

MEMORANDUM

To: Members of the Section of Legal Education and Admissions to the Bar
From: Kyle P. McEntee, Executive Director¹
Patrick J. Lynch, Policy Director
Re: Collection of Graduate-Level Employment Data from Law Schools

August 4, 2011

In a letter to Mr. Askew and Dean Gaudio, NALP's executive director, Jim Leipold, expressed in no uncertain terms his anger over the Section of Legal Education decision to begin collecting graduate-level employment data. Mr. Leipold's concerns are unassailably important.

NALP has provided useful information about the entry-level legal market for 37 years, and there is certainly risk that some schools will stop reporting to NALP due to the dual burden. Such big-picture analyses of the health of the legal industry are useful for schools and employers trying to gauge larger trends in hiring shifts, but they cannot be expected to replace the work of an accrediting agency. If the Section of Legal Education is finally deciding to fulfill its accreditation responsibilities fully, this decision should be given a certain level of deference. In other words, if only one group receives the underlying data, it should be the accrediting body and not the third-party relying on voluntary reporting (which itself is enhanced by privacy agreements that make the data inaccessible to those who need it).

However, this is a false dichotomy. There is no need for the ABA Section of Legal Education and NALP to clash; the two can co-exist seamlessly. NALP collects an enormous number of data each year and not only is the process well thought out, but the definitions are useful, coherent, and authoritative. NALP also already collects almost all of the data the Section can reasonably desire to collect itself. In the interim minor differences will exist, such as conflicting definitions of what jobs qualify as short-term employment, but there is little reason to believe that NALP would not be willing to negotiate the terms if the two groups reached a mutually beneficial understanding. However, this requires reopening the discussion and mending the relationship with NALP quickly so that the annual questionnaire may go out at the end of this month.

Recognizing the important and historically complimentary roles of both the Section of Legal Education and NALP, we believe that a compromise in the collection of employment data is both

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 lawyers, recent law school graduates, and current law students.

achievable and desirable. Our suggestions for reaching such a compromise utilize the following premises:

- That the Section of Legal Education actually does wish to collect employment data at graduate-level detail.
- That it is important for the Section of Legal Education to fulfill its accreditation obligations, which encompass the collection of employment data at graduate-level detail, so as to limit fraud and enable auditing where such auditing is shown to be necessary.
- That NALP already collects these data and more.
- That at least some law schools will not participate in NALP's survey under the Section's proposed changes, because they believe doing so would be too costly.
- That if fewer law schools participate in NALP's voluntary survey, it will damage NALP's ability to provide systemic employment information to schools, the legal profession, and prospective law students.
- That, if in the end only one of the Section of Legal Education and NALP can collect employment data, it should be the Section of Legal Education.
- That both the Section of Legal Education and the ABA should respect and value NALP's longstanding service to the profession and engage in dialogue with NALP's leadership.
- That, if possible, NALP's function should be preserved.
- That the Section of Legal Education can fulfill its accreditation responsibilities by using the questions and definitions NALP has fashioned over the years, and does not need to reinvent the wheel.

It's important to remember what the real fight has been about when discussing law school transparency: the optimal level of information. Schools already collect enough data to more than adequately inform prospective law students. Yet, these data remain private and inaccessible to those who genuinely need quality information. As such, the success of any reforms hinges on the quality of information that follows after schools report data. But this is not the controversy before us today. This is a clash over who can collect and access the underlying data.

As we said above, this clash is unnecessary. The Section of Legal Education and NALP need to work together, not deride each other in the press and behind closed doors. NALP should communicate a willingness to cede the final say on post-graduation outcome surveys, and in exchange continue to gain access to the data.

The simplest (and also cheapest) way to achieve this is for NALP and Section of Legal Education to use the same survey. Under this model, NALP would use the Section of Legal Education's survey that happens to be based on NALP's survey. Each year, NALP and the Section can discuss changes, but the Section would have the final say. This does not constitute outsourcing a regulatory function to NALP, something the Council of the Section of Legal Education legitimately fears doing, but it does recognize and utilize NALP's great work over the past 37 years. NALP's role would diminish only as far as the Section does not defer to its institutional expertise in making changes to the survey.

LAW SCHOOL TRANSPARENCY

The Section has the power to put NALP out of the employment statistics business, and it should not wield this power irresponsibly. But it should also not forget that it has a responsibility to the profession and to those who wish to enter into it, and that some of this responsibility can be shouldered by NALP without outsourcing its regulatory function. Adopting NALP's survey and inviting NALP to help change it in the future is the right thing to do given the obvious pressure to better regulate law schools. There would still be details to work out, for instance the Section would need to invest significant resources into technology (especially to ensure that NALP and the Section do not end up with different data) and staff. Similarly, NALP would need to share its wisdom and processes for cleansing the employment data.

This is an important problem that needs to be solved immediately. NALP contributes a great deal to the legal profession, and the Section wants to enhance its own contribution. Through this particular compromise, the two groups can maximize contribution and continue a long-standing relationship.

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