

How the Rankings Arms Race has Undercut Morality

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SEVERAL YEARS AGO, we began writing on how the *U.S. News & World Report* rankings were influencing legal education. For better or worse, the rankings created new metrics of competition. Yet, when we began this project, we never expected to get an education on how competition for status in a magazine could produce a competitive environment in which

bad behavior becomes the norm. Each year the rankings arms race seems to produce a new low in law school conduct. Although all the law schools are run by lawyers, our reliance on moral suasion has failed. We need rules. Rules we enforce.

The story we can now write is a tragedy. It has many victims and no heroes. And it is not yet over.

The Slope Gets Slippery

Each spring for the last twenty years, *U.S. News & World Report* has published an annual ranking of law schools. When the rankings first appeared, they contained few surprises. Although the deans might have quibbled that their school was actually better than one ranked above them, the rankings were strongly correlated with a well-entrenched pecking order favored by legal employers.

At first, law schools just ignored the *U.S. News* rankings — until it became clear that the rankings were influencing appli-

cant volume. At the same time, alumni started to pay attention, as did university administrators. ‘Why aren’t we ranked higher?’ and ‘What will it take for us to move up?’ were the questions on the minds of most stakeholders—including law professors.

As the rankings took hold, the *U.S. News* editorial staff also began to notice ‘disturbing discrepancies’ between the median LSAT scores law schools reported to the magazine and unpublished figures they submitted to the ABA for accreditation purposes. In the 1995 ranking issue, the editors plaintively wrote, “Will the ABA eventually insist that schools make such data public?”

The ABA eventually succumbed to public pressure, resulting in a more uniform disclosure format in its annual ABA-LSAC Official Guide to Law Schools publication. Thereafter, *U.S. News* used only published ABA data for the vast majority of its rankings inputs.

Pressure on law schools to increase or maintain their rankings increased. For most law schools, the first line of response was to increase LSAT and undergraduate GPA statistics. They did this by discounting the importance of résumés, personal statements, and letters of recommendation, thus turning the art of admission into a formulaic effort to get high median numbers.

Moreover, schools reallocated need-based financial aid to merit-based aid for students who were above the school’s target median LSAT and GPA numbers. Because much of this merit aid was and is funded by tuition, however, full-tuition students below the LSAT and UGPA median effectively paid for the discount given to highly credentialed students.

These practices upset many admissions and careers services. Not surprisingly, students with high LSAT scores tend to

come from more affluent families. And as a group, students with high LSAT and UGPA scores tend to get the high grades in law school needed to get the highest paying jobs. Conversely, the students with the highest law school debt tend to have the worst job prospects.

Rankings also had a huge impact on law schools’ part-time programs and intake of transfer students. Because the entering credentials of these two groups had no effect on a school’s ranking inputs, several dozen schools shrank their 1L full-time classes to improve their LSAT and UGPA profiles. In turn, they made up the lost revenues by creating or expanding part-time programs and actively soliciting a higher volume of transfer students. These changes had little or no educational value and were driven almost entirely by the effort to improve *U.S. News*’ rankings.

The Deans Respond

Disgusted with the 800-pound gorilla that the *U.S. News* rankings had become, the vast majority of law school deans became signatories to an annual letter distributed to law school applicants through the Law School Admissions Council (LSAC). The letter, which was posted on the LSAC website, urged prospective students to look beyond the ‘inherently flawed’ law school rankings.

The spirit of the deans’ letter, however, was at odds with celebratory press releases issued by law schools that had moved up in the rankings. A handful of industrious law school bloggers made a sport of linking the two documents together in order to point out an institution’s apparent hypocrisy. The LSAC responded by redacting the names of the deans from the letter; eventually the Deans’ letter just went away completely.

From far away, it is easy to blame the deans, and there is enough blame to go



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around. But focusing on the deans is a mistake. Several years ago, at a conference on law school rankings, we began to come to grips with the fact that moral courage alone could not be counted upon to defeat truly perverse industry incentives. One of the conference speakers was an eminent professor who had recently become the dean of a Top 25 law school. As an academic, the professor had been a firebrand determined to upend the status quo. Yet, he remarked, “Once I got inside the dean’s suite, the world looked a lot more complicated. My righteous principles had costs—costs that would have to be borne by other stakehold-

to the dean’s office, there’s no incentive for second guessing. Sure, we expect the deans to be honest. But university administrators, alumni and students don’t want to hear about the illegitimacy of the rankings when your school just dropped three spots or, worse, from the second to the third tier. The math that drives the *U.S. News* ranking is complex and from a layperson’s perspective, explanations about the divisor in bar ratios or low response rates to reputation surveys just sound like excuses. An occasional dean gets fired for refusing to cross the line, many more lose enthusiasm for the work, but more often they reluc-

by ranked law schools (based on the class of 1995) was 83.9 percent. Thirteen years later, it had risen to 93.1 percent. Similarly, in 1997, 26 schools reported employed-at-9-months rates of 95 percent or higher. By 2010, the number had risen to 91 schools scattered throughout the *U.S. News*’ first, second and third tiers.

These increases in employment are all the more remarkable because they are based on employment (for the class of 2008) as of February 15, 2009 — the trough (we hope) of the worst legal economy in decades. Moreover, with national first-time bar passage rates hovering at 84 percent, a sub-



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ers within my own law school community.”

When those of us outside the dean’s suite offer our own morally tinged solutions to the rankings arms race, we tend to give ourselves too much credit.

Over time, a terrible dynamic has emerged in which bad behavior among law school administrators is rewarded and principled behavior gets you fired. Virtually everyone hates this system. Unfortunately, it is all too easy to rationalize unethical actions for the greater good of one’s school. At most law schools, such conduct is diffuse. Career services and admissions professionals — who are not tenured and so have no strong job security — are under tremendous pressure to increase or hold onto their numbers. They justify their actions (to themselves and others) by saying the practices are the norm throughout the law school hierarchy. As a result, pretty soon they are the norm.

When higher numbers are submitted

tantly hold their noses. And over a period of twenty years, we end up in an indefensible position.

Indefensible Numbers

We know that some people embrace the advent of the *U.S. News* rankings because it made ‘objective’ credentials synonymous with merit. We are not in that camp. We think the conflation of merit and test scores strongly incentivizes narrow-minded attitudes and behaviors among undergraduates that must be shed before someone can become a truly effective lawyer and counselor. We concede, however, that reasonable minds might disagree.

Unfortunately, we don’t think there is much room for debate on how the *U.S. News* rankings have influenced the reporting of law school employment statistics. In 1997, when *U.S. News* first incorporated ‘employed-at-9-months’ data into its rankings formula, the average figure reported

stantial number of those employed likely would have actually flunked the bar.

How did the law schools accomplish this apparent miracle? Individuals talented enough to slog through seven years of higher education usually have the ability to find some job to pay the rent. Home Depot, Best Buy, Appleby’s, or the corner tavern fit that bill. It is also not unheard of for a law school to temporarily employ its graduates, particularly during the month of February, when the employed-at-9-months figures are calculated. Yet for the purposes of ABA reporting, all of these students are employed in ‘business’ or ‘academia.’ Because *U.S. News* counts 25% of ‘unknown’ graduates as employed, many career services professionals are loath to contact graduates who have no job.

Does all of this chicanery amount to consumer fraud? If we have not crossed the line, we are at least perilously close to doing so.

Law schools care about the employed-at-9-months figures because even a slight decline could drop them several spots in the rankings. This has significant collateral effects on students, alumni giving, and, yes, who decides to enroll. Although the vast majority of students are ‘relying’ (a legal term that is an element of fraud) on the *U.S. News* rankings, rather than employment figures, law schools are not behaving ethically. The ABA accredita-

department and turned off its street lights, the level of bad behavior would increase. Moral exhortation would not be enough to solve the problem. As it turns out, good behavior proliferates when bad behavior is swiftly rooted out and punished. And virtually all of us want more good behavior. When we began writing about rankings, we did not fully grasp this lesson. Now we get it.

Applying this lesson to law schools is

tering. Prospective law students would be able to see—cheaply and transparently—what three years and \$100,000+ got recent graduates of a particular law school. As a result, it would be harder to fill the 45,000 annual entry-level slots and some law schools could go out of business. The remaining schools, however, would become much more attune to the value they are providing to both students and employers.



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tion standards mandate that law schools provide “basic consumer information” to the public “in a fair and accurate manner reflective of actual practice.” We are not there yet.

Our students are paying attention. Every day these shady practices continue, we lose our credibility to teach to next generation of lawyers on the rule of law and the professional imperative of honesty and ethical conduct.

End of the Road

With the recent publication of exposés on law school rankings in the *New York Times* and *The New Yorker*, deans and faculty have become vulnerable to the perception that students are being misled, especially with regard to future employment. This day is upon us because nobody in the legal academy was willing to step up and lead. We are professors; we’ll accept our share of the blame.

In this context, it is important to separate soapbox morality from bad, destructive behavior. It is the latter we are worried about. If a major city disbanded its police

simple but painful. Someone needs to act. The legal profession has a last chance to get it right. The ABA Section on Legal Education and Admission to the Bar should promulgate clear, rigorous standards on the reporting of post-graduation employment outcomes, specifying internal controls for how the data is compiled and documented. Reported data must then be verified as accurate and subject to random audits by neutral third-party professionals. When discrepancies are found, law school officials should be subject to severe penalties. We believe that the mere existence of a credible enforcement system would virtually eliminate the problem.

These data also need to be released to the public in a way that facilitates school-to-school comparisons. For the most part, these data are already reported to the National Association of Law Placement (NALP) but the information is never disclosed to the public on a school-by-school basis.

Many law schools would resist this solution because the data reported to NALP are often incomplete and unflat-

The ABA Section on Legal Education and Admission to the Bar may say such measures are too expensive given their limited personnel and resources. But the ABA Section is comprised of a large proportion of legal academics that would be adversely affected by such a change, either directly or indirectly. Therefore, it is up to the governing bodies of the ABA (comprised of practicing lawyers rather than academics) to step into the leadership vacuum. The cost of our proposal, perhaps \$2 million per year, could be paid for by a surcharge imposed on ABA-accredited law schools. In the aggregate, that is chump change compared to the 45,000 students making \$250,000 bets (in time and money) on their futures.

If the ABA does not act in the next few months, the Department of Justice, Congress, and the state supreme courts that regulate the legal profession should move to take away the ABA’s accreditation authority and act directly. This is an issue that should transcend partisan differences.

We are out of options. It is time to do the right thing.