Understanding the U.S. News Law School Rankings

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Much has been written on whether law schools can or should be ranked and on the U.S. News & World Report ("U.S. News") rankings in particular. Indeed, in 1997, one hundred

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fifty law school deans took the unusual step of signing a joint letter condemning the *U.S. News* rankings. The following year, the Association of American Law Schools commissioned a study by Drs. Stephen Klein and Laura Hamilton (the "Klein-Hamilton report") calling the *U.S. News* rankings' validity into question. Nevertheless, *U.S. News* has continued to compute and publish its rankings. This Article focuses on *U.S. News*'s special issue entitled *America's Best Graduate Schools* published in spring 2006, posted online as "America's Best Graduate Schools 2007" (the "2007 issue"). *U.S. News*'s staff confirms, however, that its methodology has not changed in any respect in the past year. While some of the numbers may have changed, therefore, the Article's analysis applies equally to the "2008" rankings issued on March 30, 2007.

Like many law professors, I have long found the *U.S. News* rankings perplexing. Although I generally focus on the school at which I teach—Loyola Law School, Los Angeles—and its ranking competitors, the nature of my difficulties is better illustrated by *U.S. News*'s 2007 ranking of three of America's best-known law schools: Yale (ranked 1st), Stanford (ranked 2nd), and Harvard (ranked 3rd). As a Harvard graduate, I confess bias. I also want to assure readers that I hold both Yale and Stanford in very high regard. Nevertheless, I suggest that even impartial observers might perceive a need for further justification of *U.S. News*'s bottom line with respect to these schools.

Consider the following Harvard-Stanford statistics. About 58% of Harvard's students had Law School Admission Test scores (LSATs) of

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5. Telephone Interview with Mr. Samuel Flanigan, Deputy Director of Data Research, U.S. News & World Report (Mar. 30, 2007).

6. *America's Best Graduate Schools*, supra note 4, at 44.
172 or higher; in absolute numbers, about 980 students.\footnote{Computed by interpolation based on Harvard's reported 75th percentile LSAT (176), 50th percentile LSAT (173), and 2004-2005 Full Time Equivalent (FTE) JD student count (1,679). See id. at 150-51.} Harvard's law library—the heart of any research institution—was without peer.\footnote{See Association of Research Libraries, \textit{ARL Academic Law Library Statistics 2004-05}, http://www.orl.org/bm-doc/law05.pdf, at 24.} Legal academics ranked Harvard with Yale as the best school in the country.\footnote{\textit{America's Best Graduate Schools}, supra note 4, at 44.} Stanford, by contrast, reported that only about 25\% of its much smaller student body had LSATs of 172 or higher; in absolute numbers, about 130 students (about 13\% as many as Harvard).\footnote{Computed by interpolation based on Stanford's reported 75th percentile LSAT (172), 50th percentile LSAT (169) and 2004-2005 FTE JD student count (514). See id. at 144.} Its law library was about one-quarter the size of Harvard's—indeed, it was smaller than the library at the school at which I teach.\footnote{See National Jurist, \textit{How Law School Libraries Stack Up}, http://www.nationaljurist.com/filedownload.aspx?f=dRoi7dclsFOlyG7yDGQQ=, Id.} Consistent with these objective indicators, legal academics ranked Stanford lower than Harvard; judges and lawyers ranked them the same.\footnote{\textit{America's Best Graduate Schools}, supra note 4, at 44.} Yet \textit{U.S. News} ranked Stanford over Harvard.\footnote{Id.} “Why?,” I wondered. And what might that mean about \textit{U.S. News}'s relative ranking of less well-known schools?

\textit{U.S. News}'s conclusions with regard to Yale and Harvard were also puzzling. The two were ranked equally by law professors; judges and practitioners ranked Yale slightly higher.\footnote{Computed by interpolation based on Yale's reported 75th percentile LSAT (175), 50th percentile LSAT (172), and 2004-2005 FTE JD student count (581). See id. at 46.} Yale reported that only about 50\% of its students had LSATs of 172 or higher; in absolute numbers, about 290 students (about 30\% as many as Harvard).\footnote{Id. at 44.} Yale's graduates passed the New York bar examination at a lower rate than Harvard's—marginally lower, but lower nevertheless.\footnote{See Association of Research Libraries, \textit{supra} note 8.} Yale's law library was less than half the size of Harvard's.\footnote{\textit{America's Best Graduate Schools}, supra note 4, at 44.} Yet \textit{U.S. News} awarded Yale an “overall score” of 100, Harvard an “overall score” of only 91—a nine-point difference.\footnote{Id.} In the \textit{U.S. News} universe, a nine-point difference was huge—further down the scale, for example, it meant the difference between being ranked in the top 20 and being excluded from the top 40.\footnote{Id. at 47.}

Indeed, as I began playing with a spreadsheet I had written to replicate the 2007 \textit{U.S. News} computations, I discovered that even if Harvard had reported a perfect median LSAT of 180, it still would have been ranked third. And even if Yale had reported a median LSAT of just 153 (placing it in the “fourth tier” of law schools ranked by LSAT),\footnote{Tied with thirteen other schools for 147th out of 180. See id. at 47.} it still would have been ranked first. Indeed, Yale would have been ranked higher
than Harvard even if both had been true—if Harvard had reported a perfect median LSAT and Yale a 153. I was stunned. Was Yale really that much better than Harvard in all other material respects? If not, what might the parts of U.S. News's methodology that led to these counterintuitive results tell one about the validity of U.S. News's ranking of other schools?

This Article reports the results of my explorations. Its descriptions, analyses, and conclusions are based primarily on U.S. News's published descriptions of its 2007 computations, telephone conversations with U.S. News's staff clarifying those descriptions, and a spreadsheet I have written that approximately replicates those computations. The Article's goals are relatively modest: to help prospective students, employers, and other law school stakeholders read the U.S. News rankings more critically and to help law school administrators get a better handle on how to manage their schools' rankings. In addition, the Article suggests ways in which U.S. News methodology might be improved. It does not, however, purport to offer a systematic critique of either the U.S. News rankings or ranking in general.

Part I describes both U.S. News's methodology and problems involved in replicating it. Part II is intended to help prospective students, employers, and other law school stakeholders read U.S. News's results intelligently. Prospective students and others trying to understand how to use U.S. News's rankings in their decision-making may wish to focus on this part, although a reading of Part I may also be necessary to understand some of the technical details. Part III addresses the problem of managing rankings. Part IV, finally, suggests ways in which the rankings might be improved.

PART I. COMPUTING THE RANKINGS

U.S. News's 2007 ranking process began with twelve input variables.21 According to the methodological description published in the 2007 issue, those variables were "standardized," weighted, and totaled.22 The resulting raw combined scores were then "rescaled so that the top school received 100 and other schools received a percentage of the top score."23 U.S. News labeled the resulting figure the school's "overall score," reporting this score to the nearest integer for each of the one hundred law schools with the highest such scores, in rank order.24 In addition, it classified the thirty-six law schools with the next highest overall scores as "third tier" and the remaining forty-four as "fourth tier," listing the schools in each such tier alphabetically without reporting their overall

21. Id. at 45.
23. Id.
24. Id.
scores or ranks within their respective tiers.25

A. The Input Variables

1. Peer assessment scores

U.S. News’s first input variable reported the results of a survey administered by U.S. News in the fall of 2005, in which “the law school dean, dean of academic affairs, chair of faculty appointments, and the most recently tenured faculty member at each law school accredited by the American Bar Association” were asked to rate law schools on a 1 to 5 scale, with “1” meaning “marginal” and “5” meaning “outstanding.”26 The 2007 issue reported that 67% of surveyed academics responded.27 The average score awarded to each law school was published in the 2007 issue itself; these average scores were apparently not further modified before being “standardized” and combined with U.S. News’s remaining input variables.

2. Assessment scores by lawyers/judges

A second input variable reported the results of a similar survey of lawyers and judges in the fall of 2005.28 U.S. News did not disclose how its respondents were chosen—how they were distributed geographically, between large and small firms, or, in the case of judges, between state and federal or trial and appellate courts. The 2007 issue did report that only 26% of those to whom the survey was sent actually responded.29 It did not report whether members of the group that responded differed demographically from those to whom the survey had initially been sent. As was true of peer assessment scores, average scores for the various law schools were published in the 2007 issue and apparently not adjusted before being incorporated in U.S. News’s further computations.

3. Median LSATs

In computing its third variable, “median LSAT scores,” U.S. News began with each school’s median LSAT score for first-year full-time students entering in 2005.30 Scores for part-time students—most

25. America’s Best Graduate Schools, supra note 4, at 46–47.
26. Id. at 45. The letter soliciting participation in the survey stated that: “This survey is being sent to the law school dean, dean of academic affairs, chair of faculty appointments, and the most recently tenured faculty member at each law school accredited by the American Bar Association.” Letter from Robert Morse, Director of Data Research, U.S. News & World Report, to Richard Bales, Professor of Law, Chase School of Law (Sept. 29, 2005) (on file with the author).
27. America’s Best Graduate Schools, supra note 4, at 45.
28. Id.
29. Id.
30. Id. It appears that U.S. News used median LSAT and Undergraduate Grade Point Average (UGPA) figures for Baylor that omitted students who had matriculated in the spring or summer of 2005. See Baylor Explains the Data it Reported for the USN&WR Rankings, http://agoraphilia.blogspot.com/2006/06/baylor-explains-data-it-reported-for_27.
importantly, scores for students in evening programs—were omitted. Although the 2007 issue reported the 25th and 75th percentile LSATs for each school’s full-time students, those figures were not actually used in computing the rankings; the medians reported by each school to U.S. News were used instead. In creating my spreadsheet, I used the medians themselves, as published by the American Bar Association (ABA).

The next step was critical but not publicly disclosed: before being “standardized” and combined with other input variables, all median LSAT scores were first converted into percentile equivalents. In other words, a median LSAT of 150 became approximately 42.7%, 160 became approximately 79.7%, 170 became approximately 97.5%, and so on. This conversion significantly changed the effect of LSATs on overall scores. Differences in high LSAT scores are minimized when converted into percentiles; differences in lower LSAT scores are exaggerated. For example, the one-point difference between a 172 (98.6 percentile) and a 173 (98.9 percentile) converts to a .3 difference in percentile points; the same one-point difference between a 153 (54.6 percentile) and a 154 (59.3 percentile) converts into a 4.7 difference in percentile points—more than 15 times larger. Although differences in LSATs accounted for 12.5% of differences in overall scores on average, at the high end they accounted for much less, at the low end for more.

Unfortunately, there is no fixed way of converting LSAT scores into percentile equivalents. Because students sitting for a particular LSAT administration may do a little better or a little worse than those taking the test on a different date, percentile equivalents will not be identical across test administrations. Because the number of students who take the LSAT is large, however, fluctuations are likely to be small. U.S. News did not disclose which LSAT percentile conversion table it used. In my spreadsheet, I used the table for the combined June, October, and December.html (June 27, 2006, 10:27 EST). This was clearly incorrect. The ABA 2005 Annual Questionnaire Part II: Enrollment states:

In order to obtain a complete picture of the admissions statistics of a law school, the school must include all persons in the particular category, regardless of whether that person was admitted through any special admissions program rather than through the normal admissions process. The admissions year is calculated from October 1 through September 30. Schools which admit in the spring and/or summer must include those students in the totals.

American Bar Association, ABA 2005 Annual Questionnaire Part 2, at 1. As a result of this error, Baylor was ranked 51st when in fact it should have been ranked 56th. Arizona State, Cardozo, Cincinnati, and Florida State were ranked 53rd when they should have been ranked 52nd, and Utah was ranked 57th when it should have been ranked 56th. All results reported in this Article assume that the Baylor error is corrected.

31. See America’s Best Graduate Schools, supra note 4, at 45.
32. Morse, supra note 22.
33. See ABA•LSAC OFFICIAL GUIDE to ABA-APPROVED LAW SCHOOLS 67 (2007 ed.), available at http://officialguide.lsac.org (LSAT and UGPA figures are for the 2005 entering class); id. at 70–829 (data for each school).
34. Telephone interview with Samuel Flanigan, Deputy Director of Data Research, U.S. News & World Report (June 2, 2006).
2005 administrations—the only table reported on LSAC’s website. My conversions may therefore not be identical to U.S. News’s, but are probably not significantly different.

4. Median UGPAs

Like median LSATs, the median undergraduate grade point averages (UGPAs) of first-year full-time students entering in 2005 were not actually reported in the 2007 issue. Instead, the 2007 issue reported the 25th and 75th percentile UGPAs, computed on a 4.0 scale, for each school. Again, in creating my spreadsheet, I used the actual medians for full-time students published by the ABA. Unlike median LSATs, however, median UGPAs were incorporated directly into U.S. News’s final computation; they were not first restated in percentile terms. This meant that their effects on overall scores were uniform across the entire range of law schools. Because the effects of median LSATs were understated at the top and overstated at the bottom, median UGPAs ended up having a more significant effect on overall scores and therefore on relative rankings for top-ranked schools; for lower-ranked schools, the reverse was true.

5. Acceptance rates

U.S. News labeled its fifth variable “acceptance rate” or “proportion of applicants accepted.” The number it reported for each school in its 2007 issue reflected the percentage of applicants for the 2005 entering class actually accepted by that school. Again, only applications and acceptances for each school’s full-time program were taken into account; evening program applications and acceptances were omitted.

U.S. News faced a technical problem in combining the resulting variable with others. In the case of acceptance rates, lower is better; lower acceptance rates suggest greater selectivity. For the first four variables, by contrast, higher is better (for example, higher reputation scores, LSATs, or UGPAs). To combine acceptance rates with its other variables in a meaningful way, therefore, U.S. News had to invert the acceptance rate data set to make higher better. It accomplished this by subtracting all acceptance rates from 1 (or 100%). The effect was to convert ac-

35. The table is posted on a portion of the Law School Admissions Council website not accessible to the public.
36. See America’s Best Graduate Schools, supra note 4, at 44.
38. America’s Best Graduate Schools, supra note 4, at 45.
39. The switch-over point appears to have been an LSAT of approximately 161. Above this point, LSATs had less of an effect on overall scores; below this point, more.
40. Id.
41. Id.
42. Id.
43. Telephone conversation with Samuel Flanagan, Deputy Director of Data Research, U.S. News & World Report (June 2, 2006).
acceptance rates into rejection rates. These rejection rates were then “standardized” and combined with U.S. News’s remaining input variables.44

6. Employment rates at graduation

U.S. News reported employment rates at graduation for students graduating in 2004 for one hundred thirty-two schools;45 it did not report such rates for the remaining forty-eight, apparently because the forty-eight in question had not reported such rates to U.S. News. With respect to the rates actually reported, the 2007 issue stated: “[e]mployment rates include graduates reported as working or pursuing graduate degrees . . . . Those not seeking jobs are excluded.”46 Graduates working part-time or working in non-law-related jobs were counted as employed for this purpose.47 For the forty-eight schools not reporting such rates, the 2007 issue noted “N/A” in its tables.48 For purposes of including this variable in its computation of overall scores, however, it estimated employment rates at graduation (EG) for those schools based on their reported employment rates nine months after graduation (E9), using the equation:

\[ EG = (E9 \times .996) - .294 \]

This was apparently intended to capture the relationship, on average, between the two variables for schools reporting both numbers.

7. Employment rates nine months after graduation

The 2007 issue also reported employment rates nine months after graduation for students graduating in 2004.50 All schools reported the relevant rates; no estimation was therefore required. For purposes of this variable only, the issue stated, “25 percent of those whose status is unknown are also counted as working.”51

8. Bar passage rate indicators

Each school's “bar passage ratio indicator” was based on first-time bar passage rates in the summer 2004 and winter 2005 bar examination administrations in the state in which the largest number of 2004 graduates of that school sat for the bar—not necessarily the state in which the school was located.52 The 2007 issue reported each school's relevant first-time bar passage rate, the state for which the school's bar passage rate was measured, and the overall bar passage rate for that state, but did not

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44. See Morse, supra note 22.
45. America’s Best Graduate Schools, supra note 4, at 45.
46. Id.
47. Id.
48. Id. at 45–47.
49. Telephone interview with Mr. Samuel Flanagan, Deputy Director of Data Research, U.S. News & World Report (June 5, 2006). The same equation was used to estimate employment rates at graduation in the 2008 issue. Telephone interview with Mr. Samuel Flanagan, Deputy Director of Data Research, U.S. News & World Report (Mar. 30, 2007).
50. America’s Best Graduate Schools, supra note 4, at 45.
51. Id.
52. Id.
report the "bar passage ratio indicator" itself. Each school's bar passage ratio indicator was then computed as its relevant first-time bar passage rate divided by the overall bar passage rate for the state in question. The resulting figures were then "standardized" and combined with the remaining input variables.

9. Expenditures per student for instruction, library, and supporting services

Law school financial data, collected separately by both the ABA and U.S. News, are not published by either. The ABA, however, provides law school deans with a compilation of computer-generated reports, called "take-offs," summarizing at least some of the collected data (the "Take-Offs"). There are several problems with using ABA Take-Off data in lieu of the unpublished numbers actually used by U.S. News. First, ABA Take-Offs are marked "confidential" and are not readily accessible, even to law school faculty members. Second, it is not clear that law schools report the same numbers to U.S. News that they report to the ABA. Discrepancies may arise simply by reason of the fact that U.S. News requests its numbers later, by which time at least some schools may have further refined their figures. In addition, it must be assumed that U.S. News seeks clarification from the relevant school if a particular number seems out of line. Such refinements or clarifications will not necessarily be reflected in the ABA Take-Offs. Third, the Take-Offs sometimes omit data entirely for one or more schools. Since the data set is "standardized" before being combined with other variables, even one omission can have significant effects on rankings, including the relative rankings of schools other than the one for which data is missing. Fourth, the Take-Offs contain a distressingly high number of either input or arithmetic errors. For example, the Take-Offs report that one "third tier" school increased its "direct" expenditures from under $6 million in 2003-2004 (a number consistent with its ranking) to over $65 million in 2004-2005—a more than ten-fold jump. One assumes that the 2004-2005 figure reflected an input error. In any event, that school's U.S. News ranking did not move correspondingly, so it does not appear that U.S. News used the ABA number. Finally, if U.S. News had used numbers identical to those reported in the ABA Take-Offs, it ought to be possible to replicate U.S. News's analysis fairly closely by plugging those numbers into the methodology U.S. News

53. See id.
54. Id.
55. Morse, supra note 22.
56. See, e.g., American Bar Association, Take-offs from the 2005-06 Annual ABA Law School Questionnaire.
57. I had access to them by reason of the fact that my Dean had asked me to analyze them. Pursuant to the ABA's request, I have not disclosed any school-identifiable data in its Take-Offs in connection with this Article. See generally American Bar Association, supra note 19.
says it used. It is not. In sum, the ABA Take-Offs appear to approximate the numbers *U.S. News* actually used, but do not appear to be identical.

With these caveats, the variable entitled “average 2004 and 2005 expenditures per student for instruction, library, and supporting services” (hereafter “‘educational’ expenses per student”) used in computing the 2007 *U.S. News* rankings, 58 began with a number defined in the same way as “Total Direct Expenditures,” reported in Table F-15 of the ABA Take-Offs, reduced by “Tuition Reimbursements, Grants, and Loan Forgiveness,” also reported in that table. 59 *U.S. News* divided the resulting number by the “full-time equivalent” (FTE) number of J.D. students—a number reported in Table C-9 of the ABA Take-Offs. 60 The resulting expenditures-per-student figures for 2003–2004 and 2004–2005 for each school were then averaged. 61

Three aspects of this computation deserve note here. First, although *U.S. News* called this variable “expenditures per student for instruction, library, and supporting services,” because of the way the ABA defines “direct expenditures,” the variable in fact included all current expenses charged to the law school’s budget other than expenses in eleven narrowly defined categories and expenses of “auxiliary enterprises”—regardless of how directly such expenses related to the school’s J.D. educational program. 62 If a school’s LL.M. programs were included in the school’s budget, for example, all expenses of such programs were included in this *U.S. News* variable. If a school’s clinics were included in the school’s budget, their costs were similarly included; if they had their own budgets, they were not. If expenses were capital rather than current, they were excluded, although “capital” for this purpose was defined in a very peculiar way. What is included in this variable and what is not is explored in greater detail in Part II.B(4) below.

Second, scholarships were explicitly disfavored in the computation. Although the ABA includes scholarships in “direct expenditures,” *U.S. News* shifted them into its lower-weighted “expenditures per student on all other items including financial aid” category. 63 As a result, schools that chose to allocate revenues to scholarships rather than to other purposes were down-rated.

Third, although all “expenditures . . . for instruction, library, and supporting services” were counted, including expenditures on programs other than the J.D., only J.D. students were included in the “full-time equivalent” count. 64 This meant that schools with large LL.M. or other

58. *America’s Best Graduate Schools*, supra note 4, at 45.
60. See id. at Table C-9.
61. *America’s Best Graduate Schools*, supra note 4, at 45.
63. *America’s Best Graduate Schools*, supra note 4, at 45.
64. Telephone interview with Samuel Flanigan, Deputy Director of Data Research, U.S. News & World Report (June 27, 2006).
non-J.D. programs were credited with artificially high educational expenditures per student.

Before these two-year average expenditures-per-student numbers were "standardized" and combined with other variables, they were further modified in an important but undisclosed way: *U.S. News* applied cost-of-living-adjustments (COLAs), obtained from Runzheimer International, to reflect different costs of living in different locations.⁶⁵ Unfortunately, the Runzheimer COLAs are not publicly available. In a telephone conversation with a Runzheimer executive, I was told that *U.S. News* had received those numbers on an accommodation basis because of its media status and that I would not be able to afford a comparable set.⁶⁶ I therefore purchased a set of reasonably-priced COLAs from the American Chamber of Commerce Resource Association (ACCRA), a not-for-profit source of COLAs, instead.⁶⁷

In attempting to use the ACCRA COLAs, however, I discovered two problems with using them in place of the COLAs *U.S. News* had used. First, the relative costs of living in different locations vary with profession and economic status. In some towns, law professors live at the top of the real estate market; in others (Los Angeles, for example), they live more modestly. Secretarial and janitorial staffs often face different cost of living issues than those faced by professors. The ACCRA COLAs were not broken out by socioeconomic status; the Runzheimer COLAs, I was told, were. Second and more importantly, COLAs can vary markedly depending on how one draws the geographic boundaries of different COLA regions. Should Yale Law School data be adjusted to reflect New Haven COLAs? Or should average Connecticut COLAs be used instead? Or perhaps COLAs for the New York City metropolitan area? *U.S. News*'s staff informed me that it had used "metropolitan area" COLAs for schools located in "metropolitan areas," but had otherwise used state averages.⁶⁸ Since I lacked access to Runzheimer's definition of "metropolitan areas," it was often impossible to determine which COLA had been applied. The ACCRA data set was broken up geographically by reporting political units, not "metropolitan areas."⁶⁹ Manhattan, for ex-

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⁶⁶. Telephone interview with Runzheimer Executive (June 21, 2006).

⁶⁷. See Michael S. Knoll & Thomas D. Griffith, *Taxing Sunny Days: Adjusting Taxes for Regional Living Costs and Amenities*, 116 *Harv. L. Rev.* 987, 990 n.18 (2003) ("The best data on United States regional costs of living is compiled by ACCRA, a nonprofit organization comprising the research staffs of chambers of commerce and other organizations. ACCRA compiles data quarterly from local chambers of commerce that have volunteered to price a list of goods and services in their communities."). ACCRA has since changed its name to "The Counsel for Community and Economic Research," abbreviated "C2ER." See http://www.coli.org.


ample, was separate from Queens.70 In addition, the ACCRA data set only included numbers for political units that had chosen to participate.71 Brooklyn and Minneapolis, for example, were omitted entirely, and the ACCRA data set did not include state average COLAs.72

If I had had financial data I knew to be accurate, I could have computed the COLAs actually used. But the ABA Take-Off numbers appeared to be less than completely reliable. The COLAs I used in my spreadsheet were therefore plug numbers: I began with the most apparently relevant ACCRA COLAs, but adjusted them as necessary to force the spreadsheet to generate "overall scores" identical to those reported by U.S. News for the 100 schools for which such scores were reported. With some exceptions, the resulting COLA/error correction numbers seemed plausible as COLAs. This aspect of my analysis, however, was only approximately accurate. In any event, the COLA-adjusted average of each school's 2003–04 and 2004–05 "educational" expenditures per student became U.S. News's ninth variable.

10. Expenditures per student on all other items including financial aid

U.S. News's tenth variable, entitled "average 2004 and 2005 expenditures per student on all other items including financial aid,"73 began with an expenditure number defined in the same way as "Total Indirect Expenditures" reported in Table F-15 of the ABA Take-Offs.74 To this was added the school's "Tuition Reimbursements, Grants, and Loan Forgiveness," also reported in that table.75 (In effect, U.S. News took "Tuition Reimbursements, Grants, and Loan Forgiveness" and moved it from the ABA's direct expenditure category to the ABA's indirect expenditure category. Apart from this change, U.S. News's ninth variable corresponds to direct expenditures; its tenth, to indirect expenditures.) U.S. News divided the resulting number by the "full-time equivalent" number of J.D. students at the school.76 The resulting expenditures-per-student figures for 2003–2004 and 2004–2005 for each school were then averaged and adjusted for differences in cost of living before being "standardized" and combined with the remaining input variables.77 These will be referred to hereafter as "other expenditures per student"; what is included and what is not is discussed in greater detail in Part II.B(4) below.

11. Student/faculty ratios

The 2007 issue also reported each school's student/faculty ratio as that

70. Id.
71. See id.
72. See id.
73. America's Best Graduate Schools, supra note 4, at 45.
74. American Bar Association, supra note 56, at Table F-15.
75. Id.
76. America's Best Graduate Schools, supra note 4, at 45.
77. Morse, supra note 22.
ratio had been reported to *U.S. News*.\textsuperscript{78} Unfortunately, the ratio reported by *U.S. News* was different from the ratio reported in Table B-2 of the ABA Take-Offs for a majority of schools;\textsuperscript{79} the *U.S. News*-reported ratio was sometimes higher, sometimes lower. *U.S. News*'s questionnaire merely requested that each school report its student/faculty ratio based on the data it had reported in response to Part 5 of the ABA Questionnaire.\textsuperscript{80} That Part 5, however, did not actually require schools to compute such ratios; nor did it provide any guidance as to how to do so.\textsuperscript{81} Based solely on the *U.S. News* and ABA questionnaires, therefore, it was unclear whether respondents should compute the ratio based on actual faculty or FTE faculty, actual students or FTE students, J.D.s or all students. Different schools apparently resolved these questions in different ways. The student/teacher ratios reported in the 2007 issue and used in the 2007 rankings therefore do not appear to have been computed on a consistent basis from school to school.

This variable posed the same technical problem as acceptance rates: higher student/faculty ratios are worse, lower are better. Again, to combine student/faculty ratios with its other variables in a meaningful way, *U.S. News* had to invert the relevant data set to make higher better. It accomplished this by subtracting each school's student/faculty ratio from the highest reported student/faculty ratio, which in 2007 turned out to be 25.2.\textsuperscript{82} (Because of the way it "standardized" the various data sets before combining them, the fact that it used different techniques for inverting the acceptance rate and student/faculty ratio data sets turned out to be mathematically irrelevant.). The resulting number then became each school’s eleventh variable.

12. **Total numbers of volumes and titles in library**

*U.S. News* added together the total number of volumes and the total number of titles in each school's library to produce its final variable.\textsuperscript{83} Although this had the effect of double-counting some volumes, it presumably reflected a compromise between two techniques it believed plausible for rating libraries. The 2007 issue did not report any of the library statistics actually used, presumably because the resulting numbers would not have communicated anything meaningful to readers. I obtained the relevant numbers from the Law Library Comprehensive Statistical Table, Columns 5c and 11c, in the 2005 ABA Take-Offs.\textsuperscript{84}

\textsuperscript{78} See America's Best Graduate Schools, *supra* note 4, at 45.

\textsuperscript{79} See American Bar Association, *supra* note 56, at Table B-2.

\textsuperscript{80} Telephone Interview with Samuel Flanigan, Deputy Director of Data Research, U.S. News & World Report (Jan. 31, 2007).


\textsuperscript{82} Telephone Interview with Samuel Flanigan, Deputy Director of Data Research, U.S. News & World Report (June 2, 2006).

\textsuperscript{83} America's Best Graduate Schools, *supra* note 4, at 45.

\textsuperscript{84} American Bar Association, *supra* note 56, Law Library Comprehensive Statistical Table Data from Fall 2005 Annual Questionnaire.
B. Computing Overall Scores and Ranking the Schools

Because each of the twelve variables was measured on a different scale, those scales had to be "standardized" before the variables could be combined. *U.S. News* accomplished this by normalizing them, using a common forced mean and a common forced standard deviation.\(^{85}\) Since the resulting raw overall scores were then to be rescaled, the forced mean and standard deviation actually used were irrelevant—any common forced mean and standard deviation would have produced the same rescaled results. In his analysis, parts of which he has published in his weblog, Tom Bell uses "z-scores,"\(^{86}\) which reflect a forced mean of zero and a forced standard deviation of one.\(^{87}\) In my analysis, I used a forced mean and standard deviation similar to those of *U.S. News*’s reported "overall scores" so as to make the disaggregated normalized figures more intuitively meaningful.

In any event, after being normalized, the twelve input variables were weighted as follows:

<table>
<thead>
<tr>
<th>Variable</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peer assessment score</td>
<td>25%</td>
</tr>
<tr>
<td>Lawyer/judge assessment score</td>
<td>15%</td>
</tr>
<tr>
<td>Employment rate at nine months</td>
<td>14%</td>
</tr>
<tr>
<td>Median LSAT percentile equivalents</td>
<td>2.5%</td>
</tr>
<tr>
<td>Median undergraduate GPAs</td>
<td>10%</td>
</tr>
<tr>
<td>&quot;Educational&quot; expenditures per student</td>
<td>9.75%</td>
</tr>
<tr>
<td>Employment rate at graduation</td>
<td>4%</td>
</tr>
<tr>
<td>Student/teacher ratio (inverted)</td>
<td>3%</td>
</tr>
<tr>
<td>Acceptance rate (inverted)</td>
<td>2.5%</td>
</tr>
<tr>
<td>Bar passage ratio indicator</td>
<td>2%</td>
</tr>
<tr>
<td>Other expenditures per student</td>
<td>1.5%</td>
</tr>
<tr>
<td>Library volumes and titles</td>
<td>0.75%</td>
</tr>
</tbody>
</table>

The resulting numbers were added together.

According to the 2007 issue, the resulting raw combined scores were then "rescaled so that the top school received 100 and other schools received a percentage of the top score."\(^{88}\) The *U.S. News* staff clarified this description further: the raw scores were rescaled by setting the top score at 100, the bottom score at zero, and the remaining scores, rounded to the nearest integer, in a manner proportional to their respective distances from the top and bottom.\(^{89}\) Mathematically, my spreadsheet accomplished this by applying a forced mean and forced standard deviation to

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85. Telephone Interview with Samuel Flanigan, Deputy Director of Data Research, *U.S. News & World Report* (June 2, 2006).
88. Morse, *supra* note 22.
89. Telephone Interview with Samuel Flanigan, Deputy Director of Data Research, *U.S. News & World Report* (June 2, 2006).
the raw combined scores, rounded to the nearest integer, and adjusting that mean and standard deviation until they produced the requisite top and bottom scores to two decimal points.\textsuperscript{90}

\textit{U.S. News} labeled the resulting figure for each school the school’s “overall score,” reporting this score for each of the one hundred schools with the highest such scores, in rank order.\textsuperscript{91} Schools that turned out to have identical overall scores after rounding to the nearest integer were reported as tied for the highest rank for which any of them might have qualified. Thus, schools that shared the 17th and 18th slots after rounding were reported as tied for 17th place.\textsuperscript{92} After ranking the schools with the one hundred highest overall scores, \textit{U.S. News} classified the thirty six schools with the 101st through 136th highest overall scores as “third tier” and the remaining forty four as “fourth tier,” listing the schools in each such tier alphabetically without reporting their overall scores.\textsuperscript{93}

\section*{PART II. READING THE RANKINGS CRITICALLY}

What do \textit{U.S. News}'s ranks and overall scores mean and to what extent can a reader prudently rely on them in making decisions? Here, it is important to distinguish between two concepts statisticians sometimes use to answer questions like these: reliability and validity.

Statisticians say a measure is “reliable” if repeated measurements of the same thing are likely to produce similar results. Another way of thinking about statistical reliability is that it describes the random error of the measure. A measure subject to significant random error is “unreliable”; a measure not subject to random error in significant amounts is “reliable.” A measure is “valid,” by contrast, if it measures what it is supposed to measure and “invalid” if it does not. A procedure that purports to measure the quality of law schools, for example, is “valid” if it is actually capable of measuring law school quality (whatever that means).

The two concepts are quite different. A valid measure may nevertheless be subject to significant random error. Or a perfectly reliable procedure may not actually measure what it purports to measure. Before we can prudently rely on any measure to make decisions, we should confirm that it is both reliable and valid. If Measurement A results in a rank of 43rd and Measurement B of the same law school results in a rank of 49th, and if we care about a difference of six ranks, then we cannot prudently rely on either measurement. But even if repeated measures produce consistent results—that is, even if they are “reliable”—we should not use them in making decisions if they do not actually measure what we care about.

\begin{itemize}
  \item \textsuperscript{90} Because of my problems with the raw data, this correspondence was never exact. In my spreadsheet, I used the forced mean and forced standard deviation that produced the requisite top and bottom scores and then adjusted COLAs until computed overall scores matched reported overall scores for the top one hundred schools.
  \item \textsuperscript{91} \textit{America's Best Graduate Schools}, supra note 4, at 44.
  \item \textsuperscript{92} See id.
  \item \textsuperscript{93} See id. at 46–47.
\end{itemize}
In addition, of course, a ranking system based on multiple inputs may be of questionable utility if some or all of the input data sets are themselves questionable, for whatever reason. This article will discuss the reliability and validity of specific inputs in connection with the discussion of the validity of the ranking system as a whole. Part II is therefore divided into two parts, addressing (1) whether the U.S. News rankings are reliable and (2) whether the U.S. News rankings are valid.

A. RELIABILITY

I begin with my conclusions. First, U.S. News’s law school “ranks” are unreliable—that is, they are subject to significant random error. Second, its “overall scores,” if read with a “± 2” appended, appear to be relatively reliable—with caveats.

The first conclusion can be illustrated by a simple example involving a change in the numbers of U.S. News’s lowest-ranked school—which I will call the “bottom anchor” but otherwise leave unnamed. Assume that the reported nine-month employment rate for graduates of the bottom anchor falls by just one percentage point and nothing else changes at any school in the country. In a reliable ranking system, one would hope that such a change would not affect the rank of any other school. After all, this is a miniscule change in one statistic at a school of which few lawyers, law professors, or law students have heard.

As one might expect, nothing happens to the bottom anchor’s overall score (by definition, zero) or rank (180th). But this tiny change wreaks havoc on the relative ranking of the top one hundred law schools. Seattle and San Francisco jump six ranks, Fordham jumps from 32nd to 27th, and Rutgers Camden, San Diego, and Indiana Indianapolis each jump four. Houston, Kansas, Nebraska, and Oregon, by contrast, each drop three ranks. Overall, forty-one of the top one hundred schools change rank. Fordham’s dean gets a bonus. Fingers are pointed and voices raised at Houston. All because of a trivial change in the employment statistics of a single school far away in the spreadsheet. Stranger still, if the bottom anchor’s nine-month employment rate falls an additional four percentage points (that is, a total of five percentage points)—and nothing else changes at any school in the country—most of these effects disappear, but the reordering moves into the Top Ten. University of California (UC) Berkeley and Virginia both drop from 8th to 9th place. At the other schools named above, it is as if nothing had ever happened.

Prospective students, employers, and faculty members, reading that UC Berkeley and Virginia have dropped to 9th place, may decide to go

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94. “Significant” means simply that the errors are of a size that the average reader would care about.
95. “Relatively reliable” similarly means that the errors are generally of a size that the average reader would not worry about. Note that between 2007 and 2008, Pepperdine’s overall score moved up by four points and San Diego’s down by the same amount. Whether these movements reflected real input changes or reliability problems is not clear.
elsewhere. Regents, trustees, and university presidents, reading that Seattle, San Francisco, and Fordham have advanced dramatically in the rankings, may record this accomplishment in the apparently responsible deans' performance evaluations. What the foregoing example suggests, however, is that basing decisions on this kind of difference or change in U.S. News ranks is unwarranted.

The same kind of random changes in rank can occur if small changes occur at the other end of the spreadsheet as well. Assume that Yale's reported nine-month employment rate rises by one percentage point and that nothing else changes at any school in the country. This relatively minor change has no effect, of course, on Yale's overall score (by definition, 100) or rank (1st). But it makes a big difference for Harvard, which now moves into a tie with Stanford for second place. Next, assume that Yale's nine-month employment rate rises by just 1/10th of a percentage point more, from 99.9% to 100%. Catastrophe! UC Hastings drops six ranks, from 43rd to 49th, almost losing its place in the top fifty.

How can the rankings be so extraordinarily sensitive to tiny changes unrelated to the schools affected? Two aspects of the U.S. News system account for this sensitivity. First, the fact that U.S. News insists on assigning an overall score of 100 to the top-scoring school and an overall score of zero to the bottom-score school, no matter what, means that any change in one of those schools' numbers will shift the entire scale against which other schools are measured. If any Yale number changes, Yale's overall score cannot change. Instead, "100" is effectively redefined to mean something new. This, in turn, means that every other overall score (except zero) is redefined as well. Conversely, if a number at the bottom anchor changes, "zero" is effectively redefined to mean something new—as is every other overall score except 100. As a result, changes in input variables for Yale or the bottom anchor, particularly in higher-weighted variables, can trigger extensive random changes across the system.

The same is true of a change in the identity of the top or bottom anchor. Unless U.S. News's methodology changes, Yale is unlikely to lose its position as top anchor any time soon. But the identity of the bottom anchor can change at any time. The 2007 issue noted that seven provisionally ABA-accredited law schools were not included in the rankings because they lacked full accreditation. In future rankings, one of those seven could displace the current bottom anchor, redefining "zero" in a significant way. Or the current bottom anchor could leave the rankings.

96. See Morse, supra note 22.
97. America's Best Graduate Schools, supra note 4, at 45.
98. The 2007 issue identified the seven provisionally-accredited and therefore omitted law schools as Western State University, Barry University, Florida A&M University, Florida International University, John Marshall Law School (Atlanta), St. Thomas School of Law (Minnesota), and Appalachian School of Law. Id. Since then, Barry, Florida A&M, Florida International, St. Thomas, and Appalachian have received full accreditation and four new schools have been provisionally accredited: Charleston School of Law, Faulkner
Another school's statistics would then be used to define the meaning of "zero"—and of every other overall score less than 100.

By itself, the foregoing problem might not produce the extreme sensitivity illustrated in the foregoing examples. Perfect Yale nine-month employment numbers move UC Hastings' unrounded overall score by only 0.02 (in my spreadsheet, from 51.50 to 51.48). A second aspect of U.S. News's system, however, magnifies this effect. Before ranking schools by overall scores, U.S. News rounds each overall score to the nearest integer.99 A school's unrounded overall score may be slightly above the midpoint between two integers. That score will be rounded up (from 51.50 to 52). A small change in the unrounded score, however, may push it below the midpoint. Thereafter, the score will be rounded down (from 51.48 to 51). As a result, a small change (here, 0.02) in the school's unrounded overall score can trigger a full one-point change (from 52 to 51) in the score upon which relative rankings are based.

U.S. News then lumps all schools with the same rounded overall score together and ranks them as tied. UC Hastings's rounded overall score of 52 puts it in 43rd place.100 The hypothetical Yale employment figure change, however, moves UC Hastings' unrounded score enough to cause it to be rounded down to 51 instead. Under U.S. News's methodology, it is now lumped together with schools with rounded overall scores of 51, which U.S. News declares to be tied for 49th place. UC Hastings has just fallen six ranks.

Before going any further, I need to make one thing clear. I am not predicting that if Yale's nine-month employment figure goes up by 1.1 percentage points, UC Hastings will fall by six ranks. The model, as noted, is only approximate. Because U.S. News's methodology is so sensitive to small changes, even minute imperfections in any model may trigger large changes in predicted rank. Every time I have made adjustments to my model and rerun the scenarios reported above, my spreadsheet has produced a different parade of ranking changes. The point is simply that U.S. News's reported ranks are extraordinarily sensitive to small changes in data or procedure—"unreliable," in the language of statisticians—for the reasons given above.

By contrast, the parts of the U.S. News system that produce the sensitivity illustrated above will generally not trigger apparently random changes in overall scores of more than ± 2. In response to modest changes in input variables, most overall scores change by no more than one point, none by more than two. When schools' overall scores shift by one or two points, they are merely shifting within that "± 2" range. This, in turn, implies that overall scores are at least somewhat reliable—within

99. See America's Best Graduate Schools, supra note 4, at 45.
100. Id.
a two-point margin of error. (Recall, please, the difference between reliability and validity—I am not asserting that they measure anything one cares about. I am merely asserting that they are less subject to random error.)

In reading the *U.S. News* rankings, therefore, it would seem prudent to focus on overall scores, not merely on ranks. When we turn to overall scores, however, we discover something peculiar: *U.S. News* only publishes scores for the one hundred schools with the highest such scores; no scores are given for the remaining eighty.101 Why? The reason is simple. After computing raw overall scores, *U.S. News* rescales all scores so that the highest score will always be 100 and the lowest score will always be zero. Were it to publish all of its rescaled overall scores, it would necessarily have to state in print that some school rates a “zero”—which undoubtedly would make that school very unhappy.

The fact that some school will always be assigned a score of “zero,” however, is symptomatic of a much deeper problem: because of the way *U.S. News* assigns them, its overall scores have no inherent meaning. In fact, the score assigned to a given school in any given computational run will depend entirely on the choice of schools to be ranked in that run. Applying exactly the same methodology to compute overall scores for Yale, Stanford, and Harvard and no others, for example, would result in the following overall scores:

<table>
<thead>
<tr>
<th>School</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yale</td>
<td>100</td>
</tr>
<tr>
<td>Stanford</td>
<td>9</td>
</tr>
<tr>
<td>Harvard</td>
<td>0</td>
</tr>
</tbody>
</table>


As a result, when *U.S. News* awards Yale a 100 and Harvard a 91,102 the size of the difference has no inherent meaning. It does not mean that Harvard is only 91% as good as Yale. It does not mean that a Harvard legal education is only 91% as effective as a Yale legal education. It does not mean that a Harvard law graduate is only 91% as likely to meet employers’ standards as a Yale law graduate. There is no way of determining, based solely on the size of the difference, whether the purported difference ought to affect any decision we are trying to make. Assume that a prospective student is trying to decide between Harvard and Yale. She prefers Boston to New Haven as a place to live, but notes that Yale has an overall score of 100, Harvard an overall score of 91. Is this nine-point difference meaningful enough that she should choose Yale over Harvard because of the difference in the quality of the schools? Or is it small enough that she should make the decision based on location? We have no way of knowing.

101. *See id.* at 46–47.
102. *Id.* at 44.
The same is true of any other difference between overall scores. The school at which I teach, for example—Loyola Law School, Los Angeles—is awarded an overall score of 44.\textsuperscript{103} How much “better” is UCLA, which is awarded an overall score of 71?\textsuperscript{104} The difference between UCLA and Loyola is 27 overall score points, three times larger than the difference between Yale and Harvard. Does this mean we should take the amount by which Yale is “better” than Harvard and multiply it by three to determine how much “better” UCLA is than Loyola? Does such an operation have any meaning? Ultimately, overall scores tell one something about direction, but very little about magnitude. We need to delve into the disaggregated data—median LSATs, GPAs, reputations, or whatever it is we really care about—to figure out how schools are different and whether we think those differences are meaningful. Since \textit{U.S. News} does not publish all of the data it uses in computing those scores, this can be a problem.

\textbf{B. Validity}

Reliability (or lack thereof) is irrelevant if the ranks or overall scores do not actually measure anything one cares about—that is, if the \textit{U.S. News} scoring system is not “valid.” I begin this section with a platitude: the \textit{U.S. News} rankings are useful only to the extent that one values the same things the \textit{U.S. News} methodology implicitly values, and gives them the same weight. If you are an employer, for example, you may not care about student/teacher ratios or expenditures per student. Your bottom-line question is more likely: “How many students of the quality my firm requires will I find at this school?” In deciding where to interview, you may find median LSATs more useful than \textit{U.S. News} rank. The size of the school, and therefore the depth of the talent pool it offers, may also be relevant. Or perhaps you are a prospective law student. If so, again, the information you use to make your decision should depend on what you care about. Students who simply want to attend the most prestigious school possible should focus on reputation, not \textit{U.S. News} “rank.” Students who aim to become big firm partners in a particular city might be better off looking at the hiring and partnering histories of big firms in that city (this article will tell you how below). Students who just want a law school where they can learn and enjoy learning the law should probably set \textit{U.S. News} aside; instead, they should sit in on classes at schools with good reputations for teaching.\textsuperscript{105}

To introduce my discussion of whether the \textit{U.S. News} measures are “valid,” I return to the questions with which I began this article: why is

\begin{flushleft}
103. \textit{Id.} at 45. \\
104. \textit{Id.} at 44. \\
105. Based on student survey data, \textit{The Princeton Review’s 2007 Best 170 Law Schools} ranks the following as the top ten law schools in the United States for “best overall academic experience:”
\end{flushleft}
Yale given an overall score nine points higher than Harvard?\textsuperscript{106} And why is Stanford ranked above Harvard?\textsuperscript{107} If we understand the parts of the \textit{U.S. News} system that account for these results, we may get a better sense of whether \textit{U.S. News} correctly measures something of interest.

My spreadsheet allows me to determine which input factors give Yale and Stanford a scoring advantage, and by how much. In a Harvard-Yale match-up, the nine-point overall score difference is attributable to \textit{U.S. News}'s twelve input variables in the amounts set forth in Table 1.\textsuperscript{108} Each number is given in overall score points—that is, each number estimates how much of the nine-point overall score difference is attributable to differences in that variable.

\textbf{TABLE 1: HARVARD V. YALE: HARVARD ADVANTAGE (+) OR SHORTFALL (−)}

<table>
<thead>
<tr>
<th>Library</th>
<th>+0.8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment at nine months</td>
<td>+0.2</td>
</tr>
<tr>
<td>Median LSAT</td>
<td>+0.1</td>
</tr>
<tr>
<td>Bar pass ratio indicator</td>
<td>+0.1</td>
</tr>
<tr>
<td>Academic assessment</td>
<td>0.0</td>
</tr>
<tr>
<td>Employment at graduation</td>
<td>0.0</td>
</tr>
<tr>
<td>Other expenses per student</td>
<td>−0.3</td>
</tr>
<tr>
<td>Acceptance rate</td>
<td>−0.3</td>
</tr>
<tr>
<td>Lawyer assessment</td>
<td>−0.5</td>
</tr>
<tr>
<td>Student/faculty ratio</td>
<td>−0.7</td>
</tr>
<tr>
<td>Median UGPA</td>
<td>−0.9</td>
</tr>
<tr>
<td>“Educational” expenses per student</td>
<td>−7.5</td>
</tr>
<tr>
<td>Total overall score difference</td>
<td>−9.0</td>
</tr>
</tbody>
</table>

Table 1 thus tells us that 7.5 points of the 9.0 point overall score difference is attributable to differences in COLA-adjusted “educational” expenses per student. Harvard gets a 0.1 bonus for its higher median LSAT (173 as opposed to 172) but loses 0.9 overall score points for its lower median UGPA (3.81 as opposed to 3.88). It gets a 0.8 bonus for the fact that its library is twice the size of Yale’s and small bonuses for its slightly better nine-month employment and bar passage rates, but takes a cumulative 1.8 point hit for its lower COLA-adjusted other expenses per stu-

1 Stanford  
2 Chicago  
3 Virginia  
4 Georgetown  
5 Loyola Los Angeles  
6 Washington and Lee  
7 BYU  
8 Michigan  
9 Pennsylvania  
10 Northwestern  

\textsuperscript{106} \textit{See America’s Best Graduate Schools, supra} note 4, at 44.  
\textsuperscript{107} \textit{See id.}  
\textsuperscript{108} \textit{See id.}
dent, higher acceptance rate, lower lawyer reputational score, and higher student/faculty ratio.

These numbers raise obvious questions about the validity of the two overall scores. Do COLA-adjusted "educational" expenditures per student measure something important enough to give Yale such an edge? (Remember that as a result of this edge Yale would still be ranked first even if its median LSAT were to drop to fourth tier levels.) Do we think that a .07 difference in median UGPAs should be worth nine times as much as a one-point LSAT differential? Other such questions will surely occur to the reader.

The one-point (actually 0.8) overall score difference between Harvard and Stanford is attributable to differences in these same variables in the following amounts, again measured in overall score points:

TABLE 2: HARVARD V. STANFORD: HARVARD ADVANTAGE (+) OR SHORTFALL (−)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Library</td>
<td>+1.2</td>
</tr>
<tr>
<td>Academic assessment</td>
<td>+0.7</td>
</tr>
<tr>
<td>Other expenses per student</td>
<td>+0.6</td>
</tr>
<tr>
<td>Median LSAT</td>
<td>+0.4</td>
</tr>
<tr>
<td>Employment at nine months</td>
<td>+0.2</td>
</tr>
<tr>
<td>Lawyer assessment</td>
<td>0.0</td>
</tr>
<tr>
<td>Employment at graduation</td>
<td>−0.1</td>
</tr>
<tr>
<td>Acceptance rate</td>
<td>−0.2</td>
</tr>
<tr>
<td>Student/faculty ratio</td>
<td>−0.4</td>
</tr>
<tr>
<td>Bar pass ratio</td>
<td>−0.6</td>
</tr>
<tr>
<td>Median UGPA</td>
<td>−0.7</td>
</tr>
<tr>
<td>&quot;Educational&quot; expenses per student</td>
<td>−1.8</td>
</tr>
<tr>
<td>Total overall score difference¹⁰⁹</td>
<td>−0.8</td>
</tr>
</tbody>
</table>

Again, differences in "educational" expenditures per student make the biggest difference in the two schools' relative U.S. News ranking. Interestingly, notwithstanding its much larger student body, Harvard actually spends more per student than Stanford.¹¹⁰ Because more of Harvard's expenditures are classified as "indirect," however, and because "indirect" expenditures are weighted lower in the U.S. News system than "direct" expenditures (1.5% as opposed to 9.75%), Harvard loses a net 1.2 overall score points by reason of expenditure differences. Harvard gets a 0.4 bonus for its four-point edge in median LSATs (173 as opposed to 169),¹¹¹ while losing 0.7 overall score points for a .06 deficit in median UGPAs (3.81 as opposed to 3.87).¹¹² Although Harvard's relevant bar pass rate is significantly higher than Stanford's (95.9% as opposed to 91.8%),¹¹³ for

¹⁰⁹ Individual components do not add up to −0.8 exactly because of rounding error.
¹¹⁰ See American Bar Association, supra note 57, at Table F-15.
¹¹¹ See America's Best Graduate Schools, supra note 4, at 150–51.
¹¹² See id. at 144.
¹¹³ Id. at 44.
U.S. News purposes, the California bar is treated as more difficult than the New York bar. As a result, Harvard loses 0.6 overall score points for its lower "bar pass ratio indicator." Indeed, Harvard would still lose points for its "inferior" bar pass rate even if it were to report a perfect (100%) New York pass rate. And so it goes.

Is this scoring valid? That is, does it correctly measure things we care about? The remainder of this Part II.B explores in greater detail some of the issues raised by specific input variables.

1. The reputational surveys

U.S. News’s reputational surveys are the bane of every law dean’s existence. Collectively, law schools spend millions each year on attempts to influence survey outcomes. Without question, the surveys matter. If the two surveys were to be dropped from U.S. News’s ranking procedure and law schools were to be ranked solely on the remaining ten more-or-less objective variables, the dozen schools most helped (and the number of ranks each would rise) would be as follows:

Toledo 41
McGeorge 21
George Mason 18
Northeastern 17
Alabama 16
BYU 16
Mercer 16
Cincinnati 15
Denver 14
Seattle 14
Cardozo 13
New Mexico 11

In other words, based purely on U.S. News’s non-reputational variables, Toledo would be ranked 55th, not 96th—a stunning difference.114

Conversely, the dozen schools most helped by inclusion of the two reputational variables (and the number of ranks each would fall if those variables were omitted) are the following:

114. See id. at 45.
Oregon –28
UC Hastings –24
Kansas –20
Miami –20
North Carolina –15
Rutgers Newark –13
Tulane –13
Florida –11
Missouri Columbia –11
Georgia State –10
San Diego –10
UC Davis –10

I do not mean to suggest that schools in this second set are overranked or that schools in the first are underranked. It may well be that each deserves its reputation as measured by U.S. News. I mean only to suggest that these two variables, given an aggregate weight of 40%115 really matter.

On the plus side, the surveys represent direct attempts to measure something about which many readers care a lot. So far as is apparent, the scores returned by deans, law professors, lawyers, and judges are not manipulated in any way by U.S. News before being averaged and reported. The academic survey seems methodologically more plausible, although more likely to be gamed by respondents; the response rate is quite high and we have some sense of who the respondents are: “the law school dean, dean of academic affairs, chair of faculty appointments, and the most recently tenured faculty member at each law school accredited by the American Bar Association.”116 In the case of the survey of judges and practitioners, unfortunately, we do not know how respondents are chosen, the response rate is a worrisomely low 26%, and we know nothing about the demographics of those who respond.117

The basic problem with reputational surveys, however, is that they only work if the people or institutions being rated have reputations.118 It is one thing to ask respondents to rate, for example, the President and Vice President of the United States. It is another thing entirely to ask them to rate the individual performances of each of one hundred senators, many of whom are probably unknown even to well-read respondents, let alone one hundred eighty law schools. I have long worried that the U.S. News surveys might simply measure name recognition—that they might there-

115. Id.
116. Letter from Robert Morse, Director of Data Research, U.S. News & World Report, to Richard Bales, Professor of Law, Chase School of Law (Sept. 29, 2005) (on file with author).
118. Leiter, supra note 116. U.S. News asks respondents to rate the “reputation” of the law school as a whole. Brian Leiter states that the questionnaire mentions “faculty, programs, students, and alumni as possibly pertinent considerations.” Id.
fore be biased, for example, in favor of schools on the East Coast,\footnote{Brian Leiter has asserted that "[s]chools on the two coasts are usually at an advantage in opinion surveys, because schools are more tightly clustered, geographically, and faculty tend to know each other better, both professionally and socially." Brian Leiter, Faculty Quality Rankings: Scholarly Reputation, 2003–2004, Brian Leiter’s Law School Rankings, http://www.leiterrankings.com/faculty/2003faculty_reputation.shtml.} where a majority of respondents reside, or schools whose universities have well-known athletic teams.

I have developed a simple tool both for testing such hypotheses and for thinking more methodically about how properly to respond to U.S. News’s reputational survey. Assume that median LSATs of full-time students are at least a rough indicator of the quality of law schools’ student bodies.\footnote{A prior posted draft of this Article used the median LSATs of all students, not merely full-time students, to generate LSAT-predicted reputational scores. Consistent with U.S. News’s current practice, the scores reported and analyses in this version of the Article are based on the LSATs of full-time students only.} Assume further that a school that can attract a good student body can probably also attract a faculty with a comparably good scholarly reputation; a school that can attract an excellent student body, a faculty with a comparably excellent scholarly reputation; and so on. If these assumptions are approximately true, one can use median LSATs to generate a set of predicted reputational scores having the same means and standard deviations as those actually reported by U.S. News. These LSAT-predicted reputational scores are the scores survey respondents would presumably return if (1) respondents were fully informed, (2) each school’s scholarly reputation and other reputational inputs were consistent with the quality of its student body, and (3) median LSATs of full-time students correctly measured student body quality. A table of LSAT-predicted reputational scores, both peer and practitioner, is given in Appendix A to this Article.\footnote{To generate “LSAT-predicted peer scores,” the median LSATs of the various schools were normalized using a forced mean and standard deviation equal to the actual mean and standard deviation of U.S. News’s reported peer assessments. A similar computation, using the actual mean and standard deviation of U.S. News’s reported lawyer/judge assessments, was performed to generate “LSAT-predicted practitioner scores.”}

Using LSAT-predicted reputational scores to test for bias is roughly equivalent to using multiple regression to perform the same tests, controlling for median LSATs and creating a dummy variable for the characteristic being tested (for instance, location in the Eastern time zone). LSAT-predicted reputational scores, however, are more intuitively accessible to the mathematically challenged. Using this tool, I have tested a number of hypotheses about survey bias and can report the following tentative results.\footnote{The method used to reach these conclusions is simple: take the group of schools being investigated (for example, law schools in the Eastern time zone), sum the apparent over- or underrankings for those schools, divide by the number of schools in question to determine their average over- or underranking, and use the conversion factors given in Part III to convert the results into overall score points.}

(1) Law schools in the Eastern time zone do not appear to be systematically overranked. In fact, both academics and practitioners appear to
evidence a slight bias against schools in the Eastern time zone, which ultimately costs law schools in that zone an average of 0.31 overall score points. (I want to emphasize that I am not asserting that survey respondents are wrong. Law schools in the Eastern time zone may, on average, be slightly worse than their median LSATs would indicate. I have no reason to think so; I merely note the possibility. The same warning should be read as accompanying each of the subsequent conclusions.)

(2) Law schools in the Central time zone appear, as a group, to be significantly overranked, picking up an average of 0.92 overall score points as a result. For most such schools, this means a net pickup of about five ranks. What might explain this phenomenon? It is possible that law schools in the Central time zone are, on average, significantly better than their median LSATs would indicate. There is no obvious reason to think so, but it is a possibility. My tentative hypothesis is rather that such schools are close enough to the East Coast (where a majority of survey respondents reside) to have name recognition, but not so close that familiarity breeds contempt.

(3) The reputations of law schools within one hundred miles of New York City exhibit a pattern that reinforces this hypothesis. The reputation leaders (Yale, Columbia, NYU, and Pennsylvania) are assigned actual scores close to their LSAT-predicted scores. The next group down, however, gets slammed: Fordham (-0.4, -0.5), Cardozo (-0.7, -1.0), Brooklyn (-0.7, -0.7), Temple (-0.4, -0.2), Villanova (-0.5, -0.6). On average, schools within one hundred miles of New York lose 1.68 overall score points based on this apparent underranking—of which 0.76 is attributable to academics and 0.92 to lawyers and judges. It would appear that good-but-not-top schools located in or near the City suffer seriously by comparison with reputation leaders in the same market. Respondents have heard of them, but judge them adversely in comparison to their better-known competitors.

(4) Law schools in the Pacific and far western time zones appear to be systematically underranked by both academics and lawyers, losing an average of 0.88 overall score points as a result, of which about two-thirds is attributable to academics. Again, for most such schools, this means a net loss of about five ranks. My tentative hypothesis is that many such schools lack name recognition on the East Coast.

(5) The possibility that name recognition is a factor in the reputational surveys is bolstered by yet another finding: schools named after the state within which they are located, regardless of whether public or private, appear to be overranked nationwide, picking up an average of 1.26 overall score points as a result. Of the seven schools in the top one hundred

123. Each school’s apparent underranking is given in reputational score points. Academics, for example, assign Cardozo a 2.7; its LSAT-predicted peer reputational score, by contrast, is 3.4. Lawyers and judges give Cardozo the same 2.7, a full 1.0 lower than its LSAT-predicted lawyer reputational score. Had Cardozo been rated 3.4 by academics and 3.7 by lawyers and judges, its overall score would have been 9 points higher, moving it from 52nd to 34th in the rankings. See America’s Best Graduate Schools, supra note 4, at 44.
both of whose actual scores exceed LSAT-predicted scores by .4 or more, all but two are eponymically state schools.

<table>
<thead>
<tr>
<th>Apparent peer overranking</th>
<th>Apparent lawyer/judge overranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida</td>
<td>.5</td>
</tr>
<tr>
<td>Indiana Indianapolis</td>
<td>.4</td>
</tr>
<tr>
<td>Iowa</td>
<td>.5</td>
</tr>
<tr>
<td>Miami</td>
<td>.5</td>
</tr>
<tr>
<td>North Carolina</td>
<td>.6</td>
</tr>
<tr>
<td>Stanford</td>
<td>.6</td>
</tr>
<tr>
<td>UC Berkeley</td>
<td>.7</td>
</tr>
</tbody>
</table>

It is possible that these schools have better faculty scholarship, on average, than their median LSATs would predict. Alternatively, or perhaps in addition, it is possible that law schools named after states get a reputational boost because state names are immediately recognized.

By contrast, of the eleven schools in the top one hundred both of whose actual scores are lower than LSAT-predicted scores by .4 or more, only one has a name that explicitly identifies it as a state school.

<table>
<thead>
<tr>
<th>Apparent peer underranking</th>
<th>Apparent lawyer/judge underranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>−.6</td>
</tr>
<tr>
<td>Brooklyn</td>
<td>−.7</td>
</tr>
<tr>
<td>BYU</td>
<td>−.6</td>
</tr>
<tr>
<td>Cardozo</td>
<td>−.7</td>
</tr>
<tr>
<td>Fordham</td>
<td>−.4</td>
</tr>
<tr>
<td>George Mason</td>
<td>−.6</td>
</tr>
<tr>
<td>Loyola Los Angeles</td>
<td>−.5</td>
</tr>
<tr>
<td>Northeastern</td>
<td>−.7</td>
</tr>
<tr>
<td>Rutgers Camden</td>
<td>−.5</td>
</tr>
<tr>
<td>Toledo</td>
<td>−.7</td>
</tr>
<tr>
<td>Villanova</td>
<td>−.6</td>
</tr>
</tbody>
</table>

(6) Finally, if name recognition is a factor, athletic prowess is clearly not by itself enough, as the foregoing list demonstrates. Neither the Alabama Crimson Tide nor the Villanova Wildcats ensure their law schools reputational scores commensurate with their median LSATs.

I want to emphasize once more that I am not asserting that any of the schools listed above are actually over- or underranked. I am merely attempting to detect patterns. My conclusions are tentative, and I hope that others will analyze the data set forth in Appendix A more fully. I suggest, however, that in completing U.S. News surveys it may be useful to look at LSAT-predicted reputational scores and be more conscious of why one deviates from them, up or down—particularly with respect to schools about which one has incomplete information. In other words, a conscientious respondent might begin with the relevant column in Appendix A and deviate from each school's LSAT-predicted score only for good reason.
Returning to Yale, Stanford, and Harvard, we find that Yale and Stanford are apparently overrated, and that Harvard is slightly overrated by academics but underrated by lawyers.

<table>
<thead>
<tr>
<th>Apparent peer misranking</th>
<th>Apparent lawyer/judge misranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yale</td>
<td>+.2</td>
</tr>
<tr>
<td>Stanford</td>
<td>+.6</td>
</tr>
<tr>
<td>Harvard</td>
<td>+.1</td>
</tr>
</tbody>
</table>

What should we make of this? It is possible, of course, that Yale’s and Stanford’s student bodies are actually better than their median LSATs would indicate. This issue is further explored in the next section. The more likely explanation, however, is that Yale’s and Stanford’s faculties are viewed as better than their student bodies, at least as measured by median LSATs, while Harvard’s is not. Is such a view warranted? If one credits Brian Leiter’s Faculty Quality Rankings, the answer is “yes” with respect to Yale, “partially” with respect to Stanford.\(^\text{124}\) If one uses Social Science Research Network (SSRN) downloads as an indicator of current scholarly visibility, the answer is clearly “no” with respect to both.\(^\text{125}\) In any event, why practitioners would be influenced by scholarship in their survey responses is not clear.

Regardless, in reading the U.S. News rankings critically, we still need to decide whether whatever it is that causes reputational scores to deviate from LSAT-predicted scores is relevant to anything we care about. If we are academics, we generally do care about faculties’ scholarly reputations. If we are employers, we may not—and certainly not to the same extent. If we are prospective students, our reactions may depend on what we are looking for in a law school. If the problem appears, at least partly, to be one of geographic bias or name recognition, we may want to discount it.

2. **Student body quality**

The quality of the students a law school can attract is probably the single most important consideration for law firms making interviewing and hiring decisions. It should also be important to prospective students; the quality of one’s legal education often depends as much on one’s interactions with other students as it does on one’s interactions with profes-


\(^{125}\) Many law professors post their papers in electronic format on the SSRN. Interested readers can then read abstracts of the posted papers and download any they wish to read in their entirety. As of May 1, 2007, Harvard ranked first in both total and “recent” (last twelve months) downloads. Social Science Research Network, SSRN Top U.S. Law Schools, http://hq.ssrn.com/Rankings/Ranking_display.cfm?TMY_gID=2&TRN_gID=13 (last visited May 22, 2007). Stanford ranked fourth in total downloads; Yale seventh. Id. See also Bernard S. Black & Paul L. Caron, Ranking Law Schools: Using SSRN to Measure Scholarly Performance, 81 Ind. L. J. 83 (2006) (discussing the use of SSRN downloads to measure scholarly performance).
sors. For prospective faculty, student body quality affects the level at which one can effectively teach. Some academics care about this; others do not.

The *U.S. News* methodology includes three variables intended to measure student body quality, which *U.S. News* labels “selectivity”: median LSATs, median UGPAs, and acceptance rates.\(^{126}\) What do these three variables tell us about the quality of the student bodies at Harvard, Yale, and Stanford?

<table>
<thead>
<tr>
<th></th>
<th>Harvard</th>
<th>Yale</th>
<th>Stanford</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median LSAT</td>
<td>173</td>
<td>172</td>
<td>169</td>
</tr>
<tr>
<td>Median UGPA</td>
<td>3.81</td>
<td>3.88</td>
<td>3.87</td>
</tr>
<tr>
<td>Acceptance rate</td>
<td>11.5%</td>
<td>6.2%</td>
<td>7.8%</td>
</tr>
</tbody>
</table>

Here are the same figures translated into overall score points with Harvard as the baseline:

<table>
<thead>
<tr>
<th></th>
<th>Yale</th>
<th>Stanford</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median LSAT</td>
<td>-0.1</td>
<td>-0.4</td>
</tr>
<tr>
<td>Median UGPA</td>
<td>+0.9</td>
<td>+0.7</td>
</tr>
<tr>
<td>Acceptance rate</td>
<td>+0.3</td>
<td>+0.2</td>
</tr>
<tr>
<td>Total</td>
<td>+1.1</td>
<td>+0.5</td>
</tr>
</tbody>
</table>

In other words, according to *U.S. News*, Yale’s student body is sufficiently superior to Harvard’s to warrant awarding Yale a full extra overall score point. Stanford’s student body is sufficiently superior to Harvard’s to warrant awarding Stanford half of an extra overall score point. Is this scoring valid?

The most obvious problem with *U.S. News*’s methodology is that it gives almost no credit for higher LSATs at the top end. Although Harvard’s entering class has a median LSAT *four points* higher than Stanford’s, Harvard gets a grand total of 0.4 overall score points for the difference. By contrast, elsewhere in the spreadsheet the *one point* difference between a 153 and a 154 is worth 1.9 overall score points. This difference in treatment is impossible to justify. Either LSATs matter, or they do not.

This is a serious problem. I assume that *U.S. News* will fix it—that is, that *U.S. News* will eventually use the median LSATs themselves, not their percentile equivalents, as its LSAT input variable. Applying this fix retroactively to the 2007 “selectivity” numbers and translating those numbers into overall score points with Harvard as the baseline, the immediately preceding table would look like this:

\(^{126}\) *America’s Best Graduate Schools*, supra note 4, at 45.
With this change, Harvard’s student body is deemed better than Stanford’s, although still not as good as Yale’s. Indeed, in my spreadsheet Harvard moves into second place overall ahead of Stanford. In the Top 10, NYU drops from fourth to fifth and UC Berkeley from eighth to tenth, and Duke moves up to join Berkeley in a tie for tenth.

Fixing this problem and making no further changes in U.S. News’s methodology results in the following ranking changes across the top 100 law schools:

- Indiana Indianapolis, Louisiana State: +7
- Seattle: +5
- Fordham: +4
- George Mason: +3
- Brooklyn: +2
- Cardozo, Duke, Emory, Harvard: +1
- All other schools: 0
- Arizona State, BC, Cincinnati, Florida State: −1
- UC Berkeley: −3
- Iowa, UC Davis: −3

Better. But are we prepared to declare U.S. News’s corrected measure to be a valid measure of student quality? I, for one, am not.

LSATs have many well-known problems. Nevertheless, they have three major virtues: (1) they are nationally uniform, (2) they are one of the best predictors of first-year law school grades (which means they measure at least some part of what law professors measure when they grade), and (3) they are statistically “reliable.” When I was a big-firm hiring partner, I relied heavily on median LSAT figures in assessing law schools with which I was not familiar.

Like LSATs, UGPAs also measure something we care about. David Thomas has concluded that, at least at one school, UGPAs are almost as good a predictor of first-year law school grades as LSATs.127 There are major problems, however, with using UGPAs to make national comparisons. First, undergraduate grading scales vary dramatically from school to school and major to major. In 2003, Dr. Stuart Rojstaczer of Duke

University collected GPA data from 30 undergraduate institutions.\textsuperscript{128} Recent average GPAs at those schools ranged from 2.51 to 3.47—an extraordinary variation. The average GPA at the public undergraduate institutions he studied was only 2.97, while the average GPA at private schools was 3.26—0.29 higher.\textsuperscript{129} Similarly, an article published in the \textit{Virginian-Pilot} in 2003 tabulated the percentage of "A" grades given at Virginia undergraduate schools broken out by major.\textsuperscript{130} At each, the percentage of "A" grades varied radically from major to major: at the University of Virginia, from 24.8% to 84.3%; at William and Mary, from 27.0% to 87.4%; at Old Dominion, from 18.4% to 76.6%; at Norfolk State, from 7.4% to 76.8%.\textsuperscript{131}

What this means is that, all else being equal, law schools that draw primarily from private colleges are likely to be ranked higher by \textit{U.S. News} than law schools that draw primarily from state schools. This is true even if median LSATs are identical. It also means that schools that are willing to take risks on applicants in easy majors and discriminate against applicants in tough majors will be higher-rated by \textit{U.S. News}. And the problem is not a small one. As discussed further in Part III below, each 0.097 bump in median UGPA gives a law school an additional overall score point. The fact that a school draws predominately from public schools may therefore cost a law school several overall score points. In the middle ranges, this may drop a law school by a dozen ranks or more. This is true even if its median LSATs are identical to an otherwise comparable school that draws predominantly from private undergraduate institutions.

What does Yale's 0.07 median UGPA edge over Harvard mean?\textsuperscript{132} We do not know. It may reflect a superior student body. It may reflect a difference in admissions philosophies. Or it may merely mean that Yale draws more heavily from private schools. This might happen, for example, if Yale were to draw more heavily from the Northeast, where private schools predominate, and Harvard from a broader national pool, including states where public universities are the norm. Would this mean that Yale's student body is better than Harvard's? Not in my book.

There is another problem with using UGPAs to make interschool comparisons. Even if we can correct for differences in grading scales—as \textit{U.S. News} attempts in the case of bar passage rates—we still have to face the fact that a 90th percentile grade from Pasadena City College (PCC) does not mean the same thing as a 90th percentile grade from UC Berkeley. By this I mean no criticism of PCC; it is a very good school. But getting a

\textsuperscript{129} Id.
\textsuperscript{132} See America's Best Graduate Schools, supra note 4, at 44.
90th percentile grade at PCC is undeniably easier; the two schools’ student bodies are simply not comparable.

I therefore conclude—as I did when I was a hiring partner—that UGPAs can only be used to compare students from the same school. Using UGPAs as *U.S. News* does introduces a significant potential source of error into its rankings.

This brings us to the third variable *U.S. News* uses to measure student body quality: acceptance rates.\(^{133}\) If we already know LSATs and UGPAs, it is unclear what acceptance rates add. Assume that Schools A and B have identical median LSATs and UGPAs, are of equal size, and are identical in every other respect. Assume, however, that School A accepts 10% of its applicants, while School B accepts 15%. Is School A “better” than School B? It may simply be that School A is a very popular backup school, gets scads of applications, and only needs to accept 10% of them to fill its classes. Perhaps School B is more geographically isolated; only students that really want to go there apply. As a result, perhaps School B needs to accept 15% of its applicants to fill its classes. Or perhaps the reverse is true: School B, the backup school, needs to accept more of its applicants because it loses so many to other schools. Or perhaps School A advertises heavily to elicit more applications. Assuming, again, that the two schools end up with identical median LSATs and UGPAs, is it really the case that School A is “better” than School B in any meaningful sense? I think not.

If we drop UGPAs and acceptance rates out of the system, Harvard’s student body appears to be slightly better than Yale’s (173 median LSAT versus 172) and significantly better than Stanford’s (173 median LSAT versus 169).\(^{134}\) Even this comparison, however, underestimates the attractiveness of Harvard’s student body to employers, a major part of *U.S. News*’s audience.

Harvard’s student body is not merely good, it is enormous. Based on the publicly available data, Harvard is probably responsible for the legal education of more than half of all U.S. students with LSATs of 173 or higher. It dominates the high-end legal market nationwide. No other law school even comes close. In 2002, I researched which law schools supplied the most partners to the five then-largest law firms in Los Angeles.\(^{135}\) Although Los Angeles is more than 2,500 miles from Boston, Harvard tied with University of Southern California (USC) for second, just slightly behind University of California, Los Angeles (UCLA). Yale was a distant sixth, Stanford (a California school) an even more distant eighth.

The problem with median LSATs (or UGPAs) is that they completely obscure size differences. Larger schools have larger pools of talent out of which to hire. Median LSATs are relevant for many purposes. To ac-

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133. See *id.* at 45.
134. See *id.* at 144, 146, 150–51.
135. See *supra* Part II.B.2.
count for differences in size, however, a different statistic is needed. I propose either the 50th or the 100th LSAT. To compute a median LSAT, one lines LSATs up in order and finds the middle one. To compute a school’s 100th LSAT, one does the same, but counts down to number 100. What a school’s 100th entering LSAT tells is that the school’s entering class contains at least one hundred students with that LSAT or higher. This is the pool likely to be of greatest interest to large law firms. It is also the pool likely to supply a significant portion of that school’s academic student leadership—its law review editors, moot court board members, and the like.

Schools’ 50th and 100th LSATs are not publicly available. They can be estimated by interpolation, however, using published 75th and 25th percentile LSATs and enrollment data. I have made such estimates for the top one hundred United States schools, ranked by estimated 100th LSAT.136 The results appear in Appendix B, which might be subtitled, “where to go to find large pools of good law graduates.” For at least some employers, the data in Appendix B may be of greater relevance to decisions about where to interview than anything published by U.S. News. Interestingly, estimated 100th LSATs do a better job of predicting the source of Los Angeles big-firm partners as among Harvard, Yale, and Stanford—the top non-local suppliers—than any statistic currently published by U.S. News.

<table>
<thead>
<tr>
<th></th>
<th>Estimated 100th LSAT</th>
<th>Partners in 5 largest LA firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harvard</td>
<td>177</td>
<td>34</td>
</tr>
<tr>
<td>Yale</td>
<td>171</td>
<td>16</td>
</tr>
<tr>
<td>Stanford</td>
<td>169</td>
<td>12</td>
</tr>
</tbody>
</table>

3. Placement success

Prospective students often care a lot about a school’s placement success. Employers probably care much less; prospective faculty, on average, very little. U.S. News uses three variables to measure placement success, weighted as follows: the percentage of graduates who have jobs at graduation (4%), the percentage who have jobs nine months after graduation (14%), and “bar passage ratio indicators” (2%).137 The question, as always, is: are these variables reliable and valid? That is, do they correctly measure something we care about, and do they do so without significant random error? The short answer in each case is “no,” for a variety of reasons.

136. See American Bar Association, supra note 56, at Table 1-1. For the purposes of this calculation 75th percentile and 25th percentile LSATs for all students and total first year enrollment were used. Estimated 100th LSATs were computed using the equation:

\[
\text{Est 100th LSAT} = 75\%\text{LSAT} + (1/2-200/\text{Enr.}) \times (75\%\text{LSAT} - 25\%\text{LSAT})
\]

The equation used to estimate 50th LSAT was:

\[
\text{Est 50th LSAT} = 75\%\text{LSAT} + (1/2-100/\text{Enr.}) \times (75\%\text{LSAT} - 25\%\text{LSAT})
\]

137. America’s Best Graduate Schools, supra note 4, at 45.
I begin with the two employment variables. For prospective students, the most important thing to keep in mind is that neither measures law-related jobs. Flipping burgers counts. *U.S. News* necessarily uses the same nine-month employment data tracked by the ABA. Using any other numbers would require law schools to submit statistics they do not already compile; compliance would probably be low. The ABA’s employment numbers, in turn, are not limited to law-related jobs—nor can they fairly be. Many students, particularly in evening programs, obtain law degrees to enhance their performance in non-legal careers. Counting them as unemployed would ignore the very reasons they went to law school. Counting non-legal jobs as employment, however, seriously limits the validity of the employment variables for ranking purposes.

Several additional factors tend to distort the first employment variable, employment rates at graduation. Three sets of students are likely to count as employed in these numbers: (1) students who have been offered full-time jobs out of big-firm summer programs, (2) evening students who already hold jobs, and (3) students who have worked part-time for smaller firms while in school and been invited to stay on after graduation. To the extent that employment-at-graduation figures measure big-firm offers, they measure something many prospective students do care about. But it is often impossible to determine the extent to which this is true. Schools with evening programs are likely to report higher employment-at-graduation rates, since evening students are generally already employed. In addition, more students are likely to have jobs at graduation if the school is located in a major legal center. On the other hand, to the extent a school’s graduates go into public interest jobs, its employment-at-graduation numbers will probably be lower, since public interest organizations often prefer to wait until graduates have passed the bar before extending offers. Finally, graduates in states with tough bar examinations are generally advised to study full-time for the bar; graduates in states with easier bar examinations are more likely to begin work immediately. And, of course, more than a quarter of all schools do not report employment-at-graduation numbers at all; *U.S. News* simply makes up numbers for them. For all of these reasons, it is unclear how much useful information employment-at-graduation numbers actually contain.

Unfortunately, although they account for 14% of *U.S. News*’s overall scores, the nine-month employment rates are even less meaningful. Federally guaranteed law school loans become payable six months after graduation. Typically, only graduates who are independently wealthy or have spouses or parents willing to support them can afford to remain unemployed at this point. (Remember, flipping burgers counts as employment.) Not surprisingly, in the 2007 issue, the median reported nine-

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138. *Id.*
140. See America’s Best Graduate Schools, supra note 4, at 45.
month employment figure was 93\%.\textsuperscript{141} For most schools in the top one hundred, therefore, the entire game on this variable was played out in the remaining 7\%. Harvard beat out both Yale and Stanford, reporting a 99.5\% nine-month employment rate—0.6\% higher than the other schools’ 98.9\% rates.\textsuperscript{142} For this, Harvard got 0.2 of overall score credit—twice as much credit as it got for the fact that its median LSAT was 173 while Yale’s was only 172. Why did Harvard perform slightly “better” on this variable? The answer is unclear, but it seems unlikely that it would be relevant to anyone making any kind of decision about law schools.

Given the incredibly small differences among most top 100 schools on this variable, the single biggest determinant of nine-month employment figures was probably the amount of time each law school devoted to managing this figure. From an educational perspective, such time was completely wasted. But schools that ignored the issue were penalized by \textit{U.S. News}. As is discussed in greater detail in Part III, \textit{schools gained or lost more points in the rankings by reason of the nine-month employment variable than by reason of any other}. And this is true even if one excludes an apparent clerical error which, by my computation, cost one school 18 overall score points.\textsuperscript{143} Did these differences measure anything of relevance to anyone? For the most part, no.

There is one further reason that \textit{U.S. News}’s employment variables do not tell a particular student much about her employment prospects if she attends a particular school: a student’s employment prospects generally depend far more on the student than on the school she chooses. A really good student attending a mid-ranked school will probably graduate near the top of the class and get the big-firm job she wants. If the same student attends a top-ranked school, she is less likely to graduate near the top of the class; her chances of getting that big-firm job may even decline. Judicial clerkships and law teaching positions are exceptions to this general rule. School reputation matters a lot for these jobs; the \textit{U.S. News} employment figures, however, are completely irrelevant. In addition, if a student wants to attend school in one part of the country but practice elsewhere, attending a school with higher name recognition is likely to help getting the first job in that other part of the country. But again, employment figures do not tell anything about name recognition.

By contrast, \textit{U.S. News}’s third “placement success” variable—bar passage—is clearly important. Like employment rates, however, bar passage rates generally tell more about the quality of a school’s student body than they do about the likelihood that a particular student will pass the bar. Stronger students tend to pass the bar regardless of where they go to school. Weaker students tend not to. Two further problems confound bar passage rate statistics. First, evening students commonly do not quit their jobs to study for the bar. As a result, at least at my school, they tend

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{141} See id. at 44–47.
\item \textsuperscript{142} Id. at 55.
\item \textsuperscript{143} The school has asked not to be identified.
\end{itemize}
\end{footnotesize}
to do worse than day students, pulling down the school’s overall bar passage rate. Second, a common technique schools use to boost bar passage rates is to “academically disqualify” (that is, flunk out) a larger portion of their student body, typically after the first year. Academic disqualification rates are not published by *U.S. News*. The fact that ‘Sink or Swim Law School’ does better than ‘We See You Through Law School’ in bar passage, however, may merely mean that ‘Sink or Swim’ flunks out a larger portion of its class. If so, attending ‘Sink or Swim’ will not necessarily boost a particular applicant’s chances of passing the bar at all.

Finally, all three of *U.S. News*’s “placement success” variables suffer from the same technical problem. One expects input variables to be normally distributed. Roughly speaking, there should be a large number of schools in the middle, with tails extending above and below the middle. When one of the tails is truncated, odd things happen. I call this a “ceiling” or “floor” effect—it arises whenever there is a line beyond which a school’s numbers cannot rise or fall. In the case of the *U.S. News* “placement success” variables, that line is 100%; no school can report a rate greater than 100% on any of these variables. The data suggest that top schools clearly bump up against this ceiling and are penalized by it.

In Part III, this article introduces the concept of leading and lagging variables, input variables in the *U.S. News* system that pull a school’s overall score up or down, respectively. For *U.S. News*’s five top-ranked schools, the placement success variables are almost all lagging—that is, they almost invariably pull overall scores down. In the table that follows, the amounts by which they do so are given in overall score points.

<table>
<thead>
<tr>
<th>School</th>
<th>Employ. at grad.</th>
<th>Employ. at 9 mos.</th>
<th>Bar pass ratio ind.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Columbia</td>
<td>-0.1</td>
<td>-3.3</td>
<td>-0.3</td>
</tr>
<tr>
<td>Harvard</td>
<td>-0.4</td>
<td>-3.9</td>
<td>-0.3</td>
</tr>
<tr>
<td>NYU</td>
<td>-0.3</td>
<td>-3.2</td>
<td>-0.1</td>
</tr>
<tr>
<td>Stanford</td>
<td>-0.4</td>
<td>-4.2</td>
<td>+0.3</td>
</tr>
<tr>
<td>Yale</td>
<td>-0.8</td>
<td>-5.4</td>
<td>-0.5</td>
</tr>
</tbody>
</table>

The reason for this is a ceiling effect: the top-ranked schools are so close to 100% that they bump up against that ceiling. The one exception is Stanford’s bar pass ratio indicator, which actually pulls Stanford’s overall score up by 0.3. A school’s bar pass ratio indicator measures how far the school’s bar pass-rate is from the average bar pass-rate for its jurisdiction.\(^\text{144}\) The other four schools’ bar pass rates are measured against the New York average, which is moderately high (75%).\(^\text{145}\) Their distances from that average therefore cannot get much larger than they already are. Stanford’s, however, is measured against the California average (61%).\(^\text{146}\)

\(^{144}\) *Id.* at 45.


\(^{146}\) *Id.*
Even though its reported bar pass rate is lower than any of the others', the ceiling in California is further away from the average. As a result, Stanford is not effectively constrained by that ceiling. In ranking the top five law schools, therefore, Stanford is deemed to have outperformed all four of the others in bar passage and, indeed, would still be deemed superior in this regard even if the other four were to report perfect (100%) New York bar pass rates.

I conclude that U.S. News's "placement success" variables do not really measure much that its three primary audiences—employers, prospective students, and prospective faculty members—actually care about. Inasmuch as they are accorded, in the aggregate, a weight of 20% in computing overall scores, this is a problem. I say this notwithstanding the fact that these variables boost my own school's overall score by a total of 2.1 points.

A prospective student whose goal is to become a big-firm partner in a particular city may wish to conduct her own research into the hiring and partnering patterns of firms in that city. The technique is simple: take a representative sample of firms in that city, then use Martindale-Hubble to count the number of partners from each school who graduated in or after some year, say twenty five years ago. I did this for Los Angeles four years ago. My results:

<table>
<thead>
<tr>
<th>Partners in the 5 largest LA firms (2002)</th>
</tr>
</thead>
<tbody>
<tr>
<td>UCLA</td>
</tr>
<tr>
<td>Harvard</td>
</tr>
<tr>
<td>USC</td>
</tr>
<tr>
<td>UC Berkeley</td>
</tr>
<tr>
<td>Loyola Los Angeles</td>
</tr>
<tr>
<td>Yale</td>
</tr>
<tr>
<td>NYU</td>
</tr>
<tr>
<td>Stanford</td>
</tr>
<tr>
<td>Chicago</td>
</tr>
<tr>
<td>Columbia</td>
</tr>
<tr>
<td>UC Hastings</td>
</tr>
<tr>
<td>Virginia</td>
</tr>
<tr>
<td>Georgetown</td>
</tr>
<tr>
<td>Michigan</td>
</tr>
<tr>
<td>San Diego</td>
</tr>
</tbody>
</table>

The foregoing numbers do not mean, of course, that one's chances of making partner at a big Los Angeles firm are better if one attends Loyola than if one attends Stanford. They do suggest, however, that attending University of California Hastings or University of California Davis, both of which are higher U.S. News-ranked than Loyola, will not necessarily give a student any advantage. The same kind of analysis can be done for any city in which a prospective student is interested.
4. Expenditures per student

Expenditures per student make an enormous difference in the relative ranking of otherwise comparable schools. They comprise 7.8 of the 9.0 overall score difference between Yale and Harvard and by themselves push Stanford past Harvard in the U.S. News rankings. Indeed, if we were to drop the two expenditure variables out of the computation altogether, use median LSATs instead of their percentile equivalents, and make no further changes to U.S. News's methodology, the top 10 law schools would reorder as follows:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Overall Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>Yale 100</td>
</tr>
<tr>
<td>2nd</td>
<td>Harvard 99</td>
</tr>
<tr>
<td>3rd</td>
<td>Stanford 97</td>
</tr>
<tr>
<td>4th</td>
<td>Columbia 92</td>
</tr>
<tr>
<td>5th</td>
<td>Chicago 91</td>
</tr>
<tr>
<td>6th</td>
<td>NYU 91</td>
</tr>
<tr>
<td>7th</td>
<td>UC Berkeley 89</td>
</tr>
<tr>
<td>8th</td>
<td>Virginia 88</td>
</tr>
<tr>
<td>9th</td>
<td>Pennsylvania 87</td>
</tr>
<tr>
<td>10th</td>
<td>Michigan 86</td>
</tr>
</tbody>
</table>

Yale would beat Harvard by 0.8 of an overall score point—still coming in first, but not by a nine-point margin; Harvard would move ahead of Stanford; Chicago would tie with NYU instead of coming in two ranks behind; and University of California Berkeley would move ahead of University of Pennsylvania.

This hypothetical scoring seems at least as plausible as U.S. News's actual scoring and ranking; it is certainly more consistent with Brian Leiter's rankings of faculty quality.  This, in turn, raises at least two questions: first, whether the reported expenditure figures actually reflect additional dollars spent on the J.D. programs U.S. News is ranking, and second, whether any such additional dollars spent actually improve the quality of those programs in a meaningful way.

(a) Do higher reported amounts actually reflect additional dollars spent on J.D. programs?

As noted, at least some of the expenditures-per-student numbers used by U.S. News appear to differ from those reported in the ABA Take-Offs. Some of these inconsistencies, my spreadsheet suggests, are quite significant. Unfortunately, the numbers used by U.S. News are not publicly available; it is therefore difficult to determine either the source of the problem or how widespread the problem is. There is something troubling about rankings based on secret numbers apparently inconsistent with those reported to the law schools' accrediting authority. There is a very

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real potential that the *U.S. News* rankings may come to measure dishon-
esty—higher rankings indicating, among other things, a greater willing-
ness to fudge the numbers. But there is little more to be said about this
aspect of the problem; the remainder of the discussion therefore focuses
on how the ABA numbers themselves are computed.

U.S. universities and stand-alone law schools are commonly subject to
generally accepted accounting principles (GAAP) for financial reporting
purposes. The expenditure numbers reported to the ABA, however, are
not based on GAAP at all. They are based instead on the rules each
school uses for internal budgeting purposes, and different schools use dif-
f erent rules.\(^{148}\) Nor is there any requirement that the rules used by a
given school remain consistent from year to year. We therefore begin
with a serious problem. In comparing two schools’ “expenditures,” or
even a single school’s “expenditures” in one year with the same school’s
“expenditures” in another, we may be comparing apples to oranges.

Three problems usefully illustrate the possibility that serious inconsis-
tencies may result from differences in accounting conventions. The first
is the treatment of capital expenditures. A capital expenditure, roughly
speaking, is an expenditure with a useful life of more than one year.\(^{149}\)
Examples include purchases of new buildings, new technology systems,
new library books, and the like. (These can be very large numbers in
legal education.) For budgeting purposes, one alternative is to treat capi-
tal expenditures as expenses. They are, after all, cash-out-of-pocket. A
school that budgets on this basis and builds a new $30 million building
will report a $30 million expenditure in the year of payment. A second
possibility, available only if the school finances the acquisition with debt,
is to treat the repayment of the debt as the expenditure. Now the $30
million cost of the building will be reported as a series of expenditures
over the life of the debt, whatever that might be, as the principal amount
of the debt is paid off. A third possibility, which my school uses for build-
ings and equipment, is to depreciate capital assets on a straight-line basis
over their useful lives. For budgeting purposes, schools can choose any
useful life they want. For buildings, my school uses sixty years. Under
such a budgeting rule, the cost of a $30 million building would be re-
ported as a $500,000 expenditure each year for sixty years. A fourth pos-
sibility, common for state schools with respect to facility costs, is not to
charge the law school budget at all. My school uses this fourth conven-
tion for land acquisition costs. Each of these conventions results in very
different reported law school expenditures—for the same $30 million
building.

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\(^{148}\) See American Bar Association, 2005 Annual Questionnaire Part 6, at 2 (“the ques-
tionnaire is designed for law schools with a wide variety of accounting and budgeting
practices”).

\(^{149}\) See *e.g.*, Theodore P. Seto, *Drafting a Federal Balanced Budget Amendment That
The ABA’s reporting instructions constrain the use of these conventions to some extent. Use of the first—treating the entire cost as an expenditure up front—is prohibited for “major capital projects.”150 Defined as “substantial remodeling and new buildings, including architectural and engineering fees for those projects.”151 The second,152 third,153 and fourth154 conventions are all explicitly authorized, even though they lead to very different expenditure numbers. Equipment155 and library acquisitions,156 however, must be expensed up front, regardless of how they are treated in the school’s actual budget. For this purpose, unfortunately, “equipment” is undefined. Does it include a new building’s computer and communications infrastructure? Its plasma screens and Smartboards? Its elevators? Its heating and air conditioning systems? The answers are unclear. It would not be surprising to discover that different schools interpret the ABA’s instructions in different ways.

A related problem arises from the fact that for many older schools, the value of buildings is omitted entirely from the expenditure computation. A school that owns its buildings free and clear and has already amortized any associated costs gets no credit at all in the ABA and U.S. News figures for what may be a spectacular campus. A school that merely rents its buildings or has purchased them but not yet paid off any associated debt, by contrast, may report its rent or debt service as expenditures, and thereby be treated as “better” for U.S. News ranking purposes than an otherwise identical school that owns its buildings free and clear. Whether a law school has adequate classroom space, space for faculty and student organization offices, and the like is obviously relevant to the quality of

150. American Bar Association, 2005 Annual Questionnaire Part 6, at 13 (“Includes Operating Funds Only. We are not seeking capital expenditures which are reported in Capital, Endowment, and Reserves later in this questionnaire.”); id. at 35 (with regard to “Gifts, Endowment and Reserve Funds,” Line F, “Please state actual expenditures during the year for major capital projects. . .”).

151. Id. at 35.

152. Id. at 12 (“Interest and Debt Service Payments. Report expenditures only if they are included in the law school budget directly or charged to the law school.”); id. at 18.

153. Id. at 7 (“Funds designated for ‘depreciation’ should be included in Line K.1 if charged against the law school.”). Presumably, the reference to Line “K.1” is a typographical error, intended as a reference to Line “J.1” in the current questionnaire.

154. Id. (“Many schools will have few of the categories in this section filled out. This will particularly be true of public institutions.”).

155. Id. at 10 (“Library Equipment: Purchase, rental, repair, maintenance.”); id. at 11 (“Indirect Expenditures: In this category, include all relevant personnel, fringe benefits, supplies and equipment expenditures.”); id. at 16 (“Library equipment (purchase, rental, repair, maintenance . . . )”); id. at 17 (“Equipment Purchase, Rental, Repair and Maintenance”); id. at 18 (“Indirect Expenditures and Overhead (In this category include all relevant personnel, fringe benefits, supplies and equipment expenditures)”); id. at 34 (“Line F. This question asks for the actual expenditures for major capital projects. Generally, equipment purchases should not be reported here; rather in the Expenditures section, line H-5.”); id. at 35 (“Please state actual expenditures during the year for major capital projects. . . . Equipment purchases and the like should generally be reported on line H-5 of the Expenditure section.”).

156. Id. at 10 (“Acquisitions of Other Library Information Resources. Any non serial library information resources not reported in G.1 and G.2, including books, non-serial microfilms, CD-ROMS not reported above, audio-visual, and other.”).
the experience it is able to offer its students. Because of the way "expenditures" are computed, however, *U.S. News* does not actually measure this educational input.

A third set of potential inconsistencies arises in accounting for expenditures made out of restricted or dedicated revenue sources. The purpose of budgeting is to make sure that a school does not spend more than it should. Reimbursed expenditures or expenditures made out of restricted revenues are therefore sometimes treated as off-budget—neither the revenues nor the associated expenditures show up in the budget at all. An example at my school is work/study funding. Only the portion of work/study payments contributed by the law school is treated as an "expenditure." An alternative way to account for exactly the same revenue and expenditure streams would be to include federal work/study subsidies as revenues and treat the full amount of all work/study payments as expenditures. Whether a school uses the first convention or the second will substantially affect its reported work/study expenditures for *U.S. News* purposes.

A similar anomaly arises in accounting for visiting faculty. Assume that a faculty member from School A visits at School B. School A therefore hires a visitor to fill the absent faculty member's slot in the interim. Quite commonly, the absent faculty member will remain on School A's payroll; School B will simply reimburse School A for her salary and benefits for the duration of the visit. School A will therefore continue to carry her salary and benefits as an expenditure, albeit fully reimbursed. But School A will also pay for the absent faculty member's replacement. In effect, for expenditure purposes School A double-counts the cost of the absent faculty member's slot. Schools with high volumes of visiting faculty are likely to have a correspondingly high incidence of double-counting of faculty salaries and benefits.

Similar problems arise in accounting for joint degree programs and joint appointments. In the typical joint J.D.-M.B.A. program, for example, the law school gets the tuition for law courses, the business school the tuition for business courses. This can be accounted for in either of two ways. The business school tuition can be treated as having been paid directly to the business school—that is, as not passing through the law school budget at all. Alternatively, the student's tuition may be treated as having been paid first to the law school and then by the law school to the business school. In the latter case, the business school tuition payment will show up as a law school "expenditure," boosting the school's expenditures per student. Similarly, the compensation of a professor with a joint appointment can be paid separately by each school, in which case only part of her compensation will flow through the law school's budget. Or, the second school can pay its portion of her compensation to the law school, which then makes the actual payments to the employee. In the latter event, her entire compensation will flow through the law school's budget.
My purpose here is not to offer a comprehensive guide to law school budgetary rules and practices. The foregoing examples are intended merely as illustrations of a larger problem: because budgeting conventions were never designed to facilitate interschool comparisons, even large differences in reported expenditures per student may merely reflect differences in accounting practices, not differences in actual dollars spent.

Setting aside the problem of accounting consistency, we still need to ask: expenditures for what? For ABA reporting purposes, and therefore for U.S. News purposes, whether an expenditure is included as a "law school expenditure" is determined, in the first instance, simply by looking at whether it is included in the law school's budget.157 This, in turn, is an internal administrative question, resolved in different ways at different schools. For example, the largest on-campus clinic at my school—with a half-dozen faculty-like staff members whose principal function is to supervise students in their clinical work—is organized as a separate corporate entity. As a result, its expenditures do not appear in the law school's budget and its employees are not counted as "faculty"; the law school therefore gets no ranking credit for the educational opportunities it affords. If my school were to operate the very same clinic within the university's corporate shell, by contrast, its expenditures and faculty would count, potentially boosting the school's ranking.

Law schools cannot be completely arbitrary about what they include in their reporting budgets. The ABA requires that they exclude expenditures for so-called "auxiliary" enterprises, which it defines by enumeration: "e.g., vending machines, bookstore, dining halls, and law school dorms."158 The ABA questionnaire requires that schools report only net revenues from such enterprises and concludes: "[s]ince you are reporting the net revenue, do not report any expenditures related to this category."159 The questionnaire does not, however, exclude expenditures for academic programs other than the J.D. program. Many U.S. law schools offer extensive LLM. (Master of Laws), S.J.D. (Doctor of Juridical Science), certificate, and Continuing Legal Education (CLE) programs. Some offer M.B.T. programs for non-lawyers; others offer paralegal training programs. Such non-J.D. programs are not "auxiliary" enterprises for ABA reporting purposes. If the non-J.D. program is included in the law school's budget, all of that program's expenses are included in the expenditure figures reported to the ABA and U.S. News, even if the expenses are really being incurred, in whole or in part, to educate non-J.D. students.

The next step in computing expenditures per student is to divide "expenditures" by the number of students. We therefore need a definition of

157. Id. at 4 ("Expenditures are to be reported if they are in the law school budget regardless of the source of income that supports the expenditure").
158. Id. at 22. I want to thank Laurie Newitz, Chief Financial Officer of Brooklyn Law School, for correcting an error in a prior draft of this article with respect to the proper treatment of such expenses.
159. See id.
“student.” In computing its expenditures-per-student numbers, the ABA includes FTE students in all of the law school’s degree programs (for instance, LL.M.’s, S.J.D.’s, M.B.T.’s, paralegals). U.S. News computes expenditures per student differently, dividing each school’s total “expenditures,” including expenditures on non-J.D. programs, by the number of FTE J.D. students. This is clearly wrong; U.S. News’s method significantly overstates J.D. expenditures per student at schools with large non-J.D. programs. A table of the percentage by which each school’s J.D. expenditures per student are overstated as a result of this error is given in Appendix C to this Article. NYU’s expenditures per student, for example, appear to be overstated by 44% in U.S. News’s computations as a result.

U.S. News then breaks the resulting expenditures per student into two categories. The more heavily-weighted variable (9.75%), which U.S. News calls “expenditures per student for instruction, library, and supporting services,” is based on the ABA “direct expenditure” numbers, with “tuition reimbursements, grants, and loan forgiveness” removed. The less heavily-weighted variable (1.5%), which it calls “expenditures per student on all other items including financial aid,” includes ABA “indirect expenditures” plus “tuition reimbursements, grants, and loan forgiveness.” The labels U.S. News uses imply that its more heavily weighted expenditure variable reflects educational inputs and that its less heavily weighted expenditure variable does not. Each is only partly true, and, again, the extent to which each is true is likely to vary significantly from school to school. To understand what each variable actually represents, one must first understand how the ABA differentiates between “direct” and “indirect” expenditures.

“Indirect” expenditures are defined as expenditures in eleven categories: (1) “building operation and maintenance,” (2) “utilities (other than telephone),” (3) “security,” (4) “interest and debt service payments,” (5) “assessments by the university for specific university services,” (6) “indirect or overhead charges by the university,” (7) “overhead on grants/contracts or the like retained by the university,” (8) “overhead or charges of any kind assessed by the university against private giving, endowment funds or the like,” (9) “surplus retained by university,” (10) “student fees retained by the university,” and (11) “other overhead-type expenditures.” All other expenses are treated as direct. U.S. News’s “expenditures per student for instruction, library, and supporting services,” therefore includes expenditures for, among other things, fundraising, public relations, alumni relations, career services, and computer infra-

160. Telephone Interview with Samuel Flanigan, Deputy Director of Data Research, U.S. News & World Report (June 27, 2006).
162. Id. at Questions 96–97.
structure—not what one necessarily thinks of when one thinks of core educational expenditures.

Indirect expenditures, thus defined, fall into three basic groups: (1) facility expenses (categories 1-4), (2) amounts paid to or retained by the parent university (categories 5-10), and (3) "other overhead-type expenditures" (category 11). U.S. News then adds a fourth group, "tuition reimbursements, grants, and loan forgiveness," to complete its less heavily weighted expenditure variable.\(^{164}\) Two questions suggest themselves with regard to this variable: first, whether it makes sense to give expenses in these four categories a lower weight (1.5%) in the ranking computation than other expenses (weighted at 9.75%); and second, whether it makes sense to give such expenses any weight at all.

One might colorably argue that the quality of a law school's physical plant merits more than a 1.5% weight. Anecdotal evidence suggests that many ABA accreditation issues relate to physical plant. An inadequate building limits course offerings, new faculty hiring, library resources, high-tech teaching methods, student organizations, study facilities—the list goes on and on.

The problem with giving facility expenses any greater weight—or indeed any weight at all—is that the numbers themselves are so inherently problematic. Because of the accounting consistency problems discussed above, the numbers are simply not comparable from school to school. On the other hand, these very accounting consistency problems may argue in favor of not attempting to distinguish between the two types of expenditures for ranking purposes. Is classroom technology part of the "building?" If so, its costs will be low-weighted. If not, they will be given full ranking credit. As noted, different schools may well report such costs differently. And if the accounting consistency problems were not bad enough on their own, the ABA's instructions with regard to such expenses are so vague as to leave schools great leeway in reporting. Is the receptionist at the front desk "security?" If so, his salary and benefits are low-weighted. If not, they are given the same credit for ranking purposes as a full professor's.

The second group of indirect expenditures—amounts paid to or retained by the law school's parent university—raises equally serious interschool comparability problems. First, stand-alone law schools do not report any such expenditures. Such schools instead report expenditures on the same real inputs in some other category—direct or indirect. If direct, stand-alone law schools may receive substantially greater credit (9.75% as opposed to 1.5%) than university-affiliated law schools for identical real inputs. Second, schools differ in the extent to which law school revenues are used to subsidize other university programs. There is no reason to treat a law school that pays a heavy annual subsidy to its

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164. Telephone Interview with Samuel Flanagan, Deputy Director of Data Research, U.S. News & World Report (June 27, 2006).
university as "better" for ranking purposes than an otherwise identical school that pays no such subsidy—but U.S. News's methodology does.

Third, even if we can get past the comparability problems created by stand-alone schools and the use of law schools as funding sources for other parts of a university, we still face major comparability problems in assessing amounts paid to or retained by parent universities for services actually provided to their law schools. Admissions, alumni relations, development, grant management, information technology, payroll, placement, public relations, recordkeeping, registration, and student accounts are all functions sometimes provided by the law school, sometimes by the parent university. If they are provided by the law school, the relevant expenditures will be "direct" and will be counted in U.S. News's formula at 9.75%. If they are provided instead by the university in return for a fixed or formulaic amount paid to or retained by the university, that amount will be "indirect," and therefore counted at only 1.5%. Identical inputs, different treatments.

The ABA questionnaire partially addresses this problem by authorizing recategorization of indirect expenses as "direct" in limited circumstances. It states:

Ordinarily, include expenditures as direct law school expenditures only if they are included in the law school 'budget' or under the control of the law school. Exceptions are rare, but may be made where it is clear that the failure to include an item would be misleading. . . . [I]f the university . . . funds central services to the law school that are, in most law schools, funded within the law school budget, it might be misleading not to include those costs as direct law school expenditures. Thus if development and alumni relations services are provided to the law school by personnel paid by central university funds but dedicated to providing services to the law school, the reasonably allocated costs of those dedicated personnel (whether physically located in the law school or in a central university office) should be included as a direct expense. . . . Similarly, if financial aid services are provided to the law school and law students by personnel paid by central university funds but dedicated to providing services to the law school, the reasonably allocated costs of those dedicated personnel (whether physically located in the law school or in a central university office) should be included as a direct expense. . . .

Exactly what portion of any formulary amount paid to or retained by a university is paid or retained in exchange for any such services, however, is commonly very unclear. Recategorization would typically require significant extra work of a sophisticated nature by the person—often a clerical employee—filling out the questionnaire. One wonders how much such recategorization actually occurs, and on how principled a basis. A law school seeking to maximize its U.S. News ranking, of course, can renegotiate its deal with its university—recharacterizing the very same

sums it has always paid to the university as payments for direct services. It is unclear how many law schools have done so.

The ABA’s final category of indirect expenses consists of “other overhead-type expenditures,” which, the questionnaire states, should include “corporate taxes, profits or dividends distributed, or the like.”\textsuperscript{166} It is difficult to understand why a law school that pays high taxes or distributes large dividends to its shareholders should be treated as “better” than an otherwise identical law school that does not, but that is what \textit{U.S. News}’s methodology does.

In any event, in 2004–2005 the percentage that “indirect expenditures” comprised of “total expenditures” varied markedly across U.S. law schools, ranging from zero to a high of 50\%.\textsuperscript{167} Five law schools reported no indirect expenses whatsoever; fifty-five law schools reported indirect expenses of less than 10\%. Eight law schools, by contrast, reported indirect expenses in excess of 30\%. Given these dramatic variations—which seem very unlikely to reflect comparable variations in real inputs—and the likelihood that such variations result instead from inconsistencies in accounting or reporting, the division of expenses into direct and indirect categories seems largely arbitrary. In sum, the assignment of different weights to the two categories probably introduces substantial random error into \textit{U.S. News}’s rankings.

As an example, recall that Harvard actually spent \textit{more} per student in 2003–2004 and 2004–2005 than Stanford.\textsuperscript{168} Nevertheless, because a larger percentage of Harvard’s expenditures (21.87\% as opposed to 11.02\%) were reported as “indirect,” Harvard lost a net 1.2 overall score points to Stanford by reason of its “inferior” expenditures per student. This factor by itself moved Stanford past Harvard into second place.\textsuperscript{169} There is no evidence that Harvard’s “inferior” numbers reflected any meaningful inferiority.

The final group of expenses that \textit{U.S. News} (but not the ABA) includes in its lower-weighted expenditure variable consists of “tuition reimbursements, grants, and loan forgiveness.”\textsuperscript{170} The argument, presumably, is that scholarships reflect tuition foregone, not real educational inputs. At the extreme, a school could increase its tuition substantially while rebating the entire increase to its students in the form of scholarships. The effect would be to boost the school’s reported expenditures per student without changing the amount actually spent on education by a single penny. In addition, it appears that a significant portion of all law school scholarships are now awarded to help manage schools’ LSATs and

\textsuperscript{166} \textit{Id. at 11.}

\textsuperscript{167} For purposes of the computations reported in this paragraph, “tuition reimbursements, grants, and loan forgiveness” were excluded from both numerator and denominator.

\textsuperscript{168} \textit{See Table 14, supra.}

\textsuperscript{169} \textit{See America’s Best Graduate Schools, supra note 4, at 44.}

\textsuperscript{170} Telephone Interview with Samuel Flanigan, Deputy Director of Data Research, \textit{U.S. News & World Report} (June 27, 2006).
UGPAs for ranking purposes, not for reasons having anything to do with legal education. Lowering the weight given scholarships minimizes the impact of such games.

A counter-argument is that at least some expenditures in this category do affect student opportunities in significant ways. My school, for example, has a grant program that funds students in summer public interest jobs. As a result, many students who otherwise could not afford to do so receive supervised public interest legal experience. Similarly, my school offers public interest loan forgiveness for students who go into low-paying public interest jobs upon graduation. While this program is not "educational" in the curricular sense, it is certainly as educational as expenditures incurred to place graduates in big firms—to which U.S. News accords its higher 9.75% weight. The ABA treats these as "direct" expenditures; U.S. News does not.

(b) Do higher reported expenditures significantly improve program quality?

At the beginning of my expenditure discussion, I posed two questions. The first was whether higher reported figures actually reflected additional dollars spent on the J.D. programs U.S. News was ranking. Because the data in question was of such poor quality, I suggested, the answer was, at best, "in many situations, it is very hard to tell." I turn now to the second question: whether additional dollars spent actually improve the quality of those programs in meaningful ways.

The assumption, of course, is that more money means a commensurately better program. Three preliminary observations about this assumption may be useful. First, extensive studies of K-12 public schools have failed to establish any systematic relationship between per-student expenditures and student achievement.\(^{171}\) There is no obvious reason to believe that a stronger relationship exists in the context of legal education. Second, U.S. News-ranked schools all meet the ABA’s relatively high standards for accreditation, which effectively require expenditures per student more than twice those of non-ABA-accredited law schools.\(^{172}\) The question, therefore, is not whether ranked schools are spending enough, as it sometimes is in the context of public elementary or secondary schools; the question is rather whether more is always better—in-


\(^{172}\) American Bar Association, supra note 56, at Table F-6. The average 2004–2005 direct expenditures per FTE student for all ABA-approved law schools were $25,449. It can be inferred that average total expenditures per FTE were therefore about $29,874. See also id. at Table F-15 (average direct expenditures = $20,107,927; average total expenditures = $23,603,114). By contrast, a sample of four California-accredited law schools (Cal Northern School of Law, San Francisco Law School, Empire College School of Law, and Glendale University College of Law) charge an average full-time tuition rate for 2006–2007 of $12,395. It is unlikely that these schools spend substantially more per student than they receive in tuition. This suggests that ABA-accredited schools spend, on average, more than twice as much per student as California-accredited schools.
deed, proportionately better. Third, a number of law schools, including many with unexceptional expenditure-per-student numbers, regularly run operating surpluses.\(^{173}\) In other words, they do not spend all that they take in, saving instead for the future. Presumably, they believe their levels of current expenditure to be adequate.

I would like to begin by framing this second question more concretely. Recall that largely because of the expenditure variables, Yale outranked Harvard by nine overall score points, Stanford moved past Harvard, NYU moved past Chicago, and Pennsylvania moved past UC Berkeley. The concrete question, therefore, is whether tangible educational opportunities are available at Yale and Stanford but not at Harvard, at NYU but not at Chicago, and at Pennsylvania but not at UC Berkeley, that might justify these scorings. If real educational opportunities are available at the schools with higher reported expenditures but not at those with lower, and if those opportunities are sufficiently important, then perhaps \textit{U.S. News}'s use of its expenditure variables is valid. If not, then use of those variables is harder to justify.

At least four possibilities suggest themselves. First, it is possible that schools with higher "educational" expenditures per student have lower student/faculty ratios, and that this in turn justifies higher scores. A simple response is that higher "educational" expenditures per student do not necessarily translate into lower student/faculty ratios: Chicago, for example, has a lower student/faculty ratio than NYU, even though it reportedly spends less per student. In any event, if what one is really interested in is student/faculty ratios, one should focus instead on student/faculty ratios, not on expenditures per student. This issue of student/faculty ratios is explored separately below.

An important variation of this first possibility, however, is that higher "educational" expenditures per student signal that a school sponsors more in-house clinics. The McCrate Report,\(^{174}\) issued in 1992, evidenced a belief on the part of many that hands-on, practical legal training should become an important part of the American law school experience. Law schools now use both externship programs and in-house clinics to provide such training. In-house clinics, however, are much more expensive, in part because they require more faculty and low student/faculty ratios.\(^{175}\) Perhaps the use of expenditure-per-student data in rankings can be justi-

\(^{173}\) See \textit{id. at Table F-19; American Bar Association, Take-offs from the 2004–05 Annual ABA Law School Questionnaire, at Table F-19; American Bar Association, Take-offs from the 2003–04 Annual ABA Law School Questionnaire, at Table F-19.\(^{174}\) \textit{American Bar Association, Section of Legal Education & Admissions to the Bar, Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992), http://www.abanet.org/legaled/publications/onlinepubs/mccrate.html.}\(^{175}\) See William R. Trail & William D. Underwood, \textit{The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools, 48 Baylor L. Rev. 201, 240 (1996)} ("Effective skills training tends to be more expensive than other aspects of legal education because of the lower faculty-student ratios generally required to provide necessary supervision and feedback.").
fied on the ground that they reflect superior practical legal training. Three questions arise in this regard: (1) Are clinics superior to externships? (2) How are clinics and externships credited for ranking purposes? And finally, (3) given the answers to questions (1) and (2), are expenditures an appropriate measure of the quality of a school’s clinical education?

A thorough evaluation of the relative merits of externships and in-house clinics is beyond the scope of this article; a brief summary, however, may be useful. Externships can offer practical training in a much wider variety of contexts than in-house clinics. As a result, externs can often get practical training more directly related to their personal career goals. On the other hand, students are often given greater responsibility for individual client matters in in-house clinics. Moreover, clinics can be offered in subject areas in which externships may not be locally available; this is particularly important for law schools not located in major metropolitan areas. J.P. Ogilvy states:

Externships share many of the teaching goals of in-house, live-client clinics. Some high credit-hour, closely supervised externships closely resemble in-house, live-client clinics. In most externship programs, however, students are given far less responsibility for client representation than is available through an in-house clinic. On the other hand, externships may provide students with unparalleled opportunities to define and pursue learning goals, to explore career interests in a variety of legal jobs, and to build a professional network.

Colorable arguments can be made that the average in-house clinic is superior to the average externship in important regards. Nevertheless, a well-designed externship program can provide many of the same educational benefits and in some contexts can do so more effectively. As Deborah Maranville notes, “[a]n uneasy truce persists . . . between proponents of ‘in-house’ clinics and externships programs.”

The *U.S. News* rankings do not reflect any such truce. *U.S. News* gives full rankings credit for clinics, no credit whatever for externship programs. At least two *U.S. News*'s input factors capture the benefits of clinics operated within the university’s corporate shell: “expenditures per student for instruction, library, and supporting services” and “student/faculty ratio.” Neither captures any of the benefits of externships. The costs of externship training are borne by the organization with which a student is placed; in exchange, that organization receives the student’s services. As a result, those costs are not included in the law school’s

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179. See *America's Best Graduate Schools*, supra note 4, at 45.
budget and are not credited to the law school for ranking purposes. Similarly, the extern's on-site supervisor is not counted in computing the school's student/faculty ratio, even on a fractional basis. Some two hundred thirty lawyers, each an expert in a specialized field, supervise and train my school's externs each year, typically on a one-on-one basis. Although these lawyers provide important practical legal training, they are completely ignored for ranking purposes. In effect, U.S. News takes an extreme position in the ongoing pedagogic debate: clinics valuable, externships worthless.

Given the foregoing, can the inclusion of expenditures per student be justified, in part, on the ground that they measure the quality of a school's clinical education? I think not. One would need significantly more evidence, for example, to conclude that Yale should be awarded 7.5 more overall score points than Harvard because of the supposed superiority of the practical legal training it offers. The numbers are simply too indirect to permit any such inference.

A second possibility is that schools with higher "educational" expenditures per student pay their faculty members higher average salaries. Higher-paid faculty members, the argument goes, are on average "better." Setting aside for a moment the question of how such faculty members are "better," I find this argument persuasive when comparing mid-ranked with top-ranked schools. Top-ranked schools tend to acquire a much larger portion of their faculties through lateral hiring. Lateral hiring often involves significant pay hikes for the professors involved. Schools that routinely engage in lateral hiring must presumably adjust their pay scales for home-grown faculty members so as to avoid major disparities between their home-grown and laterally-hired faculties. Although comprehensive law school salary data is not available, it seems likely that higher-ranked schools do tend to pay their faculty members significantly higher salaries, on average, than lower-ranked schools.\footnote{Compare Michigan Daily, Average University of Michigan Professorial Salaries, http://apps.michigandaily.com/salary/200607.xls (providing University of Michigan employee salaries), with Society of American Law Teachers, 2005–2006 SALT Salary Survey 1 (2006), http://www.saltlaw.org/EQ-March2006.pdf (showing law school professor salaries at lower-ranked schools).}

There are at least two problems with justifying use of "educational" expenditures per student figures in law school rankings on this ground. First, most readers do not use U.S. News merely to determine whether a school is in the bottom, middle, or top of the pack; most use it to compare closely ranked schools—for example, Yale versus Harvard, or NYU versus Chicago. As noted in the introduction to this topic, in such close comparisons expenditure per student figures have an enormous impact. Do they have comparable validity? Can one really suppose that NYU pays its professors 75\% more, on average, than Chicago, as their relative "educational" expenditures per student might be read to imply? This seems utterly improbable.