms. Except for job source and offer timing, each of the components is something that the reforms require law schools to share with prospectives. The main difference, of course, is that the LST Proposal takes the job characteristics that the Section believes are important and shows how they relate to each other.

The Section Reforms do not miss the significance of this entirely; after all, from the reforms we will be able to create a Job Outcome List with employment status, job type, part time/full time, and temporary/permanent. We will also be able to create a Job Outcome List with employment status, employer type, part time/full time, and temporary/permanent. We cannot, however, combine these two lists seamlessly. This means that we will still not know how many graduates worked as full-time lawyers in law firms. Moreover, even if we could combine the lists in some cases (e.g., schools that only have graduates working full-time in permanent jobs that require bar passage, in addition to unemployed graduates, those pursuing a degree full-time, and those whose employment status is unknown), we still cannot see where they worked or whether the jobs are school-funded. In particular, job location is crucial to understanding how well a law school will allow an individual to meet her career objectives. By failing to take the next small step to full disaggregation, these reforms fail to meet the Section of Legal Education's duty to inform prospectives.

The Section also appears not to have fully appreciated how useful a national salary database would be for prospectives, though it clearly appreciates it on some level because the *Official Guide* will utilize salary information—much like the National Salary Database—that aggregates all known salary data for ABA-approved law school graduates by employer type and location. The Section will also need to maintain a private database of job characteristics and salaries unless it does an about-face and decides that it approves of relying on NALP each year for the national, aggregate salary information.

181. Such additional information would still be subject to Standard 509's requirement that they present the outcomes "in a fair and accurate manner reflective of actual practice." ABA STANDARDS FOR APPROVAL AND RULES OF PROCEDURE, *supra* note 23, at 40-41. An example of such additional information already provided by a law school is at the University of Michigan Law School, where graduates are tracked down five and ten years out to report on their satisfaction levels.

Regardless of which organization furnishes the *Official Guide* with the salary information each year, prospectives will not meaningfully be able to use the *Official Guide* to understand first-job salaries at many law schools without sufficiently disaggregated information from individual law schools about job characteristics.

There has been internal disagreement within the Section of Legal Education over whether law schools should also provide individualized salary information, or whether the Section should provide it only in the aggregate. We think it should be both and are hopeful that when the new Standard 509 is approved, it still includes salary information by employer type and job type. This will not only be useful to see how many graduates at a school reported a salary, but it will keep the incentive schools will need to keep collecting salary data for the betterment of the aggregated salary information. Additionally, this sort of salary information will give prospectives the chance to consider whether to look at the whole distribution of salaries in a particular location from a school, or whether to, for example, only look at the national database's twenty-fifth percentile

All in all, the LST Proposal will help our hypothetical prospective, Taylor, tremendously on her journey. From the job and salary information it provides, she will be able to make an informed decision about the debt she would need to attend law school. Instead of only looking at the broad strokes of a school's employment profile, Taylor will be able to take a detailed, holistic look at its job outcomes and see if it will likely match her objectives and if it would be worth the investment.

C. *Challenges for Convincing the Section of Legal Education to Adopt the LST Proposal*

Over the past year, law schools and members of the Section of Legal Education have expressed two key concerns about greater disclosure of post-graduation outcomes: privacy and cost. Convincing the Section of Legal Education to release a massive volume of data requires first demonstrating that these criticisms do not apply to the LST Proposal. We examine these two concerns, as well as other criticisms relating to disclosure, in turn.

1. How Much Will this Cost?

Career services officers have been vocal in their resistance to any proposals that will take more time away from their job of motivating and assisting students and alumni in career advancement. Many conclude that data collection efforts already divert too many work hours away from these fundamental responsibilities. We have repeatedly heard complaints from career services offices about how they do not receive enough funding to even complete their current tasks, which if substantiated likely indicate misallocation of funds by law school deans. Career services officers view collecting data and helping graduates as mutually exclusive tasks despite the obvious overlap. They accordingly seek to balance the limited resources they have been allocated.

It is important to do what we can to construct a standard that keeps their costs down, just as it is important to reinforce to those who control the purse strings that restricting the budget of those involved in career placement at a professional school is a failure in resource allocation. Of course, there is a ceiling on how much should be spent collecting and releasing detailed data. It is a legitimate concern that data mining inhibits a school's ability to fulfill other objectives.

Fortunately, the LST Proposal includes only data that law schools have collected voluntarily for years. Beginning next year, schools will (mandatorily) report many of these data directly to the Section of Legal Education. As such, there will be no marginal collection costs with the LST Proposal. That is not to say there will be zero costs, as the Section of Legal Education has identified the need for a larger staff to handle all the data, for which at least some of these costs may be passed on to the law schools. But even if the LST Proposal caused a $500,000 budget increase (this is a truly excessive estimate) and all of the funding came from the law schools, the increase is $2,500 per school.[182] The Section of Legal Education could also use a small tax per application (about $1) or tap into the ABA's $330 million revenue stream.[183]

182. It may also turn out that, faced with public scrutiny of the accuracy of the data, some schools that have previously taken liberties with data will invest to ensure compliance with the ABA's requirements. This will raise individual school costs too, but this can hardly be viewed as a negative. In any case, it likely follows from the Section of Legal Education's new collection standard, not a new presentation standard, although the LST Proposal does provide the opportunity for a form of public audit.

183. AM. BAR ASS'N, 2008 FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX (2009), *available at* http://www.guidestar.org/FinDocuments/2009/360/723/

Ultimately these costs, even at the high end of the estimates, are not cause for alarm. The inevitable and slight increases in the cost of data collection and presentation are justified based on the need for consumers to have more meaningful information. The presentation of employment data speaks to the value of legal education. Without employment information, prospectives will not be able to make informed decisions, and they will continue to gamble on, rather than invest in, their futures.

2. What about Privacy?

One major concern is that certain features of the LST Proposal could violate graduate privacy norms because certain components of the LST Proposal might readily serve as unique identifiers. In other words, it would be too easy to identify a graduate in certain situations, such as when only one graduate works in a city. But are privacy concerns exaggerated—more of a convenient excuse than legitimate concern? Interestingly enough, one recent graduate was able to obtain all of the data included in the LST Proposal through an open records request of his alma mater.[184] Although this does not automatically resolve privacy norm concerns, it does tackle the legal question of whether the LST Proposal's components readily identify graduates and risk violating the Family Educational Rights and Privacy Act (FERPA), at least according to the legal determination made by one ABA-approved law school.

In designing the structure of the LST Proposal, we aim to protect privacy interests by limiting the ability to figure out whether any particular data refers to any particular individual. Much of these data are not private; they are plastered across Martindale, LinkedIn, Facebook, school websites, law firm websites, and numerous other places. Of the data that tend not to be public, for example how or when a graduate obtained a job, most are not really sensitive.[185] Salary data, however, are

2009-360723150-06645220-9O.pdf.

184. The records sought were forms which U.C. Davis submitted to NALP for the class of 2009, pursuant to the California Public Records Act. *See* CA GOV'T CODE §§ 6250-6276 (West 2011). Joel Murray, a 2011 graduate of U.C. Davis, obtained the information in August 2011. E-mail from Joel Murray, recent graduate of U.C. Davis School of Law, to Law Sch. Transparency (Aug. 17, 2011) (on file with Authors). Similar data have been successfully acquired from at least five other public law schools in Ohio. *See* Jason M. Dolin, *The Law School Class of 2010: The Real Employment Numbers*, OHIO LAW., Sept/Oct. 2011, at 10.

185. For example, if Vanderbilt University Law School placed just one person in Washington State, someone may be able to figure out who this person is by using

often private for all graduates excluding top private-sector earners and government employees, and therefore should be protected for both the employer's and graduate's sake.[186] The LST Proposal does not reveal any salary data, except in the aggregate, a practice that is already prevalent at many law schools.

3. Will Anybody Even Use It?

This ancillary concern goes to the widespread perception that no amount of information is going to keep prospective law students from, as one commenter has said, jumping off the cliff.[187] A different iteration is simply that people do not know what they want, and therefore a release of information that does not tell them what they want will not be useful. But there are a few signs that prospectives do care very deeply about evaluating the level of risk and that they do have some idea of not only what they want to do but where they want to work.

The first is the growing prominence of online discussion boards, where students and recent graduates provide advice to prospectives (usually about the nature of job prospects). By far the most popular board prospectives use is www.top-law-schools.com; utilizing the search

Facebook, Martindale, LinkedIn, etc. With the LST Proposal, someone can also figure out that that graduate got their job pre-graduation and via a job posting. These additional data are not sensitive; rather, they help shed more light on a graduating class's employment outcomes.

186. Employers, for example, may negotiate compensation packages when hiring recent graduates in a manner that is clearly intended to be confidential. Likewise, many graduates will not want salaries attached to their job outcomes because it may allow their colleagues to ascertain how much (or how little) they earn. For these reasons starting salaries are particularly deserving of privacy protections.

187. Elie Mystal, *Even if You Told Prospective Law Students the Truth, Would They Care?*, ABOVE LAW (Nov. 20, 2010, 2:41 PM), http://abovethelaw.com/2010/11/even-if-you-told-law-prospective-students-the-truth-would-they-care/ (citing a Kaplan study highlighting how prospectives don't seem to care about jobs, and concluding, "Maybe, at the end of the day, prospective law students just don't care whether or not they'll ever be able to get a job. Maybe trying to get them to think about their own futures before they leap into law school is as effective as trying to convince a lemming not to follow his brothers off of the cliff. Maybe they just don't want to learn."). We wrote on LST's website, "After reading the survey, digesting the results, and learning more about Kaplan Test Prep, it turns out that the press release and ensuing coverage did not tell the whole story. Instead, the results reflect an application landscape where important information is scarce and application decisions are complex." *Shocked About Kaplan's Survey Results? New Information Comes to Light*, LAW SCH. TRANSPARENCY (Dec. 3, 2010, 12:04 PM), http://www.lawschooltransparency.com/2010/12/shocked-about-kaplans-survey-results-new-information-comes-to-light/.

feature for "transparency," "LST," or "employment" demonstrates how much prospectives talk and care about these issues, and that they are in fact interested in obtaining specific kinds of outcomes from attending law school. The problem is that not all prospectives utilize these boards. As such, it is a fair question as to whether those who use the website are representative of prospectives as a whole. The sample size is sufficiently large that we think it is difficult to suggest it is not.

The second development is prospectives' widespread use of self-reported admissions data on www.lawschoolnumbers.com ("LSN"). Here, a significant percentage of law school applicants share their LSAT, GPA, the schools they applied to, whether (and when) they were accepted or rejected, as well as demographical data like minority status, work experience, or undergraduate institution. An even more significant percentage of applicants use the website without sharing data. These are the same people who would use detailed employment data if it were available. The problem, as we have belabored in this Article and in other fora, is that prospectives do not have access to the employment data to the same extent they do for admissions data.

But even if we did not think that many prospectives would take advantage of better employment data—to be clear, we are certain they will—this is a consumer concern about providing the opportunity for informed decisions. People will always make bad decisions no matter what they (could) know, although eventually this new information stands to alter the culturally-embedded view about legal education and perhaps reduce the number of bad decisions made with respect to earning law degrees. But for those who want to be informed about the nature of job prospects from different law schools, greater disclosure will be extremely useful. In no other area of consumer protection do we permit suppliers to avoid making disclosures based on the argument that "most people won't pay attention." Even if most applicants would not automatically make use of the information, the fact that some will is enough to justify disclosure. As things stand now, the school-induced information asymmetry permits prospectives' beliefs about legal education and optimism bias to run unchecked. Will prospectives still suffer from optimism bias? Certainly, but it is likely to be less pronounced because telling yourself you will be in the top 10% is easier when you are not thinking about the other 90% and nobody is telling you about them.

4. What about Information Overload?

By enabling the free flow of data and information, the LST Proposal will allow interested people the opportunity to develop tools that present and interpret the data. There will already be a substantial amount of new information simply due to the release of disaggregated data; perhaps the data dump compounded by such derivative tools may paralyze users. While it is not clear what substantive effect this paralysis would have on consumers besides simply ignoring the information, it would provide incentives for many smart, enterprising people to create useful, digestible tools.

If LSN is any indication of prospective law students taking advantage of mountains of data, information overload will not be an issue. There are many data to mine through, but as long as the Section of Legal Education does its due diligence in creating the platform, there is no reason it cannot develop an effective tool for the easy consumption of information.

IV. Conclusion

Trying to reform legal education in the United States is no small feat. The problems identified in this Article complicate legal education's struggle to quickly adapt to changes in the hiring market and get a clearer picture of how the costs they charge to the consumer have escalated beyond reasonable proportions.[188] But improving access is only the first step; systemic reforms to legal education will not occur by simply opening up the window and letting in a little sunlight.

The rhetorical force of "transparency" has been important in pushing for greater disclosure, but we must take care not to trivialize the issue by mindlessly repeating our call for transparency. Transparency has serious costs and is not something to seek for its own sake. We recall a colleague who, upon reading a news article on the subject of greater disclosure, jokingly opined whether it was theoretically possible for a school to become so transparent that it would actually become invisible. Out of a concern for preventing invisibility (or more seriously, for encouraging other members of the legal profession to consider the merits of transparency), it bears repeating that there is still much to be done

188. *See generally* COMM. ON LEGAL EDUC. & ADMISSION TO THE BAR, *supra* note 12.

beyond mere disclosure. Many senior members of the legal profession (both academics and practitioners) must assert their role in healing the broken trust relationships and restoring confidence in legal education. In this light, there are still many pressing areas to explore.

For one thing, this Article does not delve into the politics that affect decision-making and cost allocations within the law school model, instead treating (simplistically) each law school as a cohesive unit capable of altering its behavior once it is convinced there is a need. It is obvious after speaking with law school administrators about internal struggles that this is not the case. Within each administration, rent-seeking causes varying levels of accountability and interest in informing prospectives.[189] Subsets within a law school, be it a recruiting team, tenured faculty, or a career services office, are often not involved in each other's affairs and may share a greater level of antagonism than is normally conveyed to the public. These different entities certainly do not interrelate to the extent necessary to ensure schools are playing fair in their dealings with prospective law students; few faculty, for example, are vested in the admissions recruiting process or play a major role in assisting career services officers.

Given the recent explosion of debate among faculty members following what began as an anonymous charge of their complicity in the so-called "law school scam," we expect the conversation to be fairly robust with respect to the opinions of academia.[190] However, it is

189. Stewart E. Sterk, *Information Production and Rent-Seeking in Law School Administration: Rules and Discretion*, 83 B.U. L. REV. 1141, 1145 (highlighting how lobbying efforts aimed at law school administrations—which compete for prospective students while facing pressures to allocate limited resources among other interest groups like faculty and current students—compare to traditional special interest lobbyists that target government agencies).

190. *See supra* note 3. Much of this discussion has publicly occurred on law school faculty blogs. The discussion followed from Professor Campos anonymously blogging as "LawProf," as he discussed problems with legal education. *Id. See also* Paul Horwitz,, *I Am Law Prof*, PRAWFSBLAWG (Aug. 11, 2011, 12:38 PM), http://prawfsblawg.blogs.com/prawfsblawg/2011/08/i-am-lawprof.html. (a number of law faculty commented on Professor Horwitz's post: Professors Orin Kerr, Jeff Harrison, Dan Markel, Eric Muller, Jeff Lipshaw and Larry Rosenthal); Kim Krawiec, *Anonymous Prof on Law Schools as Scams*, FACULTY LOUNGE (Aug 11, 2011, 10:26 AM), http://www.thefacultylounge.org/2011/08/anonymous-law-prof-on-law-schools-as-scams.html; Brian Leiter, *Isn't it Obvious Who the "LawProf" Writing the Latest "Law School Scam" Blog Is?*, BRIAN LEITER'S L. SCH. REP. (Aug 12, 2011, 2:48 PM), http://leiterlawschool.typepad.com/leiter/2011/08/isnt-it-obvious-who-the-lawprof-writing-the-latest-law-school-scamblogis.html; Brian Leiter, *Update on ScamProf*, BRIAN LEITER'S L. SCH. REP. (Aug 19, 2011, 1:47 PM), http://leiterlawschool.typepad.com/leiter/2011/08/update-on-scamprof.html.

important to recognize that career services and admissions teams should play a critical role in measuring, assigning, and eventually adapting to the changing nature of legal education. Internal efforts to reallocate funds need to take into consideration the varying roles of faculty and staff, but also need to examine what is truly needed for the efficient education of future lawyers. This requires looking outside of the school's walls and into our constantly evolving profession. Should law schools wish to repair the broken trust relationship, this process begins with the adoption of disclosure policies that inform, rather than solely reduce misleading information, such that the market for law degrees can fundamentally change.

Nevertheless, the responsibility for protecting consumers and ensuring educational quality lies with the accrediting agency, which for the time being continues to be the Section of Legal Education. The Section has a duty to delineate a presentation standard for employment data that provides prospectives with the timely ability to make a meaningful choice. But there are many layers to an informed decision, and an accrediting authority is traditionally only concerned with the availability of, and timely access to, quality information. Beyond this we must look to other stakeholders to help explain the data and call for action; caveat emptor will not serve the needs of the profession even if it suits the purpose of critics against disclosure. From disclosure and access we can then move towards improving understanding of the entry-level hiring market and the underlying value of a legal education, at which point we will see changes in consumer behavior that should play a big role in structural reforms. In other words, we expect consumers to demand with their feet that law schools continue to adjust legal education.

We stress that regulatory reforms only establish minimum requirements for disclosure, and that any shifts in consumer behavior to align with the corrected market will not come automatically. As a preemptive measure, schools can and should adapt their service models and usher in a new education regime without waiting for prospectives to react. To this end, the practitioners' side of the ABA can play an important role by demanding systemic changes, even where such changes are not required by regulation. Still, we suspect that those in the Section of Legal Education will be receptive, even where their regulatory authority falls short of mandating the sort of changes (such as cost reductions or new apprenticeship programs) that may ultimately be necessary.

We hope that the LST Proposal and the reforms that follow will lead to significant, long-term change in legal education. At no time in history has American legal education come under such an assault by the public for the ways in which educators have failed in their responsibilities. It is time to find a way forward, one that can help restore legal education's broken trust relationships and lay the groundwork for future adaptation of the legal education model in the United States.