

Ideas For Law Schools

During thirty years as a law school faculty member, first a faculty fellow at the University of Chicago and then a professor at Santa Clara University, I observed a number of problems and came up with possible solutions, none of which I succeeded in implementing. Perhaps someone else can.

Robin Hood in Reverse

Law schools need students. Applicants deciding which school to choose look at statistics such as bar passage rates, reported to and published by the Bar Association, and other measures summed up in the annual *US News and World Report* ratings. To improve those statistics law schools offer generous financial aid to applicants with high LSAT scores and GPA's.¹

The students who get that financial aid are the ones most likely to do well in law school, pass their state bar exam, end up with high paying jobs in top law firms. The students who pay full fare are the ones least likely to pass the bar exam or, if they do, to get good jobs, most likely to end up more than a hundred thousand dollars in debt with very little to show for it. The schools are subsidizing the future rich at the expense of the future poor, often by more than a hundred thousand dollars per student.² A school that abandons that policy will see its ratings decline, leading to a decline in the quality of applicants, leading to a further decline in its ratings, leading to The law schools are run and staffed by people who favor redistribution from rich to poor.³ They are forced by the institutional incentives they face to redistribute from poor to rich.

There is a way out of this trap.

Outcome statistics such as a school's bar pass rate reflect two things: how able its students are and how well they were taught. The second is what matters most to someone deciding which school to go to. That is measured not by the average performance of students at the school he is considering but the performance of students like him. Of students with an LSAT of 155, what percentage passed the bar or were employed after graduation? What percentage with 156? 157? Reporting the information that way, outcomes as a function of student characteristics, would give each student the information he needs to decide which school would be best for him. It would also sharply reduce the school's incentive to buy a good rating by buying good students.

How easy it would be to generate such information depends on how many students the school has at each LSAT level. Consider Stanford. It graduates about two hundred students a year. The 25th percentile LSAT is 168, the 75th percentile is 173, so half the students have LSATs in that range,

¹ For data on financial aid at private law schools, see <https://www.usnews.com/best-graduate-schools/top-law-schools/finaid-private-rankings>. For public law schools, see <https://www.usnews.com/best-graduate-schools/top-law-schools/finaid-public-rankings>

² Pennsylvania State University, Carlisle, has a median grant of over \$35,000, making it, by that measure, the most generous of public universities. The figure for St. John's University, the most generous of private law schools, is \$40,000.

³ For evidence on the political views of law professors from a variety of sources, see <https://www.thecollegefix.com/post/24015/>

which gives an average of about sixteen students each year for each LSAT score. Bar passage over the past three years should give large enough numbers to generate meaningful data.

Calculating a student's chance of success based on both LSAT and GPA would be harder, since the number of students in each box, each combination of the two measures, would be lower. The solution is to use a multiple regression to fit the data. Currently the American Bar Association requires law schools to report statistics on average student performance. It would be almost as easy, and much more useful, if the statistics were reported as a function of LSAT and GPA. If each school did so, a student could plug in his own LSAT and GPA, read out how likely someone with those characteristics is to pass the state bar, get a job requiring a law degree, or succeed by any other criterion that applicants care about and schools can measure, and choose his school accordingly. That would help applicants make a better-informed choice of law school. It would also reduce the incentive that the present system gives law schools to buy good students. If the ABA is not willing to do it, there is nothing to keep a law school that believes it does a better of training its students than its competitors from reporting the information itself and challenging other law schools to do the same.

Decisions by the law schools or the ABA could solve part of the problem, but not for those students who chose to rely on *US News and World Reports* ratings, so law school would still have some incentive to offer more favorable terms to the more talented applicants, but not as much of one.

Why are Law Schools Expensive?

Both the [rules](#) by which the American Bar Association accredits law schools and the *U.S. News and World Report* rankings are based largely on inputs, not outputs. Thus, for example, the ABA recommends a student to faculty ratio of no more than twenty and takes a ratio of thirty or more as presumptive evidence that the school does not meet the standards for accreditation. Its rules for calculating the ratio count one adjunct as one fifth of a tenure-track professor. It requires that substantially all of the first third of a student's coursework be taught by the full-time faculty. The standards include a lengthy list of what must be in a law school library, almost all material currently available to both faculty and students online. They further require that:

A law school shall require, as a condition for graduation, successful completion of a course of study in residence of not fewer than 58,000 minutes of instruction time, except as otherwise provided. At least 45,000 of these minutes shall be by attendance in regularly scheduled class sessions at the law school.

A school that chose to spend less on its library, have a higher student to teacher ratio, use more inexpensive adjuncts and fewer tenure-track professors, provide its education in any form other than the conventional number of hours sitting in a classroom, would lose its accreditation, whether it was doing a better or worse job of teaching its students.

U.S. News and World Report does not publish the details of its ranking system, but it has been successfully [reverse engineered](#). The four factors that together predict the ranking almost perfectly are peer reputation, fraction of graduates employed nine months after graduation, student-faculty ratio, and undergraduate GPA of the students.

The ABA requirements I have listed so far measure inputs, as do two of the four factors used to generate the U.S. News and World Report ranking. The ABA also includes in its requirements a

measure of what fraction of students pass the bar. That, the *USNWR* employment measure and the peer reputation measure, are output measures, but not very informative ones. A professor at one law school is unlikely to know how good a job other schools do of educating their students and so likely to base his opinion on what prominent scholars in his field are at which school and what they are publishing, information almost entirely irrelevant to most students.

Bar passage and employment rates are more relevant, but both depend on quality of students as well as quality of instruction. Top schools get very high bar passage rates not because they do a particularly good job of teaching the skills relevant to bar passage — most of their students take an additional bar preparation course before taking the exam — but because they admit only smart students.

If schools reported bar passage rates as a function of measures of student quality, that would provide the potential applicant with the information about educational quality of the school that matters to him — what the chance is that a student of his ability who goes to that school will pass the bar. A similar approach could be used for employment statistics, but I doubt that *U.S. News and World Report* could be persuaded to do it, given that they are trying to report results in the simplest possible form, a list of schools ordered by quality.

Individual law schools could make changes, such as Judge Posner's proposal to make the third year of law school optional,⁴ that would reduce costs, but won't, since it is not in the school's interest to do a better job for their students at the cost of risking their ABA accreditation and *U.S. News and World Report* ranking. The problem could be solved at the level of the legal profession; the ABA could change its rules to permit cost-reducing changes, but there again there is an incentive problem, since the ABA is largely controlled by tenure track faculty and practicing lawyers. The current standards both increase the demand for tenure-track faculty and raise the cost of entry to the profession, benefitting both groups.

Another Approach to Ranking Law Schools

If you are a potential law student confident that you can succeed at any law school that will admit you, it makes sense to use the *US News and World Reports* ranking to help decide which one to choose, on the theory that the school's status will carry over to its graduates. You are more likely to get a high paying job at a top law firm with a degree from Stanford than with a degree from Southwestern.

Suppose, however, that you are a wealthy potential donor, and your objective in choosing a school to give money to is neither its prestige nor yours. What you want to do is to reward the school in your state that is doing the best job of educating its students. How do you find it? How could you provide a measure of law school quality, value added, that would work for all schools, allow you to compare Stanford to Golden Gate?

I have a simple answer. The required data is bar test result — pass or not pass on the first try — and LSAT for every law student in the state. Given that data, it is straightforward to compute bar pass probability as a function of LSAT score. Start with all students who got 180. Calculate what percentage of them passed the bar on their first try. Repeat for 179, 178, ... all the way down to 120.

⁴ Richard A. Posner, *The Problematics of Moral and Legal Theory* 280-95 (1999).

Now consider a particular school. Given the distribution of LSAT scores for its graduating students, calculate how many of them would have passed the bar on their first try if the results corresponded to the statewide average. If there were three students with an LSAT of 179 and 95% of the students with that LSAT score in the state passed, then $3 \times .95 = 2.85$ would on average have passed. Do the same calculation for every score and add up the result. Compare that number to how many actually did pass.

If the average result for that distribution of LSAT scores would have been 80 students passing and in fact 80 did pass, then the school is doing as good a job as the state average at preparing students for the bar exam. If 88 passed, it is doing 10% better than average, and gets a score of 1.1. If only 72 passed it is doing 10% worse for a score of .9. We now have a single measure that tells us how good a job each law school in the state is doing.

Different states have different bar exams, some easier to pass than others, which is why this has to be done at the state level rather than the national level.

The Law School Junk Mail Problem

During my years at Santa Clara I was teaching half time, one semester on, one off. During one of the off semesters, I came into my office to collect my accumulated mail and found that it included forty-three pieces of unsolicited mail from law schools, ranging from brief glossy brochures announcing a new hire, lecture, or institute to full scale glossy magazines describing the wonders of the school. None of these schools was trying to hire me, so why did they bombard me with literature advertising themselves?

The answer, almost certainly, is that one way *U.S. News and World Report* rates schools is by asking randomly chosen law professors each fall what they think of the various schools. To improve your school's rating, something all law school deans would like to do, you bombard law professors with literature in the hope that some of it will catch their eye, resulting in a favorable mention for your school.

I do not know the actual cost to the senders of those forty-three pieces of mail, but I would be surprised if the total was much under a hundred dollars or if the annual total cost of sending me such mailings, all of which go into the recycle bin, was under a thousand dollars. I would not be surprised if it were several thousand. Multiplied by all of the law professors targeted by such mailings, the total cost must be well into the millions, perhaps tens of millions.

I have a simple solution, designed to save the law schools money and law professors time. Let the ABA or the AALS set up a no write list for law professors. By putting my name on the list, I put law schools on notice that I do not wish to receive any mailing from them not specifically written for me, including any mailing of which more than a hundred copies go out. I further put them on notice that if any school sends me such mailings, I will remember the fact against them when and if *U.S. News and World Report* calls me.

A Bare Bones Law School

Part of what started me thinking about issues of law school cost was a [blog post](#) that included a description by a law school student about to take his last exam of what is really needed to teach law.

I take my last law school exam tomorrow, and I attend an ABA certified school.

Here is what I have learned about law school, and the elements required to effectively run one:

1) You need 3, maybe 4 professors (my advice: try to pick three or four that don't just read off of their own power point slides).

2) you need a table, some chairs, and a room that is relatively free from distractions. A corner table at a Denny's would be fine, a checked out conference room at a library would be perfect.

3) a few (maybe 3) admin personnel to collect money and deal with admissions and registrars issues.

4) That is it.

I have never seen anyone check a book out from the library, and so the ABA requirement that a school have a large one seems at best a relic from another time (and at worst absurd). Having a large physical plant, such as a faux-court room for the mock trial events that absolutely no one attends, or a campus bookstore (everything is cheaper on Amazon), or a law review (no one reads those things unless you are at maybe the top five or six reviews). Career services? Get rid of them, I have never seen them do anything, but if you are really not convinced about this, maybe hire one or two. 15 deans? I have never met any of them, although occasionally I get annoying emails from them. Perhaps you feel that your students cannot survive without a cafe? Build/rent your school next to a Panera.

My point is simply that a law school is about the lectures, and that is it. If you want to make the cost of law school more reasonable (and presumably the price associated with legal services with it) pay some teachers cut out all of the nonsense, pay 5 teachers 75k a year, and charge 50 students 10k a year. I am unable to see how this system would have in anyway changed what I learned during the course of my almost concluded \$120k education (during which I had classes with exactly 9 professors, 3 of whom I felt like respectably talented at their craft).

His bare bones law school would cost students about \$10,000 a year. Combine that with Posner's proposal for a two year degree and you have the cost of legal education down to \$20,000.

But the ABA wouldn't accredit it.

A Modest Proposal

Some years before I retired, my law school, along with most others, faced a sharp decline in applications, driven by the widespread perception that going to law school was likely to leave the graduating student with large debts and either no job as a lawyer or one that did not pay very well. Thinking about what we could do in response, I came up with the following plan:

Consider a school with a target enrollment of 200. It currently plans to set the lower limit for accepting applications at a level, defined mainly by LSAT score and undergraduate grade point average, that will result in accepting 400, half of whom it expects to enroll.

It instead lowers the cutoff far enough to get an entering class of 250. Fitting them in is no problem because, due to the decline in enrollment over the previous several years, it has more than enough classroom space and teaching staff for its planned enrollment.

At the end of the first year it sends a message to the fifty students at the bottom of the first year class, warning them that on the basis of their grades so far they are at serious risk of failing to pass the bar. The school offers to refund their first year tuition in full if they choose to drop out. If only thirty accept the offer, a similar message goes to twenty more. The process continues until enrollment is down to 200.

What is the result?

1. The school ends up with the same revenue as if it had followed its original plan and admitted 200 students. Costs are only increased by a little, because the school has excess resources, physical and human, due to past enrollment decline.
2. Since the students least likely to succeed have been warned and offered their money back, the professors may legitimately feel less guilty about taking the money of students who are not going to make it.
3. First year grades are a better predictor of bar passage rates than the information available at admission, so the school's bar pass rate goes up.
4. In the long run more students will be willing to apply, permitting the school to raise either its standards or its enrollment, because they know that if law school turns out to be too hard for them they will have an opportunity to leave and get their money back.

Data Mining the Ed Biz

Universities deciding whether to hire, keep or promote faculty use a mix of criteria, one of which is teaching. Teaching quality, in my experience, is judged mainly by student evaluations, to some extent supplemented by the views of faculty members who have sat in on a class to observe it.

Could we do better? Law schools have, from this standpoint, one significant advantage: The state bar exam, which most of their graduates will take, provides an external measurement of how successful their teaching has been. A second advantage is that, in the first year, all law students take pretty much the same courses and, where different sections of a large course such as Contracts or Property are taught by different professors, allocation of students is pretty nearly random.

This suggests a different way of measuring teaching ability. Analyze bar passage rates to see if students who took Property from Professor X did, on average, better or worse than those who took it from Professor Y. If there is a significant difference, take that as evidence that one of the professors was a better teacher than the other.

Who taught a particular course in the first year is only a small factor in whether, three years later, the student did or didn't pass the bar, hence the evidence produced is going to be very weak. It could be improved if it were possible to get bar results in a more detailed form, not just overall scores but scores on each question. One could then look for the effect of the property professor on questions that depended mostly on understanding property law, of the contracts professor on questions that depended mostly on understanding contract law.

A further limitation of this approach is that learning to pass the bar is not the only objective of law school. Professor Y, whose students do a little worse on the bar, might argue that he is spending

less time than Professor X on material relevant to that exam, more on material that will be important in the student's future law practice. "Teaching to the test" is not an unambiguously good thing, although it becomes more defensible when the test is one the student has to pass if he is ever going to use what he has learned to practice law in the state he lives in.⁵

How can this approach be generalized beyond the special case of the law school and the bar exam? Consider students who have taken the first course in a subject from a variety of different teachers but a more advanced course together. Their final grades in the latter course provide some evidence of how good their preparation was, which in turn provides some evidence of how good the first course was.

One problem is that students may not have been assigned to the first course at random. Perhaps Professor X started with better students than Professor Y. A second and more subtle problem is that how Professor X's students do in the second course depends in part on which of them take it. Perhaps Professor X presented the material as very difficult, scaring out of the field all but the best students, with the result that, by the time we get to the second class, we are comparing X's three best students with Y's thirty best. It would be worth including in our analysis other information on the students such as their SAT or LSAT scores and checking to see how many students from each of the initial courses went on to take more advanced courses in the subject.

If approaches along these lines have a substantial effect on hiring and promotion decisions, faculty members can be expected to try to game the system. If bar passage rate is used to measure success, professors have an incentive to teach to the bar exam, which may or may not be a good thing. If grades in more advanced courses are used, professors have an incentive to try to encourage their best students into the field and their worst students out of it. Readers interested in an entertaining and intelligent discussion of the problem of evaluating teachers and the incentives created by different ways of doing so will find it in the first chapter of George Stigler's *The Intellectual and the Marketplace*, which describes the efforts of a (fictional) South American university reformer.

Something My Law School Did Right

This chapter so far has been about things law schools could do and don't. I will end it with an example of something my law school, and some others, do right.

The [Northern California Innocence Project](#) is run out of, and largely staffed by, the law school of Santa Clara University. Its purpose is to identify people who have been convicted of crimes they did not commit in order to get their verdicts reversed and them released. While the project involves some lawyers and at least one faculty member, a lot of the work is done by law school students. Seen from one side, the purpose is to get innocents out of prison. Seen from the other, it is to educate our students.

Considered as education, it is a strikingly successful example of the approach I have been arguing for in other chapters. The students are learning legal skills, how to interview witnesses, convince

⁵ Readers of this chapter should be aware that California, where I spent most of my law school career, has an unusually hard bar exam. From February of 1999 to February of 2018, pass rates [ranged](#) from a low of 27.3% to a high of 61.7%. A student who fails the exam can take it again at a latter session, so those figures understate the number who eventually pass.

My discussion probably exaggerates the importance of bar passage for the country as a whole. Oklahoma has a first time pass rate of 86.5%. In Wisconsin any student who graduates from an in-state law school is permitted to practice, with a bar exam only required for out of state students.

judges and prosecutors, file the right paperwork, make the right legal arguments. They are learning those skills not because someone else has told them they will need them five years from now to do the work someone then will pay them to do but because they need the skills now to do something they very much want to do, to right a wrong, rescue someone unjustly imprisoned.