



Professional Dishonesty

Do U.S. Law Schools That Report False or Misleading Employment Statistics Violate Consumer Protection Laws?

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ABSTRACT

This article examines the potential legal application of the Federal Trade Commission Act¹ ("FTC Act") to American Bar Association ("ABA") accredited law schools. In recent years, evidence has emerged indicating that many law schools are misreporting or falsifying employment statistics in marketing materials, and to the *U.S. News and World Report* law school rankings, the preeminent rankings for United States (U.S.) law schools. The reporting of false or misleading employment statistics to prospective students may violate provisions of the FTC Act that prohibit deceptive trade practices and false advertising. This article reviews evidence that U.S. law schools are misreporting employment statistics, examines how the FTC Act applies to U.S. law schools, and argues that U.S. law schools that misreport or falsify employment statistics violate multiple provisions of the FTC Act.

INTRODUCTION

During the 2009-2010 school year, U.S. law schools enrolled over 51,000 students.² Over the next three years, most of the students will spend well over \$100,000 on educational expenses and living costs,³ incurring significant student loan debt primarily in the form of federal Title IV student loans.⁴ In return for this investment, most students believe that they will significantly improve their career prospects, allowing them to pursue financially lucrative and rewarding careers.⁵

A law school's location, size, reputation, and employment statistics play significant roles in a student's decision to attend. Increasingly, many students are consulting, and often relying upon, the annual law school rankings and employment statistics published by *U.S. News and World Report* in making their decision.⁶ While there are other rankings of U.S. law schools, most members of the legal community believe that the *U.S. News and*

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World Report rankings are the authoritative law school rankings.⁷ This emphasis on a law school's rank has increased competition between law schools for top students, quality facilities and faculty, driving the substantial increase in law school tuition over the past two decades.⁸ Over the past decade, evidence has emerged that many law schools also are reporting false or misleading employment statistics in order to attract students and improve the school's ranking.⁹ This has created a legal education culture in which reported employment statistics are at best incomplete, and at worst, false or misleading.¹⁰

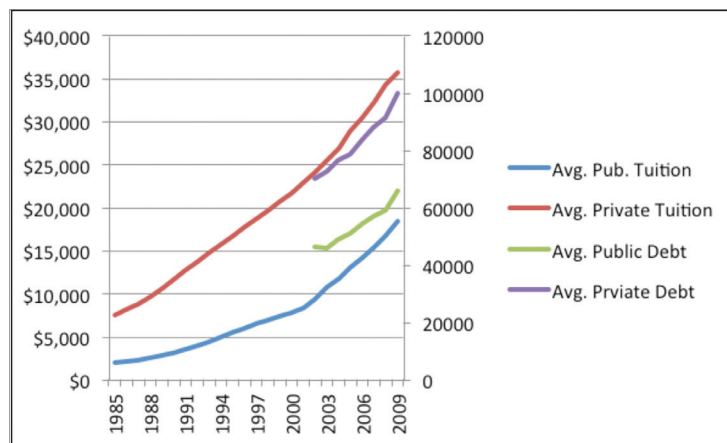
Law schools that report false or misleading employment statistics violate the FTC Act's prohibitions on deceptive practices and false advertising.¹¹ Law schools are professional schools intended to prepare students for a very specific career, a career that schools advertise provides substantial economic benefits. Consequently, law schools are similar to a business that advertises a service for sale or not-for-profit organizations that provide pecuniary benefits to members and fall under the jurisdiction of the FTC Act. By reporting false or misleading employment statistics in marketing materials and to *U.S. News and World Report*, law

schools violate the FTC Act's prohibition of deceptive trade practices and false advertising. Prospective law students reasonably rely upon a law school's employment statistics to choose whether to attend a law school, and consequently, the reporting of false or misleading employment statistics materially affects law students. The FTC should investigate law schools, and enforce the FTC Act to force law schools to be honest about the employment prospects of the school's graduates. Application of the FTC Act to law schools would improve the U.S. legal education system and benefit society as a whole.

I. REPORTING FALSE EMPLOYMENT STATISTICS

The *U.S. News and World Report* rankings were first published in 1987.¹² *U.S. News and World Report* uses a variety of different statistics voluntarily submitted to the magazine¹³ by law schools, and a national survey of academics, attorneys, and law firm recruiters to determine a school's reputation.¹⁴ Statistics considered include a law school's reputation, LSAT scores and GPAs of admitted students, admission offer and acceptance yield, employment at graduation,¹⁵ the size of the school's law library, student-faculty ratio, square footage of the law school building, per student spending, bar passage rates, and additional factors.¹⁶ The weight of each statistic in computing the ranking varies year-by-year,¹⁷ nonetheless, a school's LSAT and GPA statistics, reputation and employment statistics generally play the largest role in determining a school's ranking.¹⁸

Though often critical of the rankings, law school administrations routinely take a variety of actions to maintain and/or increase their school's ranking.¹⁹ Hiring additional professors to reduce student-faculty ratios, expanding law school facilities, providing scholarships to students with high LSAT scores or GPAs, and employing graduates part-time for up to nine months have become common practice.²⁰ Increasing pressure from alumni, current students and prospective students to maximize a school's ranking has exacerbated this trend, coinciding with a significant increase in the cost of a law degree. Engaging in the practices necessary to inflate a school's ranking requires additional revenue, which provides an incentive for administrator's to increase the price of tuition. At public law schools, decreased state funding for higher education has contributed to the increased cost to students.



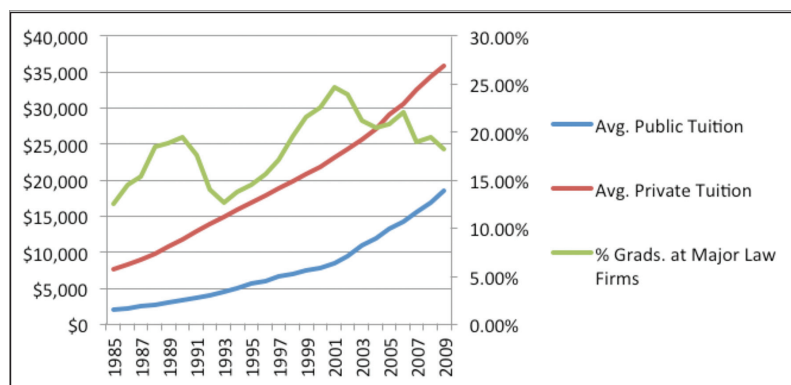
Graph 1. Increasing Law School Debt and Tuition.²¹

Over past 25 years, law school tuition has increased exponentially. In 1985, average resident tuition at a public law school was \$2,006 and average private school tuition was \$7,526.²² By 2009, average public law school resident tuition had increased to \$18,472 and average private law school tuition had increased

to \$35,743.²³ Between 2002 and 2009, the average amount borrowed at public law schools increased from \$46,499 to \$66,045, and at private law schools, from \$70,147 to \$100,000, respectively by 42% and 43%.²⁴ In 2009, the U.S. Government Accountability Office (GAO) investigated the causes behind the exponential increase in the cost of a law degree.²⁵ The GAO concluded that an increasing emphasis in legal education on clinical and resource-intensive “hands-on” educational programs, and competition for higher rankings were the primary reasons behind the increase:²⁶

[T]he move to a more hands-on, resource intensive approach to legal education and competition among schools for higher rankings appears to be the main factors driving the cost of law school, while ABA accreditation requirements appear to play a minor role.

Most students accept the higher tuition rates with the expectation that upon graduation they will have no difficulty securing employment that allows them to pay off their student loans with ease.²⁷



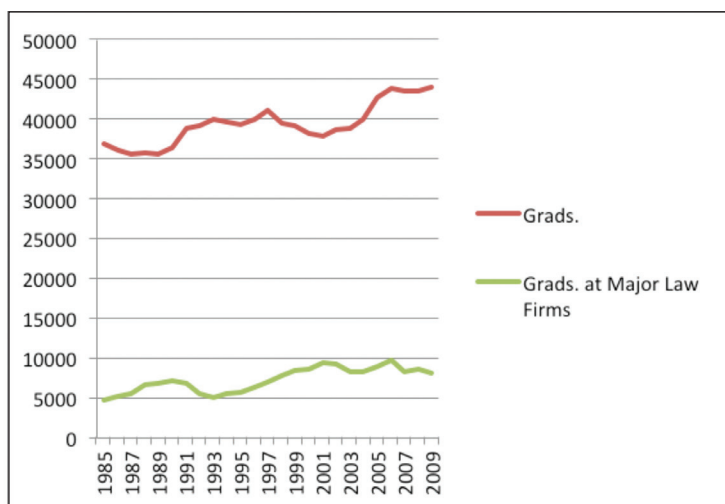
Graph 3. Increasing Tuition Cost, Less Graduates at Major Law Firms.³⁵

Despite the less than stellar employment prospects for many law school graduates, law school enrollment continued to grow through 2009.³⁶ Between 1971 and 2009, law school enrollment increased by 59.2%.³⁷ In 1971, there were 147 ABA-accredited law schools with a total enrollment of 91,225.³⁸ By 1990, the number of law schools had increased to 171 with total enrollment of 119,501.³⁹ By 2000, 183 law schools with total enrollment of 125,173.⁴⁰ As of 2009, there were 200 law schools with total enrollment of 145,239.⁴¹ While the population size of the U.S. increased over the same period, many attribute this growth to universities’ financial interest in opening law schools and enrolling additional students. Public and private law schools commonly provide net revenue to their parent university; universities have used law school “profits” to fund other university departments and programs, and in one case, the state government.⁴² This has led many in the legal community to conclude that law schools are often used as “cash cows” for universities.

Despite the fact that more than 80% of law school graduates are not landing six-figure salary positions with major law firms, many law schools continue to report average or median private-sector salaries near or over \$100,000 in marketing materials and to *U.S. News and World Report*.⁴³ Schools that list such salaries base their calculations on internal employment surveys sent to recent graduates of their law schools. While the number of graduates who respond and/or provide salary information varies from school to school, many schools appear to be reporting average and/or median salaries based on surveys with a response rate of 50% or less.

In 2007, the Tulane University Law School reported a starting median private-sector salary of \$135,000 per year for 2005 graduates based on a survey that only 24% of graduates completed.⁴⁴ The school amended the figure after the *Wall Street Journal* cited the school’s use of the survey in marketing materials in a front-page article on poor job prospects for recent law school graduates.⁴⁵ While law schools are increasingly disclosing the percentage of graduates who respond to the surveys that they use to calculate employment statistics, listing average and median salaries based on such an unrepresentative sample is potentially misleading, if not dishonest, to prospective students.⁴⁶ Furthermore, because there is no standardized methodology for schools to release employment statistics, the statistics reported by schools vary widely as do survey practices.

Between 2008 and 2011, the University of California, Davis, School of Law’s (“UC Davis”) *U.S. News and World Report* rank increased from 44 to 23, one of the highest rankings increases in recent years.⁴⁷ While the school expanded the square footage of the law school building,⁴⁸ and had seen increases in average LSAT scores and GPAs, there are questions about the verac-



Graph 2. Less Than 19% of Graduates Secure Employment at Major Law Firms.²⁸

In 2007, at the height of the housing and credit bubble, first-year associates were earning \$160,000 per year at major law firms.²⁹ Even prior to the expansion of the housing and credit bubble, first-year associates at major firms routinely had starting salaries over \$100,000. However, not reported as often, if not ignored, was that generally only graduates of elite law schools secured such positions.³⁰ Of the 43,518 graduating members of the Class of 2007, only 8,248 (19%) worked at major law firms with 100 or more attorneys nine months after graduation.³¹ Of the 44,000 graduating members of the Class of 2009, only 8,026 (18.2%) worked at major law firms nine months after graduation.³² The 2008-2009 financial crisis and economic downturn severely affected the U.S. legal market, significantly reducing the availability of these already scarce positions. This downturn left an even greater proportion of law school graduates with nothing to show for their law degrees except thousands of dollars of student loan debt.³³ Continued uncertainty about the future of major law firms and the legal profession indicate that the percentage of law students securing employment with major firms will remain at or below current levels.³⁴

ity of the employment statistics that the school reported to *U.S. News and World Report*. In 2011, the school reported that 95.8% of 2009 graduates had secured employment at graduation with a median private sector salary of \$145,000 per year.⁴⁹ While the school provides more detailed employment statistics on the employment statistics section of its website, the data reported to *U.S. News and World Report* probably does not accurately reflect the actual employment rate or median private sector salaries of graduates of the Class of 2009.⁵⁰ UC Davis' reported employment rate at graduation was higher than the rates reported by most elite law schools.⁵¹ Furthermore, similarly ranked law schools reported significantly lower employment rates.⁵² Graduates of the UC Davis Class of 2009 confirm that at least 15 students out of 191 graduates were unemployed at graduation, indicating that UC Davis' actual employment rate at graduation was likely 92.2% or less.⁵³

In 2012, UC Davis reported 82.5% employment at graduation with a median starting salary of \$145,000 to *U.S. News and World Report*.⁵⁴ As a result of the 13.3% decline in UC Davis' reported employment at graduation, changes in reported statistics, and *U.S. News and World Report's* methodology, Davis dropped from 23 to 29 in the *U.S. News and World Report* rankings. Without a substantial evaluation of the *U.S. News and World Report* methodology, comparing UC Davis' 2011 reported statistics and reviewing the 2011 and 2012 reported statistics of similarly ranked law schools, it is not possible to determine how substantial of an effect the lower rate of reported employment had on UC Davis' ranking. Nonetheless, it seems highly likely that the lower reported employment rate negatively affected UC Davis' ranking. UC Davis is not alone in having questions raised about the veracity of the school's reported employment statistics.

In January 2011, the Villanova University School of Law announced that it had knowingly reported false GPA and LSAT data to the ABA.⁵⁵ The law school made the announcement after its new administration conducted an internal investigation of the school's previous submissions to the ABA.⁵⁶ Through the investigation, the administration found that the school inaccurately reported a median LSAT of 162. Similarly, in September 2011, the University of Illinois College of Law admitted that it had submitted inaccurate GPA and LSAT information for the past three of four years to the American Bar Association and *U.S. News and World Report* rankings.⁵⁷ Reporting false LSAT and GPA data is

indicative of a culture in which attracting prospective students, additional revenue and increasing the law school's *U.S. News and World Report* ranking take precedence over the accurate reporting of employment statistics.

U.S. law schools are facing criticism over their employment statistics reports.

The likely misreporting of employment statistics at the UC Davis School of Law and confirmed misreporting of GPA and LSAT data at the Villanova University School of Law and University of Illinois College of Law does not appear unique. In the latest *U.S. News and World Report* Rankings, a number of law schools with rankings below 50 (non-tier one), reported starting median private salaries at or above \$100,000.⁵⁸ Without reviewing a school's employment survey methodology and internal data, it is not possible to determine the veracity of these statistics. Nonetheless, there is reason to doubt the high employment rates and median salaries reported by many, if not most, law schools, especially given current economic conditions and the high number of major law firm layoffs and deferrals between 2008 and 2010.⁵⁹

Increasingly though, U.S. law schools are facing criticism

over their employment statistics reports. In July 2009, two Vanderbilt University Law School students founded the Law School Transparency Project (LST).⁶⁰ LST advocates for law schools to release employment information to prospective law students, using a standardized methodology that allows for objective evaluation of employment statistics.⁶¹ In July 2010, LST sent letters to every ABA-accredited law school, requesting that the schools submit employment statistics conforming to a methodology enclosed in the request.⁶² Only 11 law schools responded to LST's request before the close of the 60-day response period.⁶³ LST later learned that law schools had communicated with each other about the request.⁶⁴

The Internet has also become a source of criticism of law schools.⁶⁵ *Above the Law*, a legal blog that "takes a behind the scenes look at the world of law" routinely posts articles about law school graduates failing to secure gainful employment in the legal sector and questioning law school administrations' marketing and reporting of employment statistics to prospective law students.⁶⁶ Multiple other blogs raise similar questions, and criticize the U.S. legal education system.⁶⁷

In May 2010, California Bar President Howard Miller published a column discussing the inability of many law school graduates to find gainful employment and the reporting of false or misleading employment statistics.⁶⁸ Miller lamented that too many law school graduates are unable to find the entry-level attorney positions that provide the education and experience required to begin a successful legal career.⁶⁹ In addition, he questions many law schools' reporting of employment statistics:

There is notoriously unreliable self-reporting by law schools and their graduates of employment statistics. They are unreliable in only one direction, since the self-reporting by law schools of "employment" of graduates at graduation and then nine months after graduation are, together, a significant factor in the U.S. News rankings — which are obsessed over, despite denials, by law schools and their constituencies.⁷⁰

Some law professors are also critical of law schools' reporting of employment statistics. William Henderson, a law professor at Indiana University's Maurer School of Law, questions the legitimacy of the employment statistics reported by schools, and advocates for more transparent reporting standards.⁷¹ Brian Tamanaha, a law professor at the Washington University Law School, reports that law students only discover the inaccuracy of law schools' employment statistics after they enroll in law school, and is calling on law schools to adopt straightforward employment statistic reporting practices.⁷²

In April 2011, Professor Paul Campos of the University of Colorado Law School published an article in *The New Republic*.⁷³ In the article, Campos compared and contrasted law schools' reported (in *U.S. News and World Report*) employment statistics with his own calculation of the actual employment statistics for graduates of *U.S. News and World* "Top 50" law schools.⁷⁴ Despite the fact that nearly all ABA accredited law schools previously reported employment rates of over 90% employment nine months after graduation to *U.S. News and World Report*, Professor Campos found that only 45% of graduates of top 50 law schools had non-temporary, legal, full-time positions nine months after graduation.⁷⁵ Professor Campos' inquiry regarding law school employment statistics raises further questions about the veracity of the statistics that law schools report to *U.S. News and Report*. In fact, even *U.S. News and World Report* questions the legitimacy of law schools' reported employment statistics. In March 2011, editor Brian Kelly sent a letter to law school deans requesting that

they ensure that their schools are reporting accurate employment statistics.⁷⁶

The strongest effort to force law schools to stop reporting false and misleading employment statistics lies with the filing of multiple class action lawsuits against law schools. New York attorneys David Anziska and Jesse Strauss are the leading effort to file class action lawsuits against law schools around the country.⁷⁷ As of February 2012, Anziska and Strauss had filed 15 class actions lawsuits.⁷⁸ In addition, in March 2012 Anziska and Strauss announced plans to file class action lawsuits against 20 additional schools by May 31, 2012.⁷⁹ A standard complaint from Anziska and Strauss alleges consumer protection act violations (laws vary by state), fraud, and negligent representation on the part of the law school.⁸⁰ Whether this effort successfully encourages law schools to improve employment statistics reporting practices remains to be seen. Nonetheless, class action litigation may provide financial recourse for recent graduates who are unemployed or underemployed.

In response to increasing criticism of law schools' reported employment statistics, the ABA recently proposed additional reporting requirements for ABA-accredited law schools.⁸¹ The proposal amends ABA Standard 509, Basic Consumer Information, by requiring law schools to disclose the past three years graduating classes' employment statistics in accordance with standards determined by an ABA committee.⁸² The employment statistics must be "fair, accurate, and not misleading," and must include the percentage of salaries and number of students included.⁸³ This is a substantial amendment to Standard 509, the standard currently requires law schools to only publish "basic consumer information."⁸⁴ In a March 2011 letter to the ABA, U.S. Senator Barbara Boxer (D-CA) urged the association to adopt this proposal to "ensure potential students have a full understanding of the costs and benefits of legal education."⁸⁵ Similarly, U.S. Senator Charles Grassley (R-IA) made a similar request in July 2011, and continues to press the ABA on the issue.⁸⁶ The ABA's proposal and bi-partisan calls of elected officials for transparency is indicative of the increasing political and public awareness of law schools reporting of false or misleading employment statistics.

LST, the recognized leader among law students and law school graduates advocating for increased transparency, is supportive of the ABA's proposal.⁸⁷ Nonetheless, LST believes that the standard should require the reporting of specific statistics.⁸⁸ Under LST's proposal, law schools would be required to disclose the following for each graduate: 1) Employment status; 2) Employer type; 3) Full-time or part-time; 4) Required credentials; 5) Location; 6) Whether the graduate received special funding; and 7) Job Source.⁸⁹ While the ABA's proposal would shed some light on the employment outcomes for law school graduates, it may not include all of the information required to allow prospective law students to make an informed decision about whether to pursue legal education.

Peer pressure, public pressure and continued media scrutiny could force law schools to stop reporting misleading employment statistics. As of May 2012, *U.S. News and World Report* does not provide a disclaimer that some law schools may misreport data. Furthermore, while some law schools indicate on their websites that they base their employment statistics on a survey that a substantial number of graduates did not respond to, many do not.⁹⁰ The ABA's proposal to change employment statistics reporting requirements would force law schools to report more accurate employment statistics. Increasing scrutiny over law schools' recruiting and reporting practices could generate the political will for a Congressional investigation into law schools and potential legislation requiring schools to report accurate employment sta-

tics. Nonetheless, under current U.S. consumer protection laws, the Federal Trade Commission ("FTC") could secure a court order under the FTC Act to stop law schools from reporting false or misleading employment statistics.⁹¹

II. THE FTC ACT

The FTC Act prohibits individuals and organizations from engaging in deceptive trade practices or false advertising.⁹² While only the FTC can enforce the Act, it is an effective means for stopping an organization from deceiving or misleading consumers. In multiple instances, the FTC has applied the FTC Act to non-profit organizations.

Section Five of the FTC Act prohibits "persons, partnerships, or corporations" from engaging in unfair or deceptive practices.⁹³ The deceptive act must have a "direct, substantial, and reasonably foreseeable effect" on commerce.⁹⁴ In practice, the FTC considers three factors in determining whether a practice was unfair or deceptive.⁹⁵ First, whether the representation, omission or practice is likely to mislead the consumer.⁹⁶ The FTC has previously found false oral and written representations, sales of systematically defective products without disclosure, and failure to perform promised services to be misleading, satisfying the first criteria.⁹⁷ Second, whether the consumer was acting reasonably in relying on the representation, omission or practice.⁹⁸ And third, whether the representation, omission, or practice was material, meaning that the practice is likely to affect the consumer's choice of product or service and causes injury.⁹⁹

While the FTC's first and third criteria for determining whether a practice or advertisement is deceptive or misleading are fairly straightforward, the second criterion leaves room for ambiguity with its reasonableness standard. Multiple FTC cases have established this standard. In *Heinz W. Kirchner*, 63 F.T.C. 1282 (1963), the FTC noted that corporations cannot be liable for every possible misconception created by a misrepresentation as sometimes "foolish or feeble minded" consumers may unreasonably interpret the representation. Instead, in interpreting a representation, the FTC examines the impression that the representation leaves with the public.¹⁰⁰ In certain cases, the FTC considered the level of sophistication and knowledge of the groups that the representation targeted in determining the reasonable effect of the representation on consumers.¹⁰¹ The FTC has held that it is not reasonable for consumers to rely on "puffing," claims (claims that most consumers will not take seriously) or subjective, smell, taste, feel, claims.¹⁰²

Section 12 of the FTC Act prohibits false advertising.¹⁰³ Prohibited false advertisements induce or are likely to induce consumers to purchase food, drugs, devices, services, or cosmetics.¹⁰⁴ Section 15(a)(1) defines "false advertisement" as one that is materially misleading.¹⁰⁵ To determine whether an advertisement is misleading, the FTC considers the representation made by the advertisement, and the extent to which the advertisement fails to reveal material facts within the context of those representations.¹⁰⁶ Under the FTC Act, the FTC can enjoin false advertisements by suing in U.S. District Court.¹⁰⁷ Furthermore, if a federal prosecutor can show that an individual or corporation disseminated a false advertisement with the intention to defraud or mislead, he or

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she may be charged with a misdemeanor, and face a fine of up to \$5,000 and imprisonment for up to six months.¹⁰⁸

While the FTC Act's prohibitions on false advertising and deceptive practices clearly apply to for-profit organizations and individuals, it is somewhat ambiguous whether the FTC Act applies to not-for-profit organizations. Section 4 of the FTC Act broadly defines corporations. Under Section 4, a corporation is defined as any company, trust or association that is organized to carry on business for its own profit or that of its members.¹⁰⁹ The FTC has long claimed to hold jurisdiction over not-for-profit organizations that provide pecuniary benefits to members.¹¹⁰ Furthermore, courts have upheld the FTC's power to exercise such jurisdiction when challenged.¹¹¹ The FTC has properly exercised jurisdiction over non-profit organizations that provided pecuniary benefits to their members.¹¹² In *California Dental Association v. FTC*, 526 U.S. 756 (1999), the Court ruled that the FTC could exercise jurisdiction over an association that engaged in lobbying, litigation, marketing and public relations on behalf of its members.¹¹³ The *California Dental Association* Court reasoned that the association transferred "far more than *de minimis* or merely presumed economic benefits" to members and thus, fell within the jurisdiction of the FTC Act and the FTC.¹¹⁴

The FTC has authority to exercise jurisdiction over not-for-profit organizations that provide pecuniary benefits for their members, and consequently, enforce multiple provisions of the FTC Act. Nonetheless, do law schools qualify as not-for-profit organizations that provide pecuniary benefits to their membership? Do the FTC Act's prohibitions on deception and false advertising potentially apply to law schools, and, do law schools that report false or misleading employment statistics violate the FTC Act?

III. REPORTING FALSE EMPLOYMENT STATISTICS VIOLATES THE FTC ACT

Although law schools are institutions of higher education, in many ways, they act as not-for-profit organizations that provide pecuniary benefits to their members. Students pay tuition, a form of a membership fee, to receive legal training from the law school.¹¹⁵ This legal training allegedly provides economic benefits by allowing students who complete a degree to pursue a career in law. Students would not likely pay for legal training if they did not believe that the value of the training equaled or outweighed its cost. Because law schools provide pecuniary benefits to students, law schools fall under the jurisdiction of the FTC Act.¹¹⁶ If a law school reports false or misleading employment statistics, the law school does so in violation of the FTC Act's prohibition on deceptive practices and false advertising.¹¹⁷

A. U.S. Law Schools are Not-For-Profit Organizations Providing Pecuniary Benefits to Students and FTC Act Applies

Nearly all ABA-Accredited law schools are part of a public not-for-profit or private not-for-profit institution of higher education that charge enrolled students tuition. This fee is akin to a membership fee that an individual or organization pays to an association with the hope of gaining services or benefits from membership with that organization.¹¹⁸ Furthermore, most law schools rely heavily upon marketing and recruiting practices to enroll prospective students.¹¹⁹ In many ways, law schools are more like for-profit businesses, competing over customers (law students) to sell a product that provides direct economic benefits than traditional institutions of higher education.¹²⁰ Consequently, the FTC has jurisdiction over law schools under the FTC Act.¹²¹

Law students choose to enroll in a law school because they judge that the legal training, and economic opportunities provided by the school will likely be superior to that of another

law school or not attending law school.¹²² Students who attend a law school with no monetary cost through a scholarship covering living and tuition expenses sacrifice income that they could make by pursuing a professional career with their college diploma, which is almost always required to attend a U.S. law school. As of 2012, there are 200 ABA-Accredited law schools and a number of unaccredited law schools. Virtually anyone with a college diploma can attend law school, including those individuals with a low GPA or low LSAT.

The largest ABA-accredited law school is the Thomas Cooley School of Law, a private not-for-profit institution that enrolls over 4,000 students, over 3,500 whom are part-time students.¹²³ Cooley refuses to submit information to *U.S. News and World Report*, and reports a median undergraduate GPA of 2.99 and a median LSAT score of 146, well below the median GPAs and LSAT scores of most low-ranked and unranked law schools.¹²⁴ Cooley releases annual rankings in which it consistently ranks itself as a "Top 10" law school, often outranking traditional elite law schools such as Harvard or Columbia. In addition, the school has a marketing campaign emphasizing that reputation does not matter: "If the NFL only signed players from the Top 20 'college football reputations,' 62 out of 88 NFL quarterbacks would not be on a roster today."¹²⁵ The school reports \$52,000 as the average starting salary for graduates, and does not report an employment rate on its website.¹²⁶ For fiscal year 2009, only 36% of former Cooley law students were actively repaying outstanding federal student loans; 36% is a significantly lower rate than the repayment rates for graduates of other law schools.¹²⁷ Within the legal community, Cooley is known for publishing what many consider fake rankings, questionable marketing practices, and a willingness to accept students with very low GPAs and LSAT scores.¹²⁸ Nonetheless, without a review of internal documents, it is not possible to determine the actual employment outcomes for graduates. As of May 2012, Cooley is subject to a class action lawsuit for fraud in which the plaintiffs are represented by New York City attorneys Davis Anziska and Jesse Strauss.¹²⁹

While the Thomas Cooley School of Law is likely an extreme example of a law school investing heavily in marketing to offset a poor reputation, it is indicative of the tendency for law schools to act like for-profit businesses competing for customers.¹³⁰ The FTC Act was enacted to regulate the trade practices of businesses, and prevent businesses from misleading consumers.¹³¹ As previously discussed, there is heavy competition among law schools to maximize their *U.S. News and World Report* ranking, and to attract the best and brightest law students.¹³² The inclusion of employment statistics in the *U.S. News and World Report* rankings and marketing materials indicates the importance of this information to prospective law students. Students generally attend law school to prepare for a legal career, and in doing so, receive economic benefits by their attendance and completion of a law degree.¹³³ Just as the individuals and organizations who joined the California Dental Association (CDA) in *California Dental Association v. FTC*, 526 U.S. 756 (1999) sought the economic benefits of lobbying, marketing, and regulatory advice provided by CDA, law students seek the economic benefits of a career in law, for which law schools claim to

The FTC Act was enacted to regulate the trade practices of businesses, and prevent businesses from misleading consumers.

prepare them.¹³⁴ Consequently, the FTC, which has jurisdiction over not-for-profit organizations that provide pecuniary benefits to members, has jurisdiction over law schools.¹³⁵

Law schools seeking to avoid application of the FTC Act will likely argue that the Act does not apply to law schools. Law schools are generally associated with institutions of higher education, and although students pay institutions of higher education tuition to attend classes, the institutions provide educational, not economic, benefits.¹³⁶ Institutions of higher education do not provide students with lobbying, marketing and regulatory advice, distinguishing the institutions from the industry associations that the FTC has previously exercised jurisdiction over.¹³⁷ Instead, institutions of higher education help students to gain knowledge and develop reasoning abilities.¹³⁸ Furthermore, if the FTC Act applies to law schools then it likely applies to all colleges and universities. Thus, application of the FTC Act to law schools would radically expand the law's scope, creating new oversight responsibility for the FTC to monitor the business practices of the nation's 4,681 colleges and universities.¹³⁹ Furthermore, the addition of this obligation would distract the FTC from its intended purpose of regulating trade practices among for-profit businesses.¹⁴⁰

This argument fails because law schools are a special type of institution of higher education. As long as law schools continue to provide legal education designed to prepare students for a legal career, the FTC likely has jurisdiction. While institutions of higher education generally focus on developing knowledge and critical thinking skills, law schools are distinct in that they prepare students for a legal career. Most individuals pursue a career to receive economic benefits or an income from that career. In preparing law students to pursue a legal career, law schools directly provide pecuniary or economic benefits to students. This is distinguishable from a liberal arts program at an institution of higher education, which although focused on a specific subject, generally does not prepare students for a specific career field. Furthermore, law schools actively market themselves, and compete to attract the most qualified law students.¹⁴¹ The FTC likely has jurisdiction over law schools as long as the schools provide legal education, and actively market themselves to prospective students.

B. Reporting False and Illegitimate Employment Statistics Violates the FTC Act Sections 5 and 12

The FTC Act was enacted to help prevent organizations from deceptively marketing or falsely advertising the goods that they sell to consumers.¹⁴² U.S. law schools compete heavily to maximize their *U.S. News and World Report* ranking, improve their reputation, and enroll students with high LSAT scores and GPAs.¹⁴³ Despite a focus on ethics within the legal education system, it is increasingly evident that many law schools are reporting false or misleading employment statistics to *U.S. News and World Report* and prospective students.¹⁴⁴ Without reviewing internal school documents,¹⁴⁵ or conducting independent employment surveys of a law school's graduates it is not possible to demonstrate that a school is reporting false employment statistics.¹⁴⁶ Nonetheless, if a school does report false employment statistics to *U.S. News and World Report* or in marketing materials, the school likely violates the FTC Act by engaging in deception and false advertising.

Section 5 of the FTC Act prohibits deceptive trade practices.¹⁴⁷ To determine whether a practice is deceptive the FTC considers whether the practice is likely to mislead consumers, would mislead a reasonable consumer, and is material or likely to affect the consumer's product choice and causes injury.¹⁴⁸ A law school that reports false or misleading employment statistics to *U.S. News and World Report* or in marketing materials is highly likely to mislead prospective students about the employment outcomes of its graduates. While many law schools disclose in marketing mate-

rials that reported employment statistics only represent outcomes for students that respond to the school's employment survey, this disclosure is not included in the *U.S. News and World Report* rankings. As a result, prospective law students who seek to determine the employment prospects for graduates of a particular law school must rely on the employment statistics that the school reports in marketing materials or to *U.S. News and World Report*.

Without making a public records request to public law schools, prospective law students have no reasonable means other than word of mouth, a school's marketing materials and the *U.S. News and World Report* law school rankings and profiles to determine the employment prospects for graduates of a law school. The emphasis on ethics within the legal education system, and a general sense of intellectual honesty in academia likely convince prospective law students to rely on, and trust information reported by law schools.¹⁴⁹ Consequently, law students act reasonably in relying on the employment statistics provided by law schools.

The employment prospects of graduates of a law school are one of the most important criteria in choosing a law school for prospective students. Law schools prepare students for a legal career with the end goal of the law student securing gainful legal employment upon graduation. Prospective students are likely to heavily weigh employment prospects, if reported, of graduates of a law school in determining whether to attend. Accordingly, the employment statistics reported by a law school are likely to play a significant role in a prospective law student's decision to attend that law school. A law school's reported employment statistics are therefore material to the prospective student's choice to attend, thereby satisfying the third requirement for deception under the FTC Act.

In addition to violating the FTC Act's prohibition on deceptive practices, a law school that reports false or misleading employment statistics also likely violates the FTC Act's prohibition on false advertising.¹⁵⁰ Under the FTC Act, a false advertisement is an advertisement that is materially misleading, and is likely to induce consumers to purchase food, drugs, services or cosmetics.¹⁵¹ To determine whether an advertisement is false, the FTC considers the representation made by the advertisement, and the extent to which the advertisement fails to reveal material facts within the context of those representations.¹⁵² Employment outcomes are material in a law student's decision to attend a law school, and false or misleading employment statistics reported by a law school misrepresent a law school's employment outcomes. Thus, a law school that reports false or misleading employment statistics likely violates the FTC Act's prohibition on false advertising.

Law schools that report false or misleading employment statistics could argue that employment statistics are not material to a prospective student's decision to attend law school. Therefore, reporting false or misleading employment statistics does not constitute a deceptive practice or false advertising under the FTC Act.¹⁵³ While law schools are professional schools, they focus on providing students a legal education and developing students' critical and legal thinking abilities. Furthermore, not all law students actually enter the legal career field, meaning that employment statistics play a less significant role in a law student's decision to attend law school than argued by the FTC.

Nonetheless, a review of the history of legal education in the U.S. indicates that this argument is flawed.¹⁵⁴ Prior to the development of law schools, most attorneys would complete an apprenticeship under a practicing attorney. Law schools were eventually developed to combine the teaching of legal principles and thinking with practical legal training. The increasing modern emphasis on "hands on" legal training, as reported by law schools administrators, demonstrates an even greater emphasis for preparing students not just to understand legal principles and theories, but also to practice law.¹⁵⁵ While law schools do develop students' legal

knowledge and thinking abilities, law schools primarily focus on preparing students for a career in law, indicating that reported employment outcomes are material to a prospective law student's decision whether to attend a law school.

C. Enforcement of FTC Act for Law Schools Would Improve Legal Education System

Law schools that report false or misleading employment information harm the U.S. legal education system and profession, as well as society. Inaccurate employment statistics result in students enrolling in law school who may otherwise not choose to go to law school, leave former law students (graduates and non-graduates) unable to repay their student loans,¹⁵⁶ and saturate the legal market with too many lawyers.¹⁵⁷ The FTC should investigate U.S. law schools, and enforce the FTC Act in cases where a law school reports false or misleading employment statistics. Investigation and prosecution would increase accountability and transparency in the legal education system, and enable prospective law students to make more fully informed enrollment decisions. Furthermore, just as questions have been raised about sending the "nation's best and brightest" individuals to work on Wall Street, it may be reasonable to ask, as Supreme Court Justice Antonin Scalia has, whether sending so many individuals to law school is a prudent investment in human capital.¹⁵⁸

False or misleading employment statistics set unrealistic expectations for prospective law students. 90%, and often over 90%, of graduating classes at second, third and fourth tier law schools, which constitute the majority of law schools in the U.S., will not secure employment at a major law firm with a six-figure salary upon graduation.¹⁵⁹ 66% or more of graduating classes at most tier one law schools will not secure such a position.¹⁶⁰ Nonetheless, the median private sector salaries and employment rates reported by many law schools do not disclose true graduate employment outcomes. Consequently, prospective students enroll with unrealistic and often grossly exaggerated, post-graduation employment and income expectations. As a result, many law students do not fully understand the consequences of the loans that they take out or their ability to repay them.¹⁶¹

As law schools continue to produce law students, the legal employment market has become overly saturated. Students who enrolled in law school, expecting a law degree to secure a middle class or upper-middle class lifestyle, find themselves earning \$20-\$30 per hour, without benefits, for contract legal work and unable to begin the career marketed to them by their law school.¹⁶² Had law schools not engaged in reporting false or misleading employment statistics, at least some of these individuals would likely not have pursued a law degree. Not attending law school would have saved them the hardship of a failed career and thousands of dollars in student loan debt that is not dischargeable in bankruptcy. Consequently, by reporting false or misleading employment statistics, law schools violate the FTC Act, and harm the legal profession and education system.

CONCLUSION

The FTC should investigate the advertising and employment statistics reporting practices of U.S. law schools. Many law schools are violating the FTC Act by reporting false and misleading employment statistics. The FTC has jurisdiction over law schools because they are professional schools oriented towards preparing students for legal careers, and therefore, provide pecuniary benefits to students. If a law school reports false or misleading employment statistics in marketing materials or to *U.S. News and World Report*, the law school engages in deception and false advertising in violation of the FTC Act. Reporting false employment statistics is deceptive as prospective law students have

limited, or no resources to determine a school's actual employment statistics. Those employment statistics play a material role in a prospective law student's choice to attend a law school.

Without third-party intervention, law schools will likely continue to report misleading or false employment statistics as the effort to maximize a law school's *U.S. News and World Report* ranking continues.¹⁶³ Increasing media coverage and scrutiny of law schools marketing practices, David Anziska's and Jesse Strauss' class action litigation effort, and reports in early 2012 of a significant decline in law school applications give some reason for optimism that prospective law students are beginning to demonstrate skepticism as to the value of attending law school.¹⁶⁴ Furthermore, the ABA's recent proposal to require law schools to disclose specific employment information may spell the end of ABA-accredited law schools reporting false or misleading employment statistics.¹⁶⁵

While ending the reporting of false and misleading employment statistics will help to ensure that prospective law students can make a fully informed decision to attend law school, there is much more that can be done to reestablish the integrity of the U.S. legal education system. Requiring law schools to disclose student loan repayment rates would help prospective students to determine if most graduates are finding gainful employment.¹⁶⁶ In addition, a gainful employment regulation that disqualifies law schools, with low student loan repayment rates or debt/income ratios, for federal financial aid under the Higher Education Act of 1965 may limit further tuition increases and student loan debt.¹⁶⁷ While law schools will likely oppose all of these proposals, the *status quo* needs to change.¹⁶⁸ A legal education system that emphasizes honesty and justice, and requires students to take a class on legal ethics should not have a culture in which law schools actively mislead prospective students about their likely employment outcomes.¹⁶⁹

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1. 16 U.S.C. §§ 41 et seq.

2. AMERICAN BAR ASSOCIATION, FIRST YEAR J.D. AND TOTAL J.D. MINORITY ENROLLMENT FOR 1971 - 2010, available at http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_8.authcheckdam.pdf. William D. Henderson & Andrew P. Morriss, *How the Rankings Arms Race Has Undercut Morality*, NATIONAL JURIST, March 2011, at 10.

3. This figure does not include the opportunity cost for students to attend school full-time rather than working full-time.

4. Higher Education Act of 1965, 20 U.S.C. § 1070 et seq.

5. Henderson & Morriss, *supra* note 2.

6. *Best Law Schools*, U.S. NEWS AND WORLD REPORT, (March 15, 2011) <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings> (hereinafter "2011 U.S. News Rankings"); Brian Burnsed, *Law Students Rank Their Future*, U.S. NEWS AND WORLD REPORT, Jan. 7, 2011, <http://www.usnews.com/education/best-graduate-schools/top-law-schools/paying/articles/2011/01/07/law-students-rank-their-future>.

7. Rachel F. Moran, *Commentary: Of Rankings and Regulation: Are the U.S. News & World Report Rankings Really a Subversive Force in Legal Education?*, 81 IND. L.J. 383 (2006), 383. See generally BRE

- NAN & LEDUC, JUDGING THE LAW SCHOOLS (2011), *available at* http://www.cooley.edu/rankings/docs/Judging_12th_Ed_2010.pdf (law school rankings published by Thomas Cooley School of Law); Brian Leiter, *Brian Leiter's Law School Rankings*, (April 4, 2011) <http://www.leiterrankings.com/new/index.shtml>; *Law School Rankings*, PRINCETON REVIEW, (April 4, 2011) <http://www.princetonreview.com/law-school-rankings.aspx>.
8. UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, ISSUES RELATED TO LAW SCHOOL COST AND ACCESS. October 2009 *available at* <http://www.gao.gov/new.items/d1020.pdf> (*hereinafter* "GAO Report").
9. *See infra*, section I, REPORTING FALSE EMPLOYMENT STATISTICS, .
10. *Id.*
11. 16 U.S.C. §§ 5 & 12; *see infra* Section I, REPORTING FALSE EMPLOYMENT STATISTICS VIOLATES THE FTC ACT.
12. J. Paul Lomio and Erika V. Wayne, *Ranking of Top Law Schools 1987 – 2006 By U.S. News & World Report*, Legal Research Paper Series, March 2005, *available at* http://www.law.stanford.edu/publications/projects/lrps/pdf/lomiowayne_rp4.pdf.
13. A small number of ABA-accredited law schools refuse to submit statistics to *U.S. News and World Report*.
14. *See generally* Paul Caron, *U.S. News Changes Methodology in Forthcoming New Rankings to Stop Schools From Gaming Employment Data*, TAX PROF BLOG (March 9, 2011) http://taxprof.typepad.com/taxprof_blog/2011/03/us-news-confirms-.html. For a detailed look at law school debt and employment statistics review the Law School Transparency Project's statistics database. *Class of 2009 U.S. News Data*, LAW SCHOOL TRANSPARENCY PROJECT, Apr. 10, 2011, *available at* <http://www.lawschooltransparency.com/2011/04/class-of-2009-u-s-news-data/>.
15. *Id.*
16. Robert Morse & Sam Flanigan, *Law School Rankings Methodology*, U.S. NEWS AND WORLD REPORT, 2011, <http://www.usnews.com/education/best-graduate-schools/articles/2011/03/14/law-school-rankings-methodology-2012>.
17. Changes in the rankings likely allows *U.S. News and World Report* to attract readers.
18. *Supra* note 16, Morse and Flanigan.
19. Kenneth Anderson, *LSAC Study on Law School Gaming Resources for US News Rankings*, THE VOLKH CONSPIRACY (Dec. 3, 2009) <http://volokh.com/2009/12/03/lsac-study-on-law-school-gaming-resources-for-us-news-rankings>; Karen Sloan, *Research Documents the 'U.S. News' Effect on Law Schools*, NATIONAL LAW JOURNAL, Dec. 2, 2009, *available at* <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202435994960&src=EMC-Email&et=editorial&bu=National%20Law%20Journal&pt=NLJ.com-%20Daily%20Headlines&cn=20091203NLJ&kw=Research%20documents%20the%20%27U.S.%20News%27%20effect%20on%20law%20schools&slreturn=1&chbxlogin=1>. *See generally* Amir Efrati, *Law School Rankings Reviewed to Deter 'Gaming'*, WALL ST. J., Aug. 26, 2008, *available at* <http://online.wsj.com/article/SB121971712700771731.html>.
20. Fellowships or employment at the school, after graduation have become common practice for part-time employment of students. Paul Campos, *Served: How Law Schools Completely Misrepresent Their Job Numbers*, THE NEW REPUBLIC, April 15, 2011, *available at* <http://www.tnr.com/article/87251/law-school-employment-harvard-yale-georgetown>. In addition, some law schools appear to be engaging in "bait and switch"-like practices by offering high dollar merit based scholarships that require students to have a certain GPA to keep the scholarship during the second and third years of law schools. David Segal, *How Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES, April 30, 2011, *available at* <http://www.nytimes.com/2011/05/01/business/law-school-grants.html?pagewanted=1&r=1&hp&adxnlnx=1304186507-DBPoLG8Jyo5jV99Q6kqSGw>.
21. AMERICAN BAR ASSOCIATION, LAW SCHOOL TUITION 1985-2009, *available at* http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_5.authcheckdam.pdf; AMERICAN BAR ASSOCIATION, AVERAGE AMOUNT BORROWED FOR LAW SCHOOL 2001-2009, *available at* http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_20.authcheckdam.pdf. Student loan debt statistics were not available for years prior to 2001.
22. *Id.*
23. *Id.*
24. *Id.* Information for the average amount borrowed prior to 2002 is not available to the best of the author's knowledge.
25. *Supra* note 8, GAO REPORT.
26. *Id.* at 2; Eric Kelderman, *Law-School Cost Is Pushed Up by Quest for Prestige, Not Accreditation*, GAO Survey Finds, THE CHRONICLE OF HIGHER EDUCATION, Oct. 26, 2009, *available at* <http://chronicle.com/article/Competition-Not/48940/>. *See also* Karen Sloan, *Legal Scholarship Carries A High Price Tag*, NATIONAL LAW JOURNAL, April 20, 2011, *available at* http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202490888822&Legal_scholarship_carries_a_high_price_tag&slreturn=1&chbxlogin=1.
27. *Id. supra* note 20, Campos, at 1-2.
28. American Bar Association and National Association of Legal Employers.
29. Major law firms are defined as law firms with 101 or more attorneys. Dealbook, *For Lawyers, Perks to Fit a Lifestyle*, N.Y. TIMES, Nov. 26, 2007, *available at* <http://dealbook.nytimes.com/2007/11/26/for-lawyers-perks-to-fit-a-lifestyle>; Joseph Goldstein, *Law Firms Racing to Boast Best Pay for Associates*, N.Y. SUN, Nov. 2, 2007, *available at* <http://www.nysun.com/business/law-firms-racing-to-boast-best-pay-for-associates/65738>; Jessica Guyn, *Right Out of Law School, Starting Salary, \$160,000 / Bay Area Firms Match Wages in New York to Draw A-List Talent*, S.F. CHRONICLE, May 5, 2007, *available at* http://articles.sfgate.com/2007-05-05/business/17244295_1_first-year-associates-orrick-herrington-sutcliffe; Catherine Rampell, *The Two-Track Lawyer Market*, N.Y. TIMES ECONOMIX, July 27, 2010, *available at* <http://economix.blogs.nytimes.com/2010/07/26/the-two-track-lawyer-market/>.
30. Amir Efrati, *Hard Case: Job Market Wanes for U.S. Lawyers*, WALL ST. J., Sept. 24, 2007, *available at* <http://online.wsj.com/article/SB119040786780835602.html>; Annie Lowrey, *When Law School Becomes a Bad Investment*, WASH. POST, Oct. 30, 2010, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/30/AR2010103004638.html>; Staff, *Stingier Job Market Awaits New Law School Grads*, ASSOCIATED PRESS, Sept. 24, 2007, *available at* <http://diverseeducation.com/article/9564/>. Many individuals define "elite law schools" as the "Top 14" law schools listed in the *U.S. News and World Report* rankings. In past years, the Top 14 has generally included Harvard, Yale, Stanford, Columbia, New York University, Chicago, Pennsylvania, Virginia, California-Berkeley, Michigan, Duke, Northwestern, Cornell and Georgetown. Tier One law schools are schools ranked between 16 and 50; Tier Two schools are typically ranked between 50-100; and Tier Three and Four schools are ranked over 100 or unranked. *See supra* note 12, J. Paul Lomio & Wayne.
31. NATIONAL ASSOCIATION OF LEGAL EMPLOYERS, CLASS OF 2007 NATIONAL SUMMARY REPORT (June 2008), *available at* http://www.nalp.org/uploads/1229_natlsummary07revised.pdf.
32. *Id.*
33. Jonathan D. Glater, *Finding Debt a Bigger Hurdle Than Bar Exam*, N.Y. TIMES, Jul. 1, 2009, *available at* <http://www.nytimes.com/2009/07/02/business/02lawyer.html>; *supra* note 30, Low-

rey; David Segal, *Is Law School a Losing Game*, N.Y. TIMES, Jan. 11, 2011, available at <http://www.nytimes.com/2011/01/09/business/09law.html>.

34. Staff, *A Less Gilded Future*, THE ECONOMIST, May 5, 2011, available at <http://www.economist.com/node/18651114> (discussing uncertainty for and potential decline of major law firms).

35. American Bar Association and National Association of Legal Employers.

36. AMERICAN BAR ASSOCIATION, FIRST YEAR J.D. AND TOTAL J.D. MINORITY ENROLLMENT FOR 1971-2011, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_minority.authcheckdam.pdf.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. Brian Boyd, *Exceeding expectations: UMass Law School Already Proving Critics Wrong*, SOUTH COAST TODAY, Feb. 27, 2011, available at <http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20110227/NEWS/102270326/-1/NEWSMAP>. (discussing a new public law school earning a profit and sending \$918,000 to the state government in its first year of operation); *supra* note 33, Segal (stating “You may think of law schools as training grounds for new lawyers, but that is just part of it... They are also cash cows... Tuition at even mediocre law schools can cost up to \$43,000 a year. Those huge lecture-hall classes — remember “The Paper Chase”? — keep teaching costs down. There are no labs or expensive equipment to maintain. So much money flows into law schools that law professors are among the highest paid in academia, and law schools that are part of universities often subsidize the money-losing fields of higher education.”); Ilya Somin, *Big-Name Universities That Don't Have Law Schools*, THE VOLOKH CONSPIRACY, (May 12, 2008), <http://volokh.com/posts/1210614188.shtml> (stating, “Why these universities haven't established law schools is a bit of a mystery (at least to me). Law schools tend to bring in net revenue for the university.”).

43. Katy Hopkins, *10 Law Degrees with Most Financial Value at Graduation*, U.S. NEWS AND WORLD REPORT, (March 29, 2011), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2011/03/29/10-law-degrees-with-most-financial-value-at-graduation>. See *supra* note 6, 2011 U.S. News Rankings.

44. Amir Efrati, *The Dark Side of the Legal Job Market*, WSJ LAW BLOG, (Sept. 24, 2007), <http://blogs.wsj.com/law/2007/09/24/the-dark-side-of-legal-job-market>.

45. *Supra* note 30, Efrati.

46. *Supra* note 6, 2011 U.S. News Rankings.

47. *Supra* note 12, Lomio & Wayne.

48. *Class of 2009 U.S. News Data*, LAW SCHOOL TRANSPARENCY PROJECT, Apr. 10, 2011, available at <http://www.lawschooltransparency.com/2011/04/class-of-2009-u-s-news-data/>. See also University of California, Davis, School of Law, *King Hall Expansion and Renovation* (April 4, 2011) <http://building.law.ucdavis.edu/project/index.html>.

49. U.S. News and World Report, *University of California-Davis*, U.S. NEWS AND WORLD REPORT (April 4, 2011) <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/school-of-law-03017>.

50. University of California, Davis, School of Law, *University of California Davis School of Law Employment and Salary Report Summary Class of 2009* (April 4, 2011) <http://www.law.ucdavis.edu/prospective/career-services/statistics.html>. In May 2011, the author placed a public records request with the University

of California, Davis, regarding the University of California, Davis, School of Law's reporting of employment statistics. Early responses to the public records request indicate that the law school considered individuals who were studying for the bar exam full-time “employed at time of graduation.”

51. The UC Davis School of Law's reported employment rate at graduation, published in *U.S. News & World Report*, for the Class of 2009 was higher than the rates reported by: Yale University Law School (94.5%), Harvard University Law School (93.7%), Stanford University Law School (94.5%), University of Chicago Law School (94.2%), University of Michigan School of Law (94.9%), University of California, Berkeley School of Law (92.2%), Northwestern University Law School (92.7%), Cornell University Law School (92.8%), Georgetown University Law Center (90.1%), University of Texas School of Law (91.2%). *Supra* note 6, 2011 U.S. News Rankings.

52. *Id.*

53. Interview with Phillip Yeager, 2009 Graduate of University of California, Davis, School of Law, March 22, 2011, notes on file with author.

54. U.S. News and World Report, *University of California-Davis*, U.S. NEWS AND WORLD REPORT, (May 20, 2012) <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/university-of-california-davis-03017>.

55. Jack Crittenden, *A New Low in the Rankings Arms Race*, NATIONAL JURIST, March 2011, at 4-6, available at <http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0311/#/4>.

56. *Id.*

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58. *Supra* note 43, Hopkins.

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62. KYLE P. MCENTEE, PATRICK J. LYNCH, & NATALIE J. REYES, LAW SCHOOL TRANSPARENCY REPORTS: THE INITIAL REQUEST 1-3, Nov. 15, 2010, available at <http://taxprof.typepad.com/files/lst.pdf>.

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64. *Id.* at 1.

65. See Lucille A. Jewel, *You're Doing It Wrong: How the Anti-Law School Scam Blogging Movement Can Shape the Legal Profession*, 12 MINN. J. OF LAW & TECH. 239, 239 (2011).

66. Above the Law, *About Above the Law*, (April 4, 2011) <http://abovethelaw.com/about/>; *infra* note 85, Mystal; Elie Mystal, *Law Students at a Top Law School Protest Continued Unemployment*, ABOVE THE LAW, (March 29 2011) <http://abovethelaw.com/2011/03/law-students-at-a-top-school-protest-continued-unemployment/>; Elie Mystal, *In Five Years Will the Endless March of New Lawyers Finally Stop?*, ABOVE THE LAW, (March 23, 2011) <http://abovethelaw.com/2011/03/in-five-years-will-the-endless-march-of-new-lawyers-finally-stop/>.

67. See generally LAW SCHOOL TUITION BUBBLE, (April 4, 2011) <http://lawschooltuitionbubble.wordpress.com/>; SHILLING ME SOFTLY, (April 4, 2011) <http://shillingmesoftly.blogspot.com/>; THE JOBLESS JURIS DOCTOR, (April 4, 2011) <http://www.noto-lawschool.com/>; THIRD TIER REALITY, (April 4, 2011) <http://thirtiertierreality.blogspot.com/>.

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74. *Id.*

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76. Robert Morse, *U.S. News Urges Law School Deans to Improve Employment Data*, U.S. NEWS AND WORLD REPORT, (March 9, 2011) <http://www.usnews.com/education/blogs/college-rankings-blog/2011/03/09/us-news-urges-law-school-deans-to-improve-employment-data>.

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80. Class Action Complaint, Cooper et al v. New York Law School, available at <http://www.nylj.com/nylawyer/adgifs/decisions/081111nylscomplaint.pdf>.

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82. *Id.* at 3.

83. *Id.*

84. ABA Standard 509.

85. Karen Sloan, *Sen. Boxer Joins Debate Over Law School Transparency*, NATIONAL LAW JOURNAL, March 31, 2011, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202488733307&slreturn=1&hbxlogin=1>. See generally Elie Mystal, *Watch Out, Law Schools: A United States Senator Wants You to Stop Lying*, ABOVE THE LAW, (March 31, 2011) <http://abovethelaw.com/2011/03/watch-out-law-schools-united-states-senators-want-you-to-stop-lying>.

86. Mark Hansen, *Sen. Grassley Questions ABA's Law School Accreditation Process*, ABA JOURNAL, July 13, 2011, available at http://www.abajournal.com/news/article/grassley_seeks_answers_on_abasLaw_school_accreditation_process/.

87. *LST's Proposal: The Job Outcome List and a National Salary Database*, LAW SCHOOL TRANSPARENCY PROJECT, March 29, 2011 <http://www.lawschooltransparency.com/2011/03/lsts-proposal/>.

88. *Id.*

89. *Id.*

90. *Supra* note 20, Campos, at 1-2.

91. 15 U.S.C. §§ 41, 44 & 45.

92. *Id.*

93. 15 U.S.C. § 45(1).

94. 15 U.S.C. § 45(3).

95. WILLIAM T. VUKOWICH, CONSUMER PROTECTION IN THE 21ST CENTURY: A GLOBAL PERSPECTIVE 129-36 (2002); Letter from John C. Miller III, FTC Chairman, to John D. Dingell, Chairman, House Committee on Energy and Commerce, Oct. 14, 1983 (hereinafter "FTC Letter").

96. *Id.* at 1.

97. *Id.*

98. *Id.* at 2-3. See *American Home Products*, 695 F.2d 681, 688 (3d Cir. 1982); *Porter & Dietsch*, 90 F.T.C. 770, 864-65 (1977), 605 F.2d 294 (7th Cir. 1979), cert. denied, 445 U.S. 950 (1980); *Heinz W. Kirchner*, 63 F.T.C. 1282, 1290 (1963).

99. *Id.* at 4.

100. *Grolier*, 91 F.T.C. 315, 430 (1978).

101. *Horizon Corp.*, 97 F.T.C. 464, 810 n.13 (1981).

102. *Supra* note 75, *FTC Letter* at 4.

103. 15 U.S.C. § 52.

104. *Id.*

105. 15 U.S.C. § 55(a)(1).

106. *Id.*

107. 15 U.S.C. § 53.

108. 15 U.S.C. § 54.

109. 15 U.S.C. § 44.

110. *American Medical Ass'n.*, 94 F.T.C. 701, 983-84 (1979).

111. *California Dental Association v. FTC*, 526 U.S. 756, 766 (1999); *F.T.C. v. Nat'l Comm'n on Egg Nutrition*, 517 F.2d 485 (7th Cir. 1975); *American Medical Ass'n.*, 94 F.T.C. at 983-84 (1979).

112. *California Dental Ass'n*, 526 U.S. at 766 (1999); *American Medical Ass'n*, 94 F.T.C. at 983-84 (1979).

113. *California Dental Ass'n*, 526 U.S. at 766 (1999).

114. *Id.* at 766-67.

115. *California Dental Ass'n*, 526 U.S. at 766 (1999).

116. 15 U.S.C. §§ 41 et seq.

117. §§ 45 & 52; *supra* BACKGROUND at 3-13.

118. *California Dental Ass'n*, 526 U.S. at 766 (1999).

119. *Supra* BACKGROUND at 3-13.

120. *Id.*

121. § 41 et seq.

122. *Supra* BACKGROUND at 3-6.

123. Thomas Cooley School of Law, *Overview: Facts-at-a-Glance*, (April 4, 2011) <http://www.cooley.edu/overview/factsataglance.htm>. (hereinafter *Cooley Overview*)

124. *Id.*

125. Thomas M. Cooley School of Law, *The NFL vs. College Football Reputation*, (April 4, 2011) http://www.cooley.edu/rankings/nfl_analogy.html.

126. *Supra* note 123, *Cooley Overview*.

127. Cooley's student loan repayment rate is significantly below that of other law schools and universities that receive federal financial aid. 2009 student loan repayment rates (only available for 57 law schools): Charlotte School of Law (0%); Phoenix School of Law (19%); Charleston School of Law (23%); Atlanta's John Marshall School of Law (28%); Seton Hall School of Law (29%); Golden Gate School of Law (32%); Touro School of Law (34%); Stetson School of Law (36%); Thomas M. Cooley School of Law (36%); Inter-American School of Law (38%); Florida Coastal School of Law (41%); Thomas Jefferson School of Law (41%); California Western School of Law (44%); Laverne School of Law (45%); Western State College of Law (48%); New England School of Law (50%); John Marshall School of Law (51%); Ave Maria School of Law (51%); Appalachian School of Law (51%); McGeorge Law School (51%); Southwestern School of Law (51%); Vermont Law School (53%); City University of New York School of Law (53%); Roger Williams School of Law (54%); Mississippi College of Law (55%); New York Law School (55%); Chapman

University School of Law (55%); Whittier School of Law (56%); Michigan State School of Law (57%); Loyola Law School (57%); San Diego School of Law (58%); Miami School of Law (59%); Albany School of Law (59%); Pennsylvania State School of Law (60%); William Mitchell School of Law (60%); Pepperdine School of Law (62%); Brooklyn Law School (62%); Wayne State School of Law (62%); George Mason School of Law (63%); Wake Forest School of Law (64%); South Texas School of Law (64%); Villanova School of Law (65%); Texas Wesleyan School of Law (66%); Georgetown University Law Center (66%); New Hampshire School of Law (67%); Quinnipiac School of Law (67%); University of California, Hastings; School of Law (69%); Benjamin Cardozo School of Law (69%); Temple University School of Law (69%); Michigan School of Law (71%); Duke Law School (75%); Georgia State University; School of Law (77%); Stanford University Law School (84%); Harvard Law School (84%); University of Connecticut School of Law (87%); Columbia Law School (87%). National Center for Education Statistics, U.S. Department of Education, *Integrated Postsecondary Education Data System*, (April 6, 2011) <http://nces.ed.gov/ipeds/datacenter/>. The Obama Administration recently proposed a gainful employment regulation that would make for-profit colleges and career-vocational education institutions ineligible for federal financial aid if the institutions had loan repayment rates below 40%. Higher Education Act of 1965, 20 U.S.C. § 1070 et seq.; Program Integrity: Gainful Employment-New Programs, 75 Fed. Reg. 43616 (final rule proposal on Oct. 29, 2010), available at <http://www.gpo.gov/fdsys/pkg/FR-2010-10-29/pdf/2010-27395.pdf>. (hereinafter "Final Proposal") (proposing promulgation of Gainful Employment rule under 34 C.F.R. § 600). National Center for Education Statistics, U.S. Department of Education, *Integrated Postsecondary Education Data System*, (April 6, 2011) <http://nces.ed.gov/ipeds/datacenter>.

128. Elie Mystal, *Latest Cooley Law School Rankings Achieve New Heights of Intellectual Dishonesty*, ABOVE THE LAW, Feb. 8, 2011 <http://abovethelaw.com/2011/02/latest-cooley-law-school-rankings-achieve-new-heights-of-intellectual-dishonesty/>.

129. Matthew Shaer, *Law Schools Sued for Lying About Lawyering*, NEW YORK MAGAZINE, Feb. 1 2012, available at <http://nymag.com/daily/intel/2012/02/law-schools-sued-for-lying-about-lawyering.html>.

130. *Supra* BACKGROUND at 3-13.

131. *Id.*

132. *Id.*

133. *Supra* note 65, Miller; *supra* note 19, Sloan.

134. California Dental Ass'n v. FTC, 526 U.S. 756 (1999).

135. 15 U.S.C. §§ 44, 45 & 52; California Dental Ass'n, 526 U.S. at 766 (1999).

136. *See generally* *Id.*

137. California Dental Ass'n 526 U.S. at 766.

138. *Id.* at 766.

139. *The Almanac of Higher Education*. THE CHRONICLE OF HIGHER EDUCATION, Aug. 28, 2009 at LVI (1): 5.

140. *Statutory Attacks on Deceptive Advertising*, 43 HARV. L. REV. 945, 945-46 (1930).

141. *Supra* BACKGROUND at 3-13.

142. *See generally supra* note 95, VUKOWICH.

143. *Supra* BACKGROUND, at 3-13.

144. *Id.* *See generally* Lauren Solberg, *Reforming the Legal Ethics Curriculum: A Comment on Edward Rubin's "What's Wrong with Langdell's Method and What to Do About It"*, 62 VAND. L. REV. EN BANC 12 (2009); Edward Rubin, *What's Wrong with Langdell's Method and What to Do About It*, 60 VAND. L. REV. 609 (2009).

145. An interesting research project would be to request and review internal employment documents, e-mails, marketing/admis-

sions memos, from public law schools using different state-level freedom of information laws.

146. On April 27, 2011 the author submitted a public records request to the University of California, Davis requesting copies of correspondence and documents regarding the law school's calculation of employment statistics and reporting of employment statistics for individuals who graduated between the years of 2006 and 2009.

147. 15 U.S.C. § 45.

148. *Supra* note 95, FTC Letter, at 3-6.

149. *Supra* note 144, Rubin.

150. 15 U.S.C. § 52.

151. *Id.*

152. *Id.*

153. 15 U.S.C. § 41 et seq.

154. *Supra* note 144, Rubin.

155. *Supra* note 8, GAO Report.

156. *Supra* note 127, Law School Student Loan Repayment Rates (listing student loan repayment rates for 57 law schools for fiscal year 2009).

157. *Supra* note 30, Efrati.

158. Ashby Jones, *Scalia: 'We Are Devoting Too Many of Our Best Minds to' Lawyering*, WALL ST. J. LAW BLOG, Oct. 1, 2009, available at <http://blogs.wsj.com/law/2009/10/01/scalia-we-are-devoting-too-many-of-our-best-minds-to-lawyering/>; Schumpeter, *Talent and the Banks: Sucking Up Too Many of America's Brightest Minds*, THE ECONOMIST: SCHUMPTER, April 13, 2011, available at <http://www.economist.com/blogs/schumpeter/2011/04/20/talentandbanks>. *See generally* PAUL KEDROSKY & DANE STANGLER, KAUFFMAN FOUNDATION, FINANCIALIZATION AND IT'S ENTREPRENEURIAL CONSEQUENCES (March 2011), available at http://www.kauffman.org/uploadedFiles/financialization_report_3-23-11.pdf.

159. *Law Schools Report*, NATIONAL LAW JOURNAL, Feb. 28, 2011, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202483173162&slreturn=1&hbxlogin=1> (listing top 50 law schools that place graduates with major law firms).

160. *Id.*

161. *Supra*, 127, 2009 student loan repayment rates.

162. *Supra* note 68, Miller.

163. *Supra* REPORTING FALSE EMPLOYMENT STATISTICS, at 4-14.

164. Nathan Koppel, *Law School Loses Its Allure as Jobs at Firms Are Scarce*, WALL ST. J., March 17, 2011, available at <http://online.wsj.com/article/SB10001424052748704396504576204692878631986.html>.

165. *Supra* note 81, ABA Memorandum, at 6.

166. *See supra* note 127, 2009 student loan repayment rates.

167. *See* 75 Fed. Reg. 43615, 43615-18 (Jul. 26, 2010) (rulemaking notice for proposed "Gainful Employment Rule" that would determine proprietary colleges and universities' eligibility for federal Title IV financial aid on former students' student loan repayment rates and debt to income ratios).

168. *See generally* Sarah Kellog, *The Transformation of Legal Education*, DC BAR, May 2011, available at http://www.dcbbar.org/for-lawyers/resources/publications/washington_lawyer/may_2011/legal_education.cfm.

169. *Supra* note 68, Miller.