

LEGALLY UNHAPPY: HOW US NEWS AND LAW SCHOOLS HAVE FAILED AND HOW THIS CAN BE FIXED

Part #1: The Problem

Law school. These two words were once regarded as the golden ticket for a better life.¹ Starting salaries for first year associates in 2019 at some firms eclipsed \$190,000 per year.² But career satisfaction has been lost among recent law school graduates. In a 2008 poll surveying recent law school graduates, only 45.6% of respondents say they were satisfied with their legal careers.³

Unhappiness among recent law school graduates has been getting progressively worse. Between 1976 – 79, 83% of law school graduates who had completed their degree within the previous 5 years were satisfied with their career as an attorney.⁴ Between 1997 – 98, 67% of law schools graduates who were in practice less than 10 years said they were satisfied with their career as an attorney.⁵ Lawyers are the least satisfied with their careers when compared to clergy, teachers, and doctors.⁶ Some argue that this lack of career satisfaction is attributable to soaring debt. The overall average debt a law school graduate undertook was just over \$112,000 in 2016.⁷ This causes many students to abandon their original goals and seek employment with large, well-

¹ Alex Williams, *No Longer Their Golden Ticket*, N.Y. Times (Jan. 15, 2010), <https://www.nytimes.com/2010/01/17/fashion/17lawyer.html>.

² Sara Randazzo, *Starting Law Firm Associate Salaries Hit \$190,000*, The Wall Street Journal (June 12, 2018), <https://www.wsj.com/articles/starting-law-firm-associate-salaries-hit-190-000-1528813210>.

³ Jerome M. Organ, *What Do We Know About the Satisfaction / Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225, 259 (1999).

⁴ John Monahan and Jeffrey Swanson, *Lawyers at Mid-Career: A 20-Year Longitudinal Study of Job and Life Satisfaction*, 6 J. EMPIRICAL L. STUDIES 451, 454-55 (2009).

⁵ Organ, *Satisfaction*, *supra* note 3, at 244.

⁶ Tom W. Smith, *Job Satisfaction in the United States 1-3* (Apr. 17, 2007) (unpublished) (on file with NORC / Univ. of Chi.) <http://www-news.uchicago.edu/releases/07/pdf/070417.jobs.pdf>.

⁷ Ilana Kowarski, *10 Law Schools Where Grads Have the Least Debt*, U.S. News & World Report (May 23, 2007), <https://www.usnews.com/education/best-graduate-schools/the-short-list-grad-school/articles/2017-05-23/10-law-schools-where-grads-have-the-least-student-debt>.

paying corporate firms where they have little desire to practice.⁸ Compare this to life in 1980, when the average tuition for a resident law student at a private institution was only \$3,890 per year.⁹

But lower career satisfaction goes beyond money. Of the 10 law schools from which students graduated with the most debt in 2011,¹⁰ only one was considered a T-14 institution.¹¹ Half were considered tier-4 schools.¹² This means that students who are the least likely to obtain \$190,000 starting salaries are the ones taking on the most debt.¹³ Common sense would suggest that these tier-4 graduates should be the most unsatisfied with their legal careers. These ‘unranked’ students are taking on significant debt and cannot find jobs that are paying enough to service their debt. But this assumption does not align with the numbers. 43% of tier-4 graduates consider themselves to be “very satisfied” with their legal careers as opposed to only 27% of T-14 graduates.¹⁴

Perhaps the lower level of happiness among T-14 graduates is a result of the legal work they are doing. Research has shown that a lawyer’s lack of ability to contribute to the public good is the most disappointing aspect of their practice of law.¹⁵ BigLaw attorneys are considered to be the least satisfied with their legal careers when compared to those who practice in the public sector, small firms, or as solo practitioners.¹⁶ A lawyer’s level of income also correlates least with higher

⁸ Philip G. Schrag, *The Federal Income-Contingent Repayment Option for Law Student Loans*, 29 HOFSTRA L. REVIEW 733, 736 (2001).

⁹ Kate Harper, *Tuition Up: Funding to be Used for New Faculty*, *The Docket*, Mar. 1980, at 1, <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1074&context=docket>.

¹⁰ Brian Z. Tamanaha, *Is Law School Worth the Cost?*, 63 J. LEGAL EDUC. 173, 175-76 (2013).

¹¹ Elie Mystal, *New U.S. News Law School Rankings: They’re Official*, *Above the Law* (Apr. 14, 2010, 10:27 PM), <https://abovethelaw.com/2010/04/new-u-s-news-law-school-rankings-theyre-official/>.

¹² *Id.*

¹³ William D. Henderson and Andrew P. Moriss, *What Law School Rankings Don’t Say About Costly Choices*, *NLJ* (Apr. 14, 2008, 12:00 PM), <https://www.law.com/nationallawjournal/almID/1207904889498/?sreturn=20200112090355>.

¹⁴ Jill Schachner Chanen, *Are You Happy Now?*, *ABA Journal* (Nov. 1, 2010, 9:34 AM), http://www.abajournal.com/magazine/article/are_you_happy_now.

¹⁵ *Id.*

¹⁶ *Id.*

reported levels of career satisfaction when compared to creativity, autonomy, or the degree to which the lawyer sees their work contributing to the betterment of society.¹⁷ Starting salaries for these positions are unlike BigLaw in that they barely eclipse \$50,000 per year.¹⁸

One could argue that this is an unavoidable process. Tier-4 graduates are forced to take lower paying positions because only the top 5% of students from these schools can obtain BigLaw jobs.¹⁹ This contrasts with the 68% of students from T-14 law schools who head to BigLaw after graduation.²⁰ But tier-4 graduates are more satisfied with their careers than T-14 graduates. It is natural to infer that lower ranked students are happier because BigLaw is not available to them.

There are two things that need to be done to make lawyers happy again. The first is to change the current structure of the *US News* rankings.²¹ Several factors which *US News* considers can be modified to improve the quality of legal education. The second solution involves law schools relying on adjunct faculty to teach students rather than highly paid full-time professors. The logic is simple: (1) recent law school graduates are unhappy in BigLaw; (2) these graduates went to BigLaw because they have large debt from expensive law schools; (3) law school is expensive because the costs of highly paid full-time professors; and (4) relying on adjuncts would reduce tuition, debt, and the gravitation to BigLaw, while at the same time providing a better

¹⁷ *Id.*

¹⁸ Travis Gibson, *Pay Raises for State Attorneys, Public Defenders Aims to Help with Retention*, The St. Augustine Record (Sep. 13, 2019), <https://www.staugustine.com/news/20190912/pay-raises-for-state-attorneys-public-defenders-aims-to-help-with-retention>.

¹⁹ Tamanaha, *supra* note 10, at 182.

²⁰ Gregory Yang, *Majority of Prospective Law Students Support the LSAT*, Tipping the Scales (Aug, 9, 2018), <https://tippingthescales.com/2018/08/majority-of-prospective-law-students-support-the-lsat/4/>.

²¹ A third option would be to eliminate the *US News*. This option is nearly impossible because another form of rank would take over. I interviewed a former Dean from a top ranked law school that requested anonymity. This former Dean states that while the *US News* has its flaws, elimination would be impossible because “if *US News* didn’t do it, somebody else would.” The Dean states “I wish we didn’t have the *US News*, but we need it.” The Dean states that the greatest “need” for the *US News* is that it “assists law firms in hiring the best graduates.” The message in this paper is to take advantage of this system and structure the *US News* in such a way that truly meaningful factors are considered. Schools will then be forced to compete for the top spot over things that matter, like career satisfaction.

education. To ensure that law schools are relying on adjunct instructors, a fifth factor can be added to the *US News* rankings called “lowest tuition.” The effectiveness of this revamped *US News* algorithm should then be graded via evaluation by law school students, graduates, professors, and deans on a yearly basis.

Part #2: US News Law School Rankings

A. Law School Deans Manipulate the Process

Law schools have placed too much emphasis on the *US News & World Report* rankings [Hereinafter *US News*]. The dean of a law school will often receive a raise if their school elevates in the rankings.²² That same dean may get “pushed out” if the law school slips in the rankings.²³ Law school deans resigned at 4 schools that suffered large *US News* declines in 2005 – 06, giving rise to the suspicion that their institution’s drop in the rankings played a role in their exit.²⁴

Deans from top-tier law schools are not immune from pressure to maintain or elevate in the *US News* rankings.²⁵ Former Stanford Dean Larry Kramer states, “[y]ou distort your policies to preserve your ranking.”²⁶ Professor Kramer admits to performing controversial practices despite the fact that Stanford has remained within the top 4 of the T-14 since *US News* began formulating

²² Christopher J. Ryan, Jr. and Brian L. Frye, *A Revealed-Preferences Ranking of Law Schools*, 69 ALA. L. REV. 495, 497 (2017).

²³ Elie Mystal, *Some Students Want Their Deans Fired After Poor Showing in the U.S. News Rankings (and One Head That’s Already Rolled)*, Above the Law (Mar. 14, 2013, 11:20 AM), <https://abovethelaw.com/2013/03/some-students-want-their-deans-fired-after-poor-showing-in-the-u-s-news-rankings-and-one-head-thats-already-rolled/>.

²⁴ Andrew P. Moriss and William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 IND. L. J. 791, 792 (2008).

²⁵ Morgan Cloud and George Shepherd, *Law Deans in Jail*, 77 MO. L. REV. 931, 956 (2012).

²⁶ Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L. J. 229, 232 (2006).

rankings in 1987.²⁷ Professor Kramer states that he would “massage numbers that were open for interpretation.”²⁸ Professor Kramer states that he would count half-time professors, two-thirds-time professors, and professors on sabbatical leave as being members of the full-time faculty.²⁹ This had a positive impact on Stanford’s rank because *US News* considers student-to-faculty ratio in the algorithm.³⁰ Professor Kramer states that he did not change anything pedagogically.³¹

Mid-tier law school deans additionally feel the pressure to elevate in the *US News* rankings. An example is former Rutgers Law School Dean Roger Dennis.³² Professor Dennis advises that he would enroll a smaller first-year class with high undergraduate GPA / LSAT scores and he would accept a high number of second-year transfer students with lower GPA / LSAT scores to compensate for the smaller first-year class.³³ Only the first-year students’ GPA / LSAT scores are reported to *US News*.³⁴ The end result was that the same number of students were graduating from Rutgers but the law school was able to elevate in the rank because the transfer students’ GPA / LSAT scores were not considered.³⁵ Professor Robert Reinstein states that he could have engaged in the same practice while dean at the Temple University James E. Beasley School of Law and “put Widener out of business.”³⁶ But Professor Reinstein advises that he never compromised

²⁷ J. Paul Lomio, Erika V. Wayne & George D. Wilson, Ranking of Top Law Schools 1987 – 2009 by U.S. News & World Report 3-12 (Apr. 2008) (unpublished) (on file with Stanford Law School Robert Crown Law Library) https://www-cdn.law.stanford.edu/wp-content/uploads/2015/03/lomio_et-al-rp20.pdf

²⁸ Telephone Interview with Larry Kramer, current Professor at Stanford Law School; former Dean of Stanford Law School from 2004 – 12 (Nov. 20, 2018).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Telephone Interview with Roger Dennis, current Professor at the Drexel Univ. Thomas R. Kline School of Law; former Dean at Rutgers Law School: Camden from 1997 – 06; former Dean at the Drexel Univ. Thomas R. Kline School of Law from 2006 – 16 (Feb. 9, 2019).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Telephone Interview with Robert Reinstein, current Professor at the Temple Univ. James E. Beasley School of Law; former Dean at the Temple Univ. James E. Beasley School of Law from 1989 – 08 (Oct. 30, 2018).

Beasley for the sake of rank.³⁷ Professor Reinstein states that having a less academically able second and third year class is a disservice to the students and potential employers.³⁸

Falsifying data due to an obsession with elevating in the *US News* can have disastrous effects upon a law school. Consider Villanova Law School in 2011. Reports emerged that administrators from Villanova inflated GPA and LSAT results for four years in order to elevate in *US News*.³⁹ Villanova fell from #67 to #84 on the rankings once the information was accurately updated.⁴⁰ The falsification of data resulted in either the termination or resignation of the Dean, Associate Dean, Assistant Dean, and Admissions Director.⁴¹

But ironically and disturbingly, law school deans admit that the current structure of the *US News* is flawed. 150 law school deans grouped together in 1997 and signed a joint letter condemning the *US News* rankings.⁴² This criticism comes from all ends of the ranking spectrum. From the bottom, Dean Andrew Klein of the Indiana University Robert H. McKinney School of Law states, “I don’t think that *US News* does a very good job of measuring the quality of an institution’s education.”⁴³ Yet Klein states in the same breath, “[w]e [would be] doing a disservice to our law school by not participating.”⁴⁴

³⁷ *Id.*

³⁸ *Id.*

³⁹ Christopher Polchin, *Raising the “Bar” on Law School Data Reporting: Solutions to the Transparency Problem*, 117 PENN. ST. L. REV. 201, 206 (2012).

⁴⁰ Kathy Matheson, *Villanova Censured for Inflating GPAs, LSAT Scores*, The San Diego Union-Tribune (Aug. 16, 2011), <https://www.sandiegouniontribune.com/sdut-villanova-censured-for-inflating-gpas-lsat-scores-2011aug16-story.html>.

⁴¹ *Id.*

⁴² Theodore P. Seto, *Understanding the U.S. News Law School Rankings*, 60 SMU L. REV. 493, 493-94 (2007).

⁴³ Marilyn Odendahl, *Law School Rankings Rumble*, The Indiana Lawyer, 1, 4 (2014), <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1007&context=parrish>.

⁴⁴ *Id.*

Dean Klein states that he thinks *US News* has “no positive influence over legal education” because it forces schools to focus on factors that are not relevant to the practice of law.⁴⁵ Dean Kline uses expenditures per student as an example.⁴⁶ Dean Klein advises that expenditures per student causes law schools to raise tuition and spend more money.⁴⁷ But *US News* makes no effort to evaluate how the money being spent is influencing the quality of education.⁴⁸ A quantity over quality approach is thus created by *US News*.⁴⁹

Deans from mid-tier law schools share the same perspective. Professor Reinstein states that one dean from a mid-tier school created jobs at that school requiring a juris doctorate degree.⁵⁰ The jobs were low paying and truly did not require a juris doctorate degree to perform.⁵¹ But the jobs allowed that law school to rise in the *US News* rankings since more graduates were obtaining J.D. required employment, which is a *US News* metric.⁵² *US News* addressed this issue beginning in 2018 by giving less weight to jobs obtained by graduates that are funded through a law school.⁵³ Professor Reinstein states that because teaching quality has no influence over *US News* rank, law schools have limited motivation for professors to give high quality education to students.⁵⁴

Deans from top-tier law schools are also aware of the flawed structure of *US News*. A recent former dean at a top-tier law school advises that they “never did anything pedagogically

⁴⁵ Telephone Interview with Andrew Klein, Dean of the Ind. Univ. Robert H. McKinney School of Law since 2012 (Nov. 28, 2018).

⁴⁶ E-Mail Interview with Andrew Klein, Dean of the Ind. Univ. Robert H. McKinney School of Law since 2012 (Jan. 27, 2019).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Reinstein, *Oct. 30 Interview, supra* note 36.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Robert Morse, Kenneth Hines & Elizabeth Martin, *Methodology: 2020 Best Law Schools Rankings*, U.S. News & World Report (Mar. 28, 2019), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

⁵⁴ *Id.*

different” for the sake of rank, but they also knew that “there would be consequences” if the school dropped fifteen positions in *US News*.⁵⁵ The dean did not define those consequences.⁵⁶ The dean states that *US News* heavily influenced their decision regarding financial aid.⁵⁷ If the dean’s law school declined as little as two positions in the *US News* rank, the school would be forced to offer greater scholarships to higher GPA / LSAT performing students (another *US News* metric) in order to have them attend the institution.⁵⁸ This created a negative effect because now the school did not have as much money to spend on students, which is another factor in the *US News* methodology.⁵⁹ But this does directly affect pedagogy, contrary to what the dean states. It is natural to infer that if a school is now spending less money on the quality of education, the education will suffer.

B. Robert Morse, Chief Data Strategist at *US News*

US News Chief Data Strategist Robert Morse has worked full-time at *US News* since 1976 and has “developed almost all of the current methodologies” that are used in the law school ranking algorithm since the 1987 inception.⁶⁰ Telephone calls, voice messages, and e-mails were initially unsuccessful in reaching Morse.

Public relations employees at *US News* were subsequently contacted. A response was finally obtained from Morse through *US News* Communications & Public Relations Coordinator Madeline Smanik. Smanik allowed questions to be sent to her regarding the *US News* rank, at which point she agreed to forward those questions to Morse.⁶¹ Morse then sent Smanik his answers

⁵⁵ Telephone Interview with Anonymous Law School Dean (Nov. 8, 2018).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Robert Morse Chief Data Strategist*, U.S. News & World Report, <https://www.usnews.com/topics/author/robert-morse>.

⁶¹ E-Mail Interview with Madeline Smanik, current Commc’ns. & Pub. Relations Coordinator at US News & World Report (Jan. 25, 2019; Feb. 1, 2019).

and Smanik forwarded Morse's answers.⁶² Smanik was not sent a question regarding the law school deans' admissions of rank manipulation. Morse needed to be asked this question personally. Smanik was asked other questions and those answers are detailed throughout this paper.

Contact with Morse was finally made via telephone.⁶³ Morse states "I know who you are because I got your e-mail."⁶⁴ Morse was told about the interviews conducted with 16 current and former law school deans.⁶⁵ Morse states "I cannot believe that they spoke to you."⁶⁶ Morse was then informed that several law school deans admitted to manipulating their *US News* rank.⁶⁷ When asked if *UN News* would consider changing the ranking algorithm if they knew that deans were being manipulative, Morse responded with the following:

I knew that I shouldn't have talked to you. I am not even sure what to say. There's a chance what you're saying is true. There's a chance you really did reach out to these deans. There's a chance these deans really spoke to you. But there's a chance that none of this is true and you're just a voice on a telephone.⁶⁸

Morse then hung-up the telephone.⁶⁹

C. Students

US News's failure to address law school deans' manipulation of rank is hurting students. The rankings serve as "gospel" for those considering which law school to attend.⁷⁰ 51% of students who entered law school in 2017 were considered by Kaplan Bar Review to place "too much weight" upon *US News* when making their matriculation decisions.⁷¹ The effect is that students

⁶² *Id.*

⁶³ Telephone Interview with Robert Morse, current Chief Data Strategist at US News & World Report (Mar. 8, 2019).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. Times (July 31, 2005), <https://www.nytimes.com/2005/07/31/us/education/the-878-million-maneuver.html>.

⁷¹ Karen Sloan, *Poll: Don't Put Too Much Stock in U.S. News Law School Rankings*, Law.com (Mar. 20, 2018, 2:29 PM), <https://www.law.com/2018/03/20/poll-dont-put-too-much-stock-in-u-s-news-law-school-rankings/>.

decline significant scholarships from lower ranked schools and take on huge debt. This has helped cause law students to collectively borrow over \$3.7 billion to fund their legal education.⁷² Lower ranked schools offer greater scholarships to better qualified students. For example, Villanova University Charles Widger School of Law recently announced an initiative to add 50 full-tuition scholarships for 3 years.⁷³ But the schools have an ulterior motive, because enrolling better scoring students increases the law school's *US News* rank.

US News also influences students currently enrolled in law school. Law students care about their school's position in *US News* because they believe that rank affects employment.⁷⁴ Students agree that they could not ignore *US News* rank due to employment.⁷⁵ Third year students at American University Washington College of Law started a petition to remove Dean Claudio Grossman following the school's drop from 45th in the rankings in 2011 to 56th in 2014.⁷⁶ The petition alleged that Dean Grossman "refused to take necessary measures to maintain not only our position within the rankings, but also our prestige amongst the nation's law schools, firms, and other employers."⁷⁷ Over 100 students signed the petition.⁷⁸ One student who signed the petition stated, "[t]his school has dropped over 10 spots since I enrolled 3 years ago. Call me a rankings whore or whatever you want, the truth is that rankings DO matter when looking for employment."⁷⁹

⁷² William D. Henderson and Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?*, ABA Journal (Jan. 1, 2012, 11:20 AM), www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills.

⁷³ Ann K. Levine, *Choosing a Law School Based on Scholarships*, Above the Law (Feb. 20, 2014, 11:11 AM), <https://abovethelaw.com/career-files/choosing-a-law-school-based-on-scholarships/>.

⁷⁴ Petition from Concerned Student to Students and Alumni of American University Washington College of Law (on file with Change.Org), <https://www.change.org/p/students-and-alumni-of-american-university-washington-college-of-law-remove-dean-grossman-and-overhaul-ocpd>.

⁷⁵ Interview with Aaron McKenney, graduate of the Univ. of Pa. Carey Law School, in Phila. Pa. (Feb. 27, 2019).

⁷⁶ Petition from Concerned Student to Students and Alumni of American University Washington College of, *supra*.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

Current law students also care about *US News* because they associate the competence of their classmates with rank.⁸⁰ A former dean advises that students will trust the opinions given by their brethren to a greater degree when they know the student is attending a tier-two school as opposed to a tier-three school.⁸¹ A consequence is that law students will grow frustrated if their school drops a tier. At the University of Houston Law Center in 2006, Dean Nancy Rapoport was ordered to attend a faculty meeting to discuss the law school's 20 position drop in *US News*.⁸² Multiple law students appeared at the meeting to criticize her for the decline in rank.⁸³ Rapoport resigned a week later, tying her resignation to the meeting.⁸⁴

Students feel that *US News* is a flawed system.⁸⁵ But these students still consider the ranking when choosing a law school.⁸⁶ When Penn Law student Aaron McKenney was asked about the *US News* rank, he responded by stating, "what, how it is BS?"⁸⁷ Still, McKenney states that he only considering applying to the T-14 law schools to give himself the best opportunity to find a job after graduating.⁸⁸ In fact, McKenney states that he applied solely to Penn Law because it was the only top ranked school in the Philadelphia area.⁸⁹

It is not fair that law students are limiting themselves to a ranking system that is being manipulated by some deans. Madeline Smanik was asked to send a question to Robert Morse

⁸⁰ Anonymous Law School Dean Interview, *supra* note 55.

⁸¹ *Id.*

⁸² Mónica Guzmán, *Dean of UH Law Center Resigning*, Houston Chronicle (Apr. 18, 2006), <https://www.chron.com/news/houston-texas/article/Dean-of-UH-Law-Center-resigning-1901006.php>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ McKenney, *supra* note 75.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

regarding whether *US News* has considered the negative influence rank has on the matriculation decisions of students.⁹⁰ Smanik provided the below answer on behalf of Morse:

*“We have always recommended that students and families use the rankings to create an initial list of schools to consider, narrow down that list and use the data to compare overall academic quality. Done right, the rankings are a useful source of information for students. The rankings shouldn’t be used as the sole basis to go to one school versus another.”*⁹¹

D. What Currently Composes the *US News* Rankings?

The *US News* rankings are based upon 4 categories: quality assessment / peer review (40%), selectivity (25%), placement success (20%), and faculty resources (15%).⁹² These four categories are based on what “many law school deans and legal educators” consider to be the most important elements in assessing the quality of a school.⁹³

i. Quality Assessment / Peer Review (40%)

The quality assessment / peer review category consists of law school deans, practicing lawyers, and judges providing survey answers regarding their perceptions of the best law schools.⁹⁴ Some law school deans do not support the 40% devoted to quality assessment / peer review. One such dean is Rudolph C. Hasl from Whittier Law School.⁹⁵ Dean Hasl is the longest serving cumulative law school dean in the United States at 34 years and previously served as the chair of the *ABA*’s Accreditation Committee.⁹⁶ Dean Hasl advises that it is “ridiculous” for the opinions of

⁹⁰ Smanik, *Feb. 1. Interview, supra* note 61.

⁹¹ *Id.*

⁹² Morse, Hines & Martin, *supra* note 53.

⁹³ Smanik, *Jan. 25. Interview, supra* note 61.

⁹⁴ Morse, Hines & Martin, *supra* note 53.

⁹⁵ Telephone Interview with Rudolph C. Hasl, former Dean at Whittier Law School; former Dean of St. Louis Univ. Law School from 1979 – 91; former Dean at St. John’s Univ. Law School from 1991 – 98; former Dean of Seattle Univ. School of Law from 2001 – 05; former Dean of Thomas Jefferson School of Law from 2005 – 13 (Feb. 5, 2019).

⁹⁶ *Id.*

law school deans to comprise such a large percentage of the *US News* rank because “most deans have no clue what the rankings are even composed of.”⁹⁷

Former Beasley Law School Dean Robert Reinstein states that devoting 40% of a law school’s rank towards perception is problematic.⁹⁸ Professor Reinstein recalls a survey that was issued to entering law students in the 1990s that asked the students to rank what they perceived as the top law schools.⁹⁹ The fictitious ‘Princeton University Law School’ was added to the survey.¹⁰⁰ The students ranked Princeton University as the 4th best law school in the United States.¹⁰¹ But another dean argued that the opinions of practicing lawyers should comprise *more* than 40% of the *US News* rank at the expense of selectivity.¹⁰² This dean stated that GPA and LSAT scores should be reduced because “you don’t assess a product in the assembly plant.”¹⁰³ Perhaps this reflects the limited value that both metrics currently have.

ii. Selectivity (25%)

Selectivity makes up 25% of a law school’s rank.¹⁰⁴ Selectivity has two primary components: undergraduate school GPA and LSAT score.¹⁰⁵ Selectivity presents an issue with the *US News* rank because it interferes negatively with law school diversity.¹⁰⁶ Professor Reinstein states that he observed other deans “game the system” by admitting students with adequate scores who were racially diverse but lacked strong characteristics which made them a distinct addition to

⁹⁷ *Id.*

⁹⁸ Telephone Interview with Robert Reinstein, current Professor at the Temple Univ. James E. Beasley School of Law; former Dean at the Temple Univ. James E. Beasley School of Law from 1989 – 08 (Feb. 10, 2019).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Telephone Interview with Second Anonymous Law School Dean (Feb. 1, 2019).

¹⁰³ *Id.*

¹⁰⁴ Morse, Hines & Martin, *supra* note 53.

¹⁰⁵ *Id.*

¹⁰⁶ Reinstein, *Oct. 30 Interview, supra* note 36.

the school.¹⁰⁷ Professor Reinstein advises that truly diverse applicants who possess unique backgrounds, but with lower GPA and LSAT scores, are denied admission because the institutions will decrease in rank if admitted.¹⁰⁸ Professor Reinstein states that the law school will then claim to be diverse but “entirely misses the meaning of true diversity”¹⁰⁹ which the United States Supreme Court discussed in *Bakke*.¹¹⁰ The immortality behind truly diverse applicants being denied admission never gets addressed because attacking race makes the issue so controversial.¹¹¹

University of California – Hastings College of Law Dean David Faigman criticizes selectivity.¹¹² Dean Faigman states that the admissions committee will often “ignore” students with unique life experiences because they were 2 points too low on the LSAT.¹¹³ Dean Faigman also states that selectivity fails to consider the difficulty of an undergraduate major.¹¹⁴ An applicant that graduated from an intense physics program with a 3.5 GPA is viewed as being secondary to an applicant who graduated with a 3.8 GPA from an easy discipline.¹¹⁵ Former University of Chicago Law School Dean Richard Badger agrees.¹¹⁶ Badger served as Dean from 1972 – 99 and states that after *US News* developed, “more emphasis was placed on GPA and LSAT.”¹¹⁷ Badger did not comment on whether this change led to a “better” student body.¹¹⁸

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 322 (1978) (holding that race should be considered a very important factor in promoting diversity within an institution because it adds a “critical ingredient” to the overall effectiveness of the education).

¹¹¹ Reinstein, *Oct. 30 Interview*, *supra* note 36.

¹¹² Telephone Interview with David Faigman, current Dean at the Univ. of Cal. – Hastings Coll. of Law (Jan. 16, 2019).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Telephone Interview with Richard Badger, former Dean at the Univ. of Chi. Law School from 1972 – 99 (Nov. 1, 2018).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

The *US News* rankings game has also resulted in the reduction of need-based law school scholarships. Over 38,000 of the 145,000 law school students, more than one in four, were on merit-based scholarships in 2009.¹¹⁹ Only 18,000 law school students were on need-based scholarships during the same year.¹²⁰ As recently as 2011, only seven of the 160 plus ABA accredited law schools limited their financial aid packages to students based solely on need.¹²¹ Law schools are purchasing higher LSAT and GPA scores to increase their position in the *US News* rankings.

The author's alma mater, the University of Pennsylvania Law School, engages in these manipulative practices. The law school invites admitees with GPA and LSAT metrics above their mean to compete for a full scholarship. An essay on why the student would like to attend Penn is required. The winning students are then required to withdraw their applications to other law schools in order to claim their prize. That's in part how Penn seeks to increase their metrics and rise in the rankings.

The net effect is that poorer law students suffer. Students with higher LSAT and GPA figures tend to have a higher socioeconomic status.¹²² Students from socially disadvantaged backgrounds therefore lose out on scholarship opportunities and are forced to pay full tuition, financed through student loans, subsidizing their richer classmates.¹²³ A "classic regressive tax" is

¹¹⁹ David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. Times (Apr. 30, 2011), <https://www.nytimes.com/2011/05/01/business/law-school-grants.html>.

¹²⁰ *Id.*

¹²¹ Jerome Organ, *How Scholarship Programs Impact Students and the Culture of Law School*, 61 J. LEGAL EDUC. 173, 183 (2011).

¹²² Dorothy A. Brown, *Law Schools Are in a Death Spiral. Maybe Now They'll Finally Change*, The Washington Post (Mar. 9, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/03/09/law-schools-are-in-a-death-spiral-maybe-now-theyll-finally-change/>.

¹²³ *Id.*

subsequently created.¹²⁴ These poorer students are penalized a second time at graduation because subsidized richer students tend to finish at the top of their class and get better paying jobs while the poorer students find it more difficult to find employment which pays for their higher student loans.¹²⁵ The current structure of the *US News* has created a vicious cycle in which the rich get richer and the poor are shielded from opportunities that lead to social elevation.

Some law school deans try to ensure that they not allow GPA and LSAT scores to overinfluence their admissions decisions. 2nd Circuit Senior Judge Guido Calabresi, who served as Dean of Yale Law School from 1985 – 94, states that before *US News* began, students applied to Yale because “the school offered something special.”¹²⁶ After *US News* began, Judge Calabresi advises that he saw an increase of applicants with perfect 180 LSAT scores “who only wanted to attend Yale because the school was number one.”¹²⁷ *US News* caused students to care more about rank as opposed to what Yale offered.¹²⁸ Judge Calabresi advises that this change caused the admissions committee to look more closely at applications and determine who wanted to be at Yale for reasons other than rank.¹²⁹ The result was that more students were admitted with 175 LSAT scores as opposed to 180 LSAT scores.¹³⁰ But Yale can afford this type of flexibility. A 175

¹²⁴ Michael L. Krauss, *The Ethics of Law School Merit Scholarships*, *Forbes* (Apr. 3, 2014), <https://www.forbes.com/sites/michaelkrauss/2014/04/03/the-ethics-of-law-school-merit-scholarships/#6472e2534932>.

¹²⁵ *Id.*

¹²⁶ Telephone Interview with Guido Calabresi, current 2nd Circuit Senior Judge; former Dean of Yale Law School from 1985 – 94 (Nov. 12, 2018).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

LSAT score is still within the top .4% of all scores.¹³¹ The quality assessment / peer review category has also held Yale at number one for 33 years.¹³²

iii. Placement Success (20%)

Placement success accounts for 20% of a law school's total rank.¹³³ Placement success includes the employment rate upon graduation, the employment rate 10 months after graduation, and the bar passage rate.¹³⁴ Placement success is important because a legal job suggests that the law school and the student have achieved something tangible and potentially meaningful with regards to employment.

But this criterion fails to account for the satisfaction one experiences in their legal job. Graduates from top law schools are more likely to enter an NLJ 250 BigLaw position (considered the "best" BigLaw firms by the National Law Journal) than their lower ranked counterparts.¹³⁵ *The National Association for Law Placement* recently found that only 1% of entry-level BigLaw associates leave their firms by the end of their first year of practice.¹³⁶ But 37% of BigLaw associates quit their firms by the end of their third year of practice¹³⁷ and just under 80% of BigLaw associates leave their firms before completing five years of practice.¹³⁸ This issue is shielded from current students because *US News* only considers graduate employment 10 months post-graduation.

¹³¹ Memorandum from Lisa Anthony, Senior Research Assoc., to LSAT Score Recipients (June 20, 2017) (on file with LSAC), <https://www.lsac.org/sites/default/files/legacy/docs/default-source/data-%28lsac-resources%29-docs/lSAT-score-distribution.pdf>.

¹³² Lomio, Wayne & Wilson, *supra* note 27, at 3-12.

¹³³ Michael Sauder and Ryon Lancaster, *Do Rankings Matter? The Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools*, 40 *LAW & SOC'Y REV.* 105, 110 (2006).

¹³⁴ Polchin, *supra* note 39, at 205.

¹³⁵ Henderson and Moriss, *supra* note 13.

¹³⁶ Ashby Jones, *The Third-Year Dilemma: Why Firms Lose Associates*, *The Wall Street Journal* (Jan. 4, 2006), <https://www.wsj.com/articles/SB113571843977932357>.

¹³⁷ *Id.*

¹³⁸ Anusia Gillespie, *The Horrible Conflict Between Biology and Women Attorneys*, ABA, <https://www.americanbar.org/careercenter/blog/the-horrible-conflict-between-biology-and-women-attorneys/>.

iv. Faculty Resources (15%)

Faculty resources make up 15% of a law school's total score and consist of sub-elements such as expenditures per student and library resources. Expenditures per student is problematic because the criteria are based upon "spending per student" as opposed to "how those resources are spent."¹³⁹ Research has consistently shown that how people spend their money is more important than how much money they spend.¹⁴⁰ Law school is no different. It is more important to law students *how* resources are spent than *how much* resources are spent.

Yet former law school deans admit that they felt pressure to spend money to increase in the *US News* rank. Jesse Choper, who served as Dean of Berkeley from 1982 – 92, advises that one of the biggest challenges of being Dean was finding ways to spend money to maintain or elevate in the *US News* rank.¹⁴¹ Professor Choper states that he was always looking for more money from alumni.¹⁴² Professor Choper states that, "there was always room for funding" and "it didn't matter" what the funds were being used for.¹⁴³ John Costonis, who served as Dean of Vanderbilt from 1985 – 96, states that if his law school were to drop 10 places in the *US News* rank, he would "beat up" the University President in an effort to obtain more money to spend.¹⁴⁴

Library resources is another sub-element of faculty resources that fails. An element that goes into the *US News* rank is the number of books in a law school's library.¹⁴⁵ But what does counting books tell us about success or happiness? Law library enthusiasts have hinted that the

¹³⁹ Andrew P. Moriss, *Legal Education Through the Blurry Lens of U.S. News Law School Rankings*, 20 GREEN BAG 253, 264 (2017).

¹⁴⁰ Andrew Blackman, *Can Money Buy You Happiness?*, The Wall Street Journal (Nov. 10, 2014), <https://www.wsj.com/articles/can-money-buy-happiness-heres-what-science-has-to-say-1415569538>.

¹⁴¹ Telephone Interview with Jesse Choper, current Professor at the Univ. of Cal., Berkeley, School of Law; former Dean at the Univ. of Cal., Berkeley, School of Law from 1982 – 92 (Nov. 3, 2018).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Telephone Interview with John Costonis, current Professor at the La. State Univ., Paul M. Herbert Law Ctr.; former Dean of Vanderbilt Univ. Law School from 1985 – 96 (Nov. 3, 2018).

¹⁴⁵ Sauder and Lancaster, *supra* note 133, at 112.

need for books has decreased because now “everything is available” online.¹⁴⁶ Students from Harvard Law School have confessed that they have “never used the library” for their research and have conducted their coursework “at home on Westlaw, in... pajamas.”¹⁴⁷ A law student simply has no interest in the number of books in their institution’s library.¹⁴⁸

Part #3: Revamping *US News*

Revamping the *US News* ranking system is not easy. Opinions held by former and current law school deans are inconsistent. Dean Hasl thinks that more emphasis should be placed on selectivity at the expense of peer review.¹⁴⁹ An anonymous dean argues that more emphasis should be placed on peer review at the expense of selectivity.¹⁵⁰ University of California – Davis Dean Kevin Johnson is not sure of a ranking algorithm, but he feels that less weight should be given to selectivity.¹⁵¹ Professor Reinstein states that a second ranking system should be created to compete with *US News*.¹⁵² But professor Reinstein concedes that the new system would have minimal impact because the popularity of *US News*.¹⁵³ Robert Morse of *US News* hung-up when attempts were made to get his opinion.¹⁵⁴ Below is the proposed solution to improve the quality of the law school experience:¹⁵⁵

¹⁴⁶ Beatrice A. Tice, *The Academic Law Library in the 21st Century: Still the Heart of the Law School*, 1 U.C. IRVINE L. REV. 159, 171 (2011).

¹⁴⁷ Mary Whisner, *The Pajama Way of Research*, 99 LAW LIB. J. 847, 847 (2009).

¹⁴⁸ Stake, *supra* note 26, at 245.

¹⁴⁹ Hasl, *supra* note 95.

¹⁵⁰ Second Anonymous Law School Dean, *supra* note 102.

¹⁵¹ Telephone Interview with Kevin R. Johnson, current Dean at the Univ. of Cal. – Davis School of Law (Feb. 5, 2019).

¹⁵² Reinstein, *Feb. 10 Interview*, *supra* note 98.

¹⁵³ *Id.*

¹⁵⁴ Morse, *Interview*, *supra* note 63.

¹⁵⁵ Please note that there was one factor that this paper does not make a recommendation to changing. That factor pertains to selectivity. Each law school dean agreed that selectivity was constructed properly. The law school deans

i. Placement Success Must Have “Satisfaction Assessment” As a Sub-Category

Placement success must be reorganized to incorporate a sub-element called “satisfaction assessment.” Whereas placement success only measures employment within 10 months of graduation, “satisfaction assessment” could observe employment within 5 years of graduation to determine if the attorney has remained with their initial firm. Research has shown that dissatisfied workers leave their organizations while satisfied workers remain.¹⁵⁶ Limiting “satisfaction assessment” to one year is not enough because the first year of a new job is considered the “honeymoon” period consisting of new work.¹⁵⁷ Limiting “satisfaction assessment” to 3 years would also be misleading since many BigLaw associates unhappily remain at their firm for several years to pay debt.¹⁵⁸ Allowing too much time to pass could also be deceptive because long-tenured employees often become “less mobile” due to family obligations.¹⁵⁹ Extending “satisfaction assessment” to 5 years would allow entering students to assess how happy an attorney is with their initial firm. Additionally, including “satisfaction assessment” as a sub-category within placement success would reward law schools that assist in both employment and occupational happiness.

Madeline Smanik was asked to e-mail Robert Morse to see if a category like “satisfaction assessment” could be added to the *US News* methodology.¹⁶⁰ Morse informed Smanik that “satisfaction assessment” will not be added to the algorithm because *US News* only uses “objective, measurable data.”¹⁶¹ But current *US News* factors such as quality assessment / peer review are not

disagreed over the percentage that selectivity should receive. It is recommended that selectivity remains unchanged. But the percentage allocated towards selectivity must be reconsidered. This duty will be left to *US News*.

¹⁵⁶ Mark Hann, David Reeves & Bonnie Sibbald, *Relationships Between Job Satisfaction, Intentions to Leave Family Practice and Actually Leaving Among Family Physicians in England*, 21 EUROPEAN J. OF PUB. HEALTH 499, 499 (2010).

¹⁵⁷ Wendy R. Boswell, Abbie J. Shipp, Satoris S. Culbertson & Stephanie C. Payne, *Changes in Newcomer Job Satisfaction Over Time: Examining the Pattern of Honeymoons and Hangovers*, 94 J. APPL. PSYCOL. 844, 845 (2009).

¹⁵⁸ Schrag, *supra* note 8, at 736.

¹⁵⁹ Anna Huyse-Gaytandjieva, Wim Groot & Milena Pavlova, *Why Do Some Employees Fall into and Fail to Exit a Job-Lock Situation?*, J. OF ENVTL. & PUB. HEALTH Apr. 2013, at 1, 9.

¹⁶⁰ Smanik, *Feb. 1. Interview*, *supra* note 61.

¹⁶¹ *Id.*

objective measurable data any more than self-described professional satisfaction. Morse told Smanik that the current structure of the placement success factor is “the best available data for measuring students’ career success” upon graduation.¹⁶²

ii. *Quality Assessment / Peer Review Should Include the Professor Evaluations of Law Students*

The quality assessment / peer review category should include a sub-category in which law students evaluate their classes and, to a greater degree, their professors. This evaluation would be in conjunction with the review that practicing lawyers, judges, and deans already submit to *US News*. Current law school evaluations focus on assessing the quality of legal education and allow students to submit ideas for instructional improvement.¹⁶³ American law students spend more than 30,000 hours each academic year providing evaluations for their courses.¹⁶⁴ If a single person worked forty-hour weeks to do all those evaluations, the task would take at least fifteen years to complete.¹⁶⁵ Yet the current structure of the *US News* does not consider law student evaluations at all.¹⁶⁶ Dean Hasl agrees with the implementation of student course evaluations in the *US News* algorithm because it provides a more balanced assessment through the eyes of those who are actually receiving the education.¹⁶⁷ Dean Hasl additionally states that the current structure of the quality assessment / peer review category is limiting because it only surveys practicing lawyers, judges, and deans who are “out of touch” with evaluating the educational quality of a law school.¹⁶⁸

¹⁶² *Id.*

¹⁶³ Stephanie Jean Richardson, Darrell Coleman & Jill Stephenson, *Re-evaluating Course Evaluations: Clarity, Visibility, and Functionality*, E-J EDUC. POLICY 2014, at 1, 1.

¹⁶⁴ Arthur Best, *Student Evaluations of Law Teaching Work Well: Strongly Agree, Agree, Neutral, Disagree, Strongly Disagree*, 38 SOUTHWEST. L. REV. 1, 1 (2008).

¹⁶⁵ *Id.*

¹⁶⁶ Morse, Hines & Martin, *supra* note 53.

¹⁶⁷ Hasl, *supra* note 95.

¹⁶⁸ *Id.*

There are flaws with using student evaluations within the quality assessment / peer review category. One problem is that many evaluations are used as a weapon for students against professors.¹⁶⁹ Law students will often leave “harassing” comments in their evaluations due to course difficulty of because of racial, gender, and political biases.¹⁷⁰ Another flaw is that students may intentionally rate their professors as superb to elevate in the *US News* rank. But this problem is no different than the current quality assessment / peer review algorithm because law school deans may purposefully submit a poor evaluation of a rival school to elevate their *US News* position. Many law students currently believe that their evaluations are inconsequential and ignored when it comes to poor teaching and faculty improvement.¹⁷¹ Having evaluations matter as to the *US News* ranking algorithm would allow students’ voices to be heard while at the same time forcing schools to ensure that the finest professors are providing instruction.

iii. Faculty Resources Should Be Changed to How Well Law School Staff Assist Students in Obtaining Legal Jobs That Make Them Happy

Revamping the faculty resources category is necessary to improve to quality of legal education. Robert Morse hints that faculty resources is currently defective.¹⁷² When questioned about why the number of law school books are considered in the *US News* metrics, Morse states “[w]e’re looking for other measures of faculty quality and until we find them that is still a relatively good indicator of faculty resources.”¹⁷³ Faculty resources should focus on law school staff communicating with students to assist them in obtaining a job that would make them happy. Placement offices currently focus on assisting students obtain positions in BigLaw, large public

¹⁶⁹ Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the “Legal Writing Pathology:” Diagnosis Confirmed*, 5 CITY UNIV. NEW YORK L. REV. 115, 115 (2002).

¹⁷⁰ LawProfBlawg, *Weaponizing Student Evaluations (Part III)*, Above the Law (Oct. 9, 2018, 3:59 PM), <https://abovethelaw.com/2018/10/weaponizing-student-evaluations-part-iii/>.

¹⁷¹ Richardson, Coleman & Stephenson, *supra*, at 2.

¹⁷² Smanik, *Feb. 1 Interview*, *supra* note 61.

¹⁷³ *Id.*

interest firms, or government agencies.¹⁷⁴ Career offices make little or no effort to expose students to firms that do not come to campus.¹⁷⁵ This practice shields students from being exposed to areas of law which may interest them. The *Law School Admissions Counsel* acknowledges that students may not know which area of law they want to practice by putting a self-assessment quiz on their own website.¹⁷⁶

Students do not know about the opportunities outside the firms invited to participate at on-campus interviewing. Law students at some top institutions often have 300 employers arrive at their campus for interviewing, which seems like a large number. But these employers only represent 1% of the legal employers in America. A vicious cycle has unfortunately developed where students are misguided by their own schools into a professional area they unknowingly do not want.

Part #4: The Fifth *US News* Factor: “Lowest Tuition”

Improving the quality of legal education requires a fifth *US News* factor. The fifth factor should rank law schools based upon which institutions have the lowest tuition. The logic is simple: (1) recent law school graduates are unhappy in BigLaw; (2) these graduates went to BigLaw because they have large debt due to expensive law schools; (3) law schools are expensive because they are staffed by highly paid full-time professors; (4) relying on adjuncts would reduce tuition, debt, and the gravitation to BigLaw, thereby increasing happiness; and (5) to ensure that law

¹⁷⁴ Shanin Specter, *The Absent Plaintiff Attorney*, *Trial*, Mar. 2016, at 38, 39.

¹⁷⁵ *Id.*

¹⁷⁶ LSAC, <https://www.lsac.org/discover-law/pathways-legal-career/quiz> (last visited Feb. 12, 2020).

schools are relying on adjunct instructors, a fifth factor can be added to the *US News* rankings called “lowest tuition.”

i. Law School Graduates Are Unhappy in BigLaw

BigLaw is enticing because of the large starting salaries. The median starting salary for a BigLaw associate as of January 2019 was \$155,000 per year.¹⁷⁷ The median starting salary for an attorney overall in 2017 was \$70,000 per year.¹⁷⁸ The median household income in the United States of America in 2017 was just \$61,372 per year.¹⁷⁹ This means that entry level BigLaw associates are making 2 times more than the average attorney and more than 2.5 as much as the average household in the United States. But, as the beginning of this paper explains, the majority of these BigLaw associates are unhappy.

ii. Law School Graduates Go into BigLaw in Order to Service Large Debts from Expensive Law Schools

Debt forces new graduates into BigLaw. Law school graduates undertook an average of \$112,000 in student loan debt in 2017.¹⁸⁰ The average amount of debt a law school graduate undertook in 1998 was just under \$80,000.¹⁸¹ The average student loan debt a law school graduate undertook from a tier-1 law school in 1971 was only \$3,100.¹⁸² Some may argue that a lower tuition would be offset by a lower BigLaw salary and the principle of inflation. But since the mid-

¹⁷⁷ Jay Reeves, *First-Year Salaries at Big Law Firms Top \$150,000*, Lawyers Mutual (July 26, 2019), <https://www.lawyersmutualinc.com/blog/first-year-salaries-at-big-law-firms-top-150000>.

¹⁷⁸ Judith N. Collins, *Overall Employment Rate Up Modestly*, NALP (2018), <https://www.nalp.org/uploads/SelectedFindingsClassof2017.pdf>.

¹⁷⁹ Kayla Fontenot, Jessica Semega & Melissa Kollar, *Income and Poverty in the United States: 2017*, United States Census Bureau (Sep. 12, 2018), <https://www.census.gov/library/publications/2018/demo/p60-263.html>.

¹⁸⁰ Kowarski, *supra* note 7.

¹⁸¹ Thomas E. Chase and Fabian Gonell, *Law School Debt and the Practice of Law 5* (unpublished manuscript) (on file with The Committee on Legal Education and Admission to the Bar, <https://www.nycbar.org/pdf/report/lawSchoolDebt.pdf>).

¹⁸² RICHARD L. ABEL, *AMERICAN LAWYERS* 220 (1989).

1980s, private law school tuition has increased by 155.8% in inflation-adjusted terms, while public law school tuition has increased by 428.2%.¹⁸³

Law professors agree that student debt is an issue for recent law school graduates. Professor David Rudovsky has taught at the University of Pennsylvania Law School since 1972 and he advises that students are being “forced into BigLaw today unlike ever before in order to service large debts.”¹⁸⁴ Professor Alan Dershowitz, an instructor at Harvard Law School since 1963, states that “soaring debt” represents a problem with recent law school graduates.¹⁸⁵

iii. Law School is Expensive Because of Highly Paid Full-Time Professors

The rise in law school tuition is due to the cost of full-time highly paid professors. Full-time law professors are now making as much as \$188,000 per year.¹⁸⁶ This figure is staggering considering that the number of faculty at law schools grew from 12,200 in 1998 to 17,080 in 2008.¹⁸⁷ This influx accounted for a 48% increase in law school tuition from 1998 to 2008.¹⁸⁸ Part of this issue is influenced by *US News*, which considers student-to-faculty ratio when computing rank.¹⁸⁹ The average student-to-faculty ratio at ABA-accredited law schools was 29:1 in 1978.¹⁹⁰ This number stood at only 14.7:1 during the early 2000s.¹⁹¹ Researchers Ronald Cass and John

¹⁸³ *Id.* at 181.

¹⁸⁴ Telephone Interview with David Rudovsky, current Professor at the Univ. of Pa. Carey Law School (Oct. 31, 2018).

¹⁸⁵ E-Mail Interview with Alan Dershowitz, current Professor at Harvard Law School (Oct. 31, 2018).

¹⁸⁶ Debra Cassens Weiss, *Which Law Schools Pay Tenured Profs the Most and Least? Survey has 68 Median Salaries*, ABA Journal (May 9, 2013, 10:39 AM), http://www.abajournal.com/news/article/which_law_schools_pay_tenured_profs_the_most_and_least_survey_h_as_68_median.

¹⁸⁷ Jack Crittenden, *Law School Faculties 40% Larger Than 10 Years Ago*, The National Jurist (Mar. 9, 2010, 10:00 PM), <http://www.nationaljurist.com/content/law-school-faculties-40-larger-10-years-ago>.

¹⁸⁸ *Id.*

¹⁸⁹ Morse, Hines & Martin, *supra* note 53.

¹⁹⁰ Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 185 (2012).

¹⁹¹ *Id.* at 186.

Garvey argue that law schools will make an effort to hire more full-time faculty “regardless of their effect on educational quality” to increase their *US News* rank.¹⁹²

Even worse is that a growing number of full-time law professors have little or no experience practicing as attorneys.¹⁹³ The average time a full-time professor in the United States spent practicing law is just 3.8 years.¹⁹⁴ Tier-1 students suffer from this lack of “real-world” teaching more than students from lower-ranked law schools. While full-time law professors at schools outside the top 25 spent an average of 3.7 years practicing law, full-time professors at schools within the top 25 only spent an average of 1.4 years practicing law.¹⁹⁵ This is frightening considering that it takes 4 years for an associate to acquire the skills necessary to run their own cases.¹⁹⁶ The issue is not going away. Yale Law School now has a Ph.D. in law program to “prepare J.D. graduates for careers as legal scholars and teachers.”¹⁹⁷ There is no requirement that graduates have been admitted to practice as attorneys.¹⁹⁸ This has resulted in more professors without the requisite level of practical experience to be able to guide students.¹⁹⁹

Some argue the influx of full-time law faculty has a positive impact on the quality of legal education. Professors well-versed in the theoretical practice of law are arguably the best equipped to teach students how to analyze cases, think critically, and state their ideas orally and in writing.²⁰⁰

¹⁹² Ronald A. Cass and John H. Garvey, *Law School Leviathan: Explaining Administrative Growth*, 35 U. TOL. L. REV. 37, 40 (2003).

¹⁹³ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 57-66 (1992).

¹⁹⁴ Richard E. Redding, *Where Did You Go to Law School? Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 601 (2003).

¹⁹⁵ *Id.*

¹⁹⁶ Jones, *supra* note 136.

¹⁹⁷ *The Ph.D. in Law Program*, Yale Law School, <https://law.yale.edu/studying-law-yale/degree-programs/graduate-programs/phd-program> (last visited Feb. 12, 2020).

¹⁹⁸ *Ph.D. Common Questions*, Yale Law School, <https://law.yale.edu/studying-law-yale/degree-programs/graduate-programs/phd-program/phd-common-questions> (last visited Feb. 12, 2020).

¹⁹⁹ Erwin Chemerinsky, *Why Not Clinical Education?*, 35 CLINICAL L. REV. 35, 39 (2009).

²⁰⁰ John O. Mudd, *Thinking Critically About “Thinking Like a Lawyer,”* 33 J. Legal Educ. 704, 706 (1983).

But tuition has increased at law schools in part because more money has been funding professor scholarship. The total number of law review articles published in 1990 was 4,255.²⁰¹ That number doubled to 9,856 in 2010.²⁰² This movement has sent a message to those who want tenure to focus more on scholarship than teaching.²⁰³ The effect is that professors are diverted from teaching and mentoring outside the classroom.²⁰⁴ This prevents students from obtaining practical knowledge which they can apply in the legal profession.²⁰⁵ Professor Costonis agrees, stating that “the old model of teaching: from assistant, to full-time, to tenure, is yielding.”²⁰⁶ Professor Costonis advises that the newer model of law school teaching is too focused on scholarship.²⁰⁷ Professor Choper also states that the quality of law school instruction has declined because “too much emphasis is now placed on scholarship for full-time members.”²⁰⁸

Law school deans have varying opinions on why there has been an increase in professor scholarship. Former Drexel University Thomas R. Kline School of Law Dean Roger Dennis attributes the increase of scholarship to the *US News* rank.²⁰⁹ Professor Dennis states that law school deans focus on which schools have “premier scholarship” when sending their peer review forms to *US News*.²¹⁰ The administrative law school culture thus aims toward achieving that premier level of scholarship.²¹¹ Professor Reinstein states that professor-based scholarship has become the culture of all platforms of academia.²¹² Professor Reinstein states that teaching

²⁰¹ *The Law School Tuition Crisis*, <https://www.nlg.org/wp-content/uploads/2016/03/Law-School-Tuition-Crisis-One-Page.pdf> (last visited Feb. 13, 2020).

²⁰² *Id.*

²⁰³ Reinstein, *Oct. 30 Interview*, *supra* note 36.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Costonis, *supra* note 144.

²⁰⁷ *Id.*

²⁰⁸ Choper, *supra* note 141.

²⁰⁹ Dennis, *supra* note 32.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Reinstein, *Feb. 10. Interview*, *supra* note 98.

positions have become so difficult to obtain that scholarship is now the avenue that instructors use to stand out.²¹³ But Professor Reinstein has found in his fifty years of teaching that the instructors who are most invested in their scholarship are those that “have no clue how to teach.”²¹⁴

Worse yet is that law professors have been criticized for scholarship that does not contribute to the legal field and is out of touch with lawyering.²¹⁵ The focus on scholarship has created pressure on professors to allocate more of their time toward legal research as opposed to teaching.²¹⁶ Students’ tuition dollars are consequently being used to pay for the continuously increasing non-teaching work of professors.²¹⁷ The effect is that students are being forced into a BigLaw position in an effort to service their debt, and they are doing this without guidance because their professors do not have practical skills or are working on research as opposed to their students.

iv. More Adjuncts Would Increase Happiness Among Law School Graduates

Happiness can be improved if law schools relied more on adjuncts. Tuition would decrease dramatically. An adjunct law professor’s stipend is around \$3,000 per course.²¹⁸ Adjuncts are also judges, in-house lawyers, partners, and senior associates.²¹⁹ Adjunct faculty members would fill the practical void that full-time professors simply cannot fill. The *American Bar Association* states that adjuncts are excellent instructors because they “add to the optimal mix” and are able to

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Edwards, *supra* note 193, at 36.

²¹⁶ William R. Trail and William D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 213-14 (1996).

²¹⁷ Brent E. Newton, *Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S. C. L. REV. 105, 154-55 (2010).

²¹⁸ Deborah L. Cohen, *To Teach or Not to Teach: Adjunct Work Can Come with a Hefty Price*, ABA Journal (Aug. 1, 2020, 7:00 AM), http://www.abajournal.com/magazine/article/to_teach_or_not_to_teach_adjunct_work_can_come_with_a_hefty_price.

²¹⁹ David Lander, *Part Time, But Fully Loaded*, ABA Journal (2005), <https://www.americanbar.org/content/dam/aba/publications/blt/2005/07/part-time-fully-loaded-200507.authcheckdam.pdf>.

“combine the theoretical with the practical.”²²⁰ Adjunct professors also serve as informal advisors. Their experience and interest in a unique area of law expose students to realms outside of BigLaw.

The perception among law professors is that the number of adjuncts has increased. Adjuncts have increased because the law has grown.²²¹ So many areas of law now exist that specialized people with experience are required to teach complicated sectors.²²² Interviews were conducted with 12 professors who have taught at their school for at least forty years to get their opinions on whether adjuncts have increased. The goal was to get the opinion of a professor who had the experience to look back at their career and provide a truly reflective answer. *See Table #1:*

Table #1

Name	Law School	Tenure	Years Teaching	Has Adjunct Faculty Increased?
Guido Calabresi	Yale	1959 – Present	61	Increased ²²³
Ralph Brill	Chicago-Kent	1961 – 2019 (deceased)	58	Increased ²²⁴
Jesse Choper	Berkeley	1965 – Present	55	Increased ²²⁵
Ted St. Antoine	Michigan	1965 – Present	55	Unsure ²²⁶
William Crawford	LSU	1966 – Present	54	Increased ²²⁷
Robert Reinstein	Temple	1969 – Present	51	Increased ²²⁸

²²⁰ *Id.*

²²¹ Reinstein, *Feb. 10 Interview*, *supra* note 98.

²²² *Id.*

²²³ Calabresi, *supra* note 126.

²²⁴ Telephone Interview with Ralph Brill, former Professor at the Chi.-Kent Coll. of Law; former Dean of the Chi.-Kent Coll. of law from 1973 – 74 (Nov. 18, 2018). (Mr. Brill unfortunately passed away before this article could be published. His contributions are greatly appreciated).

²²⁵ Choper, *supra* note 141.

²²⁶ Telephone Interview with Ted St. Antoine, current Professor at the Univ. of Mich. Law School (Oct. 30, 2018).

²²⁷ Telephone Interview with William Crawford, current Professor at La. State Univ., Paul M. Herbert Law Ctr. (Nov. 19, 2018).

²²⁸ Reinstein, *Oct. 30 Interview*, *supra* note 36.

Robert Rabin	Stanford	1970 – Present	50	Increased ²²⁹
Richard Badger	Chicago	1971 – Present	49	Increased ²³⁰
Roger Clark	Rutgers	1972 – Present	48	Same ²³¹
David Rudovsky	Penn	1972 – Present	48	Increased ²³²
John Varat	UCLA	1976 – Present	44	Increased ²³³
Stephen Gillers	NYU	1978 – Present	42	Increased ²³⁴

Several professors support their opinions with facts. Mr. Badger states that the number of adjunct faculty members at the University of Chicago Law School was only 4 in 1980.²³⁵ The number of adjunct faculty at Chicago was 50 in 2018.²³⁶ Professor Brill states that there were only 3 adjunct professors at Chicago-Kent College of Law in 1961.²³⁷ That number has increased to 40 as of 2018.²³⁸ Professor Choper states that “it is perfectly clear” that the number of adjunct faculty at Berkeley has increased since he began teaching in 1965.²³⁹ Professor John Varat advises that the amount of adjunct instructors at UCLA has “increased dramatically” since he began teaching at the school in 1976.²⁴⁰ Professor Robert Rabin of Stanford Law School says it best when he states “I’m quite certain you’d find that [increased adjuncts] is the case at all leading law schools.”²⁴¹

Some law schools have taken measures to prevent adjunct faculty from increasing. Judge Calabresi at Yale states that that the number of adjuncts had increased so much that the law school

²²⁹ Telephone Interview with Robert Rabin, current Professor at Stanford Law School (Nov. 19, 2018).

²³⁰ Badger, *supra* note 116.

²³¹ Telephone Interview with Roger Clark, current Professor at Rutgers Univ. Law School: Camden (Oct. 30, 2018).

²³² Rudovsky, *supra* note 184.

²³³ Telephone Interview with John Varat, current Professor at the UCLA School of Law; former Dean at the UCLA School of Law from 1998 – 03 (Nov. 13, 2018).

²³⁴ E-Mail Interview with Stephen Gillers, current Professor at NYU School of Law (Oct. 31, 2018).

²³⁵ Badger, *supra* note 116.

²³⁶ *Id.*

²³⁷ Brill, *supra* note 224.

²³⁸ *Id.*

²³⁹ Choper, *supra* note 141.

²⁴⁰ Varat, *supra* note 233.

²⁴¹ Rabin, *supra* note 229.

created a policy that the number adjuncts could not exceed a percentage based off the number of full-time professors.²⁴² Judge Calabresi advises that this policy is still in effect at Yale.²⁴³ Judge Calabresi advises that the logic behind this policy was to “ensure that Yale Law School was not trying to cut costs and save money by relying on adjunct professors.”²⁴⁴ A consequence of this policy was that more money was spent on full-time faculty members to counter a mere perception. The effect is that tuition rises, debt loads are increased, and a BigLaw position is forced upon students, leading to unhappiness.

v. ***“Lowest Tuition” Should Be the Fifth US News Factor***

Large debt forces law school graduates into BigLaw. BigLaw makes law school graduates unhappy. The logic is simple. Adjunct professors must become the primary ingredient in delivering legal education. Tuition would decrease dramatically. What better way to assess whether law schools are following this roadmap than to include “lowest tuition” as the fifth factor in the *US News*. Law schools would be forced to compete over who can hire the most adjunct professors to guide students. The updated quality assessment / peer review category (which includes student evaluations of professors) would also assist in determining if the newly implemented fifth *US News* factor works. Evaluation comparisons can be made between schools with high and low numbers of adjuncts to see which students are more satisfied with their law school experience

The process for incorporating “lowest tuition” as the fifth *US News* factor must be accomplished through attrition. Once a law professor earns tenure, they have virtually unrivaled job security.²⁴⁵ As the chart above reflects, tenured professors may enjoy a career than spans

²⁴² Calabresi, *supra* note 126.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Katherine Barnes and Elizabeth Mertz, *Is It Fair? Law Professors’ Perceptions of Tenure*, 61 J. LEGAL EDUC. 511, 511 (2011).

upwards of 60 years. But the change needs to start somewhere considering the increasingly high level of unhappiness among law school graduates. The incorporation of a fifth *US News* factor that considers “lowest tuition” can only increase professional satisfaction while at the same time improve the quality of legal education.

Part #5: Conclusion

Graduates from top-tier law schools are finding themselves unhappy in their professional life. Research implies that this unhappiness stems from a BigLaw position that was forced upon them due to high debt. This can be remedied by having law schools rely more upon adjunct professors. Adjuncts would decrease tuition, reduce the need for graduates to enter BigLaw, and provide students with a better education. The perfect way to assess whether a law school is following this roadmap towards graduate happiness is to determine whether the school’s tuition is decreasing. More adjuncts coupled with less highly-paid full-time professors requires a reduction in tuition. “Lowest tuition” should therefore become a fifth factor in the *US News* methodology.

So, *US News*, here is a guide to fixing the problem. The interviews have been done. The research had been completed. The roadmap has been created. Why not force schools to compete with each other over meaningful categories that ultimately lead to greater professional satisfaction? Equally important, why not improve the quality of legal education? Attempts to have the above questions answered by *US News* were mostly unsuccessful; such lack of transparency is revealing.

A final recommendation for *US News* is to implement yearly feedback procedures on the revamped algorithm from those who experience the rankings firsthand. For decades, *US News* has

acted opaquely through anonymity and deafly through ignorance. All along, *US News* should have been robustly soliciting feedback from law school students, graduates, professors, and deans. The truth has now been revealed by 16 current and former law school deans with a cumulative total of 215 years of experience. We have seen this story before. When Toto pulls back the curtain and Dorothy sees the hapless Wizard of Oz, the “Wizard” yells in vain, “pay no attention to the man behind the curtain.”²⁴⁶ The hapless “Wizard” is the current structure of the *US News*. If *US News* makes changes to their algorithm, whether in response to this paper or otherwise, they should implement such robust feedback procedures. This would result in the revamped algorithm being improved on a yearly basis through honest and practical dialogue. We’re not in Kansas anymore.²⁴⁷

²⁴⁶ THE WIZARD OF OZ (USA 1939).

²⁴⁷ *Id.*