

Articles

THE ELEPHANT IN THE ADMISSIONS OFFICE: THE INFLUENCE OF *U.S. NEWS & WORLD REPORT* ON THE RISE OF TRANSFER STUDENTS IN LAW SCHOOLS AND A MODEST PROPOSAL FOR REFORM

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Introduction†

THE DECISION TO ATTEND LAW SCHOOL is one that comes with a large price tag.¹ Students interested in becoming lawyers must first decide where to obtain their legal education. Often, a variety of factors, such as a school's prestige, location, and cost, play a role in a prospective student's decision.² Many students hope that, upon graduation, the combination of their law school's ranking and their own academic success will land them jobs as associates at large law firms,³

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1. See LAW SCH. ADMISSION COUNCIL & AM. BAR ASS'N SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 35 (2013), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_official_guide_aba_approved_schools.authcheckdam.pdf ("The cost of a law school education could exceed \$150,000. Tuition alone can range from a few thousand dollars to more than \$50,000 a year.").

2. See Shawn P. O'Connor, *4 Factors for Picking the Right Law School*, N.Y. TIMES (Mar. 5, 2012), <http://www.usnews.com/education/blogs/law-admissions-lowdown/2012/03/05/4-factors-for-picking-the-right-law-school>.

3. See Interview with Casey, in Berkeley, Cal. (Mar. 4, 2013) [hereinafter Casey Interview] (notes on file with author); Interview with Jessie, in S.F., Cal. (Feb. 13, 2013) [herein-

often the most lucrative jobs available to law graduates.⁴ As such, prospective students tend to place great weight on a school's ranking, as determined by the *U.S. News & World Report* ("U.S. News").⁵ Students seek to maximize their perceived employment possibilities by attending the most prestigious school possible.⁶

The desire for gainful employment frequently leads students to calculate which school will help them obtain the highest salary.⁷ Students often use the *U.S. News* rankings as a proxy for this calculation. Each year, prospective students turn to the rankings to determine which school to attend.⁸ Many students who are not accepted to their first choice due to low Law School Admission Test ("LSAT") scores or undergraduate grade point averages ("UGPAs") accept admission at lower-ranked schools.⁹ These students may hope to transfer to a higher-ranked school at the completion of their first year, holding onto the belief that a degree from the more prestigious law school will guarantee them a lucrative job and a successful career.¹⁰

Students at the top of their class after the first year are increasingly transferring to schools ranked higher by *U.S. News* to maximize their chances of getting a law firm job immediately following graduation.¹¹ This phenomenon raises two fundamental and understudied

after Jessie Interview] (notes on file with author); Interview with Jordan, in Berkeley, Cal. (Jan. 25, 2013) [hereinafter Jordan Interview] (notes on file with author). We interviewed multiple transfer students about their perspectives on the transfer phenomenon. The names used in this Article are pseudonyms to protect the identities of those interviewed.

4. See *Associate Salaries Bobble but Remain Essentially Flat*, NAT'L ASS'N FOR LAW PLACEMENT (Sept. 18, 2013), http://www.nalp.org/associate_salaries_sept2013 ("As might be expected, in many markets, including Chicago, Los Angeles, New York, and Washington, DC, first-year salaries of \$160,000 are still the norm at the largest firms, though they are not as widespread as they were just a few years ago.")

5. Telephone Interview with Alex, in S.F., Cal. (May 20, 2013) [hereinafter Alex Interview] (notes on file with author).

6. *Id.*

7. See Jacquelyn Smith, *The Law Schools Whose Grads Earn the Most*, FORBES (Mar. 13, 2012), <http://www.forbes.com/sites/jacquelynsmith/2012/03/13/the-law-schools-whose-grads-earn-the-most/>.

8. Casey Interview, *supra* note 3.

9. See Telephone Interview with Taylor, in S.F., Cal. (Mar. 15, 2013) [hereinafter Taylor Interview] (notes on file with author); Interview with Elliot, in S.F., Cal. (Oct. 7, 2013) [hereinafter Elliot Interview] (notes on file with author); Anne Levine, *Consider this Before You Transfer*, U.S. NEWS (Jan. 3, 2011), <http://www.usnews.com/education/blogs/get-in-law-school/2011/01/03/consider-this-before-you-transfer>.

10. See Shawn P. O'Connor, *Law School Q-and-A: Deciding If and Where to Apply*, U.S. NEWS (July 15, 2013), <http://www.usnews.com/education/blogs/law-admissions-lowdown/2013/07/15/law-school-q-and-a-deciding-if-and-where-to-apply>.

11. See Bill Henderson, *Transfer Students—The Data*, EMPIRICAL LEGAL STUD. (June 3, 2008), http://www.elsblog.org/the_empirical_legal_studi/2008/06/transfer-studen.html

issues: how students make the decision to seek to transfer to a higher-ranked and higher-tier law school, and why higher-ranked law schools are willing to admit transfer students into their second-year class who they were not willing to admit initially.¹² The lack of research examining these processes and rationales represents a critical gap in our understanding of these complex issues. This Article begins the process of filling in the multifaceted gap by presenting findings from a study of a recent class of transfer students.¹³ Significantly, this study highlights the persuasiveness of *U.S. News* as a determinant of law school status and the ways in which the magazine has spawned the growth and development of law school competition for transfer students. The study also contributes to an understanding of the practical and theoretical processes that law students undergo when deciding whether to seek to transfer and the ramifications of that decision. The study is likewise significant to all law schools as they explore ways to attract transfer students and ways to incentivize their top students not to transfer.

We conclude that the scale and magnitude of the phenomenon of transfer students is affecting significantly the practices and procedures of all law schools, and that this phenomenon is driven by *U.S. News*'s failure to account for the LSAT scores and UGPAs of students that both transfer into and out of law schools when determining rankings.

Schools across all strata of the educational spectrum must actively seek transfer students, both to fill the vacancies left by students transferring out and also to make up for the students that were not admitted initially in order to artificially inflate the data reported to *U.S. News* and enhance the school's ranking. It may be superficially reason-

(noting an increase in transfer students since 1997); Arrow, *Advice for Transferring to Another Law School*, TOP LAW SCHOOLS, <http://www.top-law-schools.com/advice-for-transferring.html> (last visited Aug. 16, 2014) (explaining that law students transfer to increase employment opportunities, among other reasons).

12. When we discuss tiers of law school, no judgment is intended as to quality of instruction, scholarly or teaching ability of professors, or any other metric of school quality. Rather, we discuss tiers purely as determined by *U.S. News* in its annual survey of law schools. Similarly, for purposes of this Article, we express no opinion on whether the *U.S. News* survey has served a beneficial or detrimental effect on the legal profession.

13. We intend this Article to be the first of a series of articles exploring transfer students. Here, we discuss the importance of the *U.S. News* Selectivity component, the ways in which law schools have responded to the incentives created by that component, and the processes and resources utilized by students in deciding whether to transfer. The second article will examine whether transferring from a lower-ranked school to a higher-ranked school for the purposes of maximizing a student's chances of gaining legal employment following graduation is empirically warranted. The third will explore career data on whether the decision to transfer impacts students' long-term career outcomes.

able to assume that all schools are similarly impacted: if each school loses transfers out and gains transfers in, it is as if the transfers had never taken place.¹⁴ We do not, however, argue that the transfer system is value neutral in its effects on law schools, or that the transfer phenomenon is an unintended consequence of the rankings system itself. Rather, we argue that the growing phenomenon of law school transfer students, who overwhelmingly base their decisions to transfer on the *U.S. News* rankings, is producing winners and losers among the tiers of law schools. In other words, *U.S. News*'s choices as to the data law schools must report is systematically and disproportionately negatively impacting schools in the lower tier of the rankings while advantaging those in the higher tier.

We argue that the systematic practice of accepting large numbers of students as second year transfers is a logical consequence of the incentives created by *U.S. News* in only requiring data of incoming first-year students. This system helps to artificially maintain the rankings of the first tier of law schools, which receive the bulk of the transfers, and enhances the ability of that tier of schools to maintain their economic models, as well as their rankings. The lower-tier schools, on the other hand, lose their best and brightest students and must accept transfer students who are at a greater risk of failing the bar and are less likely to obtain top law firm jobs.¹⁵ This system effectively perpetuates the tier-ranking system.

Our research has led us to conclude that the American Bar Association ("ABA") and *U.S. News* should require law schools to provide data on the actual LSAT scores and UGPA of their current student bodies. This would permit the rankings to more accurately reflect the metrics of a school's student body since it would include the metrics of incoming transfer students and exclude the metrics of departed transfer students.

Our proposed change will result in nine possible benefits that merit consideration. First, in the interests of transparency, it will provide prospective students with an accurate measure of the metrics of the student body. Second, assuming these metrics are a measure of the quality of a law school that can be ordered numerically, it will

14. This simplification does not hold for schools at the top and bottom of the rankings—assuming there is no loss from the top school and no gain for the bottom school. Note, however, that although the end result may be the same, it is more efficient for a law school to retain a student than to replace the student with a transfer.

15. See Jeffrey L. Rensberger, *Tragedy of the Student Commons: Law Student Transfers and Legal Education*, 60 J. LEGAL EDUC. 616, 628–29 (2011).

make that ordering more accurate. Third, it will provide a far more efficient admissions system as law schools will admit the students they wish to be a part of their student bodies at the outset instead of forcing students and admissions offices to labor through two admissions processes. Fourth, it will provide far greater consistency and fairness to students, who will be: (a) more confident in what school they will attend the following year, (b), able to establish ongoing peer groups, and (c) eligible for symbolic markers of success such as law reviews. Fifth, it will provide law schools with greater continuity, as they will not have such significant turnover in their student bodies from year to year. Sixth, it will prevent higher-tier schools from using lower-tier schools as a testing and training ground for students they are considering for admission as second years. Seventh, it will allow the lower-ranked schools to retain those students at the top of the class who are most likely to pass the bar exam and become successful alumni. For lower-ranked schools, filling the vacancies left when such students transfer out is either impossible or necessitates admitting students less likely to succeed in law school. Eighth, it will challenge the status and significance of the first tier, especially the T-14 law schools.¹⁶ These schools benefit most from the current ranking system, and thus the transfer system, since they can attract the most transfer students in and suffer the least transfer students out. Finally, it will benefit law firms and other prospective employers by making it easier for them to compare students and assess prospective hirees.

In Part I of this Article, we discuss the importance of the *U.S. News* rankings and the influence they have on a student's decision of where to attend law school and whether to transfer. We also address the ranking methodology and ways in which law schools can manipulate the ranking system through the use of transfer students. In Part II, we explore how *U.S. News* affects the incentives of law schools in connection with attracting new transfer students and trying to staunch the flow of students transferring out to higher-ranked schools. In Part III, we then discuss in-depth interviews we conducted with eleven of the nineteen students who transferred from the University of San Francisco School of Law ("USF") to schools that were ranked higher by *U.S. News* in 2012.¹⁷

16. The T-14 are the fourteen law schools that have remained at the top of the *U.S. News* rankings since 1989. See discussion *infra* Part III.B.2.

17. Additionally, we conducted interviews with two students we deemed transfer-eligible but who chose to remain at USF. Interview with Riley, in S.F., Cal. (Apr. 8, 2013) [hereinafter Riley Interview] (notes on file with author); Interview with Charlie, in S.F., Cal. (Feb. 25, 2013) [Charlie Interview] (notes on file with author). Our interviews do not

In Part IV, we discuss the multifaceted issue of student happiness and its possible significance in regard to students who transfer. We argue that the current transfer practice is likely to result in decreased student happiness and is driven by law schools' unnecessary efforts to game the rankings.

In Part V, we propose a modification to the current rankings system. We suggest that *U.S. News* require schools to report the metrics of those students that transfer into and out of the law schools. *U.S. News* should then include in its ranking of a school the metrics of transfer students accepted as second years and remove the metrics of students who transfer out of the law school. In this way, the *U.S. News* rankings would depict the most accurate snapshot of the metrics of a school's student body. In Part V, we further discuss nine different ways in which this modest change would facilitate accuracy, fairness, transparency, and continuity in the legal education field. We then describe the significance this change would have on the legal profession and employers. Finally, we consider the ways in which the phenomenon of transfer students as a result of gaming the metrics of *U.S. News* would change as a result of this modest proposal.

Our conclusion summarizes our findings in regard to the resources and decision-making processes utilized by students in deciding whether to transfer; the impact of *U.S. News* in creating the incentives that have fueled the dramatic increase in transfer students; and the benefits of implementing our modest proposal to include the metrics of transfer students in calculating the *U.S. News* rankings.

I. Ranking System

The *U.S. News* ranking system has been the point of reference for most law students considering transfer.¹⁸ "If the *U.S. News* incentive went away tomorrow, transfer acceptance would drop," states David

represent the closed universe of transfer-eligible students. Rather, they provide a backdrop against which to assess changes between the original and target schools, as opposed to changes between the first and second year of law school. One interesting issue, beyond the immediate scope of this Article, is that many of the students in the top ten percent of the USF 2L class may not have been in that category had other students not transferred. That is, the transfer of a significant number of the top students allowed others to move into the top ten percent. These students have the opportunity to leverage advantages available only to the top of the class.

18. See Rensberger, *supra* note 15, at 621–22.

Yellen, Dean of Loyola University Chicago School of Law.¹⁹ Schools see admission applications rise and fall in tandem with the school's *U.S. News* ranking.²⁰ "In the world of legal education, the *U.S. News and World Report's* annually published law school rankings are ubiquitous. *U.S. News* has been publishing its law school rankings . . . since 1989, and today its rankings are the most widely read, closely followed, and hotly debated of any such publication."²¹ The publication exerts a disproportionate influence on aspiring law students in deciding to which schools they should apply.²² Moreover, students look to the rankings in making the ultimate decision of which school to attend and, then later, in determining whether to transfer to a higher-ranked law school after their first year.²³ "The rankings are so impactful that even a small drop in a school's ranking can be disastrous when recruiting future students to that school."²⁴

U.S. News bases its law school rankings on a weighted average of four categories: (1) Quality Assessment (weighted by 0.40);²⁵ (2) Selectivity (weighted by 0.25);²⁶ (3) Placement Success (weighted by 0.20);²⁷ and (4) Faculty Resources (weighted by 0.15).²⁸ This Article specifically addresses the Selectivity Score, which is the second highest

19. Leslie A. Gordon, *Transfers Bolster Elite Schools*, AM. BAR ASS'N (Dec. 1, 2008), http://www.abajournal.com/magazine/article/transfers_bolster_elite_schools/ (internal quotation marks omitted).

20. Michael Sauder & Wendy Espeland, *Fear of Falling: The Effects of U.S. News & World Report Rankings on U.S. Law Schools*, in LSAC RESEARCH REPORT SERIES, at 29–30 (Law School Admission Council Grant Report No. 07-02, 2007), available at [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/gr-07-02.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/gr-07-02.pdf).

21. *Dissecting the Rankings: The U.S. News and World Report*, TOP LAW SCHOOLS, <http://www.top-law-schools.com/dissecting-the-rankings-news-world-report.html> (last visited Aug. 16, 2014).

22. *See id.*

23. *Id.*

24. *Id.*

25. Sam Flanigan & Robert Morse, *Methodology: 2015 Best Law Schools Rankings*, U.S. NEWS (Mar. 10, 2014), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2014/03/10/methodology-2015-best-law-schools-rankings>.

26. *Id.*

27. *Id.*

28. *Id.* Further, the Quality Assessment Score is composed of the sum of peer assessment score (weighted by 0.25) and assessment by lawyers and judges (weighted by 0.15). *Id.* The Selectivity Score is composed of the sum of median LSAT scores (weighted by 0.125), median UGPA (weighted by 0.10), and acceptance rate (weighted by 0.025). *Id.* The Placement Success Score is composed of the sum of employment at graduation (weighted by 0.04), employment nine months after graduation (weighted by 0.14), and bar passage rate (weighed at 0.02). *Id.* The Faculty Resources Score is composed of the sum of the average instruction, library and supporting services (weighted by 0.0975) and other items, including financial aid (weighted by 0.015), student to faculty ratio (weighted by 0.03), and library resources (weighted by 0.0075). *Id.*

ranking criteria utilized by *U.S. News*. The Selectivity Score is composed of the sum of median LSAT, median UGPA, and acceptance rate.²⁹ Since the LSAT, UGPA, and acceptance rate are given such significant weight in the ranking criteria, the use of an inaccurate and easily remedied data criterion will substantially affect a school's ranking. Thus, we deemed it worthy to consider a revision to the basis for the ranking system and to investigate, and discuss here, the ways in which the current system has played a role in the current structuring of the law schools.

We have determined that the Selectivity Score of the *U.S. News* ranking system has had the most bearing on the phenomenon of the rise of transfer students in law schools. LSAT, UGPA, and acceptance rate, as measured only for the incoming class, are all factors that have heavily influenced the business of transfer students. Accepting fewer students into the first year class, and only accepting those with the highest LSAT and UGPA possible, allows a school to maintain its ranking. Admitting transfer students with lower metrics into the second year class permits the school to increase revenue lost from not admitting the students initially. The *U.S. News* ranking, which is generated from skewing the Selectivity Score from the first year class, then allows the school to attract a similarly select group of students for the incoming first year class in subsequent years.

As noted previously, this Article does not evaluate the utility or importance of the *U.S. News* ranking system. We are intentionally agnostic as to these features so as not to detract from a focus on the ways in which *U.S. News* has influenced the business of transfer students. That said, it is relevant to our inquiry on the rationales for the current system to highlight a certain orientation of the ranking criteria to the maintenance of the status quo.

The top category, Quality Assessment, which accounts for a weighted .40 of the ranking, is composed of the sum of peer assessment score (weighted by 0.25) and assessment by lawyers and judges (weighted by 0.15). While we make no judgment about whether that is an accurate evaluative criterion or its relative importance to other possible criteria, we note that it is a criterion that has the effect of entrenching the status quo system of current rankings.³⁰ Polling new

29. *Id.*

30. *U.S. News's* explanation for the emphasis on what it calls "quality assessment" is that:

One way of getting at the quality of a graduate program is to survey the people in the best position to have an informed opinion—academics who administer

faculty members, deans, practitioners, and judges is unlikely to generate significant changes from one year to the next. This observation may be helpful in explaining a rationale for only considering LSAT, UGPA, and acceptance rate for incoming students, and may also provide an explanation for the phenomenon of transfer students.

Because the *U.S. News* rankings carry so much weight, law school administrators have learned how to expertly manipulate the ranking system. Brian Leiter identifies the following factors as “[h]ighly [m]anipulable,” meaning schools can “exercise, through deceit or otherwise, a lot of control over [the] criterion”:³¹ median LSAT,³² median GPA,³³ acceptance rate,³⁴ and job placement.³⁵ For a law school to maintain its all-important UGPA and LSAT numbers—the two factors it can control most easily—it may “poach” high-achieving transfer

and teach in these programs and people who hire or work directly with graduates of these programs.

For all disciplines we rank, we surveyed deans or program directors as well as department chairs or faculty members and asked them to rate the quality of each program

A second survey was sent out to practitioners in the fields of business, education, engineering, law and medicine. These people—recruiters of . . . professionals in legal fields, including law firm hiring partners, lawyers and judges . . . were surveyed using the same survey format

Sam Flanigan & Robert Morse, *Frequently Asked Questions: 2015 Best Law Schools Rankings*, U.S. NEWS (Mar. 10, 2014), <http://www.usnews.com/education/best-graduate-schools/articles/2014/03/10/frequently-asked-questions-2015-best-graduate-schools-rankings>.

31. Brian Leiter, *The U.S. News Law School Rankings: A Guide for the Perplexed*, BRIAN LEITER’S LAW SCHOOL RANKINGS (May 2003), <http://www.leiterrankings.com/usnews/guide.shtml> (internal quotation marks omitted).

32. *Id.* (“This criterion is one of many that favors small schools. Consider: a school that enrolls 180 students each year, only needs to recruit 90 with an LSAT of, say, at least 164 in order to have a strong median LSAT. A school that enrolls 450 each year, by contrast, will need to recruit 225 students (more than twice as many) with that LSAT to report *the very same median*. Note also that *U.S. News* has no way of verifying the data reported by private schools, since the American Bar Association does *not* collect median LSAT data, only data about the 25th and 75th percentile. *So this factor is highly manipulable by the schools.*” (emphasis in original)).

33. *Id.* (“Note, too, that the feeder schools for a particular law school will have a significant effect on this criterion. Example: schools that draw on the ‘grade inflated’ Ivy League have it easier than those that draw on universities with less rampant grade inflation.”).

34. *Id.* (“*U.S. News* has no way of verifying the data reported by private schools. In addition, many schools inflate their ‘selectivity’ by giving fee waivers to applicants who have no chance of getting in.”).

35. *Id.* (“This data is entirely self-reported by schools, and should be treated as essentially fiction: it may have elements of truth, but basically it’s a work of the imagination. Schools report it, and *U.S. News* has no way of checking. In addition, we know nothing about the nature of the employment—it could simply be as a research assistant, which is what Northwestern did a few years ago for its unemployed grads.”).

students from lower-ranked schools, so that those students' lower UGPA or LSAT scores do not count towards the *U.S. News* rankings.³⁶ Higher-ranked schools can strategically accept students who are more likely to pass the bar and obtain employment, further bolstering the school's ranking.³⁷ David Van Zandt, Dean of Northwestern University School of Law, articulates a rational viewpoint from the perspective of a top-tier law school that law schools should seek out transfer students and notes that top-performing students "should be entitled to transfer, and there's no harm in us facilitating that . . . Chrysler and General Motors don't agree not to poach each other's customers."³⁸

Northwestern University School of Law actively recruits top-performing law school students from lower-ranked law schools.³⁹ Northwestern turns down approximately 5000 applicants each year, but issues "conditional acceptances" inviting around 150 applicants to apply again the following fall.⁴⁰ "The acceptance would be contingent upon your achieving a certain GPA or class rank during your first year of law school elsewhere," says the letter, which is signed by the school's assistant dean of admissions.⁴¹ Northwestern now only extends fifteen to twenty-five of these conditional acceptances each year.⁴² This allows Northwestern to maintain its UGPA and LSAT averages, which are key to the rankings, while using transfer students to help the law school increase tuition revenue.⁴³ Northwestern's practices are not unique.⁴⁴ Harvard Law School has issued similar rejection letters that strongly suggest certain students reapply as transfer students.⁴⁵

36. Gordon, *supra* note 19 ("Deans of lower-tier law schools argue that such recruiting is predatory, allowing elite schools to poach their best students. Moreover, they claim the practice helps top schools boost revenues in their second- and third-year classes, while keeping up their LSAT and GPA averages—both significant components of *U.S. News & World Report's* law school rankings.").

37. See Rensberger, *supra* note 15, at 628–29.

38. Gordon, *supra* note 19 (internal quotation marks omitted).

39. *Id.* This practice is "becoming commonplace at elite institutions." *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. See *id.*

44. See *id.*

45. See Paul Campos, *The Transfer Game*, INSIDE THE LAW SCHOOL SCAM (Feb. 20, 2012), <http://insidethelawschoolscam.blogspot.com/2012/02/transfer-game.html> ("I knew how easy transfer admissions were because Northwestern offered me 'conditional' transfer acceptance when they rejected me for 1L. Moreover, a friend who was accepted to Penn for 1L (same year) received a rejection letter from Harvard (Harvard!) that strongly suggested he reapply as a transfer: 'If your interest in Harvard Law School continues into your first year at another law school, we would welcome your application as a transfer student in 2010.'").

II. Trading Up the *U.S. News* Ranking

The ABA requires law schools to provide data on a range of metrics, such as the number of students who enter and graduate from the law school; each student's ethnicity, gender, LSAT scores, and UGPAs; the school's bar passage rates; and employment statistics after graduation.⁴⁶ It is worth noting, however, that the ABA only reports the total number of transfers to each school, without collecting other metrics from students who transfer in or out.⁴⁷

Despite this lack of data, it can be assumed that higher-ranked law schools gain from the transferring in of students who performed well during their 1L year at their lower-ranked law school, while lower-ranked schools lose their best and brightest. The lower-ranked schools must then determine how to make up for lost revenue, lower bar passage rates, and lower employment statistics as a result of transfers out without corresponding transfers in.⁴⁸

The process by which students transfer from law schools with lower mean LSAT scores to schools with higher mean LSAT scores is more than just a shifting of resources and revenue.⁴⁹ The process is detrimental for lower-ranked schools, which end up losing both tuition dollars and their strongest students.⁵⁰ David Logan, Dean of Roger Williams University School of Law in Bristol, Rhode Island, worries that the ripple effect of transferring students will reduce academic discussion, harm bar passage rates, cause faculties to lose research assistants, alter student relationships, and force tuition increases to offset departing students.⁵¹ Essentially, says Logan, transfer students are "just cash cows."⁵²

Law schools have responded to the need to maintain or enhance school ranking and to make up for the revenue lost from outgoing transfer students in two main ways. First, schools actively try to attract transfer students from lower-ranked schools to recover lost revenue from students transferring out.⁵³ Second, schools attempt to enroll transfer students they would have admitted as 1Ls if they were not obligated to report incoming academic metrics to *U.S. News*. Since

46. See Rensberger, *supra* note 15, at 616.

47. *Id.*

48. *Id.* at 619–21 (providing a detailed mathematical analysis of gainers and losers).

49. *Id.* at 623.

50. See *id.* at 638–39.

51. See Gordon, *supra* note 19.

52. *Id.* (internal quotation marks omitted).

53. See *id.*

U.S. News does not collect the metrics of incoming transfer students and does not deduct the metrics of students transferring out of a school, there is an incentive for schools to be more selective in the initial admission decision and to attempt to poach incoming 2L students from lower-ranked schools.⁵⁴ And indeed, law schools appear to be engaging in this rational behavior: even as the total number of enrolled law students has decreased overall, the number of students transferring and being accepted as transfers has increased significantly since 1997.⁵⁵

Law schools poach the high-performing law students from lower-tiered schools to acquire revenue while leaving their ranking unaffected by lower acceptance rates, UGPAs, and LSAT scores, the factors that compose the highly weighted Selectivity component of the *U.S. News* ranking criteria.⁵⁶ As Professor Tamanaha notes:

[L]aw schools have been gaming the ranking for as long as it has existed. Back in 1995, soon after the ranking originated, *U.S. News* called out 29 law schools for “disturbing discrepancies” in the LSAT scores they reported, and observed that salaries reported by some schools “seem a bit high.”⁵⁷

Some commentators have argued that it is unlikely law schools would game their ranking because it would be self-defeating—since *U.S. News* accounts for job placement after graduation, accepting students who cannot get good jobs would likely not contribute to the school’s future ranking.⁵⁸ However, Professor Leiter responds to this argument by noting that “the ways of gaming the placement data are

54. See Brian Z. Tamanaha, *Law Schools Fudge Numbers, Disregard Ethics to Increase Their Ranking*, DAILY BEAST (June 17, 2012), <http://www.thedailybeast.com/articles/2012/06/17/law-schools-fudge-numbers-disregard-ethics-to-increase-their-ranking.html>.

55. See Bill Henderson, *Transfer Students—The Data*, EMPIRICAL LEGAL STUD. (June 3, 2008), http://www.elsblog.org/the_empirical_legal_studi/2008/06/transfer-studen.html (suggesting that schools are shrinking first year classes and accepting more transfer students).

56. See Gordon, *supra* note 19.

57. Tamanaha, *supra* note 54.

58. See Brian Leiter, *Schools that Take the Largest Number of Transfers (Relative to the Size of Their 1L Class)*, BRIAN LEITER’S LAW SCHOOL REPORTS (June 3, 2008) <http://leiterlaw-school.typepad.com/leiter/2008/06/schools-that-ta.html>. Professor Leiter received the following comment:

If a school were to try to “game” US News by taking large numbers of transfers who were less able, and less likely to succeed in law school, than the broad middle of its class, the effort would be inherently self-limiting, because US News counts placement as well (and, thinking more long-term, because students who can’t get good jobs are unlikely to contribute to the school in the future). A smart school isn’t going to take lots of transfers whose abilities can’t enable them to get good jobs.

Id.

legion and well-known,”⁵⁹ which suggests that law schools actively participate in gaming.

The University of Illinois College of Law provided an exaggerated and well-publicized example of how law schools could rationally respond to the positive and negative incentives created through the phenomenon of transfer students.⁶⁰ To increase its reported LSAT and UGPA medians and decrease its acceptance rate, Illinois reduced its entering class size and used second-year transfer students to replace the revenue lost from not initially admitting students and from the loss of their best-performing students who transferred to higher-ranked schools.⁶¹ It also created a program to admit University of Illinois undergraduate students with high UGPAs without requiring them to take the LSAT.⁶² While other law schools may have engaged in similar behavior, the strategic calculation made by Illinois was revealed in an email in which the administrator directing the initiative stated that it would “trap about 20 of the little bastards with high GPAs that count and no LSAT score to count against my median.”⁶³ Illinois paid a heavy price for its blatant misconduct.⁶⁴

The factors that gave rise to Illinois’s behavior, and to similar, if less overt, behavior at other law schools, is a product of the way in which *U.S. News* collects and publishes data for the Selectivity component of its ranking system. Trying to admit as large a first-year class as possible, reporting data that would lower the school’s ranking as little as possible, and seeking to admit as many transfer students as possible to compensate for the loss of its best and brightest without sacrificing additional revenue are perfectly rational responses to gaming the Selectivity Score. The need to game that criterion is a self-perpetuating system as well: the lower a school’s Selectivity Score, the lower its ranking; the lower its rank, the fewer qualified students that will enter the first-year class and the higher number of students that will seek to transfer following their 1L year, both of which will lower the school’s ranking even more. When loss of revenue, reduction in students pass-

59. *Id.*

60. Tamanaha, *supra* note 54.

61. *Id.*

62. *Id.*

63. *Id.* (internal quotation marks omitted).

64. Jodi S. Cohen, *U. of I. Law School Fined \$250,000 for False Admissions Data*, CHI. TRIB. (July 24, 2012), http://articles.chicagotribune.com/2012-07-24/news/chi-20120724u-of-i-law-school-fined_1_false-admissions-data-lsat-scores-paul-pless. Illinois was censured and fined \$250,000 for intentionally publishing false LSAT scores and inflated incoming student UGPAs for the entering class of 2005 and classes 2007 through 2011. *Id.* The ABA also required Illinois to end their undergraduate early law school admission program. *Id.*

ing the bar, and reduction in employment following graduation are also factored in, the decline of the school becomes ineluctable.

Illinois is not unique in trying to report the strongest possible numbers to *U.S. News* while simultaneously making up for lost revenue.⁶⁵ In the most recent data reported to the ABA, 460 students transferred into the T-14.⁶⁶ One hundred twenty-two students transferred into Georgetown, forty-seven into NYU, fifty-two into Columbia, and forty-four into Northwestern.⁶⁷ The T-14 “are taking around 450 transfers a year—thus creating the equivalent of a couple of extra elite law schools.”⁶⁸

At least for the top tier of law schools, incoming transfer students partially make up for revenue lost from students transferring out and permit schools to create a pool of initially admitted students with artificially high credentials.⁶⁹ At Columbia University School of Law, for example:

[U]sing a conservative estimate of 80 transfers in the current 2L class, transfer students—who of course get no scholarship money—are paying slightly more than eight million dollars in tuition at [Columbia Law School] this year. This represents [an] amount equal to about half of the total tuition being paid by the entire 1L class, based on the assumption that the 1L class is collectively paying 80% of sticker tuition price. The money being brought in by transfers pays for around 40 tenure-track faculty salaries: it’s 21% of all tuition revenue collected from all 2L and 3L students.⁷⁰

Facing a situation in which schools have incentives to maintain a low acceptance rate and admit students with only the highest UGPAs and LSAT scores, yet have a continued need for revenue from tuition, it appears law schools are using second-year transfer students to subsidize some of the revenue lost by strategic admission decisions and departing transfer students.⁷¹

65. See Campos, *supra* note 45. Note that lost revenue comes both from students transferring out and from lower first year enrollment. *Id.*

66. *Standard 509 Information Reports*, AM. BAR ASS’N SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, <http://www.abarequireddisclosures.org> (last visited Aug. 16, 2014). This figure only represents the number of students who transferred in, not the total number of students accepted as transfers, which, presumably, is a higher figure. This figure may be overinclusive, as it could include students who transferred from one T-14 school to another.

67. *Id.*

68. Campos, *supra* note 45.

69. See *id.*

70. *Id.*

71. See Leiter, *supra* note 58.

This is an economically inefficient system for both schools and students.⁷² Schools must undertake the expense, personnel resource allocation, and uncertainty of conducting an admissions process twice, while students must undertake the expense, uncertainty, possible relocation costs, and loss of friends and opportunities associated with transferring. Students also face having to pay full tuition at the target school as compared to the potentially generous scholarships available at the school they initially chose to attend.⁷³

We argue that the current transfer system is more than an economically inefficient means of admitting a class. That is, the phenomenon of transfer students is not just an unanticipated consequence of the Selectivity component of the reporting requirement of *U.S. News*. We do not view it as ideologically neutral. We do not believe that *U.S. News* uses the Selectivity component based on an objective standard of how selective a law school is in admitting law students, nor that the use of this criterion naturally produces winners and losers. Instead, we argue that the choice to use a Selectivity component that does not account for the metrics of transfer students or the metrics of departing students functionally serves to favor the top tier of schools and disadvantage lower-tier schools.

Schools at the bottom of the rankings, which are in the position of accepting students based on whether the school believes they can successfully pass the bar and become lawyers, face losing their top students to higher-ranked schools. The top students are the students most likely to pass the bar, be offered lucrative law firm associate positions, and enhance the reputation of the school. When these students, and their attendant revenue, transfer to higher-ranked schools, they fill the revenue gap at the higher-ranked school without impacting that school's *U.S. News* ranking, while the lower-ranked school is unable to compensate for this difference.

For example, in 2012, the University of San Francisco School of Law ("USF") lost nineteen students as transfers and only succeeded in

72. While not the focus of this Article, we query whether the high cost of law school attendance is in part attributable to the phenomenon of transfer students. However, even with this gaming of the selectivity criteria in regard to the entering 1L class, and even considering the increased revenue from the transfer students, law schools do not fully recoup the revenue lost from not initially admitting a larger class. We view it as an unresolved empirical question whether the Selectivity criteria component, as currently collected by *U.S. News*, plays a role in the tuition charged by law schools.

73. Jordan Interview, *supra* note 3; Elliot Interview, *supra* note 9; Casey Interview, *supra* note 3. See also *infra* note 212 and accompanying text.

enrolling one transfer student,⁷⁴ who came from an unaccredited law school and thus is probably more at risk of failing the bar.⁷⁵ In general, if a law school loses roughly forty students following their 1L year at a tuition rate of \$50,000, the school loses \$4 million in revenue.⁷⁶ Significantly, the school also loses the top-tier of its class and may suffer a reputational hit as its bar passage rates decline, it graduates a less qualified class, and its graduates perform worse in the marketplace.⁷⁷ These losses will themselves worsen the data reported to *U.S. News*, which, in turn, will decrease the metrics of incoming students and increase the desire of students at the top of the class to transfer out. If a school responds to this lost revenue by decreasing faculty, library resources, or spending per student, the metrics reported to *U.S. News* will also suffer.⁷⁸ These issues spiral from the current transfer system.

Higher-tier schools, in contrast, profit from the current system, as the lower-tier schools serve as a training ground and revenue stream for second-year transfer students. The lower-ranked schools also serve as a filter for the higher-tier schools in helping ensure that transfer students will be more likely to successfully complete the program.⁷⁹ Finally, the lower-tier schools serve as a buffer against the higher-tier schools' having to report transfer students' potentially lower LSAT scores and UGPAs to *U.S. News*. A school such as Columbia, in contrast to USF, reaps the benefits of this system as it can gain a Selectivity component advantage from its first-year student statistics and make up the loss in revenue from a proven qualified applicant pool in its second year. These transfer students will presumably be more likely to pay the full tuition rate as a cost of trading up in the rankings.

Additionally, the notion that this business of transfer students is an inevitable byproduct of *U.S. News's* collecting Selectivity data to rank schools is inaccurate. As discussed later, *U.S. News* could require all law schools to provide an accurate snapshot of the LSAT scores and UGPA of the students currently attending the school, subtracting the

74. *Standard 509 Information Reports*, *supra* note 66.

75. ST. B. CAL., GENERAL STATISTICS REPORT: JULY 2012 CALIFORNIA BAR EXAMINATION I (2012), available at http://admissions.calbar.ca.gov/portals/4/documents/gbx/july2012stats.122112_r.pdf (showing that unaccredited law schools have significantly lower passage rates on the California State Bar).

76. This analysis assumes that revenue is lost only in the second and third years of study.

77. See Rensberger, *supra* note 15, at 628–31; Gordon, *supra* note 19.

78. These resources are directly accounted for in the Faculty Resources Score. See *supra* note 28.

79. See *Study: Transfer Law Students Succeed Academically but Fail to Integrate Fully in New School*, IND. UNIV. (Jan. 6, 2012), <http://newsinfo.iu.edu/news-archive/20792.html>.

metrics of students who have left and including the statistics of those who transfer in. We hope to draw attention to this practice and suggest that efficiency, accuracy, and fairness require this modest change.

III. Qualitative Data

In 2011, the top law schools sent fewer graduates into first-year associate jobs at the nation's largest 250 firms than they did in 2010.⁸⁰ Students know the job market is competitive, and they believe that going to the right school will increase their odds of getting a coveted big law job.⁸¹ Ultimately, the main reason why students transfer to a higher-ranked law school is the belief that doing so will result in greater opportunities to obtain employment upon graduation.⁸² In this Article, we do not test whether this perception is empirically warranted, but merely note it is not a settled issue.⁸³

On-campus interviews ("OCI") represent a significant mechanism for students to obtain law firm jobs.⁸⁴ Through this process, law firms come to law schools to interview candidates for law firm associate positions.⁸⁵ Far more law firms interview at higher-tier law schools than lower-tier law schools.⁸⁶ Intuitively, transferring to a school where

80. David Lat, *Best Law Schools for Getting a Big Law Job*, ABOVE THE LAW (Feb. 28, 2012), <http://abovethelaw.com/2012/02/best-law-schools-for-getting-a-biglaw-job-2012/>.

81. See Arrow, *supra* note 11.

82. See Ian E. Scott, *Should I Transfer Law Schools After My First Year?*, STUDENT APPEAL (Jan. 10, 2012), <http://thestudentappeal.com/op-ed/transferring-law-schools/0> ("Attending a highly ranked school, especially in a poor economy, could have a significant impact on your ability to find a job and your other opportunities as a lawyer.")

83. See Rensberger, *supra* note 15, at 639 ("The most obvious benefit to transferring is the enhancement of one's future career. A degree from a higher ranked school is thought by students to open greater career options than that from a lower ranked school. It appears that this perception does have some reality behind it. But the alternative for the transfer student is to remain at his or her lower ranked school and do extremely well (I am assuming they are off to a good start at their original school, which is what makes them attractive to their new school). The transfer may do extremely well at the new school. But it is also possible that he or she will graduate with an undistinguished record from a distinguished school, finishing in the middle or lower portion of the class. The student is thus trading a relatively sure thing—continued high performance at his or her current school and the job prospects that entails—for an uncertainty." (internal citation omitted)).

84. See David Lat, *Some Thoughts About On-Campus Interviewing*, ABOVE THE LAW (Aug. 15, 2013), <http://abovethelaw.com/2013/08/some-thoughts-about-on-campus-interviewing/>.

85. *Id.*

86. See 2L OCI: *How the On Campus Interview Process Works*, JDEMPLOYED, <http://jdemployed.com/2l-on-campus-interviews> (last visited Aug. 16, 2014); Steve Schwartz, *Law School Diary: On Campus Interviews*, LSAT BLOG (July 27, 2012), <http://lsatblog.blogspot.com/2012/07/law-school-on-campus-interviews.html>.

more prospective employers interview is in the rational self-interest of students focused on obtaining such a job.

We argue, however, that this is an area in which more successful students at lower-tier schools may actually have an advantage. Simply put, while lower-tier schools may have fewer employers coming to the school to interview, successful students can monopolize those interviews and increase their chances of securing a law firm position. The reason for this unintuitive discrepancy is the difference in the bargaining power that law firms possess with respect to the tier of school with which they interview. Most top-tier schools insist on randomizing the OCI process. Students bid on employers and employers do not have the chance to prescreen students in whom they may be more interested.⁸⁷ Neither the employer nor the student has much control over selecting the interviews.

As opposed to higher-ranked schools where there is an assumption that all students are equally capable, lower-ranked law schools do not have the leverage to force employers to interview a random selection of its students. Interviews at lower-tier law schools must typically be “employer selected,” meaning that students submit their applications for employer review and employers select candidates for first-round interviews. Thus, at the lower-tier school, a firm can insist that it will only interview students from the top five to ten percent of the class, students with some combination of class rank and law review editorial experience, or students who possess a desired diversity. Whether the entire class at a top-tier school is equally capable or whether no student below the top ten percent of the class at a lower-tier school is qualified to be a law firm associate is not relevant. What is significant is that a law firm employer has strong leverage to insist that lower-tier schools allow it to preselect whom it wishes to interview and the same employer has diminished leverage with respect to higher-tier schools. Thus, the difference to the transfer-eligible student, a student in the top of the class, cannot be measured simply by counting the raw number of employers who interview at a given school. Not only may the top candidates at the lower-tier school receive more interviews, but they also enter those interviews based on an initial positive match by the employer.⁸⁸

87. Schwartz, *supra* note 86.

88. A couple of caveats are worth noting. First, we acknowledge the difference in potential employer processes may counter the intuitive assumption that more employers means that students have better chances at obtaining law firm jobs. This observation highlights an open empirical question—one that we hope to test in the next article in this

OCI can also be challenging for transfer students because of the timing of Early Interview Week (“EIW”). Higher-tier schools often have EIW, which transfer students may miss due to the timing of their acceptance to the transfer school.⁸⁹ As a result, transfer students must often independently seek interviews with firms.⁹⁰ Since most firms will have secured their summer associates through EIW, it will often be too late to obtain one of these positions through the student’s own initiative.⁹¹

Most importantly, because my transfer process happened so late, I missed out on Early Interview Week and was left to my own devices to try to find a summer job. By sending out letters on my own, I was able to secure first interviews with several large firms. However, by the time I interviewed, they had already conducted their callbacks from EIW and I missed the big-firm boat entirely.

Not being able to participate in EIW might have been a tipping point in my career, and I look back on it with an immense amount of regret.⁹²

The 2004 *After the JD* study found that the median salary for new attorneys depends significantly more on law school academic performance and GPA than on the rank of the law school from which the student graduates.⁹³ The study also revealed that there is little statistical difference in salaries between students who graduate from middle-tier law schools, save for the main determining factor of academic performance while in law school.⁹⁴

series. At best, we can say that differences between the number of employers interviewing at the schools based on tier may not disadvantage a student as strongly as the raw numbers would suggest. Second, this observation may not hold with regard to highly specialized employers who may overlook lower-tier schools. A law student who wishes to specialize in plaintiff-side educational disability rights litigation, for example, may be better served at a top-tier school that might draw an employer in such an area.

89. Telephone Interview with Brook, in S.F., Cal. (Apr. 6, 2013) [hereinafter Brook Interview] (notes on file with author); Casey Interview, *supra* note 3.

90. Brook Interview, *supra* note 89; Casey Interview, *supra* note 3.

91. See Erin, *To Transfer, or Not to Transfer*, LAW SCHOOL TRANSPLANT (Jan. 23, 2011), <http://lawschooltransplant.com/to-transfer-or-not-to-transfer/>.

92. *Id.* (“On the other hand, it is just as likely that if I *had* ended up with a big firm job, I would have been one of the casualties of the massive layoffs that occurred when the economy tanked less than a year after I graduated. But still, I have to wonder how differently my life would have turned out had I been able to interview on-campus during EIW.”).

93. NAT’L ASS’N FOR LAW PLACEMENT FOUND. FOR LAW CAREER RES. & EDUC. & AM. B. FOUND., *AFTER THE JD: FIRST RESULTS OF A National Study of Legal Careers* 42–44 (2004) [hereinafter *AFTER THE JD*], available at <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf>.

94. *Id.* Of course, it is possible that a different outcome, or at least a different probability of success at finding legal employment might result when considering the highest-tier schools and the lowest. Further, salary may not be the appropriate measure of the success of a transfer since it is conceivable that a given student might prefer a lower-paying

A. Student Perspectives on Transferring

From the class of 2014, we interviewed eleven students who transferred from USF to another law school. Of the eleven, ten “traded up” to a first-tier school, while one traded up to a school in the middle of the third tier. We also spoke with two students from the class of 2013 who were transfer-eligible but chose to stay at USF, and we also spoke with one student who transferred into USF from another law school.⁹⁵ The students offered their perspectives on their decisions to transfer or not to transfer.

In our discussions with the students, we were guided by an interest in their experiences with the transfer decision. That is, we sought to understand their decision without regard to whether their decision was empirically grounded, but rather the ways in which they experienced it. We wanted to understand: (1) what career expectations students had with respect to their initial law school choice; (2) how they subjectively viewed their first year experience absent any issue of transferring; (3) why the students considered transferring; (4) what resources and criteria the students utilized in deciding where to apply to transfer; (5) the decision-making criteria they employed in deciding whether to transfer once it was an option; (6) the interview process and the ways in which law school stratification affected the process of employer interviews at law schools; and (7) their perceived satisfaction with their transfer school. We were trying to understand the student’s perspective on the issues involved in deciding whether to transfer, apart from the Selectivity component of *U.S. News* and the rise of the transfer student phenomenon. A reasonably common narrative that we heard provided a complicated, conflicted, and nuanced decision-making process performed largely in the absence of empiricism and despite an exhaustive (and exhausting) process of searching for that empiricism.

Generally, the fear of not being able to obtain a job proved to be the primary reason why students transferred out of USF.⁹⁶ In 2012, USF dropped precipitously in the annual *U.S. News* rankings, from 106

job in a particular sector of the legal market rather than a higher-paying job in a different sector.

95. Interview with Blake, in S.F., Cal. (Mar. 12, 2013) [hereinafter Blake Interview] (notes on file with author).

96. Elliot Interview, *supra* note 9; Jessie Interview, *supra* note 3; Telephone Interview with Jamie, in S.F., Cal. (Oct. 21, 2013) [hereinafter Jamie Interview] (notes on file with author).

to 144.⁹⁷ After falling from the top of the third tier to the bottom, many of the top performers at USF explored the option of transferring to a higher-ranked school in the belief that this would increase their odds of gaining employment upon graduation.⁹⁸ Students typically cited fear of the lack of job prospects as the main reason for transferring, and ultimately decided to transfer based on the worry of obtaining a job in addition to the protections offered by obtaining a degree from a more prestigious school.⁹⁹

This fear was reaffirmed for some students after attending events set up by the school, where attorneys informed students that they would not be conducting interviews at USF.¹⁰⁰ Some students felt that in addition to securing jobs, the desire to graduate from a more prestigious school with a better “brand” played a role in the decision to trade up to a higher-ranked school.¹⁰¹ One student felt that graduating from a T-14 school would be helpful down the line if she chose to practice outside the legal field.¹⁰²

During the transfer process, most students consulted their professors at USF while some independently researched the pros and cons of transferring, often looking to popular blogs and websites for ad-

97. *USF and the U.S. News Law School Rankings*, UNIV. OF SAN FRANCISCO (Mar. 21, 2013), <http://www.usfca.edu/law/news/usfnewsrankings/>. USF played up the role of *U.S. News's* changes in methodology when explaining the drop, but noted that the rankings “discount[] the innovative and nontraditional career paths that many USF graduates have taken, including work in international public interest organizations, in business, and in government agencies.” *Id.*

98. Casey Interview, *supra* note 3. Upon the release of the new rankings toward the end of her 1L year, Casey began considering the prospect of transferring. *Id.*

99. *Id.*; Taylor Interview, *supra* note 9; Elliot Interview, *supra* note 9.

100. Elliot Interview, *supra* note 9. Elliot’s interest in transferring peaked after attending a “lunch with lawyers” event held at a law firm. *Id.* One of the lawyers at the event told Elliot that the law firm would not be recruiting students from USF. *Id.* Elliot was also made aware that most associates at the firm were from higher-ranked law schools. *Id.* Jordan’s decision to transfer was also solidified after an attorney at a career panel held at USF recommended that he transfer and also notified Jordan that the attorney’s firm would not be interviewing at USF. Jordan Interview, *supra* note 3.

101. Alex Interview, *supra* note 5. Alex transferred from USF to a T-14 school, basing the decision to do so substantially on the rank of the school. *Id.* He told us that while the ability to get a good job from USF is a possibility if you are in the top of your class, having a better brand and more prestige behind you allows for additional opportunities. *Id.* Alex thought that moving to a top school would relieve some of the pressure he felt to be at the top of the class at USF. *Id.*

102. Jordan Interview, *supra* note 3. Jordan mentioned that she was not sure how long she wanted to stay in law, but that a J.D. from a T-14 would give her a better position outside of the legal field. *Id.*

vice.¹⁰³ Most students were encouraged by their USF professors to transfer.¹⁰⁴ Some students actively sought out other transfer students at their target schools and sought advice on the process and feedback on the decision.¹⁰⁵ Students typically consulted a number of sources, such as the blogs *Above the Law* and *Top Law Schools*, and upon doing so, learned that some schools, like Georgetown and Berkeley, accept more transfer students than others.¹⁰⁶

Even when students transferred to the best schools, they expressed reservations about their decision and alluded to a period of transition that they found unsettling. Most students transferring to T-14 schools felt a loss of community upon transferring.¹⁰⁷ Some students found there to be a stigma attached to being a transfer student.¹⁰⁸ “My first two weeks [at a T-14 school] I had breakdowns and panic attacks. It was a hard adjustment. It is hard to know what is different because it’s not 1L year anymore, but I feel a difference in the

103. *Id.* Jordan began to inquire into the transfer process after discussing the option with various professors at USF who encouraged the idea of transferring. *Id.* She also consulted sources such as *Top Law Schools*. *Id.* Casey consulted a book that discussed the pros and cons of transferring, along with a few blogs. Casey Interview, *supra* note 3.

104. Elliot Interview, *supra* note 9 (“All professors but one encouraged me to transfer, saying it would allow for more opportunities.”). Jamie stated: “During the process, I talked to professors while I was asking for letters of recommendations. The professors were very nice and supportive about my decision.” Jamie Interview, *supra* note 96. It is interesting that most of the professors mentioned by our interviewees encouraged the students to transfer. It is unclear if this is because law school professors, who are overwhelmingly educated at top-tier law schools, exhibit a bias in favor of the top schools. It is also possible that the professors believe students will have a better chance of obtaining law firm jobs if they transfer. Further, the professors’ advice may be a reflection of the precipitous drop in rankings and the resulting concern that employers would stop interviewing students for law firm positions.

105. Casey Interview, *supra* note 3. Casey contacted her T-14 transfer school, which directed her to two students who had transferred and were willing to share their perspectives. *Id.*

106. Jessie Interview, *supra* note 3.

107. Jordan Interview, *supra* note 3. When we asked Jordan about her experience after deciding to transfer, she shared that while ultimately happy with her decision, she still went through a difficult adjustment process. *Id.* A drawback to transferring included the loss of connections she had established at USF. *Id.* Jessie also felt that USF has a much stronger sense of community. Jessie Interview, *supra* note 3. As such, the first semester at the new school was particularly difficult, as Jessie had little support from friends or community. *Id.* Taylor also shared this loss of community and connections established at USF. Taylor Interview, *supra* note 9.

108. Jordan Interview, *supra* note 3. As for the new school’s atmosphere and how the other students receive transfers, Jordan mentioned that there is a stigma placed on transfers—a belief that they are not good enough to be at the school. *Id.* Jessie also shared that there is some sentiment of transfer students not being welcome at the target school. Jessie Interview, *supra* note 3. Casey also experienced a loss of community and a feeling of not being adequate at the new school. Casey Interview, *supra* note 3.

school itself. USF is such a great community, and I was close with everyone there.”¹⁰⁹ At some schools, the integration of transfer students was made easier by providing an orientation for incoming transfer students.¹¹⁰ However, at other schools transfer students felt that the transfer student orientation was not sufficient in transitioning new students into the community.¹¹¹ One student felt that while transferring was a great decision professionally, it was one of the worst decisions personally.¹¹²

We asked the students if they believed their decision to transfer provided any additional opportunities for them at their new schools that they would not have had at their previous school. Of course, students cannot know what experiences they would have had if they had remained, and cannot know what other experiences they would have found had they transferred to a different school, but again, we were not seeking to make an empirical argument, just to understand the transfer experience as perceived by the student. Many of the students who transferred have since been able to secure employment in their desired fields.¹¹³ Some of the students secured summer associate positions at big law firms with the hopes of obtaining an offer to return upon graduation.¹¹⁴ Other students utilized their career planning offices in finding positions at smaller firms more tailored to their specific interests.¹¹⁵ Some students, who were not able to participate fully

109. Jordan Interview, *supra* note 3.

110. Elliot Interview, *supra* note 9. Elliot shared that she really liked her new school and found it to be very welcoming of transfer students. *Id.* She stated that the school provided a “great transfer orientation where we could meet each other and dive in headfirst.” *Id.*

111. Jessie Interview, *supra* note 3. Jessie found that the new school’s transfer student orientation was “terrible” in transitioning the students into the new community. *Id.*

112. Taylor Interview, *supra* note 9. Taylor noted that being personally happy has a lot to do with where the student is located as well as the student’s surroundings. *Id.*

113. Jessie Interview, *supra* note 3; Jamie Interview, *supra* note 96; Jordan Interview, *supra* note 3; Taylor Interview, *supra* note 9.

114. Jordan Interview, *supra* note 3. For Jordan, the benefits of transferring included obtaining a big law job through the school’s on-campus interviews. *Id.* Jordan has since obtained a summer associate position at a large firm, which has quelled her fear of remaining jobless. *Id.* She still, however, expressed some regret over her decision to transfer. *Id.*

115. Casey Interview, *supra* note 3 (“I did not participate in Early Interview Week, but I should have. I’m not even sure if I want a big firm job, that’s not why I transferred, but I wish I did it just to see what is out there. [Berkeley] helped me get the small firm job, but the firm said it is just a summer position—can’t work there after graduation.”).

in the new school's OCI because of the timing of their acceptance, struggled to find employment for their 2L summer.¹¹⁶

Students did, however, report a belief that they experienced additional opportunities at their new schools, including a greater variety of classes, more assistance from career planning offices, as well as increased access to programs.¹¹⁷ One student who transferred to a T-14 school has been able to travel and compete in various advocacy programs, an experience she believes would not have been possible for her at USF.¹¹⁸ Another student, interested in pursuing a career in a very specific legal field, was able to participate in the school's OCI and obtain a job in that narrow area of law, which he believes would have been more difficult to accomplish at USF.¹¹⁹ Some students stated that other than graduating from a higher-ranked school and possibly obtaining a job, there were no other benefits at the new school.¹²⁰ One student stated that the legal education at USF was the same as if not better than the new school.¹²¹

We were also interested in whether lower-tier schools could take actions to incentivize students not to transfer, or whether the decision to transfer is made solely on the basis of perceived opportunities at the target school. When asked what incentives might have persuaded students to remain at USF, most agreed that larger scholarships accompanied with greater assistance from the career planning office

116. Elliot Interview, *supra* note 9. Elliot obtained summer employment at a small firm for the summer, but she was not able to participate fully in the school's on-campus interviews. *Id.*

117. *Id.* Elliot transferred from USF to a T-14 school. She recognized additional opportunities at the new school, such as being able to work on a variety of distinguished cases, in addition to having the opportunity to take classes that are more tailored to her interests. *Id.* Jessie also experienced tremendous benefits at his new school, such as a stronger career services office, more opportunities with professors, a wider variety of classes, more renowned journals, and generally more professional connections. Jessie Interview, *supra* note 3.

118. Casey Interview, *supra* note 3. Casey had the opportunity to participate in moot court competitions in New York and San Francisco and was also able to travel to Paris and Vienna. *Id.* "Travelling is fun, and getting to do competition for big firms is exhilarating and fun. The benefit is that I am getting an experience I wouldn't have been able to get otherwise." *Id.*

119. Jamie Interview, *supra* note 96. Upon transferring to the new school, Jamie was able to participate in on-campus interviews and obtain a job in his desired field, something he felt he would not have been able to do had he remained at USF. *Id.*

120. Taylor Interview, *supra* note 9. Taylor listed the only benefits of transferring as attending a higher-ranked school and obtaining a summer associate position. *Id.*

121. *Id.*

might have swayed those not certain of transferring.¹²² Some students suggested linking the top students with professors to serve as mentors and advise them in the job search process.¹²³ Still, one student shared that once receiving acceptance to the higher-ranked school, particularly a T-14, nothing could prevent him from transferring.¹²⁴ Thus, he suggested that the school head off the idea of transferring early on in order to retain their top-performing students.¹²⁵

One student we spoke with transferred from USF to a lower-ranked school.¹²⁶ His decision to do so was based mostly on a personal need to be in the new school's location.¹²⁷ He found that the new school provides more practical courses geared towards providing students with skills necessary for the legal work force.¹²⁸ He was able to obtain a big law position and noted that without the security of the job, he would not likely have left USF to attend the lower-ranked school.¹²⁹

Another student we spoke with transferred into USF from an unranked school.¹³⁰ His main reason for transferring was to relocate for

122. Jordan Interview, *supra* note 3. A bigger scholarship and more assistance from the career service office would have made Jordan more inclined to stay at USF, rather than transfer. *Id.* Elliot also stated that had USF provided a significantly larger scholarship accompanied with more job opportunities, she would have stayed. Elliot Interview, *supra* note 9. Taylor suggested that if offered a full scholarship, coupled with the assurance of a job, she would have reconsidered her decision to transfer. Taylor Interview, *supra* note 9.

123. Casey Interview, *supra* note 3. Casey shared that if USF had been more actively involved in assuring she would get a job, provided a full scholarship, and helped foster mentorship relationships, she would not have transferred. *Id.*

This is something I thought about a lot. If I had known I was going to get a job, I would have stayed. There are a lot of professors [at USF] that really care about their students. If there was a mentorship program, linked to a professor, I would have stayed. If I knew a professor would help me find a job, I would have stayed. If I had felt special, I would have stayed. If I had known USF wanted me, and got a full scholarship [I would have stayed].

Id.

124. Jessie Interview, *supra* note 3. Jessie stated that upon receiving an offer from the T-14 school, there was nothing USF could have done to prevent him from leaving. *Id.* As such, Jessie suggested that schools that want to prevent students from transferring out should cut off the idea of transferring early on by providing more opportunities to these students, particularly by increasing job prospects. *Id.*

125. *Id.*

126. Telephone Interview with Ryan, in S.F., Cal. (Dec. 16, 2013) [hereinafter Ryan Interview] (notes on file with author).

127. *Id.*

128. *Id.* Ryan believed that the school probably offers more practical courses in order to make up for its lower ranking. *Id.*

129. *Id.* Ryan also noted that the lower-ranked school offered him scholarships, while USF did not, and that this also played a factor in his decision to transfer. *Id.*

130. Blake Interview, *supra* note 95.

personal reasons and stated that the ranking system did not play a large role in his decision.¹³¹ He was, however, pleased with the decision to transfer, finding that the level of professionalism was much higher at USF than at his original school.¹³²

In addition to speaking with students who chose to transfer from a lower-ranked school to a higher-ranked school, we also spoke with two transfer-eligible students who performed well enough to transfer to a top-tier school but chose to remain at USF.¹³³

One transfer-eligible USF student discussed the factors that played a role in the decision not to transfer.¹³⁴ At USF, he thrived, obtaining high marks in every class and receiving a scholarship covering fifty percent of tuition.¹³⁵ He shared that transferring was not something he considered, expressing that while theoretically a degree from a higher-ranked school may be worth more, USF maintains a good reputation in the Bay Area and he preferred to be a big fish in a little pond rather than a small fish at a higher-ranked school.¹³⁶ He was able to obtain a summer associate position at a big law firm for the summer, and subsequently received an offer to return upon graduation.¹³⁷ He felt comfortable at USF, given its strong sense of community and approachable professors.¹³⁸ Ultimately, he felt that USF offered a good reputation and an on-par legal education, and thus did not regret his decision to stay at USF.¹³⁹

Another transfer-eligible student chose not to apply to transfer for both personal and professional reasons.¹⁴⁰ She performed exceptionally well at USF and developed connections with many professors and obtained various positions with student groups.¹⁴¹ The student stated that loyalty played a strong factor in her decision to stay—that the professors and students had given her support, and that to leave would be to abandon those ties.¹⁴² She was able to obtain a summer associate position with a big firm through on-campus interviews at

131. *Id.*

132. *Id.*

133. Charlie Interview, *supra* note 17.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. Riley Interview, *supra* note 17.

141. *Id.*

142. *Id.* Riley also mentioned that she would rather be in the top five percent at USF than transfer to a top-tier school and potentially lose that position. *Id.*

USF and also received an offer to join the firm upon graduation.¹⁴³ She mentioned that students transferring to T-14 schools were getting similar offers, and thus never felt disadvantaged in remaining at USF.¹⁴⁴ She noted that while better training students for practice and focusing on improving the rankings could improve the school, the current USF ranking is not an accurate representation of the school's value.¹⁴⁵ Furthermore, she suggested that students at USF need to take more personal initiative to seek various opportunities rather than relying on the school's office of career planning or other resources.¹⁴⁶

In sum, we saw that students making decisions about whether to apply to transfer and whether to accept an offer to transfer faced great confusion, conflicting impulses, and imperfect information. Leaving aside the students who chose to transfer to lower-ranked schools or otherwise made their decision for purely affective reasons having little to do with law school (such as a desire to be closer to family), students are given relatively little time to make a decision that they believe could have profound consequences for them. It appears that the same factors that led some students to transfer also led other students not to transfer: namely, that they had done well at their initial school. For some students this wave of success was something they expected would continue. Their success and relationships with their professors and peers were motivating factors not to leave, particularly when coupled with the greatly reduced cost of the original law school.¹⁴⁷ For other students, the same success was confirmation that they should transfer, especially when they were accepted to schools that had previously rejected them.

While students who were admitted to the T-14 schools felt that the decision to transfer was clear, students admitted to lower-ranked schools seemed more conflicted. Non-T-14 transfers were most likely to cite to the failings of their original school to more aggressively recruit them to stay. They would have been more likely to stay had the

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. While beyond the scope of this Article, it is worth noting that the ultimate success of students who did not transfer may have been enhanced by the transfer of a large number of other successful students. That is, a large percentage of the students at the top of the class transferred out and shrunk the pool of talented students from which law firms make hiring decisions. Assuming a student near the top of the class does not transfer and a law firm is only interested in interviewing students from the top ten percent of the class, the student may receive interviews he or she would not otherwise have received had the cream of the crop not transferred.

school done a better job of emphasizing the students' status and easing their way administratively.¹⁴⁸

B. Resources Consulted When Deciding To Transfer

In this section we explore the resources that students consulted when making a decision about whether to transfer from a lower-ranked law school to a higher-ranked law school. This inquiry is relevant because it fills a gap in our understanding of the resources that influence the transfer decision and what messages are conveyed by those resources. The vast majority of law students interviewed mentioned that they had consulted a small universe of resources, both online and with trusted mentors, and that these resources were important in shaping how they thought about transferring.¹⁴⁹

When determining whether to transfer, students reported consulting with four key resources: fellow students, family, professors at their current law school, and online sources.¹⁵⁰

No students mentioned family as encouraging them not to transfer. We hypothesize that family may be the most likely to encourage a student to transfer. Family members, unless they are recent law graduates, are unlikely to understand the nuanced variables involved in the business of transfer students and most likely to believe that a more prestigious school will enhance a student's opportunities for a successful career. They also likely view the opportunity as a symbol that the more prestigious school had finally come to its senses and realized its error in not admitting their loved one in the first place. That is, we

148. These interviews indicate that it may be possible to retain transfer-eligible students either before they make the decision to seek to transfer or after they have been admitted. This group of students—transfer-eligible students who were not admitted as transfers to the T-14 or top-tier law schools—may be amenable to being persuaded to remain at the school or not seek to transfer in the first place. Such persuasion might include: formally recognizing the transfer-eligible students as a distinct group; providing them with additional scholarships; linking them with professors as research assistants or co-authors; connecting them with influential alumni at major law firms; automatically admitting them to law review or easing their path administratively; allowing them more autonomy with regard to externships or class selection; treating them differently with respect to the on-campus interview process; or connecting them with students who did not transfer (to hear of their successes) or with students who did transfer (to hear of their mixed experiences).

149. Casey Interview, *supra* note 3; Jessie Interview, *supra* note 3; Jamie Interview, *supra* note 96; Alex Interview, *supra* note 5; Telephone Interview with Jaden, in S.F., Cal. (May 21, 2013) [hereinafter Jaden Interview] (notes on file with author); Elliot Interview, *supra* note 9.

150. Casey Interview, *supra* note 3; Jessie Interview, *supra* note 3; Jamie Interview, *supra* note 96; Alex Interview, *supra* note 5; Jaden Interview, *supra* note 149; Elliot Interview, *supra* note 9.

hypothesize that a family member would be most likely to want their loved one to graduate from the most prestigious school possible. They will be inclined to see the student being accepted as a transfer student from a school that had previously rejected them as being symbolic of the hard work the student put into proving that he or she deserves to attend the more prestigious school.¹⁵¹

1. Blogs

Many prospective law students and students considering transfer look to blogs to obtain perspectives from other students and information regarding which schools are considered the best.¹⁵² One of the main sites visited by both prospective law students and potential transfer students is *Top Law Schools*.¹⁵³ The site is one of the most popular sites about law school, and includes pages discussing various law schools, articles regarding transferring, including one authored by a student who transferred from Loyola to Berkeley, as well as an area for students to post comments regarding assorted law school topics.¹⁵⁴

“Arrow,” an anonymous writer on *Top Law Schools* and a transferee to U.C. Berkeley School of Law, posted an article devoted exclusively to offering advice on transferring between law schools.¹⁵⁵ Arrow’s article is a well-researched guide for students interested in transferring.¹⁵⁶ The article addresses a number of topics such as why to transfer, where to apply, chances of admission, application requirements, personal statements, and letters of recommendation.¹⁵⁷ It focuses mainly on transfers from non-T-14 schools into the T-14, both because such transfers are more common and because this was Arrow’s personal transfer strategy.¹⁵⁸ Arrow lists the most popular reasons to transfer as employment prospects and personal reasons, and proceeds to advise students on where to apply given the transfer atmosphere of certain schools.¹⁵⁹

151. Family members are more likely to make judgments based upon a school’s reputation, rather than on an individual school’s merits. Thus, it is possible that family members are less likely to respond to an original school’s retention efforts.

152. TOP LAW SCHOOLS, <http://www.top-law-schools.com/> (last visited Aug. 16, 2014); Jordan Interview, *supra* note 3; Jessie Interview, *supra* note 3.

153. Jessie Interview, *supra* note 3; Jamie Interview, *supra* note 96; Alex Interview, *supra* note 5; Jaden Interview, *supra* note 149; Elliot Interview, *supra* note 9.

154. See TOP LAW SCHOOLS, *supra* note 152.

155. Arrow, *supra* note 11.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

It is worth considering this article at greater length because most of the transfer students interviewed in this study mentioned visiting and being influenced by *Top Law Schools*¹⁶⁰ and Arrow's article is highly featured on the site.

The article discusses the author's perceived pros and cons of transferring. As Arrow explains, "[t]his may be obvious, but let us stay in perspective. Understanding why you (or others) may want to transfer helps you choose where to apply, helps you write your personal statement, helps you explain to your professors when you ask them for [Letters of Recommendation], and helps you better answer questions during interviews."¹⁶¹ Arrow goes on to say that the most popular and best reasons for transferring include (1) "Employment prospects/job placement/better OCI/better prestige/academia/clerkships" and (2) "[p]ersonal reasons /geographical desires/family/spouse/significant other/parents /kids."¹⁶²

Arrow refers to transferring as "the opportunity of a lifetime to correct those [past academic] errors" and "put you back on track."¹⁶³ He notes a laundry list of factors in favor of transferring, many of which are unrelated to future job prospects following graduation.¹⁶⁴ He notes elements such as class size, geographic location, the opportunity to work with specific professors, variety of courses available, and stronger extracurricular activities.¹⁶⁵ He also explains that students who have been accepted as transfer students may be in a better bargaining position for scholarships or loan forgiveness programs at their current school.¹⁶⁶ Finally, he notes reasons for transferring from a purely affective perspective: personal ambition, desire to go to your dream school, shame/guilt from not attending a top school, a desire to gain respect or self-confidence, to make your parents proud, or because you did not like your current law school.¹⁶⁷ Of the exhaustive list, relatively few factors are focused on future employment prospects: factors included the current economy, "[i]t goes on your resume for-

160. Casey Interview, *supra* note 3; Jessie Interview, *supra* note 3; Jordan Interview, *supra* note 3; Taylor Interview, *supra* note 9.

161. Arrow, *supra* note 11.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *See id.*

167. *Id.*

ever,” “because it is the right ‘business decision,’” to help generate clients in the future, and availability of clerkships.¹⁶⁸

Arrow also lists cons to transferring such as not being able to list current grades, giving up scholarships and paying a lot more for the new school, probably not participating on law review, losing study abroad possibilities, paying for transfer applications, transfer stigma, difficulty in obtaining professor recommendations,¹⁶⁹ and losing your old friends.¹⁷⁰ Of note, nearly all of the con factors are also affective and unrelated to obtaining future employment following law school.

Arrow discussed his decision to transfer to Berkeley in an interview with John Wilscot on *Policy Diary*.¹⁷¹ What Arrow and many transferees have in common is their belief that transferring automatically leads to more job prospects and that their transfer is a symbol that they have shown the target school that they are of the same caliber as the target school’s other students.¹⁷²

We note and accept this belief as genuine, though we bracket whether this is an empirical reality. What Arrow and many students believe regarding the process of transferring and their job prospects may be empirically misplaced. Considering their high performance at their former schools, such students may have had the same employment opportunities without transferring. Further, the target school may only be accepting the transfer student based on their preexisting economic model of how to game the Selectivity component of the *U.S. News* ranking system while minimizing lost revenue. As such, transfer students’ views on the willingness of the target school to accept a transfer student and future job prospects may not be empirically grounded.¹⁷³

Furthermore, since the ranking system plays such an important role for both schools and prospective law students, law schools have been manipulating the system to achieve a win-win outcome for them-

168. *Id.*

169. *Id.* We originally conceived of this Article as a result of the stream of requests received by professors each year from prior students who transferred to higher-ranked schools and wanted letters of recommendation at the conclusion of their 2L year at the transfer school.

170. *Id.*

171. John S. Wilson, *Inside the Law School Transfer Process*, POLICY DIARY (Apr. 14, 2010), <http://www.policydiary.com/2010/04/inside-law-school-transfer-process.html>.

172. *See id.* (“Given the current recession, I was merely trying to optimize my employment prospects.”).

173. The willingness of the target school to accept the transfer student is at least partially a reflection of his or her success at the former school, as target schools will not consider applicants without superior academic performance at their former schools.

selves.¹⁷⁴ By admitting fewer students into its entering class through higher UGPA and LSAT requirements, schools ensure that their ranking is maintained or bolstered.¹⁷⁵ To recoup the lost revenue of a smaller entering class, schools will recruit high-performing transfers from lower-ranked schools, who may not have met the stringent UGPA and LSAT requirements to enter in the first year. This allows the school to obtain necessary revenue while leaving their ranking unaffected.¹⁷⁶

Another main resource for law students considering transferring is the data collected by the Law School Admission Council (“LSAC”).¹⁷⁷ It is worth highlighting that none of the interviewed students reported directly consulting LSAC, but rather gathered information indirectly through LSAC-collected data prominently discussed on blogs.¹⁷⁸ LSAC discusses several factors that students should take into consideration when deciding whether to transfer.¹⁷⁹ While generally neutral as to whether to transfer, LSAC mentions several downsides to transferring, including losing connections developed during the first year,¹⁸⁰ potentially losing scholarships and other financial assistance,¹⁸¹ potentially losing student board positions or being ineligible to serve on law review or moot court,¹⁸² and having less selection for classes as well as potentially being ineligible for honors programs.¹⁸³ Students may not have considered these potential drawbacks given their immediate attraction to higher-ranked schools.

Students periodically look to information provided by other transfer students who can offer their perspectives and insights. Such information has been provided in various blogs. One such blog that discusses transferring is *The Law School Transplant*.¹⁸⁴ The author of the site is a lawyer who transferred from a local law school to the Uni-

174. See Gordon, *supra* note 19.

175. *Id.*

176. Rensberger, *supra* note 15, at 625–27 (“From the standpoint of the transferee school, a transfer is all but pure financial gain.”).

177. LAW SCHOOL ADMISSION COUNCIL, <http://www.lsac.org/> (last visited Aug. 16, 2014).

178. Jessie Interview, *supra* note 3; Jamie Interview, *supra* note 96; Alex Interview, *supra* note 5; Jaden Interview, *supra* note 149; Elliot Interview, *supra* note 9.

179. *Transferring to Another Law School*, LAW SCHOOL ADMISSION COUNCIL, <http://www.lsac.org/jd/applying-to-law-school/transferring-law-schools> (last visited Aug. 16, 2014).

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. LAW SCHOOL TRANSPLANT, <http://lawschooltransplant.com> (last visited Aug. 16, 2014).

versity of Georgia School of Law.¹⁸⁵ She consequently produced a few articles on the topic of transferring, including a transfer timeline, advice on whether to transfer, and transfer student frequently asked questions.¹⁸⁶ In giving advice on the process of transferring, she suggests a month-by-month schedule to prepare for transfer during the first year.¹⁸⁷ The site also includes a blog post concerning the decision to transfer, which includes a discussion of both the benefits and draw-

185. *About Me*, LAW SCHOOL TRANSPLANT, <http://lawschooltransplant.com/about/> (last visited Aug. 16, 2014).

186. See LAW SCHOOL TRANSPLANT, *supra* note 184.

187. Erin, *A Transfer Timeline*, LAW SCHOOL TRANSPLANT (Sept. 17, 2007), <http://lawschooltransplant.com/a-transfer-timeline/>. A selected summary of the schedule follows:

- September: “Know what you’re getting into.” *Id.*
- December: “Ace your final exams! With well-prepared outlines and a disciplined study schedule, you should be able to kick some ass on your first semester final exams. Take time to reflect. With your first semester finals behind you, take this opportunity to decide whether or not you really want to transfer. Think about the qualities you are seeking in your ideal law school environment, both academically and environmentally.” *Id.*
- January: “Evaluate your fall semester grades. Once your fall grades are posted, evaluate your performance and determine which schools from your list you actually have a realistic shot at being accepted to.” *Id.*
- March: “Start crafting your personal statement.” *Id.*
- April: “Take care of administrative issues. Finalize the list of schools you’ll be applying to. Register for LSAC. If your LSAC subscription has lapsed, you’ll need to register again. Make sure you have transcripts from your previous degree-granting institutions sent to LSAC. Begin filling out the individual applications. Budget for application fees. Write down due dates. Approach your selected professors for recommendations. This can be intimidating and nervewracking. I was afraid that my professors would be insulted that I was leaving their school. To the contrary, they were supportive and more than willing to write me excellent recommendations to my schools of choice. One professor asked me why I was transferring, another said that it wasn’t her business to ask. Be prepared for either reaction.” *Id.*
- May: “Submit your applications. Have you [sic] applications submitted before finals begin so that you only have to tackle one hurdle at a time. Finish the year with a bang! You’ve almost made it—do great on your finals so that you will place high in your 1L class and optimize your chances of getting into the law school of your dreams.” *Id.*
- June: “Request transcripts. As soon as your law school releases first year grades, request official transcripts be sent directly to each of the schools you’ve applied to.” *Id.*
- July: “Select a law school! . . . Get in touch with career services at your new law school. . . . Withdraw from your old school. . . . Notify your friends. It’s a hard thing to do, but make sure you let your friends at your old school know that you’re leaving.” *Id.*
- August: “Start classes at your new law school! Congratulations, you did it! You’ve worked hard, so enjoy your final two years of law school at your new law school.” *Id.*

backs of transferring to another law school.¹⁸⁸ A few of the drawbacks mentioned include a smaller selection of classes, losing the opportunity to join law review, missing Early Interview Week and the opportunity to work at a big firm, and the constant feeling of having to justify the transfer to others.¹⁸⁹ The blog further discusses the necessity of explaining the transfer decision to prospective employers.¹⁹⁰

188. See Erin, *supra* note 91.

There are, on the face, a lot of compelling reasons to transfer: a better alumni network, a different campus environment, a more prominent school with better job prospects and perhaps even lower tuition (if you transfer from a pricey private school to a better, more inexpensive state school), to name a few. I didn't like the ultra-urban environment of my first law school, and based upon the advice of several smart people, I felt like transferring would be a step up where my resume and job prospects were concerned.

I got accepted to an exclusive and excellent private school that had a well-established transfer program. Instead, I opted to stay in state and ended up transferring to a highly-regarded Tier 1 public school that was a fraction of the cost. Though I sometimes wonder if things would have been different had I made a different choice, I can say with certainty at this point that I don't regret taking on a smaller debt load than I otherwise would have.

Id.

189. *Id.*

However, there were pitfalls to the decision I made, and I think some of that is because my school did not have the most well-defined procedures for handling transfer students. A lot of classes were closed by the time I registered, so my course load my first semester left a lot to be desired. I was told by one of the administrators that I would have the opportunity to write onto the law review, but once my transfer was complete, I learned that the law review "was not taking transfers this year." I'd previously considered applying to clerk for a federal judge, but this *effectively slammed that door shut* for me.

Id.

190. *Id.*

When I did land interviews, *both during and after law school*, I frequently found myself in the uncomfortable position of having to justify my decision to transfer. Because I transferred in state, this was sometimes difficult to do without coming across as flighty and indecisive. It seemed clear to me that going from a Tier 3 to a Tier 1 school was a step up, regardless of the fact that I went from one public school to another in the same state. That never seemed to make sense to interviewers. Though I can never be sure, I have a feeling that if my transfer had been an even "bigger jump" to the elite private school to which I was also accepted, *I never would have faced that question.*

.....

... You'll need to be able to explain to potential employers in a logical, respectful and convincing way why you decided to transfer. Chances are, if you haven't sold yourself on the reasons you transferred, you won't convince your interviewer, either.

Id. It should be noted that this was the first time we encountered the issue of whether employers would consciously or subconsciously take into consideration that a student had transferred law schools. Following this line of inquiry, presumably an employer might make the assumption that the student must have had a lower LSAT and UGPA and was only admitted to make up for lost revenue as a 2L, and hence is less desirable as an appli-

Another blog, *The Student Appeal*, features an article by Ian Scott, which discusses factors law students should consider in making the transfer decision.¹⁹¹ Scott analogizes transferring from a lower-ranked school to a higher-ranked school as being upgraded from economy to first class, although when it comes to upgrading law schools “a higher rank does not always mean better.”¹⁹² He highlights the perks of attending a better school and stresses the importance of the ranking system.¹⁹³ Scott notes that transferring to a better school could have a significant impact on job prospects, particularly in a struggling economy.¹⁹⁴ Scott is particularly careful, however, to highlight the disadvantages of transferring and that students should not just leap to the assumption that a higher-ranked school is a better school and that they should transfer if at all possible.¹⁹⁵ Scott notes significant disadvantages, such as losing connections created at the former school, being considered an outsider at the new school, the possibility of lower grades at the new school, and perhaps becoming a “small fish in a big pond” after transferring.¹⁹⁶ Scott concludes that transferring was the

cant. We see the reaction of prospective employers to job applicants who transferred in their 2L year as an open empirical question. It seems equally plausible that the employer could view the candidate as ambitious, driven, accomplished, and a proven entity by virtue of having been at the top of the class at the initial school.

191. Scott, *supra* note 82.

192. *Id.*

If you go to the airport and get upgraded from economy to first class, you should accept the upgrade without asking any questions. Human nature is such that most want to apply the same philosophy to many aspects of life and want to upgrade homes, cars, and even law schools. The current system allows you to “upgrade” law schools by transferring to a different higher ranked school after your first year and this option could put your dreams of going to an ivy league school well within reach. In some cases a transfer makes sense but “upgrader” beware as higher rank does not always mean better.

Id.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

There is a substantial risk that if you transfer you will lose some or all of the important connections that you will make in your first year. This includes both students and professors. . . .

. . . .

. . . I became accustomed to the facial expressions of other students and professors when I told them I transferred. In fact, after my second year, I intentionally did not mention I was a transfer student unless explicitly asked. . . .

. . . People who get admitted to top schools know how to take exams very well. As such, you will find that the ability to get great grades when you transfer is more difficult. . . . Generally speaking, if you transfer your grades will decrease and you will not be at the top of the class. . . . Do not be fooled into thinking that

best decision for him, though it should not be a foregone conclusion for everyone.¹⁹⁷

2. T-14 Websites

The infamous top fourteen law schools, as ranked by *U.S. News*, are the desired targets for students looking to “trade up” to a better-ranked school.¹⁹⁸ It may seem arbitrary as to why there should be fourteen schools with such continued dominance.¹⁹⁹ The concept of the T-14, however, has been in existence since *U.S. News* began publishing their rankings in 1989.²⁰⁰ Since the beginning, the same schools have been ranked the top fourteen each year.²⁰¹ While there has been some movement and jockeying for position on the list itself, the T-14 has remained a homogenous group.²⁰² While some schools rise and fall dramatically outside the T-14, no new schools have been able to move into the T-14.²⁰³

Several hypotheses have been put forward to explain why this group should be so distinguished.²⁰⁴ We suggest that the prominence

because you were a superstar at your old school, you will be one at the school you transfer to.

. . . Some schools do not permit transfer students to be eligible for Latin and other awards because they did not spend all three years at the Law School. . . . Depending on the law school, the Latin awards or class ranking will be very important and it may not be obvious to employers that you were ineligible. Instead, all that they will see is that you were not in the top 40% and did not receive any awards.

Id.

197. *Id.*

198. Jessie Interview, *supra* note 3; Jamie Interview, *supra* note 96; Alex Interview, *supra* note 5; Jaden Interview, *supra* note 149; Elliot Interview, *supra* note 9.

199. See *Dissecting the Rankings: The “Top 14,”* TOP LAW SCHOOLS (Apr. 2010), <http://www.top-law-schools.com/dissecting-the-rankings.html>. The T-14 schools are Yale Law School, Harvard Law School, Stanford Law School, Columbia Law School, Chicago Law School, NYU Law School, Berkeley Law School, University of Pennsylvania Law School, Michigan Law School, University of Virginia Law School, Duke Law School, Cornell Law School, Northwestern Law School, and Georgetown Law School. *Id.*

200. *Id.* (“Since [*U.S. News*] first began publishing [its] rankings annually in 1989, the same schools have been ranked the top fourteen each and every year.”).

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* T-14 graduates have an increased ability to find employment nationwide, as opposed to graduates from regional law schools. *Id.* Prior to any ranking system, these fourteen schools were already distinguished for the quality of their law graduates and thus were themselves already an elite tier. *Id.* Further, these schools have produced many of the nation’s judicial leaders. *Biographies of Current Justices of the Supreme Court*, SUPREME COURT OF THE U.S., <http://www.supremecourt.gov/about/biographies.aspx> (last modified Aug. 16, 2014) (noting that five of the current Justices of the United States Supreme Court

and exclusiveness of the T-14 law schools are a product of the conservative nature of the *U.S. News* ranking system. As previously discussed, the Quality Assessment Score, composed of peer assessment and assessment by lawyers and judges, has a conservative orientation inclined towards maintaining the *status quo* of the schools within the top tier. It is unlikely that those surveyed, many of whom attended T-14 schools themselves, will change their view of a school from a given year to another. The Selectivity Score as currently conceived by *U.S. News*, composed of UGPA, LSAT, and acceptance rate of incoming 1L law students, can similarly be expected to advantage law schools in the top tier. We argue that this practice has provided incentives that have given rise to the phenomenon of the big business of transfer students.

Many students directly access the websites of the T-14 to obtain relevant information about the transfer process.²⁰⁵ Many of the schools' websites inform students of the approximate number of applications it will receive and the number of students likely to be admitted.²⁰⁶ Some of the schools provide students with information regarding what makes a successful candidate: While some schools look primarily at the applicant's first year law school grades, others take into consideration the student's LSAT, UGPA, and other relevant criteria.²⁰⁷ The websites also let students know the opportunities available to them upon transferring, such as whether they will be able to

attended Harvard Law School, three attended Yale Law School, and one attended Columbia Law School).

205. Jessie Interview, *supra* note 3; Jamie Interview, *supra* note 96; Alex Interview, *supra* note 5; Jaden Interview, *supra* note 149; Elliot Interview, *supra* note 9.

206. See, e.g., *Transfer Applicants*, HARVARD LAW SCHOOL, <http://law.harvard.edu/prospective/jd/apply/transfer-applicants/index.html> (last modified June 17, 2014) [hereinafter *Harvard Transfer Applicants*] (stating that increased opportunities for off-campus study enhance transfer possibilities, but recognizing that the school cannot estimate an applicant's chances for admission); *Transfer Applicants*, YALE LAW SCHOOL, <http://www.law.yale.edu/admissions/JDTransferStudent.htm> (last visited Aug. 16, 2014) (stating that approximately 200 students apply and admissions are offered to ten or fifteen students); *Transfer Application Overview*, COLUMBIA LAW SCHOOL, <http://web.law.columbia.edu/admissions/jd/apply/transfer-student> (last visited Aug. 16, 2014) (stating that approximately 400 students apply and only forty-five to sixty are expected to be enrolled).

207. See, e.g., *Harvard Transfer Applicants*, *supra* note 206 (stating that successful candidates often place near the top of their first year law class and "would have also been admitted or wait-listed as first year students on the basis of their pre-law-school credentials"); *Requirements for Transfer Applicants*, YALE LAW SCHOOL, <http://www.law.yale.edu/admissions/requirementsfortransferapplicants.htm> (last visited Aug. 16, 2014) (listing an outstanding record at another law school as a prerequisite for admission); *Transfer Application Overview*, *supra* note 206 (stating that while successful transfer applicants are often in the top five or ten percent of their first year law class, admission is based on an entire applicant profile).

participate in OCI or Early Interview Week.²⁰⁸ The schools let students know whether they will be able to participate in programs such as moot court and law review, and the process by which they may do so.²⁰⁹ While some schools permit transfer students to be eligible for honors upon graduation, other schools inform prospective transfers that they will not qualify for honors.²¹⁰ Some schools let interested students know of programs tailored to help integrate transfer students into the community.²¹¹ Many of the schools remind students that scholarship aid is not available for transfer students.²¹²

208. See, e.g., *More Information*, COLUMBIA LAW SCHOOL, <http://web.law.columbia.edu/admissions/jd/apply/transfer/information> (last visited Aug. 16, 2014) (stating that transfer students may participate in Early Interview Week if they have been admitted to the law school at least one week prior to the start of the program and have submitted their deposit to the Office of Admissions); *Transfer Students*, UNIV. OF CHI. LAW SCHOOL, <http://www.law.uchicago.edu/prospectives/transfer> (last visited Aug. 16, 2014) (assuring transfer students that admissions decisions will be made with sufficient time for incoming students to participate in the on-campus interviewing program); *Transfer (J.D.) Application Questions*, N.Y. UNIV. SCHOOL OF LAW, <http://www.law.nyu.edu/jdadmissions/applicants/transferapplicationfaq> (last visited Aug. 16, 2014) (allowing transfer applicants to participate in Early Interview Week).

209. See, e.g., *Harvard Transfer Applicants*, *supra* note 206 (stating that transfer students may participate in the writing competition to join Harvard Law Review); *More Information*, *supra* note 208 (allowing transfer students to participate in writing competitions for various student journals); *Transfer Students*, *supra* note 208 (confirming transfer student eligibility for membership on one of the school's three journals).

210. See, e.g., *Harvard Transfer Applicants*, *supra* note 206 (barring law courses from a student's previous school from inclusion in Latin honors calculations); *Transfer (J.D.) Application Questions*, *supra* note 208 (explaining that eligibility for the Order of the Coif is dependent on the percentage of classes the student has completed in graded courses at NYU, as well as class rank); *FAQs*, UNIV. OF PENN. LAW SCHOOL, <https://www.law.upenn.edu/admissions/jd/faqs.php> (last visited Aug. 16, 2014) (stating that transfer students are eligible for honors, but that honors will only take account of second and third year courses).

211. See, e.g., *League of Stanford Transfers (LOST)*, STANFORD LAW SCHOOL, <http://www.law.stanford.edu/organizations/student-organizations/league-of-stanford-transfers-lost> (last visited Aug. 16, 2014) ("The League of Stanford Transfers (LOST) exists to facilitate the integration of law school transfer students into the greater Stanford Law School Community so as to enrich educational experiences of all Stanford Law Students."); *More Information*, *supra* note 208 (describing a student organization for transfer and visiting law students that serves primarily to ease the transition of transfer students into the Columbia community); *Application Information for Transfer Students*, UNIV. OF VA. SCHOOL OF LAW, <http://www.law.virginia.edu/html/prospectives/transfers.htm> (last visited Aug. 16, 2014) (stating that transfer students are assigned transfer peer advisors to assist with transitioning into the community).

212. *Transfer Students*, *supra* note 208 ("Transfer students are not eligible for scholarship aid, but will be able to apply for federal and private loans to cover the cost of attendance."); *Transfer (J.D.) Application Questions*, *supra* note 208 ("Transfer applicants are not eligible for scholarships or need-based financial aid grants."); *Application Information for Transfer Students*, *supra* note 211 ("Scholarship funds are not available for transfer students.").

In addition, one school permits potential transfer students to apply through either the early decision or regular decision program.²¹³ Students applying to transfer to Chicago through the early decision program must certify that if accepted they agree to make the transfer.²¹⁴ This commits the student to both the transfer decision and to transferring to Chicago.

IV. Happiness and Performance at Target School

In this section, we discuss data on law student happiness. We were struck by the interviewees' expressions that they had left a situation in which they were very happy and experienced decreased happiness at their transfer school. Students reported this feeling even when they felt that the transfer had been a positive move on whole. We are not experts on or even well versed in the psychological and cognitive literature on happiness, nor can we even report a more granular explanation of happiness than the common understanding. While it may seem tangential to discuss happiness in an article focused on the process by which students make the decision whether to transfer and the role of *U.S. News* in creating the phenomenon of the transfer student industry, we believe it is relevant. The vast majority of students interviewed mentioned how happy they were at USF, the friends and community they made, and the relationships they developed with professors.²¹⁵ Many of those who transferred spoke of sadness at losing those positive aspects of law school, and those who were transfer-eligible but did not transfer cited happiness as a factor in their decision.²¹⁶ We hypothesize that the loss of happiness for students who transfer is not just due to the specific attributes of USF but is an unintended consequence of the criteria used by *U.S. News* for ranking schools.

We argue that attention should be paid to a transfer practice that is likely to result in decreased student happiness and is driven by an unnecessary effort to game the rankings by law schools. The *U.S. News's* ranking system has institutionalized the practice of transferring by providing an incentive to successful candidates at the source school

213. *Transfer Students*, *supra* note 208 (stating that students can apply to Chicago through the early decision or regular decision programs).

214. *Id.* ("Early Decision acceptances are binding on the applicant, which means that, if admitted, you must commit to matriculating at the Law School and withdraw all other transfer applications at other law schools. If you apply Early Decision, you may not apply to any other law school through a binding early decision or early action program.").

215. Casey Interview, *supra* note 3.

216. *Id.*; Riley Interview, *supra* note 17; Taylor Interview, *supra* note 9.

to transfer to the target school, which uses the student as a source of revenue to make up for lost revenue due to the gaming of the rankings. In doing so, those transferees lose the positive communal feelings and happiness they gained in their first year.

A. Happy and Involved Students

The happiness aspect should be viewed as more than just an intangible emotional reaction that is irrelevant to the student and the profession. We argue that happiness has implications for both law students and the legal profession, and that the loss of happiness that may result from a large movement of students transferring from one school to another is an unintended and negative consequence of the Selectivity criterion as measured solely by the metrics of incoming 1L students. The rate of depression and alcoholism among attorneys is approximately double the national average of other professions.²¹⁷ Research indicates that depression starts in law school.²¹⁸ Entering law school students are no more depressed than other groups of graduate students, but law school students are more depressed than any other group of graduate students.²¹⁹ This is an alarming statistic.

It becomes obvious that law school educators need to focus more on student happiness. We argue that transferring law students are less happy as a result of lost community, lost friendships, and lost institutional support. This decrease in happiness as a result of transferring is a result of students transferring, which is driven by law schools gaming the *U.S. News* ranking system.

Professors Levit and Linder cite surveys suggesting that lawyers are by far unhappier than most other professionals, including travel agents, architects, scientists, engineers, pilots, physicians, detectives,

217. See G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among US Lawyers*, 13 INT'L J.L. & PSYCHIATRY 233, 241 (1990) ("Eighteen percent of the lawyers were problem drinkers. This percentage is almost twice the approximately 10 percent alcohol abuse and/or dependency prevalence rates estimated for adults in the United States." (internal citation omitted)); Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1225 n.2 (2003) ("The rate of depression (and of alcoholism) among lawyers is approximately double the national average." (internal citation omitted)).

218. Rosenberg, *supra* note 217, at 1225 n.2 ("The depression often begins in law school. Entering students are not more depressed than any other group of graduate students, but law school, for many, brings it on quickly." (internal citation omitted)).

219. *Id.*

and financial planners.²²⁰ Data from a 1993 poll reported by the *California Lawyer* magazine found that more than seventy percent of those responding would have chosen a different career path if they could do it over again.²²¹ Moreover, there was a prevalence of depression, alcoholism, and suicide across the profession.²²² “Law students—lawyers in training—suffer from many of these same types of mental and physical ailments, in addition to chemical addictions. Legal education itself can promote these stressors and the ‘corrosive effect[s]’ carry over into legal practice.”²²³ Levit and Linder’s article pursues the question of whether law schools can make law students happier and whether making law students happier would in turn create better lawyers.²²⁴

One factor that contributes to a student’s happiness is having a sense of control.²²⁵ Levit and Linder suggest that recognition of one’s professional achievement and participation in a common enterprise heavily weigh into the overall measure of happiness.²²⁶

Another factor contributing to overall happiness is a recognition of belonging and having meaningful social connections—“connectedness.”²²⁷ “Social connections are amazingly powerful. Families, friends, neighbors, trusted co-workers, communities—these are the bonds that make people the happiest. Happiness is influenced by a sense of belonging, a connection to other people and projects bigger than the individual.”²²⁸

We extrapolate from this data to hypothesize that a student who has made meaningful connections with peers, professors, and the overall community will be happier. The breadth and depth of the social connectivity of law students is lost when they transfer from one law school to another. They lose their friends, their study groups, the support of their professors, and often the symbolic markers of recognition such as grades, class rank, law review, and scholarships.

Losing this connectivity and symbolic recognition matters:

Countless studies document the link between society and psyche:
people who have close friends and confidants, friendly neighbors,

220. Nancy Levit & Douglas O. Linder, *Happy Law Students, Happy Lawyers*, 58 SYRACUSE L. REV. 351, 351–52 (2008).

221. *Id.* at 352 (presenting survey data collected in the 1990s).

222. *See id.* (“Some indicators of an absence of well-being across the profession were the prevalence of depression, alcoholism, and suicide.”).

223. *Id.* (internal citations omitted).

224. *Id.* at 357.

225. *Id.* at 359 (“A sense of being in control is critical to happiness.”).

226. *See id.*

227. *Id.* at 362.

228. *Id.* (internal citation omitted).

and supportive co-workers are less likely to experience sadness, loneliness, low self-esteem, and problems with eating and sleeping. . . . The single most common finding from a half century's research on the correlates of life satisfaction, not only in the United States but around the world, is that happiness is best predicted by the breadth and depth of one's social connections.²²⁹

Though our sample size was small, our interviews showed that students who transferred reported being less happy than students who were transfer-eligible but chose not to leave.²³⁰ Thus, a transfer student who enters a school where most students have already established these connections is naturally more likely to be unhappy than a student at a school who has already made these connections.

Happiness research also indicates that when students search for jobs, they should focus on becoming "bigger fish in smaller pools," rather than becoming "marginal contributors to a more powerful enterprise."²³¹ While admittedly reasoning by analogy, this suggests that if standing out as a big fish is likely to result in more happiness, then a plausible connection can be made that a student who thrives in a lower-tier school as a big fish is likely to be happier and feel more accomplished than one who becomes a small fish in a higher-tier school.

It is also relevant to our inquiry to focus briefly on the issue of student loan debt and its relevance to post-graduation happiness. The Law School Survey of Student Engagement ("LSSSE"), published annually since 2004, focuses on satisfaction and participation of transfer students in its 2011 annual report.²³² The LSSSE aimed to assess transfer students' experiences at their new law schools. "In 2011, 3% of 2L and 3L students in the LSSSE sample of U.S. law schools started law school at a different school than the one they were currently attending."²³³ The students were content with their decision to switch schools and were more likely than non-transfer students to say they

229. *Id.* at 363 (omission in original) (citing ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 332 (2000)).

230. Casey Interview, *supra* note 3 (stating that transferring resulted in a loss of the sense of community felt at the original school).

231. Levit & Linder, *supra* note 220, at 370.

232. *LSSSE Reports*, LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, http://lssse.iub.edu/order_ar.cfm (last visited Aug. 16, 2014). These surveys are available from inception (2004) until the present (most recent is 2013). *See id.* The 2011 survey is the only report that focuses on transfer students. *See id.*

233. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, 2011 ANNUAL SURVEY RESULTS 12 (2011) [hereinafter *LSSSE 2011 ANNUAL REPORT*], available at http://lssse.iub.edu/pdf/2011/2011_LSSSE_Annual_Survey_Results.pdf.

would choose to transfer to the same law school again.²³⁴ However, transfer students expected to owe significantly more in law school debt at graduation than non-transfer students.²³⁵ “The median law school-related debt for non-transfer students falls in the \$80,000–\$100,000 range, while median debt level for transfer students is in the \$100,001–\$120,000 range.”²³⁶ While this did not seem to affect students’ stated happiness levels during law school,²³⁷ this could have potential effects on their happiness post-law school, as students’ career choices and mobility may become constrained by greater debt.

The LSSSE also found that students who transfer reported being less likely to feel connected with their classmates and are also less likely to participate in extracurricular activities.²³⁸ That is, transfer students were less likely than other students to participate in law journal, moot court, and law school organizations.²³⁹ Law review is a signifier of writing ability, motivation, and success across law schools.²⁴⁰ For transfer students, the prospect of obtaining a position on law review is compromised.²⁴¹ Similarly, chances to participate in moot court are reduced for transfer students.²⁴² In the 2L year, transfer students were

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *See id.*

239. *Id.*

240. *See* Elizabeth Smith, *The Advantages of Joining Law Review, Part II*, LAW CROSSING, <http://www.lawcrossing.com/article/558/The-Advantages-of-Joining-Law-Review-Part-II/> (last visited Aug. 16, 2014).

District Judge Dana M. Sabraw, who sits on the bench of the United States District Court, Southern District, in San Diego, CA, says that though it’s not a prerequisite, he often seeks out law clerks with law review experience for several reasons. First, he believes that handling law review tasks is “a good indicator that a person can write well, which is extremely important since lengthy and detailed opinions are issued at the district court level.” Second, law review membership implies that individuals “knew how to write well before joining the law review and that they’ve since improved their proofreading and cite skills.” Finally, Judge Sabraw says students who serve on law review are usually “highly motivated people who work hard, try to excel in school, and are always looking for excellence in what they do.”

Id.

241. *See* Arrow, *supra* note 11 (“I would just not count on getting into the flagship law review since there are usually very few spots saved for transfers. For example, transfers into UCLA can try out for law review, but there are 30+ transfers and like only around 3 spots saved for their law review. Berkeley saves about 5 spots and Loyola saves about 6 spots.”).

242. *See* Anayat Durrani, *The Pros and Cons of Being a Transfer Student*, LAW CROSSING, <http://www.lawcrossing.com/article/428/The-Pros-and-Cons-of-Being-a-Transfer-Student/> (last visited Aug. 16, 2014) (“Students that transfer may find it more difficult to

also less likely to participate in *pro bono* activities and to work in law-related settings.²⁴³

This reduction in *pro bono* activities seems worth highlighting. There is nothing specific about transfer students that should make it less likely that they participate in *pro bono* activities. Presumably, such activities are a means to help those less fortunate and to feel more connected to the legal profession. That transfer students participate less frequently in such activities may be an indication that transfer students are lacking the connectivity emblematic of happiness, and that the legal profession is implicated in this issue.

The LSSSE also showed that transfer students were “less likely to work with classmates outside the class to prepare assignments . . . or have serious conversations with students who differ from themselves.”²⁴⁴ This suggests that transfer students miss out on key bonding activities with their classmates. This reduction in integration into the law school community is not only important as a measure of happiness, but also has implications for networking later in a career.²⁴⁵ Law school classmates may one day be colleagues who refer cases, judges who hear cases, or friends with whom to discuss personal and professional issues. Connecting with classmates may implicate both the happiness of the law student as well as an attorney’s ability to develop and maintain client relationships in the future. If a main benefit of attending a higher-ranked school is social prestige and networking for jobs, those factors appear to be reduced in the case of transfer students.²⁴⁶

Transfer students also reported that they spent more time preparing for class than non-transfer students.²⁴⁷ It is not clear to us how to interpret this finding. This could imply that transfer students perceive themselves to be at an intellectual disadvantage and feel a need to spend more time preparing for classes in order to compete. It may be that the students have no community of peers with whom to study. It may also be that the students do not understand the law school’s expectations in regard to what level of preparation or prioritization is

secure leadership positions or memberships on mock trial or law reviews.” (internal quotation marks omitted)).

243. LSSSE 2011 ANNUAL REPORT, *supra* note 233, at 12.

244. *Id.*

245. See ANNE LEVINE, THE LAW SCHOOL DECISION GAME: A PLAYBOOK FOR PROSPECTIVE LAWYERS 214 (2011) (“Making connections with your classmates is also important—don’t just show up for class and leave campus. ‘Another key to success in law school that lays the foundation for future career satisfaction is to make friends.’” (quoting NANCY LEVIT & DOUGLAS O. LINDER, THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW 133 (2010))).

246. See Scott, *supra* note 82; Levine, *supra* note 9.

247. LSSSE 2011 ANNUAL REPORT, *supra* note 233, at 13.

necessary. In any event, what is significant is that the transfer students spend more time on their class preparation and less time on other activities as compared to non-transfers.

Elie Mystal, an editor at the *Above the Law* blog, addresses why transfer students feel less connected to the rest of the law school and suggests that feeling out of place in new surroundings is perpetuated by classmates who feel that transfer students are not as qualified.²⁴⁸

When you are a transfer student, you are constantly fighting for respect. If you don't think your non-transfer classmates look down on how you gunned your way into their school despite whatever faults kept you out the first time, you really aren't paying attention to your surroundings.

But most transfer students do feel the sting, and they try like hell to *prove* that they belong.

Which is just weak. Come on, there's nothing worse than trying to interact with somebody who has a huge chip on his shoulder. Actually, the annoyingness of transfers is directly related to the rank of the school: the better the ranking, the more annoying the kids who transfer in.²⁴⁹

Mystal also notes that transfer students arrive lacking what might be classified as a cultural capital ideology that pervades students who were initially admitted at the target school.²⁵⁰

Call it "elite law school problems." One of the pleasures of going to an elite school is that you get to spend time around people who aren't frustrated that they couldn't get into a better school with better prospects. There's a calmness on campus; everybody's doing their thing, everybody feels like things are going to work out. Then the transfers get there and they're gunning, and annoying, and have ridiculous bro stories about bombing the LSAT, "But it's ALL GOOD, 'cause I'm HERE NOW buddy, YEAH. I'm taking a class with PROFESSOR FAMOUS PANTS which will really help in my CALLBACK at [mid-tier firm that is actually a fallback option for people at elite schools] DAY."²⁵¹

While somewhat tongue-in-cheek, Mystal makes the argument that transfer students may be stigmatized by having internalized the ideological orientation of their original law school and may lack the assumptions of success and importance with which the students at the

248. See Elie Mystal, *You Can Transfer the Student into Stanford, but You Can't Transfer the Stanford into the Student*, ABOVE THE LAW (Jan. 20, 2012), <http://abovethelaw.com/2012/01/you-can-transfer-the-student-into-stanford-but-you-cant-transfer-the-stanford-into-the-student/>.

249. *Id.*

250. *Id.*

251. *Id.* (brackets in original).

top-tier school arrived and had enhanced during their first-year experience.²⁵²

B. Success at Target School

While beyond the scope of this first Article in our series on transfer students, we note the issue of whether students should transfer also has implications for the student's performance at their transfer school and later performance in their careers.²⁵³ Here we briefly and hesitantly raise the issue of the scholarship²⁵⁴ made most prominently and controversially by Richard Sander.²⁵⁵ Sander's basic line of scholarship, as we understand it, is that minorities are preferentially admitted to law schools where they have lower UGPA or LSAT scores than those of their fellow classmates as a result of school's desire to enhance diversity; that these students receive lower grades and otherwise underperform their peers; that grades are the most accurate predictors of job success; and that these students would have been better served had they gone to a law school that matched their metrics.²⁵⁶ We do not take a position with respect to this theory, though

252. *See id.*

253. *See* Richard Sander & Jane Bambauer, *The Secret of My Success: How Status, Eliteness, and School Performance Shape Legal Careers*, 9 J. EMPIRICAL LEGAL STUD. 893, 895 (2012) ("Since the dominant conventional wisdom says that law school prestige is all-important, and since students who 'trade-up' in school prestige generally take a hit to their school performance, we think prospective students are receiving the wrong message.")

254. We have not engaged the topic of race and make no claim that this Article is in any way a contribution to those issues.

255. *See* Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367, 369–70 (2004) ("My focus in this Article is on the effects racial preferences in admissions have on the largest class of intended beneficiaries: black applicants to law school. The principal question of interest is whether affirmative action in law schools generates benefits to blacks that substantially exceed the costs to blacks. . . . The principal 'cost' I focus on is the lower actual performance that usually results from preferential admissions.")

256. *See id.* at 478–79 ("[C]lose to half of black students end up in the bottom tenth of their classes. . . . Entering black law students are 135% more likely than white students to not get a law degree. . . . Blacks are nearly six times as likely as whites to not pass state bar exams after multiple attempts. . . . [A]ffirmative action by schools hurts blacks in the job market more than it helps. . . . System-wide, racial preferences expand the pool of blacks in law school by only 14%. These 14%—about five to six hundred students admitted to low-prestige schools—have very low academic credentials and face long odds against becoming lawyers.); Richard H. Sander, *A Reply to Critics*, 57 STAN. L. REV. 1963 (2005) (responding to articles by Ian Ayres and others regarding affirmative action in law schools); Richard H. Sander, *Mismeasuring the Mismatch: A Response to Ho*, 114 YALE L.J. 2005, 2005–06 (2005) ("I argue that large racial preferences in law school admissions elevate blacks to law schools where they labor under a significant academic disadvantage. This disadvantage leads to low grades (roughly half of black law students are in the bottom tenth of their law school classes), and very low law school grades lead more often to academic dismissal, dropping

we note that it has drawn critiques from several different directions.²⁵⁷

out, and trouble on the bar.”); Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755, 1820–21 (2006) (“The set of problems that plausibly stem from the aggressive use of racial preferences by law firms are therefore considerable: the frustration and sense of failure they foster among minority associates; the reinforcement of negative racial stereotypes among majority associates and partners; the likely crippling of human capital development among many of the most able young minority attorneys; substantial economic costs and inefficiencies at the firms themselves; and, of course, the failure of the underlying goal of this whole process—the integration of elite firms at the partnership level. It would be hard to imagine a more counterproductive policy.”); Kate L. Antonovics & Richard H. Sander, *Affirmative Action Bans and the “Chilling Effect,”* 15 AM. L. & ECON. REV. 252, 259 (2013) (“[S]tudents attend elite schools partly as a way of signaling to future employers their underlying motivation and ability, and a university’s use of racial preferences could muddy or decrease the value of this signal, if employers assume that [underrepresented minorities] were offered admission as much because of their race as because of their academic credentials. For related reasons, [underrepresented minorities] may feel more comfortable and be more successful at a school if, ceteris paribus, their professors and fellow students know that they were admitted solely on the basis of academic credentials.”); Sander & Bambauer, *supra* note 253, at 925 (“Grades are a powerful predictor of earnings and promotion in the short term, and maintain or increase their strength in the longer term. In contrast, the added earnings associated with an elite degree are modest, and much of that added value seems to be offset by the lower grades that are the price, for the typical student, of attending a somewhat more elite school. Many of the traditional empirical arguments about the importance of an elite school degree turn out to have little or no analytic content.”).

257. See, e.g., James E. Coleman Jr. & Mitu Gulati, *A Response to Professor Sander: Is It Really All About the Grades?*, 84 N.C. L. REV. 1823, 1825–26, 1836 (2006) (“The harm of Sander’s article is that it will contribute to the stereotyping that already undermines the success of black associates in elite corporate law firms. . . . [N]othing in Sander’s data suggest that black law students at lower-tiered law schools are being or would be hired by elite law firms, even if their grades are high. . . . If students from lower-tiered schools also are subjected to a presumption that they are underqualified, black students at such a school would experience a double burden.”); Gregory Camilli et al., *The Mismatch Hypotheses in Law School Admissions*, 2 WIDENER J.L. ECON. & RACE 165, 207 (2011) (“[T]his study has shown that regression analyses of the kind conducted by Sander are incapable of producing credible estimates of causal effects.”); Ian Ayres & Richard Brooks, *Response, Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 STAN. L. REV. 1807, 1853–54 (2005) (“Sander’s approach overstates the impact of affirmative action for two reasons. First, he overstates the grades that black students are likely to get even if they attend lower-tier schools. The weight of the evidence shows that blacks with the same entering scores at the same schools earn lower law school grades. So to the extent that law school grades drive bar passage, ending affirmative action will not cure the bar passage deficit. Second, Sander interprets away the strong evidence that, holding entering credentials constant, students have a higher probability of becoming lawyers when they attend higher-quality tiers.”); David L. Chambers et al., *The Real Impact of Eliminating Affirmative Action in American Law Schools: An Empirical Critique of Richard Sander’s Study*, 57 STAN. L. REV. 1855, 1898 (2005) (“We believe that, using the same evidence, we have demonstrated just the opposite: that, without affirmative action, both the enrollment of African American law students (particularly at the fifty or eighty most selective schools) and the production of African American lawyers would significantly decline. Sander has not made his case for the effects of a ‘mismatch.’ Our ultimate conclusion is simple but sound: Sander’s article does not deserve the attention it has attracted. Too much of it is simply wrong.”); Beverly I. Moran, *The Case for*

The argument is oriented toward what Sander sees as the deleterious effects of affirmative action on students who are not “qualified” to be in certain schools.²⁵⁸ Our argument is not intended to address who is “qualified” to be in certain schools. Rather, we intend to show that *U.S. News* has provided law schools with an incentive not to admit otherwise eligible applicants into the first year because doing so would negatively impact the schools’ rankings. We include this scholarship because it may be meaningful to highlight the issue of whether transfer students who have lower metrics than the class initially admitted to the target school may be negatively impacted by the act of transferring.

Transfer students generally have lower metrics than the incoming 1L class. We argue that these students are admitted as a result of the Selectivity component of the *U.S. News* ranking. It may be relevant to consider whether students admitted to higher-tier law schools via transfer are more likely to be harmed by the transfer than if they had remained at the lower-tier school. Such hypothetical students who transfer to a higher-ranked school will likely not be in the top of their class at the end of their second year. Sander suggests that it is not unusual for firms to hire top performers from less elite schools over low performers from elite schools.²⁵⁹ Moreover, Sander and Bambauer also mention data from a *Chicago Lawyers* study and the *After the JD* study, which reveals that:

Black Inferiority? What Must Be True If Professor Sander Is Right: A Response to A Systemic Analysis of Affirmative Action in American Law Schools, 5 CONN. PUB. INT. L.J. 41, 58 (2005) (“Professor Sander overreaches throughout his work by treating a multidimensional admissions system as if it has only two dimensions: index scores and race. The problems in Professor Sander’s article are further compounded when he seeks to explain the complicated process of law school success and failure as almost entirely determined by index scores, law school grades, and law school tier.”); Kevin R. Johnson & Angela Onwuachi-Willig, *Cry Me a River: The Limits of “A Systemic Analysis of Affirmative Action in American Law Schools,”* 7 AFR.-AM. L. & POL’Y REP. 1, 4 (2005) (“[Sander] neglects to account for the well-documented hostile environment faced by African-American, and other minority, students in law school and how it may adversely affect academic performance. Professor Sander also fails to take into consideration the time many African-American students spend on activities related to racial climate to further the cause of their community, thereby reducing the time that they are able to commit to academic study.”).

258. See Sander, *supra* note 255, at 371 (“The admission preferences extended to blacks are very large and do not successfully identify students who will perform better than one would predict based on their academic indices. Consequently, most black law applicants end up at schools where they will struggle academically and fail at higher rates than they would in the absence of preferences.”).

259. See Sander, *supra* note 255, at 373 (“But in most of the job market, legal employers in both private firms and government seem to attach more weight to grades than school elitiness . . .”).

Law school prestige is important—especially attending a “top-10” school—but its positive effects are consistently smaller than the effects of high law school grades. If anything, these GPA effects show up more strongly in the Chicago Lawyers 1994–1995 data, which implies that the long-term effects of GPA on careers are even larger than the short-term credentialing effects. . . . Moreover, law school eliteness (particularly in the AJD analyses) is mostly a one-edged sword: coming from a very elite law school is undoubtedly helpful, other things being equal, but diminishing levels of eliteness have smaller and smaller effects. Law school grades, in contrast, are a double-edged sword: poor grades are as harmful to one’s career as good grades are helpful.²⁶⁰

We suggest that studying the job and career outcomes of transfer students may provide insight into the question of whether being admitted to a law school with lower metrics than one’s peers will provide deleterious effects.

V. A Modest Proposal

We make the modest proposal that *U.S. News* require schools to report the metrics of students transferring into and out of law schools along with the metrics they require for the incoming class. We suggest that *U.S. News* utilize this information in the ranking criteria by adding in the metrics for the transfer students accepted in the second year of law school and removing the metrics of students who transfer after the first year.

As we suggest, such a change will: (1) provide prospective students with an accurate measure of the metrics of the student body; (2) make any ordering of law schools more accurate; (3) provide a more efficient system as law schools admit the students they wish to be a part of their student bodies and do not force students and schools to go through two cumbersome admissions processes; (4) provide greater consistency and fairness to students, who will not be as uncertain of which school they will be attending the following year, will be able to establish ongoing peer groups, will be eligible for symbolic markers for success such as law reviews, and will not experience the stigma of being transfers; (5) provide law schools with greater continuity as they will not have such significant turnover in their student bodies from year to year; (6) prevent higher-tier schools from using lower-tier schools as a testing and training ground for students they will admit in their second year; (7) allow lower-ranked schools to retain the top of their class, who are the most likely to pass the bar exam

260. Sander & Bambauer, *supra* note 253, at 920.

and be successful alumni, and for whom filling the vacancies necessitated by the transfers out will be either impossible or involve taking students less likely to be successful in law school; (8) challenge the status and significance of the first tier, especially the T-14 law schools, who are the primary beneficiaries of the transfer system; and (9) allow law firms and other prospective employers a chance to compare students and assess whom they most want to hire.

We suggest that the rise of the big business of transfer students, with its attendant predictable gaming, has been driven by *U.S. News's* decision to leave out these metrics. It is unclear why *U.S. News* does not already require and utilize this data in its rankings system. The schools most advantaged by the system are the T-14, as these schools experience the greatest influx of transfer students and lose the fewest transfer students. It is possible that the current *U.S. News* protocol is a way of maintaining the stability of the rankings, at least for the elite schools at the top of the list. Presumably, if the assessment was changed to reflect schools' actual metrics, rather than just those of the incoming class, there would be a reordering of the rankings as some schools would drop and others would rise in their stead. Would instability in these rankings, or even a simple reordering of the schools, challenge the supremacy and validity of the rankings system?

By requiring *U.S. News* to collect data on the entire student body, including transfers in and out, the schools will provide a more accurate picture of the school. Such a requirement will allow for a better assessment of the school and a more accurate representation by the ranking system. It is in the interests of efficiency, care and concern for students, fairness to law schools, transparency to prospective students and employers, and concern for the profession itself.

Conclusion

This Article explored the processes by which students in the top percentiles of a lower-tier law school make the decision whether to transfer to a higher-tier law school for the perceived purpose of maximizing their chances of being employed following graduation. We find that students sought to transfer in the belief that doing so would aid them in obtaining high-paying employment following graduation. Students reported being heavily influenced by the *U.S. News* rankings. Students also thought that the imprimatur of graduating from a higher-ranked school would pay dividends later in their careers. Students consulted their professors in the first instance, many of whom encouraged the students to transfer. Students also consulted a num-

ber of blogs to learn about the experiences of students who transferred, to determine which schools took the highest number of transfer students, and to be guided in the transfer process.

Students who transferred typically reported a loss of community upon transferring, perceived a stigma as a transfer student, and had difficulty with the OCI and law review process. That said, students also reported greater opportunities to specialize in certain fields of law, a larger variety of classes, more assistance in career planning, and increased opportunities to participate in different programs and competitions.

These same students would have experienced all of the advantages of the transfer school without the personal loss, stigma, and dislocation had they been accepted into the transfer school in the first instance. Top-tier law schools are “trading lower second-year selectivity for higher first-year selectivity.”²⁶¹ Since the selectivity that occurs via transfers is invisible, schools aggressively pursuing this strategy can achieve a student body of sufficient size to support the necessary tuition revenue.²⁶² Schools are unambiguously financially benefitting from transfer students while sacrificing nothing in regard to their rankings.²⁶³

If the UGPA and LSAT metrics of an incoming class are to be considered as representative of the Selectivity quality of a school, why should that data not include those students who transfer into a target school in their second year and remove those students who transfer out of the original school? To the extent that the phenomenon of schools admitting transfer students with lower, but unreported, UGPA and LSAT scores is driven by schools admitting a selective group of reported students in the first year and a relatively unselective group of transfer students in the second year, the root cause seems to be the lack of including data for transfer students. If law schools know that they will have to report the LSAT scores and UGPA of incoming transfer students and account for outgoing transfer students, *U.S. News* would end up reporting an actual snapshot of the metrics of the student body that are indicative of the reputational value of the school.

Schools would presumably have greater incentives to admit a larger first year class composed of students within its target range and would be less willing to consider transfer students it had previously denied—assuming those denials were based on lower metrics. It does

261. See Rensberger, *supra* note 15, at 637.

262. *Id.*

263. See *id.* at 637–38.

not seem technically or administratively difficult to collect this data, given the vast amount of data schools currently collect and report. It is worth asking whose interests are served by the current system. By not adding in or subtracting out the metrics of transfer students, *U.S. News* provides an erroneous indication of the school's statistics. This flawed picture is used as evidence of the reputational value of a school and as a partial justification for ranking a school within the accepted hierarchy of law schools. Students, eager to make correct decisions about where to attend school, look to this hierarchy in making their enrollment decisions and deciding whether to transfer.²⁶⁴

The schools that most directly benefit from the current system are those that can be the most selective in making their initial decision to admit students meeting the highest criteria, who will have the fewest students transfer out because of their perceived desirability, and can count on being attractive to transfer students in their second year. Those most disadvantaged are the schools that need to fill the gap left when most of the school's top students transfer to higher-ranked schools.

264. Casey Interview, *supra* note 3.