

## FIU Law Review

---

Volume 13  
Number 3 *A Summit on the Future of Legal  
Education and Entry to the Profession*

Article 7

---

Spring 2019

### More Transparency, Please

Kyle McEntee

*Executive Director, Law School Transparency ("LST")*

Follow this and additional works at: <https://ecollections.law.fiu.edu/lawreview>



Part of the [Other Law Commons](#)

---

Online ISSN: 2643-7759

#### Recommended Citation

Kyle McEntee, *More Transparency, Please*, 13 FIU L. Rev. 465 (2019).

Available at: <https://ecollections.law.fiu.edu/lawreview/vol13/iss3/7>

This Article is brought to you for free and open access by eCollections. It has been accepted for inclusion in FIU Law Review by an authorized editor of eCollections. For more information, please contact [lisdavis@fiu.edu](mailto:lisdavis@fiu.edu).

# MORE TRANSPARENCY, PLEASE

Kyle McEntee\*

I.	Introduction .....	465
II.	Data Proposals.....	469
	A. Student Borrowing .....	469
	B. Tuition Prices and Discounts .....	474
	C. Gender Diversity .....	478
	D. Racial and Ethnic Diversity .....	480
	E. Additional Diversity Data.....	482
III.	Costs of Additional Data Collection and Reporting .....	483
IV.	Costs of Additional Data Publication.....	485
V.	Conclusion.....	487

## I. INTRODUCTION

Transparency comes in many forms, from data to documents. Yet what matters most is what transparency does. It reveals. Through revelation, transparency can reduce information asymmetry to help markets, policymakers, and even decisionmakers at the institutions subject to scrutiny. It exposes blind spots and signals opportunities for change. As such, transparency is not a final step in progress—it is an early step. Whatever transparency reveals, the value is severely limited without action because progress is *not* inevitable. Progress depends on what people and institutions do with what is revealed.

This is both a blessing and a curse. Transparency is easy to be in favor of and disproportionately difficult to be against. It can also be the easy way out when confronted with a problem. Increasing transparency may let policymakers off the hook without passing additional laws, regulations, or standards. The phrase *caveat emptor* comes to mind. Of course, because transparency is easier to achieve than more onerous limits on behavior, it also

---

\*Executive Director, Law School Transparency (“LST”). Founded in 2009, LST is a nonprofit dedicated to making entry to the legal profession more transparent, affordable, and fair. The author thanks members of the Iowa State Bar Association Young Lawyers Division, including Kyle Fry, Thomas Hillers, Abhay Nadipuram, Rob Poggenklass, and Maggie White, for co-authoring *A Way Forward: Transparency in 2018*. This article draws on that report. The author also thanks Olympia Duhart, Kimber Russell, Marissa Olsson, Deborah Merritt, Susan Poser, and Caren Ulrich Stacy for the essential part each played in LST’s *Women in the Law*. That mini-series about the challenges women face in the legal profession sparked several recommendations made in this article.

provides the opportunity to build genuine progress over time while values catch up. Transparency can therefore operate as a powerful, ironically discrete tool.

At times the American Bar Association (“ABA”) Section of Legal Education and Admissions to the Bar (“Section”), the accreditor of law schools, has acknowledged and responded to problems in legal education through transparency measures. The ABA Standards and Rules of Procedure for Approval of Law Schools (“Standards”), for example, now expressly prohibit schools from providing false, incomplete, or misleading consumer information.<sup>1</sup> The Standards also require law schools to publish detailed employment data on their websites.<sup>2</sup>

The impetus for these changes began in 2010, but were caused by deceptive marketing practices that had become the norm over several decades.<sup>3</sup> Specifically, law schools overstated job and salary outcomes.<sup>4</sup> The lack of transparency and accountability resulted in inflated enrollment, inadequate job prospects, and higher prices.<sup>5</sup> Once identified, covered by the legal and mainstream press, and remedied through changes to the Standards and voluntary disclosure norms, law school enrollment fell dramatically, job prospects improved, and tuition increases slowed or in some cases declined.<sup>6</sup>

Conditional scholarships provide another example of how transparency can meaningfully affect law schools. “A conditional scholarship is any financial aid award that depends on the student maintaining a minimum grade point average or class standing, other than that ordinarily required to remain in good academic standing.”<sup>7</sup> *The New York Times* described conditional scholarship programs as a “bait and switch” tactic.<sup>8</sup> The programs raised

---

<sup>1</sup> AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018–19 35 (2018).

<sup>2</sup> *Id.*

<sup>3</sup> Kyle McEntee & Patrick J. Lynch, *A Way Forward, Improving Transparency in Employment Reporting at American Law Schools* (Apr. 10, 2010) (unpublished manuscript), [https://www.lawschooltransparency.com/documents/LST\\_White\\_Paper\\_April\\_2010.pdf](https://www.lawschooltransparency.com/documents/LST_White_Paper_April_2010.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> *Law School Enrollment, LAW SCH. TRANSPARENCY*, <https://data.lawschooltransparency.com/enrollment/all/> (last visited Aug. 21, 2018).

<sup>6</sup> After 1L enrollment peaked in 2010 at 52,404 new students, enrollment fell dramatically in each of the next three years, followed by four years of even lower, but steady enrollment between 37,000 and 38,000 new 1Ls. *Id.* While smaller class size certainly helps the percentage of the class who can get a lawyer job, the entry-level market remains structurally weak. Since 2013, fewer graduates obtained full-time lawyer jobs each year than the prior year. *Law School Job Outcomes, LAW SCH. TRANSPARENCY*, <https://data.lawschooltransparency.com/jobs/legal-jobs/> (last visited Aug. 21, 2018).

<sup>7</sup> *Conditional Scholarships, LAW SCH. TRANSPARENCY*, <https://data.lawschooltransparency.com/costs/conditional-scholarships/> (last visited Aug. 21, 2018).

<sup>8</sup> David Segal, *How Law Students Lose the Grant Game, and How Schools Win*, N.Y. TIMES (May 1, 2011), <https://www.nytimes.com/2011/05/01/business/law-school-grants.html>.

fairness concerns because students did not fully understand their terms—law school grading curves are a harsh reality for students who achieved all A’s and B’s in college—and because students were disposed not to re-assess continued enrollment once the price drastically changed in the middle of their studies, something law schools took advantage of to maximize tuition revenue. Starting in 2013, the Section’s governing council (the “Council”) required law schools to publish the number of students who receive conditional scholarships and the number of those students who lost some or all their scholarship value due to law school performance.<sup>9</sup> By the 2016-17 academic year, 36 law schools had eliminated these programs, a reduction of 29%.<sup>10</sup>

The motivation behind the change is tough to definitively pin down. Schools fiercely competed for students in that time as the number of law school applicants tumbled.<sup>11</sup> And some applicants successfully negotiated their scholarship conditions away. However, schools also came under significant fire from their own faculty, at academic conferences, and in the press. Hard data highlighted schools that utilized these scholarship programs and showed how students fared. Individuals at schools were forced to assess how these practices comported with their values, as well as the school’s. The nation’s top law schools in particular fled to higher moral ground.<sup>12</sup>

With both employment data and conditional scholarships, transparency measures were designed to address known problems. With the latter, schools likely responded to dissonance between their values and their choices. With the former, the law school applicant market responded to new information to produce change. But rebounding applicant demand despite a flat job market is likely to showcase the shortcomings of relying on transparency to create a system of legal education that suits its important place in society. The Section’s transparency measures allow observers to see worsening job prospects for graduates coming, but the Standards do not attempt to limit enrollment through, for example, a minimum employment rate as the Section does with the minimum bar passage standard.<sup>13</sup> Likewise the Section could have banned conditional scholarships, but instead opted to institute

---

<sup>9</sup> *Conditional Scholarships*, *supra* note 7.

<sup>10</sup> *Id.* The number of law schools with conditional scholarship programs was flat for the first three years of data. However, these data were cemented before the new mandatory disclosures. Once the data were in the open, the number of schools with these programs fell, first slowly and then more quickly.

<sup>11</sup> *Demand for Law School*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/enrollment/demand-for-law-school/> (last visited Aug. 21, 2018).

<sup>12</sup> Jerry Organ, *Far Fewer Law School Conditional Scholarship Programs in 2016-17 than in 2011-12*, TAXPROF BLOG (Jan. 2, 2018), [http://taxprof.typepad.com/taxprof\\_blog/2018/01/far-fewer-conditional-scholarship-programs-in-2016-17-than-in-2011-12.html](http://taxprof.typepad.com/taxprof_blog/2018/01/far-fewer-conditional-scholarship-programs-in-2016-17-than-in-2011-12.html).

<sup>13</sup> AMERICAN BAR ASSOCIATION, *supra* note 1, at 24; *see also* Scott F. Norberg, *J.D.s and Jobs: The Case for an ABA Accreditation Standard on Employment Outcomes*, 67 J.L.E. 1035 (2018).

mandatory disclosures. Open data access enables researchers to produce new information by combining datasets, as illustrated in Part A.3. It also allows problems to be identified earlier and systematically, instead of by anecdote. Yet the impact on progress—however measured—is limited by what comes after transparency, whether standards, market adjustments, or self-correction in the face of a moral dilemma.

The proposals in this article are the product of discussions with young lawyers, law students, legal academics, and leadership in various sections and divisions in the ABA. Part A outlines transparency proposals related to student debt, scholarships, and diversity. Part B considers the costs to law schools and the Section from additional data collection and reporting. Part C considers constraints related to making the resultant datasets public. Finally, Part D provides concluding remarks about the balance between the costs and benefits of these proposals.

The Council already has the authority to collect and require schools to publish all the data described below. Standard 104 permits the Council to collect these data “in the form, manner, and time frame” it specifies each year.<sup>14</sup> Rule 49(b) permits the Council to publish these data when “authorized under Standard 509 or [when] . . . made public by the law school.”<sup>15</sup> Standard 509 allows the Council to require schools to publish these data “in the form and manner and for the time frame designated by the Council.”<sup>16</sup>

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

This aligns squarely with the Section of Legal Education’s mission and values. The Section is the nationally recognized accreditor of law schools, but its mission is broader.<sup>17</sup> Its mission is also “[t]o be a creative national force in providing leadership and services to those responsible for and those who benefit from a sound program of legal education and bar admissions.”<sup>18</sup> In July 2017, the Section convened a roundtable of legal education stakeholders to discuss how to modify the Standards to encourage innovation

---

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 76.

<sup>16</sup> *Id.* at 35.

<sup>17</sup> *Mission*

*Statement,*

A.B.A.,

[https://www.americanbar.org/groups/legal\\_education/about\\_us.html](https://www.americanbar.org/groups/legal_education/about_us.html) (last visited Aug. 24, 2018).

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

and address challenges related to cost, declining job opportunities, and declining bar passage rates. One theme that emerged from the roundtable is the necessity of more transparency. While transparency is not a magic bullet, the foundation for reform is good data. In the meantime, the following recommendations will expand access to valuable data to spark reforms that advance the United States legal system.

## II. DATA PROPOSALS

### A. *Student Borrowing*

The typical law student borrows a significant sum of money to attend law school. In 2017, the average private law school graduate who borrowed received \$130,145 in student loan disbursements during law school.<sup>19</sup> The average public law school graduate who borrowed received \$92,997 in student loans.<sup>20</sup> Notably, borrowing averages do not reflect the amount of debt owed when repayment begins six months after graduation. For the 2018-19 academic year, interest immediately begins to accrue for students at 6.6% for Stafford Loans (up to \$20,500 per year) or 7.6% for Graduate PLUS loans (up to the full cost of attendance).<sup>21</sup> The government does not subsidize law student interest payments during school, thus the cost of the first-year loan increases by nearly 25% while the student is studying and before a single loan payment is due if the student does not make interest payments or repay principal during law school.

These national averages come from school-level borrowing averages. Each school's average includes any graduate who borrowed at least \$1 during law school, whether they borrowed for just one semester—perhaps \$5,000 to pay for a trip—or they borrowed the full cost of attendance each year. While the average can tell us about the entire population, it tells us little about individual students. With cost of attendance in 2017-18 as high as \$95,883 at Stanford Law School, student borrowing can vary wildly based on scholarships and ability to pay.<sup>22</sup> The latest available data show that 55% of Stanford Law students pay full price.<sup>23</sup> After accounting for interest that accumulates during law school, a Stanford graduate who paid full price for

---

<sup>19</sup> *Law School Debt*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/debt/?scope=national> (last visited Aug. 21, 2018).

<sup>20</sup> *Id.*

<sup>21</sup> *2018-19 Federal Student Loan Interest Rates*, ACCESSLEX, <https://www.accesslex.org/2018-2019-federal-student-loan-interest-rates> (last visited July 27, 2018).

<sup>22</sup> *Stanford University Costs*, LAW SCH. TRANSPARENCY, <https://www.lstreports.com/schools/stanford/costs/> (last visited July 27, 2018).

<sup>23</sup> *Id.*

all three years may owe over \$300,000 when the first payment is due, even factoring in a 2L summer associate salary.

The public does not know how many (if any) graduates actually borrow the full amount, just that 80% of Stanford Law graduates in 2017 borrowed at least \$1 and that the average graduate borrowed \$131,745.<sup>24</sup> Perhaps borrowing several hundred thousand dollars from one of the nation's elite law schools is not a matter of public interest or concern. But the debt loads at schools with worse job and bar exam outcomes can reach astronomical levels too.

Take, for example, Southwestern Law School. Its annual cost of attendance was \$82,600 in 2017-18.<sup>25</sup> Half of its students paid full price.<sup>26</sup> Only 43% of its 2017 graduates obtained a long-term, full-time job that requires bar passage within ten months of graduation.<sup>27</sup> Only 52.3% of 2017 graduates passed the California bar exam on the first try.<sup>28</sup> The public does not know how many, if any, graduates actually borrowed nearly a quarter of a million dollars at this school. But unlike for Stanford, the public does not know the average amount borrowed at Southwestern Law School because the school has not disclosed graduate borrowing data since 2012, when the average amount borrowed for the 78.9% of graduates who borrowed was \$147,976.<sup>29</sup> Since that time, tuition at the school is up 23%; net tuition is up 8%; cost of living is up 12%; the median and 75th percentile scholarship has not changed; and the 25th percentile scholarship has declined by a third.<sup>30</sup>

Given the cost of legal education and the expected entry-level salaries, many graduates face consequential financial strain. The amount of strain

---

<sup>24</sup> *Debt by Law School for 2017 Graduates*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2017> (last visited Aug. 21, 2018).

<sup>25</sup> *Southwestern Law School Costs*, LAW SCH. TRANSPARENCY, <https://www.lstreports.com/schools/southwestern/costs/> (last visited Aug. 21, 2018).

<sup>26</sup> *Id.*

<sup>27</sup> *Southwestern Law School ABA Charts*, LAW SCH. TRANSPARENCY, <https://www.lstreports.com/schools/southwestern/aba/> (last visited Aug. 21, 2018).

<sup>28</sup> *Southwestern Law School Bar Exam Outcomes*, LAW SCH. TRANSPARENCY, <https://www.lstreports.com/schools/southwestern/bar/> (last visited Aug. 21, 2018).

<sup>29</sup> *Debt by Law School for 2012 Graduates*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2012> (last visited Aug. 21, 2018).

<sup>30</sup> *Compare 2012 Southwestern Law School Standard 509 Report*, A.B.A., <http://abarequireddisclosures.org/Disclosure509.aspx> (under the section titled "Standard 509 Information Reports", select "2012" as the year; then select "Southwestern Law School" as the institution; finally, click "Generate Report"), *with 2017 Southwestern Law School Standard 509 Report*, A.B.A., <http://abarequireddisclosures.org/Disclosure509.aspx> (under the section titled "Standard 509 Information Reports", select "2017" as the year; then select "Southwestern Law School" as the institution; finally, click "Generate Report"), *and Net Tuition for U.S. Law Schools*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/net-tuition/> (last visited Aug. 21, 2018).

differs greatly based on the amount an individual owes. Financial advisors typically recommend devoting no more than 10 or 15% of income to debt service.<sup>31</sup> A graduate who borrows \$110,000 owes roughly \$125,000 at first payment, which translates to a monthly payment of about \$1,400 on the standard ten-year plan. To remain in range of the recommendation, the graduate must make between \$112,000 (for 15%) and \$168,000 (for 10%). This graduate would devote 24% of her pre-tax salary if she earns the median entry-level salary of \$70,000 for 2017 graduates in long-term, full-time law jobs.<sup>32</sup> She would devote 34% of her pre-tax salary if she borrowed \$147,976 (Southwestern's 2012 average amount borrowed).<sup>33</sup> The burden accelerates with a greater amount borrowed, a lower salary, or both.

The Section of Legal Education does not publish any school-level borrowing data, although the Section does collect related data as part of its annual questionnaire to law schools. Each law school must report the total amount borrowed by all J.D. students for the previous academic year, as well as the number of J.D. students who borrowed.<sup>34</sup> From this, the Section can calculate the average amount borrowed for a single year of law school. When combined with the total J.D. enrollment, the Section can also calculate the percentage who borrowed. In the past, the Section measured the cumulative

<sup>31</sup> *Loan Debt and Repayment*, COLLEGE BOARD, <https://bigfuture.collegeboard.org/pay-for-college/loans/loan-debt-and-repayment> (last visited Aug. 21, 2018).

<sup>32</sup> NAT'L ASS'N FOR LAW PLACEMENT, CLASS OF 2017 NATIONAL SUMMARY REPORT (2018), [https://www.nalp.org/uploads/Classof2017\\_NationalSummaryReport.pdf](https://www.nalp.org/uploads/Classof2017_NationalSummaryReport.pdf). These salary numbers are not perfect, but they overstate rather than understate salaries. The percentage of a graduating class employed in jobs that require a law license is sensitive to two distinct supply figures: total graduates and total available jobs. For example, if graduates increase and the number of jobs stays the same, the percentage will decline. The percentage of graduates obtaining full-time entry-level legal jobs was quite high in the 1980s, peaking at 84.5% in 1988. The average rate in the mid to late 1980s was 82.9%. The next two decades (90s and 00s) each had an average that was ten points lower, 73.7% in the 90s and 71.4% in the 00s. This decade, so far, the average is 61.7%—an additional ten points lower. *National Report on Law School Job Outcomes*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/jobs/legal-jobs/> (last visited Aug. 21, 2018). Strikingly, these shifts appear to reflect enrollment management decisions by law schools instead of demand for new lawyers. Between 1976 and 2000, law schools steadily enrolled between ~40,000 and ~44,000 new students each year. From 1976 to 1987, the average was 40,973. From 1988 to 2000, the average was 43,497—a little over 6% higher. But between 2000 and 2002, law schools increased first-year enrollment 11.2%. In subsequent years, enrollment steadily crept up, with minor ebbs and flows, until peaking in 2010 at 52,404. The number of jobs, on the other hand, has been far steadier. Between 1985, the first year for which we were able to analyze data, and 2010, the number of new full-time law jobs each year generally stayed between 27,000 and 30,000. Increased enrollment and a steady number of jobs spell a lower employment rate for law school graduates. *Id.*

<sup>33</sup> Using a weighted interest of 7.2%, she would owe just over \$169,000, which translates to just shy of a \$2000 monthly payment on a standard ten-year plan.

<sup>34</sup> *Annual Questionnaire*, A.B.A. (2018), [https://www.americanbar.org/groups/legal\\_education/resources/questionnaire.html](https://www.americanbar.org/groups/legal_education/resources/questionnaire.html) (last visited Aug. 21, 2018) (scroll down and select “Part IV: Financial Aid instructions and questions” and download Word document).



amount a graduating class borrowed for law school. This old measurement produces the figures peppered throughout this article.

Up-to-date graduate borrowing figures are possible because *U.S. News & World Report* continued to request the data after the Section changed the cohort and time period for which they measured student borrowing. Accordingly, public borrowing data for all years of law school come from voluntary disclosures by law schools to *U.S. News*. This comes with several clear consequences.

Consumers, schools, and researchers lose out because the only source for law school borrower data is a news magazine that muddies the decision-making process for consumers and schools alike. The Section encourages people to visit the *U.S. News* website through its decision not to publish these borrowing data. These data are not as reliable as they would be if they were reported to and published by the Section. Every year, more than a handful of schools make erroneous disclosures to *U.S. News*, which only occasionally get corrected. For example, some law schools routinely report to *U.S. News* the average borrowed by all J.D. students who borrow, presumably because school administrators assume the *U.S. News* survey instrument matches the Section's questionnaire. One additional consequence of a voluntary publishing regime is that, every year, a dozen or so schools decline to publish the average amount borrowed by graduates.<sup>35</sup>

That said, the average amount borrowed by graduates and the percentage borrowing are limited in utility to consumers, although there is value in confronting consumers with figures that account for several years of schooling instead of just the annual cost of attendance. The average amount borrowed also helps journalists, advocates, and policymakers to contextualize bar passage and employment rates, as well as entry-level salaries. It is important for the Section to return to collecting borrower data for graduates in addition to borrower data during a single academic year, even if graduate borrowing data are imperfect. For example, a transfer student who graduates from the school after the first year will not have all borrowing captured. Graduate borrowing figures also exclude those who never graduated, whether they failed out or left voluntarily.

Beyond publishing the data the Section used to collect, the Section would do a great service to legal education if it enabled consumers, researchers, and internal influencers, such as faculty, to peer underneath the surface figures (average borrowed) to see the borrower makeup. Shedding light on underlying borrowing data may stir policymakers, faculty, and administrators to think more clearly and realistically about the problem of student debt. One way to do this is through a frequency distribution, which

---

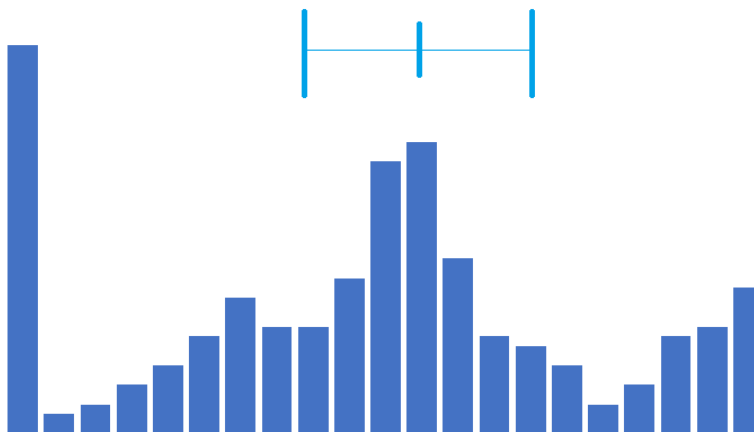
<sup>35</sup> *Debt by Law School for 2017 Graduates*, *supra* note 24.

“displays the frequency of various outcomes in a sample.”<sup>36</sup> The following data table, **Table A**, uses \$10,000 bands. **Figure A** applies the data table in graphic form (axes/data labels omitted), along with a modified box-and-whisker plot to represent the median and the interquartile range.

**Table A**

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

**Figure A**

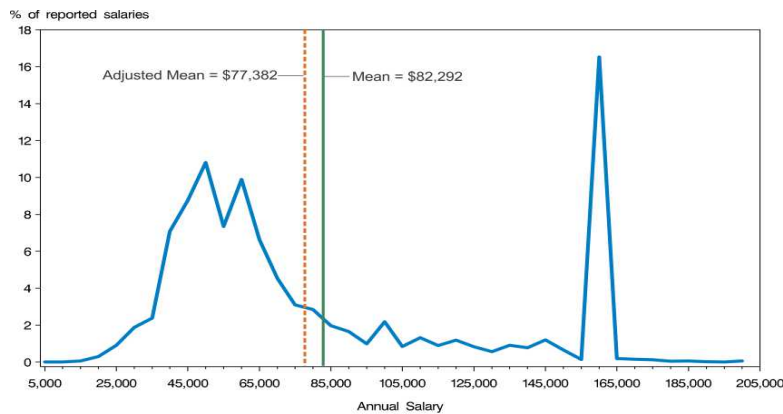


In legal education, the most famous application of a frequency distribution is NALP’s bi-modal salary distribution curve (shown below, **Figure B**). This curve continues to shape how policymakers, researchers, consumers, and the public understand entry-level salaries. The mean salary may have been \$82,292 for 2014 graduates, but very few graduates made at

<sup>36</sup> *Frequency Distribution*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Frequency\\_distribution](https://en.wikipedia.org/wiki/Frequency_distribution) (last visited Aug. 21, 2018).

or near that amount. Instead graduates fell into one of two “humps”—\$160,000 on the one side and between \$40,000 and \$65,000 on the other.<sup>37</sup> It is impactful because readers must confront the individuals that make up the averages.

**Figure B**



© NALP, 2015  
www.nalp.org

In an ideal world, the public would know how much graduates owe when the first payment is due including interest, but this is not possible without federal legislation. Instead, the Section should collect data on student loan borrowing outcomes for graduates and publish those outcomes using a frequency distribution table, including non-borrowers, using its authority under Standard 104 and Rule 49(b).

This proposal poses no additional collection burden and minimal reporting burden for law schools. As evidenced by roughly 90% of law schools voluntarily disclosing the average amount borrowed to *U.S. News* each year, the burden would be negligible for schools to report the relevant figures once again to the Section. Further, the reason law schools can calculate an average at all is that the schools process student loans for their students. Reporting individual records, properly anonymized in the same way as employment outcome records, would require minimal staff time and produce valuable data for public consumption.

### *B. Tuition Prices and Discounts*

Over the past several decades, law school tuition has increased dramatically, well above inflation. Compared to tuition in 1985, private and

---

<sup>37</sup> *Salary Distribution Curves*, NAT'L ASS'N FOR L. PLACEMENT, <http://www.nalp.org/salarydistrib> (last visited Sept. 22, 2017).

public law school tuition is 2.7 and 5.8 times as expensive after accounting for inflation.<sup>38</sup> The average private law school tuition was \$46,329 in 2017, with residents at public schools paying an average of \$26,425 per year.<sup>39</sup> The range of tuition, however, demonstrates remarkable variability. At public schools, one year of resident tuition ranged from \$7,383 to \$58,300.<sup>40</sup> At private schools, the range was \$16,418 to \$67,564 per year.<sup>41</sup> While the average tuition at top performing law schools is much higher than the rest, prices do not scale with job outcomes elsewhere.<sup>42</sup> The average tuition at the lowest performing schools is similar to the average for mid-range schools.<sup>43</sup>

Law schools engage in significant tuition discounting through grants and scholarships. Although the nominal tuition price has increased, it does not tell the whole story. About 30% of students pay full price.<sup>44</sup> For the 70% receiving a discount, the discounts have shifted away from need-based discounts based on ability to pay towards merit-based discounts based on LSAT and undergraduate GPA. Those with the highest LSATs and GPAs receive the discounts. As such, the students who are least likely to complete school, pass the bar, and get a job subsidize the students who are more likely to succeed. These also tend to be the students who are the most disadvantaged.<sup>45</sup>

The Section of Legal Education collects and publishes useful data related to how much students pay for their legal education. The Section currently requires schools to report and publish for full-time and part-time students: tuition and fees; scholarship data by the median and interquartile range; and scholarship data by the percentage of tuition covered, e.g. what percentage of all students have a scholarship that covers up to 50% of tuition.<sup>46</sup> Moreover, the Section requires schools to report and publish

---

<sup>38</sup> *Law School Tuition in the United States 1985–2017*, LAW SCH. TRANSPARENCY, <https://www.data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2017> (last visited Aug. 21, 2018).

<sup>39</sup> *Id.*

<sup>40</sup> *Law School Tuition Grouped by 2016 Job Outcomes*, LAW SCH. TRANSPARENCY, <https://www.data.lawschooltransparency.com/costs/tuition/?y1=2016&y2=2017&scope=jobs> (last visited Aug. 21, 2018).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Net Tuition for U.S. Law Schools*, *supra* note 30.

<sup>45</sup> LAW SCH. SURVEY OF STUDENT ENGAGEMENT, LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUITY 2016 ANNUAL SURVEY RESULTS (2016), <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf>.

<sup>46</sup> *Annual Questionnaire*, *supra* note 34.

whether and how often they reduce or eliminate scholarships after poor academic performance.<sup>47</sup>

The Section already recognizes the value of publicly available price information for consumers, researchers, and the public. But with increased discounting and the shift away from need-based aid, additional clarity would add additional value. The utility of data for policymaking and decision-making depends not only on whether data are publicly available, but also data presentation. The Section can further its efforts of helping people understand the cost of legal education with frequency distribution tables for tuition paid by students using relatively narrow distribution bands. The Section should collect data on tuition paid by each enrolled individual and publish up to four frequency distributions tables per law school—one for 1L tuition paid, one for upper-level tuition paid, and a distinction for part-time and full-time as necessary—using its authority under Standard 104 and Rule 49(b).

This proposal poses no additional collection burden and minimal reporting burden for law schools. In fact, rather than a new style of information, this proposal merely improves upon the frequency distribution table the Section already utilizes for how much tuition students pay, referred above as “scholarship data by the percentage of tuition covered.” **Table B** reproduces a Standard 509 Information Report arbitrarily selected (seriously) from ABArequireddisclosures.org, with several stylistic and linguistic clarifications to showcase its contents. The clearly erroneous part-time column is reproduced without any adjustment.

**Table B**

	All		Full Time		Part Time	
<b>Total Students</b>	248	100%	240	97%	8	3%
<b>No Grant Received</b>	44	18%	67	26%	0	0%
<b>Receiving Any Grant</b>	204	82%	177	74%	27	338%
<b>&lt; Half Tuition</b>	81	33%	71	30%	10	125%
<b>Half to Full Tuition</b>	57	23%	48	20%	9	113%
<b>Full Tuition</b>	48	19%	45	19%	3	38%
<b>&gt; Full Tuition</b>	18	7%	13	5%	5	63%

The proposal (below, **Table C**) would improve the precision of the table by introducing narrower bands than the first column in **Table B**. The proposal also reframes, for the sake of precision, the bands from the percentage of tuition to the amount of tuition paid. These simple changes will help people

---

<sup>47</sup> *Id.*

connect tuition prices to the real lives affected by them. The resultant **Table C** showcases the transactional nature of tuition discounting, rather than a framework that treats scholarships as acts of generosity, which restricts how consumers, policymakers, and internal decision-makers understand and act on the information. Law school financial aid and admissions administrators frequently and rightfully complain that prospective students focus too much on the scholarship amount, rather than on the price they would pay. Consider a student who receives a \$10,000 scholarship at School A with \$35,000 annual tuition and a \$20,000 scholarship at comparable School B with \$45,000 annual tuition. Although the price paid is the same, students in his or her position often complain about disparate scholarship amounts.

**Table C**

<b>Tuition Paid, Full Time</b>	<b># Students</b>	<b>\$</b>	<b>#</b>
\$0	58	\$18,000 - \$20,999	[0-48]
\$1 - \$2,999	[0-48]	\$21,000 - \$23,999	[0-27]
\$3,000 - \$5,999	[0-48]	\$24,000 - \$26,999	[0-27]
\$6,000 - \$8,999	[0-48]	\$27,000 - \$29,999	[0-27]
\$9,000 - \$11,999	[0-48]	\$30,000 - \$32,999	[0-27]
\$12,000 - \$14,999	[0-48]	\$33,000 - \$35,999	[0-27]
\$15,000 - \$17,999	[0-48]	\$36,000 - \$38,999	44
<b>Median Tuition Paid</b>	\$25,706	\$39,000 - \$41,999	63
<b>Mean Tuition Paid</b>	\$28,071		

**Table C** is the author's best estimate using publicly available data. The range of students for the distribution bands from \$1 to \$35,999 (75 total students) were derived from the frequency distribution table on the Standard 509 Information Report. The interquartile range and median produced a different distribution across those bands—and the distributions contradicted each other, almost surely due to a data reporting error by the unnamed law school.

As this table merely refashions how the price paid by students is communicated to the public, the burden would be negligible for law schools to report the necessary data to the Section. Every law school can account for how much its students pay—in fact, it is necessary to know this for any school that processes Title IV student loans (all law schools). Reporting individual records, properly anonymized in the same way as employment outcome records, would require minimal staff time and produce valuable data for public consumption. It also has the added benefit of holding law school deans accountable for public and private claims about net tuition.

### C. Gender Diversity

In 1965, just 1 in 25 law students was a woman. That number steadily climbed to 1 in 4 in 1975; 1 in 3 in 1980; and since 2000, the proportions have been roughly equal—though slightly more men than women every year except the 2017 entering class. Parity in law school enrollment marked an enormous milestone, but new research demonstrates that national parity masks lurking gender inequality.

The research shows three significant “leaks” in the law school pipeline for women.<sup>48</sup> The first of these leaks involves women applying to law school. Even though women are 57% of college graduates, they account for only about 51% of the law school applicants.<sup>49</sup> If women applied at the same rate as men to law school, applications would increase 16%.<sup>50</sup> The second leak is that women who apply to law school are less likely than men to be admitted. For the class entering in 2015, law schools admitted about 80% of the men who applied, but just 76% of the women who applied.<sup>51</sup> The third leak is that, even when women are admitted, they are not spread evenly across law schools. They instead cluster disproportionately in schools with the weakest employment outcomes and worst reputations.<sup>52</sup>

The first and second leaks go back several decades. The third leak, however, is new and worsening. In 2001, when schools had just gotten to roughly 50/50 nationwide, women were evenly distributed amongst schools.<sup>53</sup> But by 2006 the story had started to change. Although the pattern did not yet reach statistically significant, it had started to emerge. By 2015, the pattern was statistically significant and quite stark. Today, the top 50 schools are the mirror opposite of the bottom 50 schools.<sup>54</sup>

The emerging explanations mostly relate to the *U.S. News* law school rankings, with the most compelling relating to schools jockeying for higher LSAT scorers to increase the median score, which is a considerable driver of ranking. Over the past 15 years, in their quest to secure or improve their *U.S. News* ranking, law schools have decided to emphasize LSAT scores more in admissions decisions. This emphasis may explain, in part, the emergence of the third leak over the course of a decade. Women actually score two points worse on average than men on the LSAT, and there are fewer higher scorers

---

<sup>48</sup> *LST's Women in the Law: Leaky Pipeline – Assumptions and Law Schools*, LST RADIO (Nov. 30, 2016), <https://www.lstradio.com/women/?theme=lp1>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

as well.<sup>55</sup> This is typical of standardized tests with predominately multiple choice questions, unlike writing examinations that tend to favor women.<sup>56</sup> Additional explanations may include an uneven distribution of applicants (perhaps increased median LSATs drive applicants away), uneven distribution of scholarship money (perhaps because schools overvalue the extra two points they get from men), and scholarship negotiation tendencies (perhaps because women are less likely to ask for more or any money). Additional data will provide a more robust understanding of very concerning patterns related to progress for gender diversity in the legal profession.

The Section of Legal Education collects rafts of data from law schools by gender yet publishes almost none of it. The Section has had a standing practice of publishing the gender breakdown of the entire student body, which is how the author discovered the third leak. But only beginning with the 2017-18 academic year did the Section break this out by the year in school, e.g. the number of women 1Ls. However, the number of 1Ls is a different number than the number in the first-year class, which the Section collects but does not publish. The latter does not include, for example, students who were re-admitted after academic dismissal or re-enrolled after voluntarily leaving.<sup>57</sup> Likewise, the Section collects but does not publish gender data for the number of applicants, the number of admitted applicants, the number of graduates, the number of transfers, and the number attrited.<sup>58</sup>

The Section should publish these data in the interest of its efforts to diversify the legal profession and to promote fairness using its authority under Rule 49(b). Under the same authority, along with Standard 104, the Section can further these efforts by collecting and publishing gender data related to scholarship amounts, conditional scholarships, and first-year class profiles.

Together and apart, these data may illuminate unknown problems and explain known ones. These data may also help consumers make informed choices. As outlined in the previous subpart on tuition and borrowing, law school is expensive. Reducing the information asymmetry—allowing

---

<sup>55</sup> SUSAN P. DALESSANDRO, ET AL., LSAT PERFORMANCE WITH REGIONAL, GENDER, AND RACIAL/ETHNIC BREAKDOWNS: 2005–2006 THROUGH 2011–2012 TESTING YEARS 17 (2012).

<sup>56</sup> SAMUEL A. LIVINGSTON & STACIE L. RUPP, PERFORMANCE OF MEN AND WOMEN ON MULTIPLE-CHOICE AND CONSTRUCTED-RESPONSE TESTS FOR BEGINNING TEACHERS 17 (2004); THE AM. PHYSICAL SOC'Y, FIGHTING THE GENDER GAP: STANDARDIZED TESTS ARE POOR INDICATORS OF ABILITY IN PHYSICS 3 (2016), <https://www.aps.org/publications/apsnews/199607/upload/jul96.pdf>; Andrew Hacker, *Standardized Tests are the New Glass Ceiling*, NATION (Mar. 1, 2016), <https://www.thenation.com/article/standardized-tests-are-a-new-glass-ceiling/>.

<sup>57</sup> *Annual Questionnaire*, *supra* note 34.

<sup>58</sup> *Id.* Gender numbers for the first-year class are required to fully understand the three abovementioned leaks because the number of 1Ls is not interoperable with the number of applicants and admitted applicants. In other words, calculating the yield rates for women applicants and women admitted applicants is impossible from the now-public number of women 1Ls.



students to more clearly understand their bargaining position—will help them to pay less, which would reduce debt and/or enhance the school options. Additionally, these data will help the Section analyze compliance with Standard 206(a). Standard 206(a) provides that “a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.”<sup>59</sup> If a school, even inadvertently, is biasing enrollment towards men because it is too concerned with chasing a higher ranking, then the school may be out of compliance with the ABA’s Standards.

Most of this proposal involves the Section making public data it already collects from law schools. For the data the Section does not yet collect by gender—scholarship amounts, conditional scholarships, and first-year class profiles—this proposal poses minimal burden. Law schools already classify every student and graduate by gender. Law schools also already possess individual, organized records for each of the proposed data categories. Matching these two datasets, to the extent law schools do not do so already, would require minimal staff time, produce valuable data for public consumption, and help decisionmakers and policymakers meet diversity objectives.

#### D. Racial and Ethnic Diversity

Whereas tremendous progress has been made towards gender parity, even with the emerging trend of gender clustering at the most and least reputable schools, significant progress remains for enrollment by race and ethnicity.<sup>60</sup>

**Table D**

	Hispanic	NA	Asian	Black	Hawaiian	White	2+ Races
<b>2016 1Ls</b>	13.7%	0.5%	6.5%	9.6%	0.1%	65.2%	4.3%
<b>US Population</b>	17.8%	1.3%	5.7%	13.3%	0.2%	61.3%	2.6%

<sup>59</sup> AMERICAN BAR Association, *supra* note 1, at 12.

<sup>60</sup> *Statistics*, A.B.A., [https://www.americanbar.org/groups/legal\\_education/resources/statistics.html](https://www.americanbar.org/groups/legal_education/resources/statistics.html) (last visited Sept. 28, 2017) (Under “Bar Passage and Enrollment Data” select “2017 1L Enrollment by Gender & Race/Ethnicity” and download Word doc). Excludes unknowns and non-resident 1Ls. U.S. Population percentages come from the U.S. Census. *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045216> (last visited Sept. 28, 2017).

Aaron Taylor, the executive director of AccessLex's Center for Legal Education Excellence, observed similar trends with race and ethnicity as the previous subpart outlined about gender. Taylor found that Black and Hispanic students were more likely to attend schools with lower median LSAT scores, which tend to be less prestigious.<sup>61</sup> Whereas White and Asian students were more likely to attend more prestigious schools with higher LSAT median scores.<sup>62</sup> Taylor told the *National Jurist* that "[t]his affects long-term outcomes, career trajectories and payoffs from law school investments. There are many implications tied in large part to race and ethnicity."<sup>63</sup>

Even on the tuition and debt front, the implications are huge. According to the Law School Survey of Student Engagement (LSSSE), then-directed by Taylor, "[i]t seems apparent that increased costs of attending law school have placed undue pressures on students from less affluent backgrounds to rely on student loans to finance their education. This burden falls disproportionately on Black and Hispanic students, who are more likely to come from low-wealth backgrounds."<sup>64</sup> Less than 5% of Black students and less than 10% of Hispanic students expected zero law school debt.<sup>65</sup> For White students, it was about 20% and for Asian students about 25%.<sup>66</sup> On the high end, about 25% of White students expected debt in excess of \$120,000, compared to almost 45% of Black students and about 40% of Hispanic students.<sup>67</sup>

Of course, these disparities relate to the "large racial and ethnic wealth disparities in the U.S."<sup>68</sup> But they also appear to relate to law school scholarship policies, because wealth explains part of the divergence in LSAT scores, which play an outsized role in determining the price a student pays to attend law school. According to LSSSE's 2016 report, which had a response rate of 53% from 72 different law schools, two in three White students receive a merit scholarship, while just one in two Black and Hispanic students do.<sup>69</sup>

---

<sup>61</sup> Aaron Taylor, *Diversity as a Law School Survival Strategy* 17 (Saint Louis U. Legal Studies Research Paper No. 2015-1, 2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2569847](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2569847).

<sup>62</sup> *Id.*

<sup>63</sup> Laira Martin, *Law Schools Enrolling More Minorities to Combat Enrollment Drop*, NAT'L JURIST (Feb. 17, 2015), <http://www.nationaljurist.com/prelaw/law-schools-admitting-more-minorities-combat-enrollment-drop>.

<sup>64</sup> LAW SCH. SURVEY OF STUDENT ENGAGEMENT, HOW A DECADE OF DEBT CHANGED LAW SCHOOL EXPERIENCE 12 (2015), <http://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE-Annual-Report-2015-Update-FINAL-revised-web.pdf>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

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

<sup>69</sup> *Id.* at 1, 4, 9.

The LSSSE dataset is the only available dataset on race/ethnicity and scholarships, so school-specific data are not publicly available. Using its authority under Rule 49(b) and Standard 104, the Section of Legal Education should collect and publish race/ethnicity data related to scholarship amounts and conditional scholarships.

Despite the lack of race/ethnicity scholarship data, by and large, the Section does a much better job at publishing the race/ethnicity data it collects each year compared to gender data. It publishes breakdowns by race/ethnicity for the number of graduates, the number enrolled by the year in school, the number of transfers, and the number attrited.<sup>70</sup> However, as with gender, the Section does not publish the data it collects by race/ethnicity for the number of applicants, offered applicants, and enrollees (first-year class).<sup>71</sup> This leaves gaps that relieve schools of accountability in light of common promises to advance diversity. The Section should publish these data using its authority under Rule 49(b).

Enhancing the race/ethnicity dataset may illuminate unknown problems and explain known ones, as well as help consumers more clearly understand their bargaining position and make informed choices. Additionally, these data will help the Section analyze compliance with Standard 206(a). Most of this proposal involves the Section making public data it already collects from law schools. For the data it does not yet collect by gender—scholarship amounts and conditional scholarships—this proposal poses minimal burden. Law schools already classify every student and graduate by race/ethnicity and can match datasets, as with the gender data. This would require minimal staff time, produce valuable data for public consumption, and help decisionmakers and policymakers meet diversity objectives.

#### *E. Additional Diversity Data*

For the foregoing reasons outlined in the subparts on race/ethnicity and gender data, the public would also benefit if the data requested in the subparts on tuition prices and student borrowing outcomes were publicly accessible by race/ethnicity and gender. The Section of Legal Education may do so under its current authority under Standard 104 and Rule 49(b). This proposal poses no additional collection burden and minimal reporting burden for law schools—the same dataset matching requirement from the previous two subparts.

---

<sup>70</sup> *Annual Questionnaire*, *supra* note 34.

<sup>71</sup> *Id.*

### III. COSTS OF ADDITIONAL DATA COLLECTION AND REPORTING

The costs of additional data collection and reporting are relevant to any discussion about the value of transparency efforts. As outlined for each proposal in **Part A**, the Section of Legal Education already has the authority to cause schools to report the relevant data. Not even one of the above proposals requires law schools to collect new data. In some cases, such as the number of women applicants, law schools already report the data to the Section. In other cases, such as scholarship amounts by gender, schools may need to connect two datasets, e.g. the list of students with their genders and the list of students by their scholarship. Regardless, the schools have all the relevant data and the reporting burden for each proposal is minimal.

But this article argues for the adoption of all these proposals—not just one. As such, the aggregate cost of collecting and reporting these data, including the burden born by the Section, is relevant to assessing the value of the efforts relative to the policy goals. Law schools already have direct access to all data proposed above. The cost of reporting, therefore, comes down to how schools submit the data to the Section and how the Section processes the data. These choices belong to the Section through its accreditation authority.

In some cases, the Section chooses to collect data in summary form. The school counts the number of students in a category and reports the total number in an individual cell. That is the equivalent of asking schools to populate a data table, such as **Tables A, B, and C** embedded earlier in this article. In other cases, the Section chooses to collect raw data and the school reports all students on the equivalent of a spreadsheet. Each row is a different student, distinguished by a unique individual identifier; each column indicates something about the student. The Section previously asked for first-year enrollment data in this way. The school reported a list of all first-year students and their LSAT and GPA.<sup>72</sup> From the list, the Section calculated the 25th, 50th, and 75th percentile LSATs and GPAs.

The second approach allows the Section to more easily audit the reported data and do national analyses with the data. The first approach is less work for the Section and puts the onus on proper summarization on the law schools. As shown in **Table B** above, schools do not always do that correctly.

For law schools, their reporting burden stems from connecting just two spreadsheets or database tables—depending on how the school organizes its data. The first (**Spreadsheet A**) is for all graduates in a given year and schools possess it in nearly, if not exactly, this form already.

---

<sup>72</sup> *Id.*

### Spreadsheet A

---

#### Class of 201x Graduate Data

---

Graduate ID	Gender	Race/Ethnicity	Total Borrowed
123456	M/F/O	White/Black/Etc.	\$zz,zzz

---

From Spreadsheet A, the law school can either export the data to the Section or produce the required statistical summaries, whichever the Section chooses. The second (**Spreadsheet B**) is for all students in a given year. Some schools may already have a spreadsheet or database table like this, but each can readily generate it because each column is associated somewhere in a law school's records with a unique individual identifier.

### Spreadsheet B

---

#### 201x - 201x

#### Academic Year

#### Student Data

---

Student ID	Class	Gender	Race/Ethnicity	Program
654321	1L/2L/3L	M/W/O	White/Black/Etc	FT/PT
	<b>Tuition &amp; Fees Paid</b>	<b>Tuition Discount</b>	<b>Conditional Scholarship</b>	<b>Reduced or Eliminated</b>
	\$zz,zzz	\$zz,zzz	Yes/No/Blank	Yes/No/Blank

---

These spreadsheets produce all the data necessary for the above proposals, except for data in two categories. The first category includes data that the Section already collects, e.g. the number of women who applied, were admitted, and who enrolled. The schools and Section have no additional reporting burden. The second category has only one dataset: first-year class profiles by gender. The Law School Admissions Council (LSAC) can generate these data for law schools through the organization's ACES<sup>2</sup> student management software, which every law school uses. Already the Section relies on LSAC to help schools report first-year enrollment data to the Section.<sup>73</sup> To report these statistical profiles for gender, LSAC would only need to add a gender column to the list it already provides schools. LSAC, having been apprised of this proposal, has agreed to do so.

In sum, schools can create two spreadsheets from existing datasets and download a report from LSAC with ease. For the Section of Legal Education, the additional burden is well worth it, even if it chooses the more laborious task of maintaining individual records for each new dataset. The effort produces significant, valuable data that advances its mission that reaches

---

<sup>73</sup> *Id.* "LSAC will provide each law school . . . a list of first-year enrollees from the data entered in the ACES<sup>2</sup> system. Once each law school has verified the information provided by LSAC, the information will be shared with the [Section of Legal Education]." *Id.*

beyond accrediting law schools, as well as helps it to enforce Standard 204 and Standard 509.

#### IV. COSTS OF ADDITIONAL DATA PUBLICATION

Not all data the Section of Legal Education collects winds up published. This article has thus far made the case for the Section to publish additional data under its Rule 49(b) authority. The Section currently publishes data in a variety of formats on its website, including national summaries, spreadsheets, and school-specific reports. These data help analysts repurpose the data for presentation, whether as part of scholarship, consumer-facing tools, policy-making research, or internal research. The proposals in Part A are consistent with the Section's current practices related to making data public for analysts.

Standard 509 also permits the Section to require law schools to publicly disclose information on their websites "in the form and manner and for the time frame designated by the [Section]."<sup>74</sup> The Section requires schools to publish a variety of important consumer information on their individual websites, including tabular and summarized data on reports, text descriptions, lists, and more. This information helps consumers decide whether and where to go to law school.

The decision to make data public and to require schools to disclose information in their own materials are related, but can produce divergent results because the audiences, while overlapping, differ. There is little reason to worry about broad disclosures on the Section's various websites provided the data are contextualized and reliable. The Section also publishes definitions, survey instruments, and guidance memos. A law school can be sanctioned or lose its accreditation for reporting false or incomplete data to the Section.

Open access to data has enhanced data integrity since the Section began to publish spreadsheets with school-level employment data for the class of 2011. Since that time, external parties have caught and reported errors, usually before legal and mainstream press stories. In the early years, schools and the Section made innocent mistakes that would not have been caught in a timely fashion, if at all, but for open access for analysts. Today, there are fewer mistakes in employment data as the Section has refined its pre-release process.<sup>75</sup>

---

<sup>74</sup> AMERICAN BAR ASSOCIATION, *supra* note 1, at 35.

<sup>75</sup> The importance of open datasets cannot be understated, but it is not a guarantee that the public will catch problems either. The erroneous data the author happened upon, reproduced in **Table B**, is available to the public as part of a spreadsheet on the Section website. At least seven other schools made this same reporting error for the 2017-18 school year. The Section must also be more vigilant in its use of the resources it makes available.

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

The default position should be for schools to publish information that will help consumers decide whether and where to attend law school, provided the Section collects the underlying data through Standard 104 and may require schools to publish through Standard 509. The proposals in Part A are not only pre-authorized for the Section, but will also help students understand important financial details, their bargaining power with schools, and where schools' priorities lie. However, these proposals add substantially to what a consumer is asked to mine through and understand. The additions may prove to be so overwhelming that consumers ignore important information, making them worse off.

Already, each law school publishes four PDF reports prescribed by the Section and "current information on refund policies; curricular offerings, academic calendar, and academic requirements; and policies regarding transfer of credit earned at another institution, including a list of institutions with which the law school has established articulation agreements" in a "readable and comprehensible manner."<sup>76</sup> The first PDF is the Standard 509 Information Report, which details a variety of statistics that help students figure out when to apply, whether they can get in, how much it costs, how diverse the student body is, and at what rate students complete school.<sup>77</sup> The second PDF is the Employment Summary Report and includes graduate employment data.<sup>78</sup> The third and fourth PDFs are the First-Time Bar Passage and Ultimate Bar Passage reports, which detail bar exam outcomes for two different measurement periods.<sup>79</sup>

The Section extracted the employment and bar passage data from the Standard 509 Information Report in recent years. In 2011, the Section changed disclosure requirements for graduate employment outcomes. In

---

<sup>76</sup> AM. BAR ASS'N, MANAGING DIRECTOR'S GUIDANCE MEMO (2016), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2016\\_standard\\_509\\_guidance\\_memo\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_509_guidance_memo_final.authcheckdam.pdf).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> The July 2016 Guidance Memo has not been publicly updated for the bar-related information reports.

2018, the Section changed disclosure requirements for bar exam outcomes. In both cases, the Section changed when schools published information. Likewise, the Section increased how much information schools published. This ensured more timely and more comprehensible publication of important consumer information.

Nevertheless, the Standard 509 Information Report remains dense even with the three additional reports because the Section has continued to add data to benefit consumers. The changes built on an outdated format, however. The Standard 509 Information Report was originally designed two decades ago for print in the LSAC Official Guide. The current PDF is not the optimal method for distributing information given modern advances in technology and design theory.

If the Section finds some or all the proposed disclosures sufficiently valuable for consumers, the Section should reevaluate its approach. The Section should continue to publish most, if not all, of the current data, as well as most, if not all, of the proposed data. But modest changes to how the Section styles, words, and formats the disclosures will maximize comprehension of, and confidence in, the contents. Fear of information overload, however, should only be used as justification to withhold information after alternative presentation formats are dutifully explored.

## V. CONCLUSION

The transparency measures outlined in this article have been designed to address some of the most pressing issues in legal education. Every suggestion from this article can be accomplished by the Section of Legal Education without additional authority from the ABA Standards. In many cases, the suggestions can be accomplished without additional reporting burdens for law schools. In other cases, schools already possess the data but are not required to report it as part of the annual questionnaire. On balance, the value of public data will outweigh the costs of reporting in these cases.

Informed policy choices require a diversity of information and voices. What these measures reveal can contribute to change. Whether it amounts to progress will come down to the choices made by regulators, schools, and consumers. Regardless, clarity is in order. The problems facing legal education are as immense as they are important and the foundation for addressing them will be high-quality, smartly presented data.