

MEMORANDUM

To: ABA Standards Review Committee
From: Kyle P. McEntee, Executive Director of Law School Transparency¹
Re: Subcommittee on Standard 509's Draft Proposal

April 2, 2011

This Memorandum is a response to the ABA Standard Review Committee's subcommittee on Standard 509's recent draft proposal for the revision of Standard 509(b). This Memorandum suggests that the 509 Subcommittee continue refining its proposal. This Memorandum also suggests that the Standards Review Committee consider Law School Transparency's proposal for a national salary database. Whatever the outcome of the Standard 509 revisions, the new standard should (1) disaggregate the current information, (2) demonstrate the economic value of a school's J.D., and (3) operate on an accelerated schedule.

Background

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

Law schools report employment data and information to three primary organizations: the ABA, NALP, and the *U.S. News & World Report* ("*U.S. News*"). The ABA and *U.S. News* each publish the reported information in their respective publications. NALP does not publish the employment data that schools report; rather, NALP publishes data and information that aggregates school-specific employment outcomes. Additionally, schools report employment information on their websites and recruiting materials according to their own procedures.

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

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

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

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

These problems have existed for quite some time, and are divorced from schools' current struggle to help their graduates find gainful employment. That said, the economic climate is creating ever-larger implications for the legal profession. Law school in the U.S. is now an extremely costly proposition in terms of both positive attendance costs and opportunity costs. Tuition continues to rise, debt is not dischargeable in bankruptcy, and the expected value of all outcomes is less than it was just a few years ago. The result is more graduates for whom uninformed decisions will adversely affect their well-being. *Caveat emptor* may be an attractive quip when consumers choose to buy inherently dangerous goods, but it is not applicable when even the most informed prospectives really have no idea what kind of return follows from investing in a particular J.D.

I. Problems with the current information

(1) The ABA

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

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

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

(2) The *U.S. News* Employment Summaries

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

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

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

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

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

(3) Other Resources

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

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

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

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

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

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

II. Evaluation of the Subcommittee’s proposal

The 509 Subcommittee is off to a really strong start in reforming how schools report employment information. It was made clear to us that this is only a preliminary draft, and that the Subcommittee expects more changes will be made. We hope this is the case.

The principles guiding the Subcommittee are sound. It is true that the information must be meaningful, consistent, and help prospectives make informed decisions about whether to, and where to, attend law school. But the execution of these principles still leaves something to be desired. If approved as a new accreditation standard in its current form, the proposal would certainly help prospective students and drastically cut down on misleading statistics. At the same time, it runs the risk of only providing superficial comfort, because it would not help match students to the schools that best meet their career objectives as efficiently as legal education needs.

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

We will use three criteria to assess the draft proposal:

- (1) Does it disaggregate the current information?
- (2) Does it demonstrate the economic value of a school's J.D.?
- (3) Does disclosure operate on an accelerated schedule?

(1) Does it disaggregate the current information?

This proposal does disaggregate the current information. It helps show the nature of the jobs graduates obtained and with whom the graduates were employed. But as evidenced by comparing this draft proposal to [the LST Standard](#), the vague “employed at 9 months” standard, where “a job is a job,” can be disaggregated to varying degrees. **We’ve concluded that this draft does not disaggregate the current information to an adequate degree.**

The more disaggregated employment information is, and the more data provided at that degree, the more likely it is that there will be privacy norm concerns. With these norms in mind, there is a legitimate interest in not disclosing all of the employment data that law schools already collect. On the other hand, law schools already collect all of the data needed to help prospectives make informed decisions, so cost concerns are greatly overblown (as the Subcommittee recognizes). As such, the appropriate level of disaggregation must balance privacy norms against the usefulness of additional disaggregation to anybody trying to understand the entry-level market for a school's graduates.

It is the job of the Section of Legal Education to use its regulatory power to enforce the right balance. The Section must force schools to share the appropriate level of disaggregated information and must not opt to require less useful information because law schools have competitive concerns. The important question thus becomes how much weight the Section of Legal Education should give to schools that believe that more disaggregated information could (i) hurt their recruiting efforts, (ii) cause prospectives to focus too much on the first job in making their law school decision (as opposed to something else the schools think prospectives should focus on), and (iii) cause confusion through information overload.

Among the opportunities for improvement is how well the proposal connects job outcome features together. It does not disaggregate the locations of these jobs and does not show how the job, employer, and location connect for individual graduates. For example, we might be able to tell that 60% of a school's graduates are working at jobs that require bar passage, but we do not know what percentage of those are working in business & industry. Likewise, we might know that 15% of a school's graduates work in 2-10 attorney law firms, but we cannot tell what percentage of those graduates are working there as attorneys. This is not merely a theoretical concern— a sizeable percentage of law school graduates work in non-attorney positions in law firms. The decision to disaggregate further directly contravenes the Subcommittee's principle against providing misleading impressions about the true successes of a school's graduates.

Part of the reason additional disaggregation is so important is that it would minimize the effect of national rankings on student decision-making by offering a window directly into what graduates shortly after graduating. With this proposal, a prospective's choice might still hinge on what a school ranks each year in U.S. News rather than on how well a school can help a student achieve her goals. Prospectives need clarity about how a school fits into the legal hiring market.

After all, the Subcommittee's stated goal is to help prospectives make "informed decisions about whether to go to law school or which law school to attend." **The proposed solution is only satisfactory insofar that the goal is to differentiate between schools using percentage differences in broad, albeit more disaggregated, categories.** It will still be too difficult to know the challenges graduates face for achieving their career objectives, which usually include a combination of location, employer type, and required credentials. Without sufficient granularity, neither will prospectives as easily understand a school's placement niches. All together, prospectives will still struggle to understand schools' unique placement abilities.

Another issue with the Subcommittee's method of disaggregation is that it actually creates new gaps in the information (though not to a debilitating extent) and thus an incentive for creative accounting. One of the purposes of disaggregating the nine-month employment rate is to limit how much schools hide employment outcomes. Unnecessary gaps undermine this purpose.

The total number of graduates in each subcategory, taken together, should equal the total number in the parent category. For example, the total number of graduates who are employed, unemployed, pursuing a graduate degree, or whose employment statuses are unknown should equal the total number of graduates in the graduating class because the categories are exhaustive.

The unknown status category is very important for identifying gaps in the employment status data. However, an unknown category is missing from all other exhaustive groups except the group for type of law firms. The employment type category, required credentials subcategory, judicial clerkships subcategory, and the full time and part time (and corresponding long and short term) subcategories all need an unknown field so that the numbers in the subcategories all equal the parent category's total number.

Helping prospectives understand where data gaps exist encourages them to ask the right questions and serves to limit false impressions due to extrapolating outcomes from unrepresentative segments of the graduating class. Unfortunately, allowing schools to report graduates as "unknown" in any category incentivizes schools to avoid learning or researching employment outcomes. However, it is more important that the gaps created by non-reporting graduates are readily identifiable. As such, all exhaustive categories and subcategories need to account for each graduate.

(2) Does it demonstrate the economic value of a school's J.D.?

It is a huge step forward for the Subcommittee to recognize salary information as “basic consumer information.” As of right now, the only standardized, school-specific salary information is courtesy of U.S. News. Until [this year](#), even U.S. News salary information was too opaque.

The Subcommittee’s proposal does a decent job with highlighting what new graduates make and, accordingly, demonstrates some of the economic value of each school’s J.D. This new salary information would allow prospective students to roughly understand how well graduates can service their debts immediately after law school. For the Class of 2009, the average graduate had \$98,055 of law school debt, which translates to about a \$1200/month loan payment.

While the Subcommittee’s approach is useful and likely the best way for schools to report school-specific salary outcomes without using job-specific salary data, it is not the approach we think the Subcommittee should take. A better way would be to leverage the reported salary data of all law schools together the way NALP does in its annual [Job’s and J.D.’s](#). Certainly, if prospectives knew about this publication, which [costs non-members \\$90](#), they could use it to have a better understanding of entry-level salaries for law school graduates. But there is currently no way to bridge the gap between this salary information and an individual school’s graduates, and the Subcommittee’s proposal does not help on that front, so it is limitedly useful for those trying to decide which law school to attend.

The aforementioned lack of connectivity between employers, job credentials, and job location makes understanding how the new salary information impacts them – particularly for loan payments – very difficult. For example, a \$160,000 starting salary for a new associate grows differently in New York City compared to Houston due to salary compression in years two through seven. Additionally, \$70,000 in New York City does not go as far as \$70,000 in Philadelphia, Raleigh, or Nashville. The geographic impact on the ease of loan repayment cannot be understated. Even if a prospective has the Job’s and J.D.’s book, that information can only take them so far because its salary breakdowns are very specific (e.g., attorneys in 2-10 person law firms in X city). Nothing in the new standard or chart helps answer these important questions.

There is a separate concern about whether each category would have meaningful salary information associated with it. For example, 10 may work at small firms, with only four reporting. In this case, the four salaries do not get reported and thus do not serve any use. They are simply swept away. However, if these four salaries were added to a national salary database, those four salaries become 40 or even 400, and the result is meaningful salary information about jobs that wouldn’t otherwise have salary information. Unfortunately, this resource cannot be utilized on a school-by-school basis without more disaggregation. In our next post we will explain our proposal for doing this in depth.

(3) Does disclosure operate on an accelerated schedule?

Yes. In striking this balance between cost concerns and the need for timely information about the most recent graduating class, the Subcommittee has paved the way for significant improvements beginning as early as next year. At the Questionnaire Committee hearing in December, law school administrators expressed concern that requiring schools to report information too soon would be too high of a burden given cost constraints. But by limiting the Standard 509 requirements to only data that schools submit to NALP in February/March, the Subcommittee erases these concerns. Even small career services staff will be able to comply with the standard provided they already report to NALP, which nearly every ABA-approved law school does. Given that collection methods are now mostly electronic (through Symplicity or other user-entry databases), assembling and posting the data according to the proposed Standard 509(b) would take very few work hours and limited financial resources beyond what schools already allocate voluntarily.

Concluding thoughts on the Subcommittee's proposal

The goal of a revised Standard 509(b) must be to help students make informed decisions about which (if any) school best meets their career objectives. While a good start, we think that, as currently conceived, the Subcommittee's proposal will fail to adequately achieve this basic goal.

We ask that each member of the Committee imagine herself as a prospective student trying to choose a school to invest thousands of hours and dollars into. Each member must then think about how soundly she can act after analyzing employment information reported according to the new standard, and consider how well she actually understands the school's ability to help her achieve her career objectives. We suspect that this thought experiment would leave each member uncomfortably uncertain. This uncertainty, at a minimum, should be addressed through a non-theoretical exploration of the standard's implications. Before accepting a new standard, the Standards Review Committee should compare a few schools using real employment information presented as it would be under the proposed revisions.

An improved Standard 509 has the ability to wage an important battle against the influence of U.S. News on the decision-making of prospective law students. But without sufficient disaggregation of the current employment information, the effects can only be minimal. Under the current proposal, it is still too easy to imagine a prospective student choosing the #55 ranked school located on the east coast over the #81 ranked school on the west coast because she does not know, for example, what to make of the schools' minute differences in percentage employed in mid-sized firms as it pertains to her goals of working out west in a mid-sized firm. Without adequate information to dissuade her, she might come to the head-scratching conclusion that #55 must be better because it is ranked higher. This is bound to worsen now that there are [45 more schools ranked on a national scale](#).

Each year, the Section of Legal Education makes [an effort](#) to minimize the effect of national rankings. We are sure that almost every law school administrator would agree with the Section's sentiments, and revising Standard 509 is the chance to show that these are not empty words. We look forward to working with the Subcommittee to improve this first draft.

III. The LST Proposal

We have been working on our own proposal, separate from the LST Standard, for a few months. We have discussed it with key people in the Section of Legal Education, law school administrators, and briefly with NALP's Executive Director, Jim Leipold. It was born out of discussion at [December's Questionnaire Committee hearing](#). These conversations have helped shape The LST Proposal into a solution that meets the needs of all interested parties.

Our proposal can and should co-exist with the [chart](#) proposed by the 509 Subcommittee. Together, the proposals provide prospective students a quick overview of the employment opportunities at various schools while also allowing a more detailed, holistic view for those students who wish to delve deeper. We are hopeful that implementing the two proposals would result in more informed decisions and a more efficient allocation of students to the schools that best meet their career and educational objectives.

The LST Proposal has two core elements. First, each school would report graduate-level data about post-graduation employment outcomes on a "Job Outcome List." For each graduate, schools would report, as applicable:

- Employment status
- Employer type
- Full-time or part-time
- Required credentials
- Location
- Whether the graduate received special funding
- Job Source

These data are already reported to NALP by all but six ABA-approved law schools (St. Louis University, University of Kentucky, Columbia University, and the three law schools in Puerto Rico). The Job Outcome List would be publicly available.

Second, schools would report known salary data for each graduate. Schools also already report these data to NALP. However, unlike the data on the Job Outcome List, the salary data **would not be publicly available**. Instead, the Section of Legal Education would create a national database of salary data just like the database NALP already has and reports about in [Jobs & J.D.s](#). The database would include all employment data contributed by law schools each year. The result would be a public, national database of job outcomes and salaries that respects individual and employer privacy desires. Prospective students would use this database for a

general idea of lawyer pay in certain locations for certain jobs, as well as an indicator of the short-term economic value recent graduates are attaining with each school's J.D.

Mechanics of the National Database

Pairing a national salary database with school-by-school, disaggregated employment information would allow prospectives to understand entry-level salaries without identifying the compensation of any individual graduate. To do this, the database would provide salaries for small, though statistically significant, cross-sections of law school graduates. The cross-sections would be created by using the factors that many prospectives consider to be part of their career objectives: employer type, location, and key job characteristics.

For example, for the Class of 2009 graduates, the average starting salary of full-time bar-required jobs in Los Angeles at law firms with 51-100 attorneys was \$97,287. The 10th, 25th, 50th, 75th, 90th salary percentiles are, respectively, \$75,000, \$80,000, \$90,000, \$95,000, and \$145,000. In Atlanta, the average starting salary for the same category is \$107,619, and the salaries percentiles are, respectively, \$80,000, \$90,000, \$90,000, \$130,000, and \$145,000.

Under The LST Proposal, prospectives would be able to match these salaries to a school's actual placement track record in different places in different jobs. Under the 509 Subcommittee's current draft, if a school collects fewer than five salary data points for a particular category, schools report no salary information at all. Prospectives remain unaware of how graduates fared because the only information available is that Y graduates obtained jobs with 51-100 attorney law firms, with no indication of location or required job credentials.

In order to understand what these salary percentiles mean to a prospective student considering X school, each school must provide enough disaggregated information to allow prospectives to match outcomes to the national salary database. This connectivity is crucial to an operational national salary database. This is one function that the Job Outcome List would serve.

There are a few ways to design the database, and we are hopeful that the ABA, NALP, LST, and other interested parties can have open discussions about how to best execute this vision. Initially, it is our view that between one and five years of salary data, back-provided by NALP, can be aggregated to create a richer salary dataset. The number of years used would depend on the type of job and location, as salaries have shifted more or less for different cross-categories of employment outcomes. (E.g. New York City 501+ attorney firm salaries have remained relatively stable within at least the last three years.)

Additionally, it is our view that the narrowest salary picture should be provided whenever possible. If enough data exist for 51-100 attorney law firms in Atlanta, city-level figures should be available. If not, the database would provide the next narrowest regional dataset. These higher-level datasets might be Fulton County, Metro Atlanta, Georgia, the South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV), and the United States. 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 Georgia minus Metro Atlanta. The possibilities hinge only on having large enough datasets. Regardless of whether the narrowest set is available, each higher-level dataset should be associable with each listed job outcome.

Other Advantages of the Employment Lists

The benefits of this proposal do not end with the addition of elaborate, privacy-respecting salary information to the marketplace. After all, the jobs graduates take are often based on more than salaries, so a proposal that aims to help match prospectives to their best fit cannot end with only salary information. To this end, the Job Outcome List will help prospectives understand the various kinds of jobs graduates take at particular law schools. Its components offer various insights into the entry-level market and how each school fits into that market.

Long-term Help

Focusing on a single year of data is dangerous, but an improved standard must start somewhere. The concern is certain to be more pronounced when there is more disaggregated information available for public consumption. The fear that prospectives will pay too much attention to the first year of new data, while grounded in reality, is but a consequence of improved transparency at law schools. The LST Proposal will be best after three or five years. At that point, prospectives would be more able to discern which schools can best meet their individual objectives. And that should be everybody's goal.

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

Kyle P. McEntee
Law School Transparency
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