
Raising The “Bar” On Law School Data Reporting: Solutions To The Transparency Problem

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ABSTRACT

The difficult legal job market has brought attention to the reporting practices of law schools regarding their graduates’ employment data. Allegations have emerged that this employment data is highly misleading. This Comment outlines the nature of the law school reporting problem and the competitive environment that gave rise to it. In addition, this Comment examines possible solutions to the data problem, particularly the availability of civil remedies in tort for aggrieved students. Finally, this Comment addresses multiple alternatives that would provide increased clarity in law schools’ employment data.

I. INTRODUCTION

William Henderson, a law professor at Indiana University, has suggested there may be a problem with the methods law schools use to produce employment statistics distributed to prospective students. “Enron-type accounting standards have become the norm. . . . Every time I look at this data, I feel dirty.”¹

Over the last few years, tuition and enrollment at American law schools have sharply risen, while the size of the legal job market continues to shrink.² Amidst this financial uncertainty, accusations have emerged that many law schools have been dishonest regarding reported enrollment and employment statistics.³ The accusations contend that law

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1. David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, at BU1.

2. See Katy Hopkins, *Law School Tuition Climbs Despite Legal Recession*, U.S. NEWS BEST LAW FIRMS (Sept. 9, 2010), <http://bit.ly/OylJGe/>.

3. See Staci Zaretski, *Fifteen More Law Schools to Be Hit with Class Action Lawsuits Over Post-Grad Employment Rates*, ABOVE THE LAW (Oct. 5, 2011, 2:30 PM), <http://bit.ly/Rp8WfJ/>; see also Martha Neil, *Villanova Says Inaccurate LSAT and GPA*

schools have tinkered with college grade point averages (GPAs), Law School Admission Test (LSAT) scores, and even the employment rates of recent graduates.⁴

Recently, these allegations have become very public, with lawsuits filed or forthcoming against at least 15 different law schools.⁵ This Comment will address the lawsuits filed by graduates, alleging that law schools are engaging in deceptive and fraudulent data reporting. Part II of this Comment will explore the condition of the legal job market and the current trend in law school enrollment statistics, which work together to create a favorable financial atmosphere for law schools while simultaneously promoting risky career and educational propositions for law students.⁶

Part II will then discuss the influential *U.S. News & World Report* law school rankings and the methods used to calculate them. Additionally, Part II will discuss the recent lawsuits and the various causes of action alleged by the plaintiffs.

Part III will examine the ways in which the problem of exaggerated statistics might be solved. First, the Comment will analyze the causes of action in the complaints against the Thomas M. Cooley School of Law (“Cooley Law”), which is generally representative of the lawsuits as a whole,⁷ to show that finding a remedy in court for aggrieved students is unlikely. Because the problem is likely ill-suited for courts to resolve, this Comment will then examine the current American Bar Association (ABA) reporting standards and recently proposed changes to the reporting standards to determine if they adequately ensure that law schools may not lie to or mislead applicants. This Comment will conclude with a discussion of possible alternatives for creating change in the realm of law school reporting.

Data Were ‘Knowingly Reported’ to the ABA in Prior Years, ABA JOURNAL, Feb. 4, 2011, available at <http://bit.ly/OULMwE/>.

4. See Zaretski, *supra* note 3; see also Bob Morse, *University of Illinois Law School Admits to Submitting Inflated Admission Data*, MORSE CODE BLOG (Oct. 5, 2011), <http://bit.ly/MdrMEM/>.

5. See, e.g., Zaretski, *supra* note 3.

6. See David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 16, 2011, at BU1.

7. See, e.g., Complaint at 34-41, John C. McDonald, Jr. v. Thomas M. Cooley Law School (No. 11-CV-00831) (Filed Aug. 10, 2011), available at <http://bit.ly/ODzSWY/>; Complaint, Alaburda v. Thomas Jefferson School of Law (No. 37-2011-000091898-CU-FR-CTL) (Filed May 26, 2011), available at <http://bit.ly/OJm4YC/>; Complaint at 33-40, Alexandra Gomez-Jimenez v. New York Law School (No. 652226/2011) (Filed Aug 10, 2011), available at <http://bit.ly/MdtLc2/>.

II. BACKGROUND

A. Law School Enrollment and Tuition

Law schools are a booming business: 49,700 students matriculated in 2010, representing the largest number of new law students in history and an increase of about 7,000 students over 2001’s matriculation statistics.⁸ Similarly, the number of LSAT takers increased by 13.3 percent in the 2009-2010 school year.⁹

In addition to rising law school matriculation rates, law school tuition has increased at a rate far in excess of undergraduate institutions, rising by about 317 percent since 1989, compared to a 71 percent rise in undergraduate tuition.¹⁰ Stanford University serves as a cogent example; for the 2011-2012 academic year, Stanford’s undergraduate program will increase campus-wide tuition by 3.5 percent.¹¹ However, Stanford Law School’s tuition will increase by 5.75 percent.¹² This trend shows no signs of slowing down, as law school deans predict that tuition will continue to rise.¹³ Several causes are cited for increased tuition.¹⁴ One cause is an incentive provided by the *U.S. News* rankings formula:

Part of the US News algorithm is a figure called expenditures per student, which is essentially the sum that a school spends on teacher salaries, libraries and other education expenses, divided by the number of students.

Though it accounts for just 9.75 percent of the algorithm, it gives law schools a strong incentive to keep prices high. Forget about looking for cost efficiencies. The more that law schools charge their students, and the more they spend to educate them, the better they fare in the US News rankings.¹⁵

Another cause for the tuition hike is that law schools have seen large decreases in state funding, forcing the schools to make up the

8. See Segal, *supra* note 6.

9. See Hopkins, *supra* note 2. Matriculation data for 2011, however, was lower than that of previous years, suggesting that the law school bubble may be on the verge of bursting. See, e.g., Jenna Ross, *Slump in Law School Applicants*, STAR TRIBUNE, Sept. 26, 2011, available at <http://bit.ly/NVeyNW/>.

10. See Segal, *supra* note 6.

11. See Elie Mystal, *Tuition at Stanford Law Goes Up Dramatically Because . . .*, ABOVE THE LAW (Feb. 9, 2011, 7:00 PM), <http://bit.ly/N7i1XP/>.

12. See *id.*

13. See Rachel M. Zahorsky, *Law Schools Need to Partner Up to Help Deflate Rising Tuition, Dean Says*, ABA JOURNAL, Mar. 26, 2011, available at <http://bit.ly/OUMFFx/>.

14. See, e.g., Segal, *supra* note 6.

15. *Id.*

difference.¹⁶ These cuts in funding have had the unfortunate effect of narrowing the gap between the cost of tuition at public law schools and the traditionally more expensive private schools, rendering an affordable legal education difficult to attain for many students.¹⁷ And while inflation certainly plays a role in increased expenses, law school tuition increases since 1989 are well above the rate of inflation over that period.¹⁸ Increased enrollment and rising tuition beg the question: are there enough jobs for these students?

B. The Uncertain Job Market For Graduating Law Students

The odds of landing a high paying job at a large law firm are increasingly difficult.¹⁹ Since 2008, roughly 15,000 jobs at large firms have vanished.²⁰ For graduates, such statistics mean “only about one-quarter of last year’s graduating law-school classes—down from 33% in 2009—snagged positions with big law firms.”²¹ In fact, the recession has caused some major law firms to cut recruiting by more than half or, in some cases, to cease recruiting entirely.²² Between January 2008 and September 2011, the legal field lost about 50,100 jobs, a decline of about 4.3 percent.²³

A recent study by the National Association for Law Placement (NALP) reported the employment rate for graduates at 87.6 percent, the lowest in 15 years.²⁴ This calculation does not mean that 87.6 percent of graduates are employed as attorneys.²⁵ Rather, this static counts any employment, even employment unrelated to the law.²⁶ Further, according to NALP executive director Jim Leipold, “[J]obs created by law schools to help young graduates accounted for nearly 3 percent of

16. See Hopkins, *supra* note 2.

17. See Karen Sloan, *At Public Law Schools, Tuition Jumps Sharply*, THE NATIONAL LAW JOURNAL, Aug. 3, 2009, available at <http://bit.ly/Ni7Nk5/>.

18. See Ameet Sachdev, *Law School Tuition Hikes Spark Talk of Bubble*, CHICAGO TRIBUNE, Apr. 27, 2010, available at <http://bit.ly/MXwS9c/>.

19. See Segal, *supra* note 1.

20. See *id.*

21. Patrick G. Lee, *Law Schools Get Practical*, WALL ST. J., July 11, 2011, available at <http://on.wsj.com/Mm7Zy6/>.

22. See Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 25, 2009, at B1.

23. See Katharine Mangan, *Law Schools on the Defensive Over Job Placement Data*, THE CHRONICLE OF HIGHER EDUCATION, Oct. 16, 2011, available at <http://bit.ly/NZWorB/>.

24. See Chris Mondics, *Law Review: Villanova's Unseemly Silence Over Law-School Scandal*, PHILADELPHIA ENQUIRER, Jun. 12, 2011, available at <http://bit.ly/MqwOyE/>.

25. See *id.*

26. See *id.*

jobs overall.”²⁷ Therefore, the intricacies used to calculate employment rates for law school graduates fail to accurately depict the current legal market.²⁸

C. A Statistical “Arms Race”

In the center of this storm of rising educational costs and diminishing job prospects is the *U.S. News* yearly ranking of the best law schools in the nation.²⁹ The annual rankings are influential:

Unlike M.B.A. applicants, who can choose from a range of commercial ranking systems with varying emphases and methodologies, *U.S. News* has maintained a virtual monopoly in the law school realm since it started its annual ranking 16 years ago. In the prelaw community, *U.S. News* rankings are gospel, so law school deans find themselves under tremendous pressure to adopt policies to improve their standing.³⁰

This battle for the top rankings³¹ creates what has been referred to as an “LSAT and G.P.A. arms race.”³²

U.S. News uses data such as LSAT test scores, along with other factors, to compile its annual list of the best law schools.³³ Quality assessment comprises 40 percent of the algorithm, which includes assessment scores by peers, lawyers, and judges.³⁴ Admissions criteria comprises 25 percent, consisting of the school’s median LSAT score, median undergraduate GPA, and acceptance rate.³⁵ Another 20 percent is allocated to placement success, which includes the employment rate of the school’s graduates at graduation, the employment rate of the school’s graduates nine months after graduation, and the bar passage rate of a school’s graduates.³⁶ The final 15 percent is allocated to faculty

27. *See id.*

28. *See* Mondics, *supra* note 24.

29. *See* Alex Wellen, *The \$8.78 Billion Maneuver*, N.Y. TIMES, July 31, 2005, available at <http://nyti.ms/QDdsIe/>.

30. *Id.*

31. One school embroiled in the law school litigation, Cooley Law, has developed its own rubric, distinct from the *U.S. News* system. This year, the Cooley Law rankings place Cooley Law at number two in the nation, second to Harvard Law School. In the *U.S. News* rankings, on the other hand, Cooley Law does not rank in the top 150 law schools in the nation. *See* Elie Mystal, *Latest Cooley Law School Rankings Achieve New Heights of Intellectual Dishonesty*, ABOVE THE LAW (Feb. 8, 6:23 PM), <http://bit.ly/MH11F9/>.

32. Wellen, *supra* note 29.

33. *See* Robert Morse & Sam Flanagan, *Law School Rankings Methodology*, U.S. NEWS, Mar. 14, 2011, available at <http://bit.ly/OSbP68/>.

34. *Id.*

35. *Id.*

36. *Id.*

resources, a category that includes expenditures per student, the student-to-faculty ratio, and library resources.³⁷

The *U.S. News* rankings are considered “the legal academy’s favorite punching bag” and are subject to much criticism.³⁸ The Society of American Law Teachers (SALT) has even suggested that law schools should work in conjunction with the ABA to minimize the importance of the *U.S. News* rankings.³⁹ SALT’s criticism of the *U.S. News* ranking system includes law schools’ poor allocation of limited resources in an effort to maximize rank, the ranking system’s effect of minimizing diversity in the classroom,⁴⁰ and the pressure for statistical success that the ranking system places on the limited resources of law school deans and faculty.⁴¹

The false reporting of law school data became public in 2011 when reports emerged that Villanova Law School had been inflating its LSAT and GPA information, both of which are part of the *U.S. News* algorithm.⁴² In response, the ABA punished Villanova, requiring the school to post a public censure on its website for the next two years.⁴³ Although a violation of this nature could have justified removal from the list of ABA-approved schools, Villanova’s cooperation and self-reporting of the information garnered leniency from the ABA.⁴⁴ At least one commentator compared the sanction to a slap on the wrist, especially in light of behavior he classified as “lying to the ABA for four years.”⁴⁵

Similarly, it was reported in October 2011 that the University of Illinois College of Law allegedly submitted inaccurate LSAT scores and undergraduate GPAs of its matriculates in four of the last ten years.⁴⁶ In the wake of these scandals, *U.S. News* said its policy is not to alter the

37. Morse & Flanagan, *supra* note 33.

38. Ashby Jones, *Is The U.S. News Ranking Methodology Too Simple?*, WALL ST. J. LAW BLOG (Apr. 5, 2010, 3:35 PM), <http://on.wsj.com/Ncx4h7/>.

39. SALT STATEMENT IN SUPPORT OF U.S. NEWS AND WORLD REPORT BOYCOTT (May 21, 2010), <http://bit.ly/QDe9kQ/>.

40. According to SALT, the system discourages diversity because “[g]iven the well documented but little understood performance gap on standardized tests, the emphasis on LSAT scores necessarily impacts members of groups who under-perform on such tests.” *Id.*

41. *Id.*

42. See Neil, *supra* note 3.

43. See Martha Neil, *ABA Raps Villanova re Inaccurate Admission Data, Says Law School Must Post Censure Online*, ABA JOURNAL (Aug. 15, 2011), <http://bit.ly/Mm97Sa/>. However, there were no accusations that Villanova altered its employment data.

44. See *id.*

45. Elie Mystal, *Villanova Might Need a Kiss From Mommy Since the ABA Slapped Their Wrist Wreally Wreally Whard*, ABOVE THE LAW (Aug. 15, 5:35 PM), <http://bit.ly/QtZXIL/>.

46. See Morse, *supra* note 4.

current rankings based on the findings.⁴⁷ One commentator has suggested that any change in University of Illinois College of Law’s 2012 ranking due to the altered statistics would have been minor because little difference existed between the reported and actual scores used to compile the 2012 list.⁴⁸

D. Inflated Employment Statistics

On May 26, 2011, Anne Alaburda, a recent graduate of the Thomas Jefferson School of Law (“Thomas Jefferson”), filed a class action suit in California state court against the university.⁴⁹ In her complaint, Alaburda alleged violations of various statutory consumer protection laws, intentional fraud, and negligent misrepresentation.⁵⁰ According to her complaint, Alaburda

graduated from . . . TJSL [Thomas Jefferson] in 2008 with more than \$150,000 in student loan debt. Since then, [Alaburda] has been unable to secure a full time job as an attorney that pays more than non-legal jobs that are available to her, even though she graduated with honors from [Thomas Jefferson]. [Alaburda] would not have attended [Thomas Jefferson] and incurred more than \$150,000 in school loans if she knew the truth about her job prospects upon graduation.⁵¹

The complaint alleges that the school misrepresented its statistics by, for example, reporting that the median salary of Thomas Jefferson graduates has remained steady over the last five years, even as the average nationwide salary of attorneys continues to decrease.⁵² The complaint also alleges that Thomas Jefferson manipulated employment rates:

Moreover, TJSL [Thomas Jefferson] misleads students by advertising post-graduation employment rates that typically exceed 70 percent, and that topped 90 percent in 2010. [Thomas Jefferson], though, conceals the fact that these figures include part time employment, as well as non law-related positions (i.e., a [Thomas Jefferson] student will be considered employed after graduation if he works as a part time waiter or convenience store clerk). Prospective students are led

47. *See id.*

48. *See id.*

49. Thomas Jefferson Compl., *supra* note 7.

50. *Id.* at 1.

51. *Id.* at 2-3.

52. *Id.* at 2.

to believe that they will be hired as full time attorneys when they graduate, even though that is frequently not the case.⁵³

Further, the complaint argues that there is no reason for a law school to include non-legal employment in employment statistics for any reason other than to deceive and mislead individuals into applying to the school.⁵⁴ Alaburda also alleges that she relied on the inaccurate statistics, which, if proven, could impute liability on the school.⁵⁵

In August 2011, recent graduates have filed lawsuits against two other law schools: one in New York state court against New York Law School and another in the Western District of Michigan against Cooley Law.⁵⁶ The complaints are similar to the Thomas Jefferson complaint described above; the two additional lawsuits allege fraud and negligent misrepresentation in addition to various state law claims.⁵⁷ The plaintiffs in the two suits demanded \$200 million from New York Law School,⁵⁸ and \$250 million from Cooley Law.⁵⁹ Recently, New York Law School filed a motion to dismiss the action.⁶⁰ Shortly thereafter, Cooley Law filed its own motion to dismiss.⁶¹

Soon after the initial lawsuits were filed, two law firms, The Law Offices of David Anziska and Strauss Law, announced that they intended to file lawsuits against at least 15 more law schools,⁶² all of which would allege fraud and negligent misrepresentation against the schools.⁶³

53. Thomas Jefferson Compl. at 2, *supra* note 7.

54. *Id.*

55. *Id.* at 11.

56. *See, e.g.*, Patrick G. Lee, *Law Grads Sue Over Tuition*, WALL ST. J., Aug. 11, 2011, at B2.

57. *See* New York Law School Compl., *supra* note 7, at 33-40; Cooley Law Compl., *supra* note 7, at 34-41. Jim Thelen, Cooley Law's general counsel, responded that the plaintiff's concerns and frustrations should not be directed at the individual law schools but at the American Bar Association or the Department of Education. *Lee, supra* note 56.

58. New York Law School Compl., *supra* note 7, at 40.

59. Cooley Law Compl., *supra* note 7, at 42.

60. *See* Jessica Dye, *New York Law School Fights Class-Action Suit Over Job Rates*, REUTERS, Oct. 14, 2011, available at <http://bit.ly/RG48hC/>.

61. *See* Elie Mystal, *Thomas M. Cooley Law School Adopts the 'Blame the ABA' Theory For Defending Its Employment Stats*, ABOVE THE LAW (Oct. 21, 3:48 PM), <http://bit.ly/NcxZ1b/>. Elie Mystal refers to Cooley Law's motion as "largely duplicative" of New York Law School's earlier motion. *Id.* Cooley Law has also recently filed another notable action: a defamation suit against a recent graduate who, angry over the lack of job prospects, started the *Thomas M. Cooley Law School Scam* blog. *See* Karen Sloan, *Law School Seeks to Expose Online Critic*, DAILY BUSINESS REVIEW, Oct. 18, 2011, available at <http://bit.ly/N7jNbE/>.

62. The schools targeted in the upcoming litigation are: Albany Law School, Brooklyn Law School, Hofstra Law School, Pace University School of Law, St. John's University School of Law, Villanova University School of Law, Widener University School of Law, University of Baltimore School of Law, Florida Coastal School of Law, Chicago Kent College of Law, DePaul University School of Law, John Marshall School

Actual complaints were not immediately filed because the Firms stated they were actively seeking alumni of each of these schools to act as plaintiffs in the forthcoming litigation.⁶⁴ The 15 schools were chosen “either because alumni approached the law firms, the schools were in markets saturated with lawyers, or the schools released implausible statistics.”⁶⁵ Four months later, complaints were filed against 12 of the additional law schools.⁶⁶ Law schools and other professional schools are expected to closely follow these lawsuits.⁶⁷ Scholars have speculated that, if these lawsuits are successful, similar lawsuits will likely follow.⁶⁸ However, rulings favorable to the law schools are beginning to trickle out in some of the pending lawsuits; for instance, on March 21, 2012, the lawsuit against New York Law School was dismissed.⁶⁹

At least three United States Senators have taken notice of the recent lawsuits.⁷⁰ In a letter dated October 13, 2011, Senators Barbara Boxer (D-CA) and Tom Coburn (R-OK) asked the Inspector General for the Department of Education to examine the state of American law schools

of Law, California Western School of Law, Southwestern Law School, and University of San Francisco School of Law. *See* Zaretski, *supra* note 3.

63. *See* Zaretski, *supra* note 3.

64. *See* Debra Cassens Weiss, *Law Firms Announce Plans to Sue 15 More Law Schools Over Job Stats*, ABA JOURNAL, Oct. 5, 2011, available at <http://bit.ly/Ni9Ch9/>.

65. *Id.*

66. *See* Katharine Mangan, *12 More Law Schools Face Lawsuits Over Job-Placement Claims*, THE CHRONICLE OF HIGHER EDUCATION, Feb. 2, 2012, available at <http://bit.ly/NuvdSo/>. The complaints were filed against the following twelve schools: Albany Law School, Brooklyn Law School, Hofstra Law School, Widener University School of Law, Florida Coastal School of Law, Chicago-Kent College of Law, DePaul University College of Law, Golden Gate University School of Law, John Marshall School of Law, California Western School of Law, Southwestern School of Law, and the University of San Francisco School of Law. *Id.*

67. Jesse Strauss, an attorney involved in the law school litigation, is quoted as saying, perhaps with a touch of hyperbole, but perhaps not, that “almost every law school in the country will be sued by the end of 2012.” Zaretski, *supra* note 3; *see also* Mangan, *supra* note 23.

68. *See* Mangan, *supra* note 23.

69. *See* Chris Dolmetsch, *New York Law School Wins Dismissal of Suit By Ex-Students*, BLOOMBERG (Mar. 21, 7:21 PM) <http://bloom.bg/RpeXsD/>. Judge Melvin L. Schweitzer, Jr., ruled that the materials “weren’t misleading” and that there was “ample information from other sources besides the school. *Id.*

As law graduates who made their decisions to go to law school before the full effects of the maelstrom hit, they now have turned their disappointment and angst on their law school for not adequately anticipating the possibility of the supervening storm and presenting the most complete job-related data that could possibly have been compiled.

Id. Defendants intend to appeal. *Id.*

70. *See* Elie Mystal, *Another Senator Wants to Hop On the Occupy the ABA Bandwagon*, ABOVE THE LAW (Oct. 14, 3:30 PM), <http://bit.ly/RG6X2g/>.

as Congress prepares to reform the Higher Education Act.⁷¹ Senators Boxer and Coburn requested an examination that “focuses on the confluence of growing enrollments, steadily increasing tuition rates and allegedly sluggish job placement.”⁷² The examination could be a prelude to future Senate hearings regarding the problems of legal education in America, a tactic that some Senators are said to be “strongly considering.”⁷³ Senator Chuck Grassley (R-IA), meanwhile, recently expressed his belief that the ABA should begin factoring in student-loan default rates in the law school accreditation process.⁷⁴

In mid-October 2011, the ABA issued a press release to “clarify” its role in the law school data reporting process.⁷⁵ It reaffirmed that schools must comply with Standard 509 of the ABA’s Standards for Approval of Law Schools, which reads, in part: “A law school shall publish basic consumer information. The information shall be published in a fair and accurate manner reflective of actual practice.”⁷⁶ If a law school fails to comply with Standard 509, it risks losing its accreditation under the ABA.⁷⁷

In addition, the ABA is refining the questions asked of law schools in order to increase the accuracy and completeness of information.⁷⁸ Schools will now have to provide more specific information regarding the nature of the jobs held by recent graduates.⁷⁹ A new questionnaire that attempts to address the current accuracy concerns was approved on December 3, 2011.⁸⁰ The adequacy and perceived effectiveness of these

71. Letter From Senator Tom Coburn and Senator Barbara Boxer to Inspector General Kathleen Tighe (Oct. 13, 2011), *available at* <http://bit.ly/N7kgdZ>. The Higher Education Act of 1965 is codified at 20 U.S.C. § 1001 *et seq.*

72. *Id.*

73. Ashby Jones, *Lawmakers Probe Law Schools’ Data*, WALL ST. J., Nov. 14, 2011, at A5.

74. See Mary Beth Marklein, *Law Schools Pressed to Tell the Truth on Job Placement, Debt*, USA TODAY, Oct. 25, 2011, *available at* <http://usat.ly/R1SzDO/>.

75. Press Release, American Bar Association, ABA Section of Legal Education and Admissions to the Bar Update on Job Placement Data (Oct. 17, 2011), *available at* <http://bit.ly/Ta2MhK/>.

76. *Id.*

77. *Id.* It is worth noting that Villanova Law School and University of Illinois College of Law ran afoul of Standard 509, and yet, the schools did not subsequently lose its accreditation. See *Potential Admissions Data Fraud at Illinois*, LAW SCHOOL TRANSPARENCY BLOG (Sept. 14, 2011 1:39 PM), <http://bit.ly/OO2D0v/>; *The ABA’s Toothy Toothlessness*, CONSTITUTIONAL DAILY (Oct. 2011, 2:36PM), <http://bit.ly/RDvHwn/>. The ABA is also seeking to draft a new standard that provides for specific and severe penalties for violations of this nature. See Press Release, *supra* note 75.

78. *Id.*

79. *Id.*

80. Karen Sloan, *ABA Gives Ground on Law Schools’ Graduate Job Reporting*, THE NATIONAL LAW JOURNAL, Aug. 3, 2009, *available at* <http://bit.ly/OC8ndB/>.

new measures taken and proposed by the ABA will be discussed in Part III.⁸¹

III. ALTERNATIVES TO INCOMPLETE LAW SCHOOL DATA

This analysis will examine three potential ways to solve the problem of incomplete or misleading law school data through: (1) causes of action brought in litigation;⁸² (2) improved standards from the ABA;⁸³ or (3) other avenues, such as intervention by a third party or Congress.⁸⁴

A. *Causes of Action*

Cooley Law, in support of its motion to dismiss the complaint against it, offers five separate arguments: (1) the verbose lawsuit does not constitute a “short and plain statement of the claim”; (2) the ABA and NALP are indispensable parties that must be joined to the litigation because the ABA and NALP standards are the true issue underlying the complaint;⁸⁵ (3) federal preemption; (4) the statute of limitations has lapsed; and, (5) the claims fail as a matter of law.⁸⁶

This Comment is concerned with the fifth issue presented: whether the claims against law schools are sufficient as a matter of law. Such an analysis will illuminate whether the current system of law school data reporting has yielded actionable tort claims and, thus, whether courts may provide a remedy to aggrieved law students.⁸⁷

1. Fraud and Negligent Misrepresentation

As discussed in Part II,⁸⁸ the complaint filed against Cooley Law alleges, in part, fraud and negligent misrepresentation.⁸⁹ To succeed on

81. See *infra* Part III.B.

82. See *infra* Part III.A.

83. See *infra* Part III.B.

84. See *infra* Part III.C.

85. On June 4, 2012, Judge Gordon J. Quist appeared to reject the notion that the ABA and NALP are the correct parties here, stating that the ABA and NALP standards are “a floor, not a ceiling.” See Chelsea Phipps, *Judge: Graduates Face ‘Uphill Battle’ in Lawsuit Against Cooley*, WALL ST. J. LAW BLOG (June 14, 2012, 12:03 PM), <http://on.wsj.com/R1TdRN/>. In other words, there is nothing to prevent the school from reporting with greater clarity if they chose to do so.

86. Brief in Support of Defendant Thomas M. Cooley Law School’s Motion to Dismiss at 1-3, *McDonald v. Thomas M. Cooley Law School* (No. 11-cv-0083) (filed Oct. 20, 2011), available at <http://bit.ly/OJnrq6/>. This paper will only discuss the Cooley Law case, although the other suits present similar, if not identical, issues.

87. See *id.*

88. See *supra* Part II.C.

89. See Mangan, *supra* note 23.

these claims, the plaintiffs will need to show that a law school breached a duty of care to the students.⁹⁰ This element will be difficult to show because the law schools were acting in compliance with the federal regulations and standards governing the process.⁹¹ To succeed on a fraud claim, the plaintiffs must show that

- (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage.⁹²

In its Motion to Dismiss, Cooley Law asserts, in part, that the plaintiffs have not sufficiently pled that the reporting was false, having taken issue with Cooley Law's 2010 report that 76 percent of graduates were employed, a statement which complied with the requirements of the ABA even though students may have been misled through the inclusion of non-legal jobs and other statistical nuances.⁹³ Therefore, Cooley Law argues, the plaintiffs have not sufficiently pled that the statement released by Cooley Law is false; rather, the report merely creates a "subjective misunderstanding of information."⁹⁴ If Cooley Law is correct, a subjective misunderstanding, while unfortunate, is unlikely to satisfy the elements of intentional fraud.

Cooley Law also argues that the plaintiffs have not pled that they reasonably relied on the school's statements regarding post-graduate employment.⁹⁵ First, Cooley Law contends the report containing employment data was labeled a "summary" and was not meant to indicate that all of the jobs were law-related or that the reported salary figures were based on all graduates, whether or not hired.⁹⁶ Cooley Law also argues that the methodologies for gathering the employment information are readily available to anyone who cares to investigate the matter and that such an investigation would clearly show the methodologies included non-legal jobs within the calculation.⁹⁷ Cooley

90. See, e.g., Elie Mystal, *supra* note 61.

91. See Mangan, *supra* note 23.

92. Moore v. Cycon Enters., 2006 U.S. Dist. LEXIS 57452, at *52-53 (W.D. Mich. Aug. 16, 2006) (citing Kassab v. Mich. Basic Prop. Ins. Ass'n, 491 N.W.2d 545, 548 (1992)).

93. Brief in Support of Defendant, *supra* note 86, at 28-30.

94. *Id.* at 30-31.

95. *Id.* at 33.

96. *Id.*

97. Brief in Support of Defendant, *supra* note 86, at 34.

Law cites Michigan case law that suggests there can be no justifiable reliance when the injured party has the accurate information at his or her disposal but fails to review the information.⁹⁸ This argument would be consistent with the decision of New York State Supreme Court Judge Melvin L. Schweitzer Jr., who, in dismissing the claims against New York Law School, found that the student-plaintiffs had “ample information” from available sources that could have outlined the methodologies used to generate the school’s reported data.⁹⁹

The second claim brought against Cooley Law, negligent misrepresentation, requires proof similar to that compelled by a fraud claim.¹⁰⁰ A negligent misrepresentation claim “requires ‘[a] plaintiff to prove that a party justifiably relied to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care.’”¹⁰¹

Commentators have noted that Cooley Law is likely shielded from a claim of negligent misrepresentation because it complied with the ABA standards.¹⁰² Even if the plaintiffs can show adequate reliance, it may be difficult to convince a court that there should be a remedy in tort law against law schools that followed the accreditation standard provided to them.¹⁰³ Perhaps the outcome would be different if the plaintiffs could demonstrate that the schools were not in compliance with those regulations; however, there is no indication of Cooley Law’s non-compliance.¹⁰⁴ If Cooley Law’s reporting did not meet those requirements, a breach of the duty of care would be considerably easier to prove.¹⁰⁵ Some legal scholars agree that, if the information was “all their accreditor required,” schools like Cooley Law are probably not liable for negligent misrepresentation.¹⁰⁶

Therefore, despite several law schools acknowledging that the reported data fosters misunderstanding, these same schools will be free from liability because they currently lack a legal duty to report the data in a manner clear to students.¹⁰⁷ Because no duty to “clearly” report exists, these tort claims will likely be dismissed for failure to satisfy the

98. *See id.* at 33 (citing *Cummins v. Robinson Twp.*, 283 Mich. App 677, 696 (2009), and *Webb v. First of Michigan Corp.*, 195 Mich. App. 470 (1992)).

99. *See Dolmetsch, supra* note 69.

100. *See* Brief in Support of Defendant, *supra* note 86, at 34-35.

101. *Salman v. U.S. Bank*, 2011 U.S. Dist. LEXIS 120062, at *11-12 (E.D. Mich. Oct. 18, 2011) (quoting *Unibar Maint. Servs. v. Saigh*, 769 N.W.2d 911, 919 (Mich. Ct. App. 2009)).

102. *See Mangan, supra* note 23.

103. *See id.*

104. *See id.*

105. *See id.*

106. *See Mangan, supra* note 23.

107. *See* Brief in Support of Defendant, *supra* note 86, at 30-31.

falsity and justifiable reliance prongs of both fraud and negligent misrepresentation claims.¹⁰⁸ Therefore, the pressure should fall upon the ABA who, by providing the regulations, essentially establishes the duty of care that law schools owe to potential students.¹⁰⁹ Based on the facts in current lawsuits, the ABA's current standard may be legally sufficient, but it could and should provide much more care.¹¹⁰

2. Michigan Consumer Protection Act

If common law causes of action against Cooley Law fail, the plaintiffs alternatively allege that the school has violated the Michigan Consumer Protection Act (Consumer Protection Act). Despite at least two law professors speculating that law schools may be exposing themselves to deceptive-advertising liability based on these practices,¹¹¹ the claim brought against Cooley Law does not seem to violate the Consumer Protection Act, suggesting the school will be shielded from liability.¹¹²

In response to the claim against it, Cooley Law asserts that the Consumer Protection Act applies only to the "conduct of trade or commerce," which is defined in the Consumer Protection Act as "providing goods, property, or service primarily for personal, family, or household purposes."¹¹³ Further, the Consumer Protection Act does not provide protection for goods or services purchased "primarily for business or commercial" purposes.¹¹⁴ Therefore, Cooley Law avers that the claim based on the Consumer Protection Act should fail as a matter of law.¹¹⁵

Indeed, Cooley Law points to Michigan case law to support its theory that the Consumer Protection Act would not apply to the pursuit of a law degree.¹¹⁶ In *Baptichon v. Thomas M. Cooley Law School*,¹¹⁷ the plaintiff brought various claims against Cooley Law after being dismissed from the program. One of these claims alleged violations of

108. *See id.*, at 30.

109. *See Mangan, supra* note 23.

110. *See, e.g., Segal supra* note 6.

111. Karen Sloan, *Are Law Schools Opening Themselves Up to Deceptive Advertising Claims?*, THE NATIONAL LAW JOURNAL, June 16, 2011, available at <http://bit.ly/MXyHmG/>.

112. *See infra* Part III.A.2.

113. Brief in Support of Defendant, *supra* note 86, at 24 (citing MICH. COMP. LAWS ANN. §§ 445.903(1), 445.902(1)(g) (West 2002)).

114. *Id.* (quoting *Zine v. Chrysler Corp.*, 236 Mich. App. 261, 273 (1999)).

115. *Id.*

116. *Id.*

117. 2009 WL 5214911, at *1 (No. 1:09-cv-562) (W.D. Mich. Dec. 28, 2009).

the Consumer Protection Act.¹¹⁸ The court held that, because a person pays law school tuition for a business or commercial purpose—that is, to earn future dollars and to get a job—the statute did not apply.¹¹⁹

The June 5, 2012 hearing on the Cooley Law Motion to Dismiss discussed in this section corroborates this viewpoint, as Judge Gordon J. Smith commented, “I don’t see that it’s a consumer issue,” and said to plaintiffs of the fraud allegation, “you’ve got an uphill battle.”¹²⁰

Declining to apply the Consumer Protection Act to the Cooley Law case would not be surprising because courts have frequently held that students seeking professional degrees are not “consumers” under consumer protection statutes.¹²¹ Thus, claims based on violations of a state’s consumer protection act are problematic, and various consumer protection acts would likely be inapplicable to the purchase of legal education.¹²²

Action under the Consumer Protection Act would also run into the same difficulties in pleading the adequate reliance required by the common law tort claims. Specifically,

Subsection 3(1)(s)[of the MCPA] prohibits making an omission that tends to mislead or deceive any consumer, but only if the omitted fact could not be reasonably known by that consumer. Thus, the issue is not whether the omission is misleading to a reasonable consumer but whether the consumer could reasonably be expected to discover the omission at issue.¹²³

The standard for reliance under the Consumer Protection Act, whether the consumer could reasonably expect to discover the misrepresentation, is similar to the standard for common law torts.¹²⁴ Therefore, if a simple Google search is enough to discern that this data may also include non-legal and temporary jobs, it may not be reasonable for students to rely solely on the raw numbers on a law school’s website.

118. *Id.* at *6-7.

119. *Id.* at *7.

120. *See* Phipps, *supra* note 85.

121. *See* Michelle L. Evans, Annotation, *Who is a “Consumer” Entitled To Protection of State Deceptive Trade Practice and Consumer Protection Acts*, 63 A.L.R. 5TH 1 (1998).

122. *See id.*

123. *Zine v. Chrysler Corp.*, 236 Mich. App. 261, 284 (1999).

124. *See supra* Part III.A.1.

B. *The Adequacy of the ABA Standards*

Because the courts are unlikely to afford relief, the ABA and NALP must address the situation.¹²⁵ Pressure should be placed on the ABA and NALP because law schools, which comply with the minimum disclosure requirements, are unlikely to initiate a change in the system. Currently, law schools lack the incentive to change how data is reported;¹²⁶ therefore, the ABA and NALP must intervene and lead an effort to improve law school reporting.¹²⁷

The recent steps taken by the ABA in 2011 toward refining questions, requirements, and expediency are steps in the right direction, although they still fall short of complete transparency.¹²⁸ One adjustment made by the ABA requires that the data available regarding a graduating class will be released one, instead of two, years after graduation.¹²⁹ The change will provide students with a more accurate view of the employment prospects they can expect immediately following graduation.¹³⁰ Further, employment information must now be reported for each graduate instead of merely being reported in the aggregate.¹³¹ Requiring data on each graduated student is beneficial because it will allow the ABA to audit the schools' stated aggregate figures.¹³²

The new questionnaire for law schools, officially approved on December 3, 2011, is also a vast improvement over prior questionnaires because it clarifies the specific questions asked about the types of jobs graduates tend to hold post-graduation.¹³³ Specifically, the new questionnaire requires schools to report whether the schools' graduates hold short or long-term positions, and whether or not such positions are professional legal positions.¹³⁴ Requiring more detailed post-graduate employment data is the most valuable improvement in the new regulations because it may help to eradicate previous iterations of this statistic that have had the effect of artificially inflating employment

125. See, e.g., Kyle McEntee and Patrick J. Lynch, *ABA Should Make Law Schools Provide Better Info Now*, THE NAT'L LAW JOURNAL, Sept. 22, 2011, available at <http://bit.ly/Qu3sPl/>.

126. See *id.*

127. See *id.*

128. See Bob Morse, *ABA Falls Short in Efforts to Improve Law School Placement Data*, MORSE CODE BLOG (Sept. 1, 2011), <http://bit.ly/RG8CVE/>; see also Sloan, *supra* note 80.

129. See Sloan, *supra* note 80.

130. See *id.*

131. See *id.*

132. See *id.*

133. See Sloan, *supra* note 80.

134. See *id.*

rates.¹³⁵ Now, instead of including temporary employment provided to graduates in the post-graduate employment rate, short-term employment will be distinguished from long-term professional employment.¹³⁶ This division will provide a more accurate representation of the post-graduate job market, as well as the success that individual law schools have in placing students in long-term professional employment positions.¹³⁷

The benefits of a more detailed collection of data will also extend to the *U.S. News* rankings, which intend to reflect any changes in ABA methodology.¹³⁸ Prospective students should welcome the development, especially because *U.S. News* intends to modify its rankings based on the ABA’s improved questions.¹³⁹ These changes will help students by eliminating law schools’ incentives to inflate statistics for more favorable rankings.¹⁴⁰

However, the new standards are lacking in the crucial area of school-by-school graduate salary information, which suggests that the ABA may be more concerned with protecting law schools’ reputations than in protecting prospective students.¹⁴¹ The ABA states that it still has no plans to publicly release graduate salary data specific to individual schools.¹⁴² The ABA intends to release salary data based on job-type and the state in which the graduate is employed, “but those numbers will not be broken down by law school.”¹⁴³ There is little justification to hold back important information on the average salaries of graduates.¹⁴⁴ Indeed, with many students facing \$100,000 or more in debt, salary information may be the most critical statistic of all.¹⁴⁵

Part of the difficulty in enacting change thus far may be related to a battle for control between interested parties, exemplified in the recent war of words between the ABA and NALP.¹⁴⁶ Changes requiring law school data to be sent directly to the ABA, rather than through NALP, as was the previous procedure, has created a power struggle between the

135. See, e.g., Mondics, *supra* note 24; see also Segal, *supra* note 1.

136. See Sloan, *supra* note 80.

137. See Wellen, *supra* note 29.

138. See Bob Morse, *ABA May Revise Law School Reporting*, MORSE CODE BLOG (Mar. 17, 2011), <http://bit.ly/MH3pvK/>.

139. See *id.*

140. See, e.g., Wellen, *supra* note 29.

141. See Sam Favate, *ABA Makes Changes to Data Collection of Law School Graduates’ Jobs*, WALL ST. J. LAW BLOG (Dec. 5, 2011, 11:37 AM), <http://on.wsj.com/N7kIU/>.

142. See *id.*

143. Sloan, *supra* note 80.

144. See, e.g., Segal, *supra* note 6.

145. See, e.g., Segal, *supra* note 1.

146. See Karen Sloan, *A Fight Breaks Out Between ABA, NALP Over Jobs Data*, THE NAT’L LAW JOURNAL, Aug. 9, 2009, available at <http://bit.ly/Qu3KWh/>.

two administrative bodies over which is best suited to handle the data.¹⁴⁷ NALP has stated that it is best suited to provide objectivity in the assembly and release of information, considering the ABA's affiliation with the legal industry.¹⁴⁸ Nevertheless, providing the data directly to the ABA will help the problem by placing accountability on the ABA.¹⁴⁹

C. Potential Solutions to the Data Problem

Four possible solutions to the data problem are (1) the creation of a private cause of action against a law school for reporting misleading data; (2) an initiation by the ABA of a policy calling for complete transparency in law school data reporting; (3) entry of a non-biased third party into the regulation of law school data reporting; or (4) a stipulation from Congress outlining new law school data reporting regulations.

With aggrieved students unlikely to succeed by means of private litigation given current law, a new private cause of action could be drafted to remedy the wrongs that law school graduates believe they have experienced. This private cause of action could be a "Student Protection Act" that would mirror the elements of state consumer protection acts but would specifically apply in an educational context.¹⁵⁰ By holding law schools liable for engaging in what some have called "ethical violations,"¹⁵¹ almost every law school in the nation would be exposed to liability for reporting misleading data, even though the data was in line with prior ABA regulations.¹⁵² There are over 200 ABA-approved law schools that could give rise to pools of future plaintiffs.¹⁵³ Attorneys representing the current plaintiff-graduates have already suggested they are seeking additional plaintiffs, and more lawsuits, so the success of even one lawsuit against a law school could have a serious snowball effect on the legal education industry.¹⁵⁴ The threat of a private cause of action from this many potential plaintiffs should create enough fear to

147. *See id.*

148. *See id.*

149. *See id.*

150. *See, e.g.,* Michigan Consumer Protection Act, MICH. COMP. LAWS ANN. § 445.90 (West 2002).

151. *See* Daniel S. Harawa, Note, *A Numbers Game: The Ethicality of Law School Reporting Practices*, 24 GEO. J. LEGAL ETHICS 607 (2011). Harawa's note examines the law school data crisis from the perspective of modern theories of professional ethics, concluding that such behavior is clearly not in keeping with traditional standards of ethicality.

152. *See* Sloan, *supra* note 111.

153. *See* *ABA Approved Law Schools*, AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, <http://bit.ly/OC95rk/> (last visited Feb. 2, 2012).

154. *See, e.g.,* Zaretski, *supra* note 3.

promise more accurate reporting.¹⁵⁵ On the other hand, the same fear of opening up the floodgates to litigation may be what makes such a solution unlikely to go forward.¹⁵⁶

A second solution is for the ABA to create superior requirements for law school data reporting.¹⁵⁷ The ABA is best situated to deal with this effort because it controls law school accreditation, and, thus, would be able to inflict penalties on non-complying schools. Ideally, the ABA should be more objective in terms of reporting than law schools are because the law schools may stand to suffer in the rankings by reporting accurate and transparent data on post-employment data.¹⁵⁸

To protect prospective students and to avoid future litigation against law schools, the ABA should adopt a policy of complete transparency.¹⁵⁹ In an age of increased information and consumer awareness, when even McDonalds Chicken McNuggets provide detailed descriptions of ingredients and nutritional facts,¹⁶⁰ the legal education industry should be required to provide full disclosure to those contemplating undertaking the great expense involved in a legal education.¹⁶¹ Additionally, the ABA should take greater care in ensuring that the information released by law schools directly to students is an accurate depiction of post-graduate opportunities, especially because the data underlying the statistic is readily available to the law schools via communications with recent graduates.¹⁶² While complete transparency could have the negative effect of highlighting the disparity between law schools and the caliber of students attending each school, it will supply students seeking to embark on a legal career with a true understanding of the return-on-investment that each school can offer.¹⁶³

A third possible solution is to give responsibility of data collection to a neutral third party.¹⁶⁴ On drawback to the current system, according

155. See, e.g., Sloan, *supra* note 111.

156. See, e.g., David Lat, *Class Action Filed Against Thomas Jefferson School of Law*, ABOVE THE LAW (May 31, 2011, 11:21 AM), <http://bit.ly/Mw6mhp/>.

157. See Favate, *supra* note 141.

158. See, e.g., Segal, *supra* note 6. On the other hand, as addressed earlier, NALP claims the ABA is not an objective party. See Sloan, *supra* note 146. If this accusation is true, a necessary part of the solution would be that, in the future, the ABA needs to be more objective.

159. See Favate, *supra* note 141.

160. See, e.g., *McDonald's USA Nutrition Facts for Popular Menu Items*, MCDONALDS, <http://bit.ly/Nczj4f/> (last visited Aug. 2, 2012).

161. See Segal, *supra* note 1.

162. See Favate, *supra* note 141; see also Sloan, *supra* note 111.

163. See, e.g., Segal, *supra* note 6; see also Shih, *supra* note 22.

164. See, e.g., Kyle P. McEntee, Patrick J. Lynch and Derek M. Tokaz, *LST Requests Class of 2010 Employment Information From Law Schools*, LAW SCHOOL TRANSPARENCY BLOG (Dec. 14, 2011, 2:20 PM), <http://bit.ly/Nuwqta/>.

to Professor William Henderson,¹⁶⁵ is that the ABA “has a long track record of releasing mountains of data in a format that makes it very difficult to analyze the industry or make meaningful school-to-school comparisons.”¹⁶⁶

Instead, an unbiased third party not affiliated with the ABA, the schools, or *U.S. News*, may be successful at providing proper disclosure in the future.¹⁶⁷ One group, the Law School Transparency (LST) organization, has recently spearheaded a data collection effort of its own, requesting that individual law schools provide them with employment information so that they may post all of the information in one data bank for prospective students to use.¹⁶⁸ LST seeks to have all of the relevant information presented in a clear, standardized, easy-to-understand format.¹⁶⁹

While a third party, such as the LST, may devise more accurate ways to collect data and rank law schools, a third party, alone, may have difficulty reducing the ABA’s strong hold on the legal education industry.¹⁷⁰ Schools are under no obligation to report to a third party such as LST; moreover, law schools are reluctant to release unfavorable data, meaning there is little reason to assume that law schools would release such information to a third party.¹⁷¹ The addition of more entities to which law schools are required to report information also threatens to increase the workload of university employees.¹⁷² However, if a third party other than the ABA were appointed by law, schools would be required to report to the third party, and this requirement could successfully force the law schools to unveil the statistics they refuse to fully disclose.¹⁷³

Finally, a possible solution is to have Congress specify data regulations through new legislation. For instance, such legislation could be enacted through an amendment to the Higher Education Act, which is nearing its own reform.¹⁷⁴ With the problem currently on Washington’s

165. Professor Henderson, an authority on this issue, was previously quoted in *The New York Times* on page 1. See Segal, *supra* note 1.

166. Sloan, *supra* note 146.

167. See McEntee, Lynch and Tokaz, *supra* note 164.

168. See *id.*

169. See *id.*

170. See *id.*

171. Nevertheless, LST has reported positive results from school requests so far. See *id.*

172. See, e.g., SALT STATEMENT, *supra* note 39.

173. See, e.g., Debra Cassens Weiss, *Only 26% of Law Schools Report Percentage of Grads with Legal Jobs, Study Finds*, ABA JOURNAL (Jan. 18, 2002), <http://bit.ly/PY5anRd/>.

174. See Letter to Inspector Tighe, *supra* note 71.

radar, Congressional action is not implausible.¹⁷⁵ Congress could even demand that the very statistics the ABA refuses to release, such as school-by-school salary information, must be released by law; this mandate would doubtlessly have a swift effect on the clarity and thoroughness of data reporting.¹⁷⁶

IV. CONCLUSION

Misleading law school statistics remains a pervasive problem.¹⁷⁷ Students are embarking upon six-digit mounds of debt based on sunny job prospects that are, in reality, just the opposite.¹⁷⁸ Under the standards provided by the ABA, students are led to believe that a far larger number of law school graduates find lucrative work as practicing attorneys than actually do.¹⁷⁹

Courts may resolve the problem, as evidenced by 15 lawsuits filed over the past year.¹⁸⁰ Nevertheless, a careful review at the prevailing legal theories suggests that no relief will be found under traditional common law tort actions or state consumer protection acts.¹⁸¹ Thus, courts are likely not a viable option.

There are a few looming solutions that might fix the problem. The ABA may resolve the problem if it decides to demand complete transparency from law schools.¹⁸² Yielding to current pressures from students, reporters, and Congress, the ABA has begun changing its reporting standards, yet these standards are far from offering total transparency to potential law school applicants.¹⁸³ There are also third parties seeking to take command of the information, but it is uncertain whether such an effort will be fully successful.¹⁸⁴

The principal solution would be for Congress to intervene, demanding more straightforward reporting under the Higher Education Act.¹⁸⁵ With an ever-increasing public outcry and the embarrassing lawsuits filed and forthcoming, it is likely that Congress will act should the ABA choose not to do so.¹⁸⁶ However, if all law schools and the

175. See, e.g., Jones, *supra* note 73.

176. Joe Palazzolo, *Congress Gives Law Schools the Stink Eye*, WALL ST. J. LAW BLOG (Nov. 14, 2011, 9:16 AM), <http://on.wsj.com/Mmcf0m/>.

177. See, e.g., Mangan, *supra* note 66.

178. See, e.g., Segal, *supra* note 1.

179. See *id.*

180. See Mangan, *supra* note 66.

181. See *supra* Part III.A.

182. See *supra* Part III.C.

183. See *supra* Part III.B.

184. See McEntee, Lynch and Tokaz, *supra* note 164.

185. See *supra* Part III.C.

186. See, e.g., Marklein, *supra* note 74.

ABA voluntarily begin to release straightforward, easy-to-understand data, Congressional action would be unnecessary.¹⁸⁷

If 2011 is an indication for the future, the best course of action for proponents of complete law school data transparency is to continue applying pressure to the ABA. After years of refusing to budge on the subject, the ABA has responded in the past year to the increasing outcry from commentators and lawmakers, as well as from the negative press produced by the lawsuits initiated against several of the nation's law schools.¹⁸⁸ Facing such criticism, the ABA may take action in 2012 that provides a tipping point in the controversy.

187. *See supra* Part III.C.

188. *See, e.g.*, Sloan, *supra* 80.