

# How Scholarship Programs Impact Students and the Culture of Law School

Jerome Organ

Law schools design their scholarship assistance programs in a variety of ways depending upon the mix of students they would like to attract.<sup>1</sup> This article focuses on one specific aspect of scholarship programs—“renewability.” With respect to renewability, law school scholarship programs generally fall into two broad categories.<sup>2</sup> First, there is the “competitive” category in which students receiving scholarship assistance as first-year students will retain their scholarships only if they perform to a certain level, e.g., in the top one-quarter or top one-third of the first-year class. Second, there is the “non-competitive”

1. Scholarship programs might be used not only to attract bright, talented students, but also to attract a diverse student body or a student body with significant leadership skills or with a significant commitment to public service. Depending upon the precise mix of students a school desires to attract, it might “invest” its scholarship resources differently than another school. For purposes of this article, however, I am assuming the two hypothetical law schools I discuss below are pursuing the same general balance or mix of students, except that they are trying to use scholarship assistance to generate the “best” possible class in terms of objective criteria—LSAT and undergraduate GPA. Notably, for purposes of this article’s discussion of scholarship programs, the emphasis will be on merit-based scholarship programs rather than on need-based scholarship programs.
2. In addition to the competitive and non-competitive scholarship models described in this article, there are a handful of schools that fall into one of two other categories—schools that do not offer merit scholarships at all but offer only need-based aid, *see, e.g.*, Harvard, <http://www.law.harvard.edu/current/sfs/index.html>, and Yale, <http://www.law.yale.edu/admissions/Costs&FinancialAid.htm>, and schools that offer only one-year scholarships and expressly require students to reapply to be considered for a scholarship in their second year or third year, *see, e.g.*, Maine, <http://mainelaw.maine.edu/admissions/scholarships.html>, and Creighton, <http://www.creighton.edu/law/admissions/financinglawschool/scholarships/index.php>. For purposes of this article, schools with one-year scholarships that require reapplication are included within the set of “competitive” law schools because first-year students will be competing to position themselves to be awarded scholarships as second-year students.

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category in which students receiving scholarship assistance as first-year students will retain their scholarships provided they remain in good academic standing.

This article attempts to do three different things. First, the article attempts to describe how different scholarship models might impact recruiting by analyzing how two “identical” law schools embracing these two different approaches to scholarships likely would yield first-year classes with different compositions. Second, the article describes what law schools actually do in terms of scholarship programs, explains why law schools might embrace different scholarship models, and explores how scholarship programs with different renewal criteria likely would impact the well-being of law students and the competitive environment of the two law schools. Third, this article describes best practices and makes recommendations regarding appropriate disclosure of information regarding scholarship programs.

### **Comparison of the Competitive and Non-Competitive Scholarship Renewal Models**

This article begins by describing the ways in which the two hypothetical law schools discussed below—the Non-Competitive Law School and the Competitive Law School—should be seen as being “identical” with respect to applicant pool and yield data. The following section sets out the assumptions operational for both law schools regarding the applicant pool and the anticipated yield within the various quartiles of the applicant pool particularly in response to scholarship offers. The article then looks at how the two different models of scholarship programs, when intersecting with the baseline assumptions operational for both schools, would result in first year classes with different compositions.

#### *Assumptions for Comparison of Models*

Assume that Non-Competitive Law School and Competitive Law School both are urban, private law schools, and assume further that in the *U.S. News & World Report* rankings both schools are third-tier schools. In addition, assume that neither has a part-time program and that both have a student body of 600 students (200 students in each class) with a tuition cost of \$30,000 per year.<sup>3</sup> This means total potential annual tuition revenue is \$18,000,000. The budget

3. In reality, the size of the student body at most schools changes from first year to second year to third year as schools experience some attrition—students who transfer to another school, see Jeffrey L. Rensberger, *Tragedy of the Student Commons: Law Student Transfers and Legal Education*, 60 *J. Legal Educ.* 616 (2011)—or students who withdraw or take a leave of absence. In addition, law school tuition generally has increased from year to year. See *infra* note 33 and accompanying text.

of each law school allows it to invest 20 percent of its revenue on scholarship assistance for its students. So in any given year, the schools have \$3,600,000 in scholarship assistance available.

Each school has a similar pool of applicants—1,500 applicants, of whom 150 have an LSAT of 160 or above, 250 have an LSAT of 158 or 159, 300 have an LSAT of 156 or 157, and the final 800 have an LSAT at or below 155.<sup>4</sup>

Each school has comparable yield data. In the absence of scholarship assistance, each school yields 10 percent of applicants with LSAT scores at or above 160, 15 percent of applicants with LSAT scores of 158 or 159, 20 percent of applicants with LSAT scores of 156 or 157, and 30 percent of applicants with LSAT scores of 155 or less. With scholarship assistance each school also has comparable yields.<sup>5</sup> Thus, when each school offers a scholarship to a student at or above an LSAT score of 160, it anticipates a yield of 40 percent on full scholarships,<sup>6</sup> and a yield of 30 percent on one-half scholarships. When each school offers a scholarship to a student with an LSAT score of 158 or 159, it anticipates a yield of 40 percent on one-half scholarships, and 30 percent when it offers a one-quarter scholarship. With respect to those with LSAT scores of 156 or 157, to which each school only offers one-quarter scholarships, if any scholarship at all, it anticipates a yield of 40 percent.<sup>7</sup>

4. While U.S. News & World Report tracks LSAT and undergraduate GPA, this article will focus solely on LSAT, for purposes of simplifying the examples.
5. One might critique the assumption that the schools have comparable yields because the expected value of a scholarship at the noncompetitive school over three years is higher than the expected value of the same level of scholarship at the competitive school, given that the probability of renewing the scholarship in the second and third years is lower at the competitive school. However, there is evidence that admitted students treat the value of these scholarships as the same, likely due to exaggerated optimism and lack of information on renewal rates. See *infra* notes 36-41 and accompanying text.
6. For purposes of this analytical comparison, I am going to assume that the schools offer full scholarships only to students with LSAT scores of 160 or above while also offering half scholarships to some of these students. I appreciate that this may be an unrealistic assumption for a variety of reasons, and that a school might have a better yield with offers of full scholarships that it makes to students with LSAT scores less than 160 (and that there might be a number of reasons to offer full scholarships to students with lower LSAT scores).
7. Again, for purposes of this analytical comparison, I am going to assume that the schools do

**Common Yield Assumptions for Non-Competitive  
Law School and Competitive Law School**

LSAT	# Apps.	# Admits	Yield percent Full Sch.	Yield percent ½ Sch.	Yield percent ¼ Sch.	Yield percent No Sch.
>160	150	150	40	30	NA	10
158-159	250	220	NA	40	30	15
156-157	300	240	NA	NA	40	20
< 155	800	TBD	NA	NA	NA	30
TOTAL	1500					

Finally, assume that neither school is interested in distributing scholarship money evenly among all students.<sup>8</sup> Rather, each of the two schools will distribute scholarship assistance across their pools of applicants in an effort to get the pool of students with the highest median LSAT and GPA, because these are two of the key reference points in the *U.S. News & World Report's* rankings system.<sup>9</sup>

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not offer one-quarter scholarships to students with LSAT scores less than 156, recognizing that a school might have a better yield with offers of one-quarter scholarships that it makes to students with LSAT scores less than 156.

8. Neither law school will find it advantageous to give out uniform scholarship amounts to all students it admits from its pool of applicants because this is likely to result in a disproportionate yield among students at the bottom of the qualifications continuum.
9. Twenty-five percent of U.S. News & World Report rankings are attributable to LSAT (12.5 percent), GPA (10 percent), and acceptance rate (the percentage of applications rejected, 2.5 percent). The strong emphasis on rankings leads non-elite law schools to conduct expensive programs to boost these metrics, in order to boost rankings. William D. Henderson & Andrew P. Morriss, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings*, 81 *Ind. L.J.* 163, 165-166 (2006). The impact of these metrics is magnified to the extent that bar passage rate is correlated at all with the objective criteria, given that bar passage rate accounts for 2 percent of U.S. News rank. U.S. News & World Report, *Law School Rankings Methodology*, available at <http://www.usnews.com/articles/education/best-law-schools/2009/04/22/law-school-rankings-methodology.html>. Notably, LSAT and law school GPA are the two most significant factors that have been found to affect bar passage. Linda F. Wightman, *LSAC National Longitudinal Bar Passage Study* (L. Sch. Admis. Council Research Rpt. Series 1998), available at <http://www.unc.edu/edp/pdf/NLBPS.pdf>. Bar passage affects employability, and employment rates for graduates account for 18 percent of the U.S. News rank, reinforcing the importance of the LSAT score. Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 *Ind. L.J.* 791, 808 (2008).

Nonetheless, each school must decide how to distribute scholarship assistance among the three classes of students—first-year students, second-year students and third-year students—and each does it in a very different way.

*Description of the Non-Competitive Law School Scholarship Model*

The Non-Competitive Law School decides to offer scholarship assistance on a non-competitive renewal basis. It appreciates that it is making a three-year investment in each student who receives scholarship assistance because it realizes there is little likelihood of a student performing so poorly as to no longer be in good academic standing. Accordingly, it has to divide its \$3,600,000 in scholarship assistance over three classes of students and can only offer \$1,200,000 in scholarship assistance to incoming first-year students (who, it is assumed, will receive \$1,200,000 in scholarship assistance as second-year students and third-year students as well).

As noted above, the Non-Competitive Law School and the Competitive Law School each hope and want to get as many students at the top of the applicant pool while also trying to assure that the middle and bottom of its entering class also is as competitive as possible. To do this, each will need to distribute scholarship assistance fairly widely across the profile of entering students (without simply giving every student the average award of \$6,000).

For example, the Non-Competitive Law School could offer 20 students a full scholarship ( $20 \times \$30,000 = \$600,000$ ); it could offer 20 students a one-half scholarship ( $20 \times \$15,000 = \$300,000$ ); and it could offer 40 students a one-quarter scholarship ( $40 \times \$7,500 = \$300,000$ ). This would result in scholarship assistance of \$1,200,000 spread over eighty students (at an average scholarship of \$15,000, rather than simply having 40 students receive full scholarships of \$30,000 each).

If its yield is 40 percent among full scholarship recipients with LSATs at or above 160, it would need to offer 50 full scholarships to get 20 students enrolled with full scholarships. If it expected a 30 percent yield on one-half scholarships to applicants with LSATs at or above 160, it might offer 67 more applicants one-half scholarships and get 20 of them to enroll. That would leave about 33 applicants with LSATs at or above 160. If it admits 30 of them without scholarship and yields 10 percent, it would end up with 3 more students at or above 160 (for a total of 43).<sup>10</sup> With \$900,000 committed to scholarships, it would still have \$300,000 in scholarship assistance available for other students.

10. Please note that the assumption that schools will not admit all students with LSATs at or above 160 and will admit only 80 percent of the applicants with LSAT scores of 156–159 is based on the premise that some percentage of applicants will have character and fitness problems or will have really low GPAs that may make schools reluctant to admit them in spite of their very respectable LSAT scores.

With a yield of 30 percent on one-quarter scholarships for applicants with LSAT scores of 158 or 159, it could offer one-quarter scholarships to 133 of the applicants with LSATs of 158 or 159 and expect to yield 40 of them. If it admits the 67 additional applicants it is inclined to admit with LSATs of 158 or 159 without scholarship and has a yield of 15 percent on that population, that would be another 10 students, giving it 50 students with LSATs of 158 or 159 (and a total of 93 students with an LSAT of 158 or better). Among the 300 applicants with LSATs of 156 or 157, if it admits 240 of them without scholarship and expects a yield of 20 percent, it can expect a yield of forty-eight students, giving it 141 students with LSATs at or above 156. That would leave 59 spots in its class. If it chose to admit 197 of the applicants with LSATs at or below 155, with an expected yield of 30 percent, it would have 59 more students and would have a full class of 200 with an expected LSAT quartile break of 159/157/155. It would also have gotten this class by admitting 784 students, 52.3 percent of the 1500 applicants.<sup>11</sup>

- ii. With 43 students at 160 or better and 50 students at 158 or 159, it is very likely that 7 or more students will have an LSAT of 159, making the 25 percent break 159. With 43 additional students at 158 or 159, and 48 students at 156 or 157, it is very likely that 7 or more students will have an LSAT of 157, making the median 157. With 41 students left at 156 or 157, and 59 students at or below 155, it is very likely that 9 or more students will have an LSAT of 155, making the 75 percent break 155.

Some might question why the Non-Competitive Law School would not give all scholarship assistance to students at the top of the LSAT profile. The reason is that this is not likely to yield as strong a class overall. With an anticipated yield of 40 percent on students with an LSAT at or above 160 who receive a full scholarship, the school might expect to have a great top quartile using such a system, but without any scholarship assistance beyond that, the school would experience a decreased yield through the remainder of its applicant pool, such that the median and the bottom quartile will be lower than what might be possible with a more diverse scholarship program.

For example, Non-Competitive Law School could offer 100 of its top applicants full scholarships with the expectation that it would yield 40 students with LSATs at or above 160. But, it would then have no further scholarship funds to attract students. Using the statistical profiles described above, it would have another 50 applicants at or above an LSAT of 160, of which it could expect to yield 10 percent or 5, giving it 45 students with an LSAT at or above 160. Then, if it chooses to admit 200 of the 250 applicants with an LSAT of 158 or 159, and yields 15 percent of those admits, it would yield 30 students with LSAT scores of 158 or 159, and have 75 students in its first year class with LSAT scores of 158 or better. With respect to the 300 applicants with an LSAT of 156 or 157, if it chooses to admit 240 applicants with a yield of 20 percent, it could expect 48 students, giving it 123 students with LSATs at or above 156. That would leave it about 77 spots in its entering class of 200. With an expected yield of 30 percent among those with LSAT scores at or below 155, it would want to admit about 257 applicants (of the 800 that applied in that range) to yield 77.

Its class profile also would likely be 159/156/154. With only 45 students at or above an LSAT of 160, and 25 additional students at 158 or 159, it would need 25 of the 48 students with an LSAT of 156 or 157 to be at 157 to hold a median of 157. As 25 is more than half of 48, it is slightly more likely that 156 will be the median. That would leave 23 students with an LSAT of 156. Of the 77 students at 155 or below, it is unlikely that 27 of them will have an LSAT of 155, so the 25<sup>th</sup> percentile is likely to be 154.

### The Non-Competitive Law School Scholarship Program

LSAT	Admits	Yield percent	Matrics	Cost	Total Matrics
>160	50 Full Sch	40	20	\$600,000	
	67 Half Sch	30	20	\$300,000	
	30 None	10	3	0	
Total			43	\$900,000	
158-159	133 Qtr Sch	30	40	\$300,000	
	67 None	15	10	0	
Total			50	\$300,000	93
156-157	240	20	48	0	141
<155	197	30	59	0	200
TOTAL	784			\$1,200,000	

For the Non-Competitive Law School—80 of the 200 students receive scholarship assistance and are anticipated to keep it for their second year and third year because the Non-Competitive Law School has a non-competitive renewal policy. That means that \$3.6 million is divided evenly between first-year students, second-year students, and third-year students, with \$1.2 million per each set of students and a total of 240 students (out of 600) on scholarship.

#### *Description of the Competitive Law School Scholarship Model*

The Competitive Law School takes a different approach to scholarships. Scholarships are renewed at the Competitive Law School only if a student's GPA at the end of the first year places her in the top one-third of the class. The Competitive Law School appreciates that it is making a three-year investment of scholarship assistance in some of its students, but that it is making only a one-year investment of scholarship assistance in other students who will not have their scholarships renewed because they failed to perform in the top one-third of the first-year class.

The Competitive Law School has historical performance data suggesting that over time, 80 percent of students in the top one-third at the end of the first year are students on scholarship (roughly 54 of the 67 students in the top-third of the class at the end of the first year were students with scholarship assistance who were eligible for renewal while the other 13 were students who had not received scholarship assistance and had outperformed their objective criteria). If we assume that 20 of the 54 have full scholarships (20 x \$30,000 = \$600,000), while 18 have one-half scholarships (18 x \$15,000 = \$270,000) and 16 have one-

quarter scholarships ( $16 \times \$7,500 = \$120,000$ ),<sup>12</sup> then the “renewed” scholarship total would be \$990,000, and the second-year and third-year scholarship totals combined would be \$1,980,000, leaving \$1,620,000 for first-year scholarships. Notably, this means a significant number of the initial scholarship recipients no longer have scholarships as second-year and third-year students.

Like the Non-Competitive Law School, the Competitive Law School is unlikely to offer each of the 200 first-year students \$8,100 in scholarship. Because the Competitive Law School has \$1,620,000 in scholarship assistance for first-year students, however, as compared to the \$1,200,000 in scholarship assistance available at the Non-Competitive Law School, the Competitive Law School can offer larger scholarships to more applicants (although for these purposes, we will assume that the Competitive Law School distributes similar percentages of scholarship assistance among similar populations of applicants).

For example, the Competitive Law School could offer 28 students a full scholarship ( $28 \times \$30,000 = \$840,000$ ); it could offer 32 students a one-half scholarship ( $32 \times \$15,000 = \$480,000$ ); and it could offer 40 students a one-quarter scholarship ( $40 \times \$7,500 = \$300,000$ ). This would result in total first-year scholarship assistance of \$1,620,000, spread over 100 first-year students.

How might this change the profile of the entering class for the Competitive Law School as compared to the Non-Competitive Law School? Well, as noted above, we are going to assume similar yield statistics for the Competitive Law School as for the Non-Competitive Law School. If its yield is 40 percent among full scholarship recipients with LSATs at or above 160, it would need to offer 70 full scholarships to yield 28 full scholarship students. If its yield is 30 percent on one-half scholarship recipients with LSATs at or above 160, it could offer one-half scholarships to seventy of the remaining applicants with LSATs at or above 160 and expect to yield 21 students. That would leave 10 applicants with an LSAT of 160. If it were to admit 7 of them without scholarship and yield 10 percent it likely would end up with 1 additional student for a total of 50 students with an LSAT at or above 160. With an expenditure of \$1,155,000 in scholarship assistance for these 50 students, it would still have \$465,000 in scholarship assistance for other students.

With a yield of 40 percent among those with an LSAT of 158 or 159 who receive a one-half scholarship, it could offer 28 one-half scholarships and expect to yield 11 students. With a yield of 30 percent among those with an LSAT of 158 or 159 who receive a one-quarter scholarship, it could offer 134 one-quarter

12. This distribution of renewed scholarships is premised on a differential renewal rate based on LSAT scores, such that full scholarship recipients renew at a higher rate than one-half scholarship recipients and so on. This is consistent with LSAC data regarding the LSAT as a predictor of first-year grades. See L. Wightman, *Beyond FYA: Analysis of the Utility of LSAT Scores and UGPA for Predicting Academic Success in Law School* (Non-Competitive Law School Admission Council Report 99-05 2000), available at <http://www.lsac.org/LSACResources/Research/RR/RR-99-05.pdf>.



scholarships and expect to yield 40 students. These 51 additional students receiving scholarship assistance would exhaust the balance of the \$465,000 in scholarship assistance. This would leave 38 applicants in the 158–159 range that the Competitive Law School would be inclined to admit. If it admitted them without scholarship assistance, the Competitive Law School could anticipate a yield of 15 percent or roughly 6 students. So the Competitive Law School could expect 57 students with an LSAT of 158–159 (11 half-scholarship recipients, 40 quarter-scholarship recipients and 6 students without scholarship). This would give the Competitive Law School 107 students with an LSAT of 158 or better and would suggest that the Competitive Law School would have a 75<sup>th</sup> percentile LSAT of 160 and a median of 158 (compared to a 159/157 split for the Non-Competitive Law School reflected in the model above).

With respect to the students in the 156–157 range, the Competitive Law School would be comparable to the model reflected above with respect to the Non-Competitive Law School. The Competitive Law School would probably be admitting 240 of the 300 applicants without scholarship, for which it could expect a yield of 20 percent. This would generate an expected yield of 48 students, giving it a class of 155, with a likely 25<sup>th</sup> percentile of 156. With a yield of 30 percent on applicants with LSATs of 155 or lower, to get the final 45 students for the class, the Competitive Law School would need to admit roughly 150 applicants. Thus, the Competitive Law School easily could find itself with an LSAT quartile break of 160/158/156—or one full point better on all 3 quartiles for LSAT. Moreover, the Competitive Law School might expect to do this while admitting only 740 applicants (less than 50 percent of applicants and roughly 5 percent fewer admitted applicants than the Non-Competitive Law School).

**The Competitive Law School Scholarship Program**

LSAT	Admits	Yield	Matrics	Cost	Total Matrics
>160	70 Full Sch	40 percent	28	\$840,000	
	70 Half Sch	30 percent	21	\$315,000	
	10 None	10 percent	1		
Total			50	\$1,155,000	
158-159	28 Half Sch	40 percent	11	\$165,000	
	134 Qtr.	30 percent	40	\$300,000	
	38 None	15 percent	6	0	
Total			57	\$465,000	107
156-157	240	20 percent	48	0	155
<155	150	30 percent	45	0	200
TOTAL	740			\$1,620,000	

For the Competitive Law School, 100 of the 200 first-year students receive scholarship assistance, but only fifty-four of the students are anticipated to keep their scholarships as second-year and third-year students (if we assume that nearly 80 percent of the students in the top one-third are scholarship recipients (fifty-four of sixty-seven)).<sup>13</sup> Notably, this also means forty-six of

13. This renewal rate of 54 percent is actually higher than at least one law school which indicated in an email on the Admit-L Listserve that it generally renews about 45 percent of first-year merit scholarships (email on file with the author). In addition, a recent New York Times article indicated that Golden Gate's renewal rate on merit scholarships has tended to be around 50-55 percent—roughly 160 incoming students—60 percent of the incoming class of roughly 270—receive scholarships, but generally speaking no more than 30 percent—or roughly 80 students—earn the 3.0 GPA needed to maintain the scholarship. David Segal, *How Law Students Lose the Grant Game and How Law Schools Win*, N.Y. Times, May 1, 2011, Bus. Day 1, available at [http://www.nytimes.com/2011/05/01/business/law-school-grants.html?\\_r=1&ref=dauidsegal](http://www.nytimes.com/2011/05/01/business/law-school-grants.html?_r=1&ref=dauidsegal). Only three of the 195 law schools included in this analysis publish renewal data on their websites. Phoenix Law School notes that 40 percent of its first-year students maintain the required GPA of 3.0, but only 30 percent of the scholarship recipients will renew their scholarships. <http://www.phoenixlaw.edu/admissions/default.asp?PageID=17>. Rutgers-Newark notes that “more than 80 percent of our merit scholarship recipients retain them for their entire law school career.” <http://law.newark.rutgers.edu/admissions-financial-aid/paying-law-school-faqs>. St. John's also posts renewal rates noting that its “[a]verage scholarship retention rate from 2009-2010 [was] 60.2 percent.” <http://www.stjohns.edu/academics/graduate/law/prospective/admissions/tuition.stj>. One other school, the University of Tulsa School of Law, reported information from which a renewal rate could be calculated as its webpage noted that 64 percent of first years and 49 percent of its students overall are on scholarship. <http://www.utulsa.edu/academics/colleges/college-of-law/Law%20Admission%20and%20Financial%20Aid/Tuition%20and%20>

the initial scholarship recipients no longer have scholarships as second-year and third-year students. All total, 208 students (out of 600) would be on scholarship—100 first-year students, fifty-four second-year students and fifty-four third-year students.

What are the differences in the scholarship renewal models of the Competitive Law School and the Non-Competitive Law School? Using the scholarship distribution profiles reflected above, the Competitive Law School is able to offer more generous scholarships to more first-year students. The Competitive Law School also is able to attract a first-year class with a slightly better LSAT profile. But the Non-Competitive Law School offers scholarships to more second-year and third-year students. While the eighty first-year students who received scholarship assistance at the Non-Competitive Law School can expect to keep their scholarships (because they should expect to remain in good academic standing), 46 of the 100 first-year students who received scholarship assistance at the Competitive Law School should expect to lose their scholarships.

### What Do Law Schools Actually Do?

Based on a review of publicly available information regarding law schools and their scholarship programs, this article classifies scholarship programs at 160 law schools.<sup>14</sup> Of these 160 law schools, it appears that 122—over 75 percent—have some type of “competitive” scholarship program while only thirty-one—fewer than 20 percent—have a “non-competitive” scholarship program.<sup>15</sup> Notably, only four of these 160 schools had any information posted on their webpages indicating renewal rates on scholarships.<sup>16</sup>

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Financial%20Aid/Scholarships.aspx. This means only 42 percent or so of its second-year and third-year students are on scholarship, so roughly 66 percent of first-year scholarships are renewed.

14. The primary sources of data for this article are the NAPLA-SAPLA Book of Lists, 2009, the ABA-LSAC Official Guide to ABA-Approved Law Schools, 88-857 (2009 Ed.), and law school webpages.
15. For the 160 law schools on which I could find meaningful information, 122 have competitive renewal programs (Appendix A) and 31 have non-competitive renewal programs (Appendix B) while seven award only need-based aid. There was insufficient information to classify the remaining thirty-five law schools on which I tried to gather information. Notably, Appendix A includes schools that reported variable conditions on scholarship renewal and also includes those law schools that reported that scholarships for entering students were only one-year scholarships (because scholarships for second-year and third-year students were awarded based on law school GPA or class rank). Appendix C includes the seven law schools with need-based programs along with the thirty-five schools for which it was not possible to find data sufficient to classify the school.
16. See *supra* note 13.

### Why Might Law Schools Choose One Model or the Other?

Looking at the charts above, one can quickly grasp why Competitive Law Schools might choose the competitive model for scholarship assistance as opposed to the non-competitive model for scholarship assistance. The Competitive Law School has the possibility of attracting a first-year student population with higher objective criteria, which can correspond to an improvement in its ranking in the *U.S. News & World Report*.<sup>17</sup> In one sense, this could be viewed simply as another way to “game” the rankings.<sup>18</sup>

17. Compare 160/158/156 with 159/157/155 in rankings. Recruiting a first-year class with the highest possible LSAT profile clearly is a motivation for some schools. In a recent email exchange on the Admit-L Listserv, one of the admissions representatives noted the representative’s school might increase merit scholarships to top applicants while reducing scholarships to those around the school’s median (consistent with the formula used for the two hypothetical schools in this article) and that the school would be trying to make better offers “to those that ‘truly help our numbers.’” Email on file with the author. Notably, recruiting a class with the highest possible LSAT profile can work at cross-purposes with recruiting a diverse class of students, another goal for many law schools. LSAT scores vary across different racial and ethnic populations and Caucasian test takers earn higher scores on the test than any other ethnic group. Asian test takers outperform Caucasians on the Analytical Reasoning section, but Caucasians outperform all ethnic groups in every other section. African-Americans score the lowest, both on the test as a whole and on individual sections. Linda F. Wightman & David G. Muller, Comparison of LSAT Performance Among Selected Subgroups, LSAC Statistical Rpt. 90-1 (1990), available at <http://www.lsac.org/LSACResources/Research/SR/SR-90-01.pdf>. at 29. Given that law schools generally have a finite amount to invest in scholarship assistance, a decision to invest scholarship resources in “diversity” scholarships—designed to attract a racially and ethnically diverse student body—or “leadership” or “service” scholarships—designed to attract students who bring unique leadership skills or a significant passion for public service—may come at the expense of scholarship assistance available to attract a student body reflecting the highest possible LSAT scores or GPAs. While some candidates may combine attributes and make for a particularly worthwhile scholarship investment, others may offer only one attribute. For purposes of this article, these “variations” are not of consequence because this article assumes the two schools discussed above have the same perspectives on using scholarships for diversity, leadership or service.
18. Law school commentators have noted one method by which law schools “game” the ranking system—by shifting students from full-time status to part-time status (because up until recently, U.S. News & World Report only counted the objective criteria of full-time first-year students in its rankings profile). Henderson & Morriss, *supra* note 9, at 181; see [http://lawprofessors.typepad.com/legal\\_profession/2008/08/posted-by-jeff.html](http://lawprofessors.typepad.com/legal_profession/2008/08/posted-by-jeff.html) (blog posting describing gaming at one law school with a significant decrease in full-time enrollment and a significant increase in part-time enrollment and an accompanying improvement in objective criteria that resulted in the school moving into the second tier). Notably, for the rankings dataset released in April 2009, U.S. News & World Report used the complete first-year class profile, including full-time students and part-time students—thus eliminating one way of “gaming” the system. DealBreaker, Above the Law, April 27, 2009, available at [http://abovethelaw.com/2009/04/open\\_thread\\_2010\\_us\\_news\\_law\\_s\\_1.php](http://abovethelaw.com/2009/04/open_thread_2010_us_news_law_s_1.php) (noting that the George Washington University Law School ranking fell from 20 to 28 at least partly because of the addition of the part-time students to the student profile).

In addition, it is conceivable that a law school also may choose to embrace a “competitive” scholarship model to free up “misdirected” scholarship assistance so that financial assistance is available to retain rising second-year students who outperformed their objective criteria profile (and finished in the top one-quarter or top one-third of their class). A number of schools suffer modest hemorrhaging of some students in the top-half or top-third of their class who choose to transfer to schools ranked higher by the *U.S. News & World Report* so that they can get their degree from the more highly ranked institution, sometimes at less cost (if they do not have scholarship assistance and if they are transferring from a private law school to a public law school).<sup>19</sup> These students might be persuaded to remain at their original school if they can benefit from carrying a reduced financial burden as a second-year and third-year student. Unless a school has dedicated some portion of its finite pool of resources for scholarship assistance to second-year and third-year students, however, the only way to fund this “upper-level assistance” is to cannibalize scholarships originally given to other first-year students (who have not performed as well) and who have already “served their purpose” of helping enhance the objective criteria profile of the entering class.<sup>20</sup>

19. Rensberger, *supra* note 3 (discussing trends in transfers among law schools). Commentators have noted that transfers present another approach to “gaming” the ranking system. Some schools have reduced the size of their first-year class (making it easier to maintain higher objective criteria across a smaller pool of students), and have made up for the lost revenue by aggressively recruiting transfer students to boost second-year and third-year enrollment. See Henderson & Morriss, *supra* note 9, at n. 60 and accompanying text. See also Leslie A. Gordon, Transfers Bolster Elite Schools, *ABA Journal* (Dec. 2008), available at [http://www.abajournal.com/magazine/transfers\\_bolster\\_elite\\_schools/](http://www.abajournal.com/magazine/transfers_bolster_elite_schools/). At this point, however, the U.S. News & World Report has not done anything to integrate the objective criteria associated with transfer students in a law school’s student profile to negate this “gaming” technique.
20. Notably, neither of the hypothetical law schools has set aside funds to retain rising second-year students. To fund such “new” scholarships for second-year students, the available pool of scholarship money for first-year students would have to be reduced or the number of renewed scholarships would have to be reduced further so that some of the available second-year scholarship assistance could go to students who had not received scholarship assistance as first-year students (rather than only going to renewal candidates). If a school opts for the latter option, the renewal rate would be even lower than estimated above. In addition, embracing the competitive model for scholarships partly for the purpose of promoting retention can be a double-edged sword. While it might free up some resources to try to retain students considering transferring, it also may encourage those students who did not have their scholarships renewed to consider transferring. Those students whose scholarships are not renewed may conclude that if they have to pay the full freight for tuition, they may be better off doing so at a more highly ranked law school or at a less expensive law school. Therefore, it is hard to say whether this “cannibalizing” approach to competitive scholarship programs generates a positive net result for the school. The school would need to assess whether it prevented more transfers than it facilitated.

By contrast, law schools that choose the “non-competitive” scholarship model are presumably making a conscious choice not to get too caught up in the “rankings” game. Instead, they tell their first-year scholarship recipients that they will keep their scholarships so long as they remain in good academic standing and thereby communicate to their first-year scholarship recipients that they truly are valued for the attributes and experiences they bring to the community, not simply for their LSAT score or their first-year academic performance.

### **How Might These Scholarship Models Impact Students and Shape the Culture of Law Schools?**

A law school’s choice to pursue the competitive approach to scholarship renewal comes with a cost—there is no “free lunch.” In this section, I compare the impact of scholarship programs on law students and law school culture in three contexts—financial stress, competitiveness, and individual value.

#### *Financial Stress*

For students at Non-Competitive Law Schools, the financial aspect of the decision to attend law school operates as a one-time decision that coincides with the decision to attend the Non-Competitive Law School. Each student who decides to attend the Non-Competitive Law School knows what he or she can expect to spend on tuition over the three years. There are no “surprises” at the Non-Competitive Law School. Indeed, there is little reason for students at the Non-Competitive Law School to think much about their scholarships or their absence of a scholarship.<sup>21</sup>

With respect to the Competitive Law School, based on the scholarship distribution profile reflected above, the 100 first-year students who did not receive scholarship assistance will have no uncertainty about the cost of their legal education—they will incur the full \$90,000 in tuition over the three years of law school.<sup>22</sup> Of the other 100 students who did receive scholarship

21. Note that there might be some students without scholarships as first-years who perform very well and, even though they may have no expectation about obtaining scholarship assistance, may inquire about whether they can get some scholarships as rising second-year students or rising third-year students. Sometimes these students will consider transferring (and may be encouraged to consider transferring by schools that have lowered the size of their first year class to raise their LSAT and GPA profiles and increased the number of transfers they take to make up lost revenue). *See supra* note 19.
22. Notably, while non-scholarship students have no uncertainty about the financial aspects of the cost of their legal education, the reality is that those students paying full tuition—generally those with lower objective criteria (LSAT and UGPA), effectively subsidize the legal education of those with higher scores, as most scholarship programs are not funded by endowments but are funded by tuition discounting—by tuition-paying students. Daniel J. Morrissey, *Saving Legal Education*, 56 *J. Legal Educ.* 254, 269 (2006). In our hypotheticals, the tuition could have been reduced to \$24,000 (from \$30,000) if each school had no

assistance as first-year students, however, forty-six students (nearly one-quarter of the overall first-year class of 200) will have to confront a changed financial circumstance at the end of their first-year of law school. And because none of the 100 first-year scholarship recipients can be sure of how they will end the first-year in class rank, the reality is that all 100 scholarship recipients (half of the first-year class) will need to be worried about the possibility of confronting a changed financial circumstance at the end of the first year. Thus, the financial stress for scholarship students at the Competitive Law School will be much higher than for scholarship students at the Non-Competitive Law School.

### *Competitiveness*

In choosing to “front-load” scholarships for first-year students, Competitive Law Schools are making a choice to foster a much more competitive environment—a zero-sum environment—as students compete not only for the positive opportunities that come with good grades, but also to avoid the negative consequences of losing financial assistance. This is particularly true at schools that award scholarships to significantly more first-year students than possibly can meet the renewal conditions. Scholarship recipients at the Competitive Law School thus have an “extra” reason to be competing with their classmates for the highest possible grades. This is likely to exacerbate the extent to which the culture takes on an atomistic and competitive aspect.<sup>23</sup>

By contrast, Non-Competitive Law Schools are making a choice to foster a less-competitive law school culture, because students do not have the added pressure of competing with their classmates to avoid the negative consequences of losing financial assistance. While students at the Non-Competitive Law School might create an environment in which they engage in heated competition with their classmates for the highest grades and the opportunities that come with those grades, the non-competitive scholarship model does not exacerbate in any way the inherent competitive nature of the students who choose to attend the Non-Competitive Law School. Indeed, it is possible that the students in the Non-Competitive Law School will be able to create something of a more collaborative learning environment partly because they are not competing to retain their scholarships.<sup>24</sup>

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scholarship program at all (or simply gave every student the same \$6,000 scholarship).

23. See Roger C. Cramton, *Ordinary Religion of the Law School Classroom*, 29 *J. Legal Educ.* 247, 261 (1978) (quoting Robert Bellah, *The New Religious Consciousness and The Secular University*, *Daedalus* 111 (Fall 1974)).
24. For example, two law schools with non-competitive scholarship programs, Duke University Law School and the University of St. Thomas School of Law, have made a name for themselves by promoting a strong sense of community among students, staff and faculty. See <http://www.law.duke.edu/about/community/index>; <http://www.stthomas.edu/law/whychoose/community/default.html>.

*Individual Value and Devaluation*

Competitive Law Schools also create an environment in which a significant percentage of their students are going to experience a “double-whammy” of inadequacy. Not only are they not “measuring up” in terms of getting the types of grades to which they were accustomed as an undergraduate (getting Bs and Cs instead of As and some Bs), they are now being told they are “unworthy” of continued scholarship assistance as a result.<sup>25</sup> For the forty-six students who do not get their scholarships renewed, the message they receive from the Competitive Law School is one of inadequacy and of being devalued. While the Competitive Law School initially valued their background, experience, undergraduate GPA, and LSAT (or at least their GPA and LSAT) enough to provide a scholarship as an incentive to come to the school, when the students fail to perform in the top one-third of their class, the Competitive Law School essentially says: “We no longer care about your background, experience, undergraduate performance and LSAT and the ways they might enrich the law school community—we care only that you did not perform in the top one-third of your class.” This exacerbates the already extensive emphasis

25. One of my colleagues described her experience at a Competitive Law School as follows:

I had so many, many students who came to me in total shock when they lost their scholarships. ...I heard many bitter and devastated students complaining about “bait and switch,” and wanting to file consumer lawsuits against the school...[S]ending out so many graduates with such an intensely bitter attitude toward their law school [seems] unwise and unlikely to serve the law school well in the long run.

Email exchange with Professor Jennifer Wright (email on file with the author.)

The research of Ken Sheldon and Larry Krieger indicates that the first-year experience is very discouraging to most law students who experience a significant decline in well-being during the first year of law school. Lawrence S. Krieger & Kennon M. Sheldon, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 *Behav. Sci. & Law* 261, 281 (2004). Notably, their research suggests that lack of autonomy support plays a significant role in the decline of well-being among first-year law students. *Id.* Autonomy support contemplates a context in which the authority figure (law school professors) give subordinates (law students) choices to exercise autonomy, explain when choices are not available, and generally manifest an interest in and appreciation of the perspective of the subordinates. Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 *Pers. & Soc. Psych. Bull.* 883, 884 (2007). For those familiar with legal education, particularly in the first year, it should not be surprising that first-year law students generally do not perceive much autonomy support. They have almost no choice in their subjects of study, little control over the classroom experience and frequently are informed that their perspective is not only not valued, but is misguided. While there is no specific data on well-being across a comparative sample of law schools with competitive scholarship renewal programs as compared to non-competitive scholarship renewal programs, it would make sense that students who may anticipate losing their scholarship assistance based on first semester grades or first year grades would feel less autonomy support and would experience a greater decline in well-being.



law students tend to place on grades and extrinsic motivators<sup>26</sup> and creates a critical mass of unhappy second-year and third-year students who are not likely to be generous alumni.<sup>27</sup> Students at Non-Competitive Law Schools, on the other hand, may still experience one “whammy” of disappointment in terms of receiving grades that are not consistent with their past experience, along with some self-doubt and diminished confidence in their abilities, but these schools do not compound this challenge with a “double whammy” of yanking scholarship assistance from a significant percentage of their students. Rather, the Non-Competitive Law School communicates to its scholarship recipients that it continues to value the contributions they make to the law school community, even if their grades are not in the top one-third of the class. The Non-Competitive Law School, therefore, has a culture less impacted by an exacerbated sense of inadequacy and devaluation than the Competitive Law School.<sup>28</sup> While the data may not be compelling from a statistical standpoint, it is worth noting that there does appear to be some correlation between the competitive scholarship model and the competitive environment of the law school.<sup>29</sup> Conversely, there also appears to be some correlation between the non-competitive scholarship model and the quality of life experienced by law students.<sup>30</sup>

26. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 *Clin. L. Rev.* 425, 433; see Krieger & Sheldon, *supra* note 25, at 281.
27. See *supra* note 25. The other message Competitive Law Schools are sending is that the critical thinking skills and analytical skills emphasized in the first-year of law school (Carnegie’s “first apprenticeship”) are more important to being a lawyer than the other practical skills and professional values reflected in Carnegie’s “second apprenticeship” and “third apprenticeship,” respectively. William S. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law*, 13-14, 28-32 (Jossey-Bass 2007).
28. By comparison with the Competitive Law Schools, the Non-Competitive Law School also is communicating that the “first apprenticeship” is not “more important” to being a lawyer than the “second apprenticeship” and “third apprenticeship.”
29. In the Princeton Review’s Ranking of Most Competitive Law Students in the last four years, there were fourteen different law schools that were ranked among the top-ten in one or more years, ten of which showed up in multiple years. Nine of those ten school recognized as “Most Competitive” in multiple years have competitive scholarship renewal programs (Albany, Baylor, BYU, Campbell, Ohio Northern, Roger Williams, St. John’s, St. Thomas [FL], Whittier), while only one (Thomas Cooley) employs a non-competitive scholarship renewal program. *Best 172 Law Schools* (2011 Edition); *Best 174 Law Schools* (2010 Edition); *Best 174 Law Schools* (2009 Edition) and *Best 170 Law Schools* (2008 Edition).
30. In the Princeton Review’s rankings for Best Quality of Life for law students in the last four years, there were sixteen different law schools that were ranked among the top ten in one or more years, nine of which showed up in multiple years. Five of those nine schools recognized for “Best Quality of Life” in multiple years have non-competitive scholarship

### Thoughts on Best Practices

The non-competitive scholarship model is less stressful for students and should create a law school environment that is less likely to cause a significant decline in the well-being of law students as a result of exacerbated financial stress, excessive competition and a sense of devaluation. That said, law schools should not be precluded from utilizing a competitive scholarship model or whatever scholarship model makes sense for that school. Moreover, schools may have legitimate concerns about retaining rising second-year students who may have outperformed their objective criteria and now may be considering transferring to another school, and may view cannibalization of existing scholarships as the most feasible way to accomplish this retention.

But at the present moment, there is a profound information asymmetry between law schools and prospective law students when it comes to scholarship offers. At many Competitive Law Schools, the law schools are keenly aware of the impact of a forced curve on first-year grades and know that they have offered scholarships to significantly more first-year students than can possibly renew their scholarships under the renewal conditions attached to the scholarships. Prospective law students, by contrast, have generally performed very well academically, frequently have not experienced how a forced grading curve functions and well may perceive that by being granted a scholarship, they are among the “best students” and should be able to remain among the “best students” and retain a GPA or class rank that allows them to renew their scholarship. They are not aware that the law school has given out more scholarships than possibly can be renewed and are not informed by the law school of the likelihood of non-renewal.<sup>31</sup>

Thus, there is a profound need for greater clarity and transparency with respect to scholarship awards and renewal rates.<sup>32</sup> Law school has become an

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renewal programs (NYU, Oregon, University of St. Thomas [MN], Vanderbilt and Virginia), while three have competitive scholarship renewal programs (Chapman, Colorado and Northwestern) and one is need-based (Stanford).

31. More specifically, prospective students are not aware, for example, that the law school has given out scholarships to 50 percent of the incoming class and that only two-thirds of that 50 percent will be able to perform in the top-third. Or, for a school with a GPA stipulation, the prospective students are not aware that the law school forced curve may make it much harder to maintain a 3.0 than the students might think based on their collegiate experience. Moreover, as noted in the first sentence, the students are not aware that the 3.0 GPA may translate to the top-third or top-half of the class at a school that may have given scholarships to 60 percent or 70 percent of the incoming class.
32. Others have already identified the need for greater clarity and transparency with respect to placement and salary statistics. Professor William Henderson agrees that the quality of the information supporting placement and salary statistics in U.S. News and National Ass'n for Law Placement reports is uncertain. Many schools simply skip reporting short-term employment statistics to avoid unfavorable press. Short-term measurements also exclude government and public interest lawyers who usually cannot seek employment until after passing the bar exam. See Morriss & Henderson, *supra* note 9, at 798-799; see also Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession*:

increasingly expensive investment over the last two decades.<sup>33</sup> Law students increasingly are taking on greater and greater levels of debt to finance their education.<sup>34</sup> As a result, scholarships play a significant role in the decisions many applicants make in deciding among law schools.<sup>35</sup>

But how should an applicant compare competing scholarship offers from the Non-Competitive Law School and the Competitive Law School? If the Non-Competitive Law School offers an applicant a \$7,500 scholarship conditioned only on the student maintaining good academic standing, how should that compare with a scholarship offer of \$10,000 from the Competitive

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The Role of Race, Gender, and Educational Debt, 70 N.Y.U. L. Rev. 829, n.58 (1995).

33. The average resident tuition at a public law school has increased 234 percent between 1990 and 2003. Denis Binder, *The Changing Paradigm in Public Legal Education*, 8 *Loy. J. of Pub. Int. L.* 1, 10 (2006). The ABA estimates that between 1995 and 2005, private school tuition increased 42 percent, in-state public school tuition increased 52 percent, and out-of-state public school tuition rose 49 percent. Am. Bar Ass'n, *Law School Tuition Average and Median (2005)*, available at <http://www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf>. At many schools, tuition increased at triple the inflation rate between the 1980s and the present. Maimon Schwarzschild, *The Ethics and Economics of American Legal Education Today*, 17 *J. Contemp. Legal Issues* 3, 3 (2008).
34. The average law student debt doubled between 2002 and 2007. The average private law school graduate in 2006 amassed \$76,763 in debt; the average public law school graduate financed \$48,910. John O. Sonsteng, Donna Ward, Colleen Bruce & Michael Petersen, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 *Wm. Mitchell L. Rev.* 303, 359 (2007). According to the Department of Education, 80 percent of the students already had an average of \$20,000 in debt incurred while obtaining their undergraduate degrees. Letter from Karen J. Mathis, President of the American Bar Assn., to the Senate Judiciary Committee, Regarding S. 442: The John R. Justice Prosecutors and Defenders Incentive Act of 2007, 1-2 (Mar. 5, 2007), available at [http://www.abanet.org/poladv/letters/legaled/2007mar05\\_loanforgive\\_1.pdf](http://www.abanet.org/poladv/letters/legaled/2007mar05_loanforgive_1.pdf).
35. See A. Johnson, Jr., *The Destruction of the Holistic Approach to Admissions: The Pernicious Effects of Rankings*, 81 *Ind. L.J.* 309, 347 n.141 (noting that students view competing scholarship offers when considering different law schools to which they have been admitted). Consider, as well, websites such as Law School Numbers, <http://lawschoolnumbers.com/>, at which students post information about the schools to which they have applied, whether they have been accepted, and whether they have received scholarship offers (including commentaries regarding the application process in many cases). The postings at this site make it clear that schools compete with scholarships and that students consider scholarships (along with ranking/prestige and location among other factors) when making their decisions. Between 2004-2005 and 2009-2010, the number of students receiving non-need-based aid increased from 31,265 to 39,845 (an increase of over 25 percent) with an increase in the amount of non-need-based aid from roughly \$291 million to roughly \$522 million (an increase of over 71 percent). Memo from the Section on Legal Education and Admission to the Bar to Senator Charles Grassley, July 20, 2011, att. 4, pp 14-15. (Unfortunately, this memorandum does not break out the number of students receiving non-need-based aid who are first-year students rather than second-year or third-year students. Based on the renewal rates referenced *supra* note 13, my hypothesis is that the growth in those receiving non-need-based aid is predominantly among first-year students, who may represent close to half of those receiving non-need-based aid, with significantly fewer second-year students and third-year students receiving non-need-based aid.)

Law School conditioned on the student maintaining a rank in the top one-third of the class?

If the applicant does not have meaningful data about the renewal rate of scholarship recipients at each school, it is truly challenging to compare the awards. Because the student's history is one in which she always has performed in the top one-third of any population of which she has been a part, she is likely to over-estimate her likelihood of performing in the top one-third such that she can retain her scholarship. This is particularly the case if she is not cognizant of how a forced grading curve functions and if she is unaware that two-thirds of her classmates also received scholarships and will be competing to be in the top-one-third of the class.<sup>36</sup> But if each school was required to report the number/percentage of students who retained scholarships, then the applicant would have a better basis for comparing these two awards (even if the applicant remains perhaps unduly optimistic about her likelihood of maintaining the scholarship).

For example, if the Non-Competitive Law School has data (which it almost certainly does), showing that only two students each year lose scholarships by failing to maintain good academic standing, and discloses that information on its website, the applicant considering Non-Competitive Law School would know that she has a 98 percent chance of retaining her scholarship and can calculate its expected value over three years as being close to the full value of a three-year stream of payments of \$7,500 each year—roughly \$22,200.<sup>37</sup>

Similarly, if the Competitive Law School has data (which it certainly should) identifying that 46 percent of scholarship recipients did not have their scholarships renewed, and disclosed that information on its website, then the applicant should be able to do a discounted calculation that shows that the expected value of a \$10,000 a year scholarship from the Competitive Law

36. One of my colleagues noted that this was consistent with her experience at another law school. "You're right—people who have always been at the top of their classes, especially who are attending a third-tier law school, don't even consider the possibility that they may have any problem maintaining that level of achievement." Email exchange with Professor Jennifer Wright (on file with the author).
37. The expected value of three payments of \$7,500 over three years, when there is a 98 percent chance of retaining the payment in years two and three is the sum of  $\$7500 + (7500 \times .98) + (7500 \times .98) = \$7500 + \$7350 + \$7350 = \$22,200$ . Because the discounted present value calculation would be comparable at both a Competitive Law School and a Non-Competitive Law School, I have not engaged in a separate present value calculation as the comparison is simpler without it.

School is projected at roughly \$20,800, rather than the roughly \$30,000 the student might assume it to be worth believing it will be renewed for three years. If the applicant has only a 54 percent chance of renewing the scholarship, then the expected value for years two and three should be \$5,400 each year for a total of roughly \$20,800.<sup>38</sup> While the scholarship offer from the Competitive Law School “projects” to be a \$30,000 scholarship over three years (assuming it is renewed), \$7,500 more than the \$22,500 projected value of the scholarship from the Non-Competitive Law School, if applicants use the true expected value, the scholarship at the Competitive Law School is actually worth \$1,400 less than the scholarship from the Non-Competitive Law School (\$20,800 rather than \$22,200). This financial difference also does not take into account the difference in culture the applicant is likely to find at the Competitive Law School as compared with the Non-Competitive Law School.

While students are applauded for being “savvy” about scholarship assistance and for their willingness to “play” schools against each other in scholarship reconsideration competitions,<sup>39</sup> it is not at all clear that students are as savvy as they are given credit for being.<sup>40</sup> Indeed, postings to the Law School Numbers website, for example, frequently reflect a three-year total of scholarship assistance (without any discounting or acknowledgement that the scholarship is from a school with a competitive scholarship program rather than a non-competitive scholarship program).<sup>41</sup> This suggests that students may not be

38. Notably, if the renewal rate is more like 45 percent (as reflected *supra* in note 13), then the expected value of the \$10,000 a year scholarship drops to more like \$19,000.
39. See *supra* note 35.
40. In a recent blog posting, Professor William Henderson described the average student as being slightly naïve.

The modal student entering law school is not *homo economicus*. Rather, he or she is young, inexperienced, and overly impressed with branding—largely through U.S. News—and the opinions of peers. IQ does not shield the young from overconfidence and the reflexive desire to impress others through the acquisition of positional goods. Indeed, sometimes intelligence in the absence of commonsense can make matters worse.

Posting to Legal Profession Blog, September 3, 2009, available at [http://lawprofessors.typepad.com/legal\\_profession/2009/09/historical-perspective-on-the-bleak-entry-level-law-market.html](http://lawprofessors.typepad.com/legal_profession/2009/09/historical-perspective-on-the-bleak-entry-level-law-market.html).

41. For example, one applicant on Law School Numbers lists two different scholarships as if the renewal conditions were both on a non-competitive basis. One \$15,000 scholarship is listed as being worth \$45,000 even though the applicant notes that the scholarship has a 3.2 renewal GPA. One \$20,000 scholarship is listed as being worth \$60,000 even though the applicant notes that the latter scholarship has a 2.0 renewal GPA (good standing). See <http://lawschoolnumbers.com/jdean30>. Another similarly lists one \$20,000 scholarship as being worth \$60,000 even though the applicant notes that the scholarship has a 3.3 renewal GPA, while the applicant lists a \$10,000 scholarship with a 2.0 renewal GPA (good standing) as being worth \$30,000. See <http://lawschoolnumbers.com/carmani880>. Notably, neither lists scholarships by discounting to expected value. Moreover, given that there is a big difference between renewing based on a GPA of 3.2 or a 3.3 as compared to renewing based on a GPA

paying attention to the fine print regarding scholarship renewal conditions or may be unduly optimistic about their likelihood of being successful enough to renew their scholarships.

### **Best Practices Recommendations for Disclosure of Scholarship Renewal Information**

The ABA, LSAC and Pre-Law Advisors National Council (PLANC) all should endorse a best practices approach to scholarship information. That approach should contain the information in the following chart:

#### **Standardized Disclosure of Merit Scholarship Assistance and Renewal<sup>42</sup>**

	<b>First Years (2008-09)</b>	<b>Second Years (2009-10)</b>	<b>Third Years (2010-11)</b>
# Receiving Merit-Based Scholarships	100	54	54
Percent of Class Receiving Receiving Merit-Based Scholarships	50 percent	27 percent	27 percent
Percent of Merit-Based Scholarship Recipients Renewed from Previous Year	N/A	54 percent	100 percent
Average/Median Merit-Based Scholarship	\$16,200/\$15,000	\$18,333/\$15,000	\$18,333/\$15,000
# Full+/Half+/Less than Half (first-year and renewed in subsequent years)	28/32/40	20/18/16	20/18/16
Total Merit-Based Scholarships	\$1,620,000	\$990,000	\$990,000

This data would give each admitted scholarship recipient some meaningful basis for assessing the likelihood that any given scholarship will be renewed without requiring the disclosure by each school of so much detailed scholarship information as to provide competitor schools with an unreasonable competitive

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of 2.0, the listed value of the two scholarships further indicates that the applicants have not meaningfully accounted for this difference.

42. This chart presents data for the Competitive Law School. Note that if the school awards merit-based scholarships to second-year students who did not receive a merit-based scholarship as a first-year, then the number receiving scholarships in column 2 might reflect a higher percentage of the second-year class than is reflected in the third row—the percentage of merit-based scholarships renewed. In addition, note that the fifth row contains information from which prospective students can discern whether there are differential renewal rates depending upon the size of the scholarship as a first-year.

advantage.<sup>43</sup> Given the wide array of renewal rates reflected in the handful of schools with available data, it should be manifest that prospective law students really need this information to make an informed investment decision when comparing competing scholarship offers.<sup>44</sup>

The Law School Admissions Council (LSAC) policy already requires clear and accurate consumer information, particularly as it relates to financial aid.<sup>45</sup> But the policy does not go far enough, as it presently only requires that the school, “[i]n the case of renewable or multi-year scholarships, . . . fully inform candidates, at the time the offer is made, of the criteria he or she must satisfy to maintain or renew eligibility for the institutional aid.”<sup>46</sup> So the policy does

43. Law School Transparency has developed a similar proposal for addressing scholarship retention issues, <http://www.lawschooltransparency.com/2011/04/proposing-a-new-standard-to-require-scholarship-retention-information/>. Notably, the U.S. News & World Report already distributes some information that would be competitively unhelpful to law schools. The U.S. News & World Report Premium Online version contains dollar value scholarship information by first-year, second-year, and third-year, listing the 75<sup>th</sup> percentile, median, and 25<sup>th</sup> percentiles of scholarship support. This information allows competitor schools to approximate the discount rate with which each school functions, but, unfortunately, fails to provide prospective students meaningful information about the likelihood of scholarship renewal because it does not indicate the number of scholarship recipients in each class. Thus, it does not provide prospective students the information they need to make an informed choice regarding the financial commitment they will be making in choosing one law school rather than another. This standardized chart would provide students the information they need without relinquishing much more information than law schools already release through the U.S. News & World Report database. U.S. News & World Report, Best Law Schools Premium Online Edition, *available at* <http://premium.usnews.com/best-graduate-schools/top-law-schools>. Similarly, the ABA-LSAC Official Guide to ABA-Approved Law Schools has some scholarship information for each school comparable to that described above in the U.S. News & World Report Premium Online version. ABA-LSAC Official Guide to ABA-Approved Law Schools (2009) (listing the number of students receiving scholarships, broken down by full tuition (and more than full tuition), half-tuition to full tuition, and less than half-tuition, with no information regarding renewal rates).

44. *See supra* note 13.

45. The LSAC Policy sets forth the following in its list of general principles.

Law schools should strive to achieve and maintain the highest standards of accuracy and candor in the development and publication of print, electronic, and other materials designed to inform or influence applicants. A law school should provide any applicant or potential applicant with information and data that will enable the applicant to assess his or her prospects for successfully . . . financing his or her education at that school . . .

LSAC Statement of Good Admission and Financial Aid Practices, General Principle Para. 3. It similarly provides, in its section on recruitment policies, that law schools provide clear and accurate information to pre-law advisors. *Id.* Admission and Recruitment Para. 4.

46. *Id.* Financial Aid Para. 4.

not presently require schools to disclose the percentage of students who are renewed. This language should be revised so that schools also are required to “inform candidates of the number and percentage of conditional scholarships that are renewed in the second-year and in the third-year.” The chart set forth above could be inserted as part of the policy to set forth the expectation of LSAC and minimize the extent to which law schools produce information with differing formats that make meaningful comparisons more difficult for applicants.<sup>47</sup>

The American Bar Association (ABA) similarly sets forth an obligation upon law schools to disseminate fair and accurate consumer information. “A law school shall publish basic consumer information. The information shall be published in a fair and accurate manner reflective of actual practice.”<sup>48</sup> Interpretation 509-1(2) specifically references “financial aid.”<sup>49</sup> Although there is nothing more specific about disclosure of financial aid information, Interpretation 509-2 does state that law schools should publish the information in “a publication designated by the Council or publish the information in its own publication,” noting further that if the school uses its own publication, it must publish the basic consumer information “in a manner comparable to that used in the Council-designated publication.”<sup>50</sup> Thus, if the ABA were to adopt a regulation mandating a publication format that included the chart above, accredited law schools would need to conform their publications to the format used by the ABA.<sup>51</sup> Alternatively, the ABA Questionnaire Committee could request this information from law schools and at least publish in the ABA-LSAC Guide a clearer data set relating to conditional merit scholarships that includes renewal rates.<sup>52</sup>

47. Notably, the LSAC guidelines highlight the importance of applicants providing information that is not misleading. *Id.*, Application Procedures Para. 3 (indicating process of investigating false or misleading statements by applicants). While the LSAC principles state that law schools “should strive to achieve and maintain the highest standards of accuracy and candor in the development and publication of print, electronic, and other materials designed to inform or influence applicants,” *see supra* note 45, there is no meaningful sanction provided for law schools that are not complying with the highest standards of accuracy and candor.
48. ABA Standard 509, Basic Consumer Information.
49. ABA Standard 509, Interpretation 509-1(2).
50. ABA Standard 509, Interpretation 509-2.
51. The ABA Standards Review Committee is considering a proposal similar to what is presented here. Email from Dean David Yellen, Chair of the Standard 509 Subcommittee of the ABA Standards Review Committee, July 23, 2011. To view the present iteration of the proposal, which remains subject to further revision as it goes through the approval process, see [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/july2011meeting/standard\\_509\\_basic\\_consumer\\_information.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/july2011meeting/standard_509_basic_consumer_information.authcheckdam.pdf).
52. The ABA Questionnaire Committee anticipates taking up whether and how to collect



The Association of American Law Schools (AALS) handbook is no more precise in its language. Section 6.2.3 provides that “A member school shall provide to anyone requesting an application...information concerning the school’s grading system, retention rules and procedures,...and financial aid programs and policies.”<sup>53</sup>

To date, the Pre-Law Advisors National Council (PLANC) and the various regional associations of pre-law advisors<sup>54</sup> have not developed standards for assuring that law schools disseminate clear and candid consumer information to prospective applicants. Two regional associations of pre-law advisors, NAPLA and SAPLA, have collaborated on the publication of the NAPLA-SAPLA Book of Law School Lists, but it does not have a consistent presentation format regarding scholarship information for law schools that would enable applicants to determine whether the law school has a competitive or non-competitive renewal model or what their likelihood of renewing their scholarship would be.<sup>55</sup> Moreover, the NAPLA Pre-Law Guide presently does not mention the difference between competitive renewal scholarship programs and non-competitive renewal scholarship programs.<sup>56</sup>

The PLANC and the regional associations, however, would be well-positioned to lobby LSAC and the ABA to impose policies and standards that assure applicants are provided clear and accurate scholarship renewal information consistent with the chart set forth above. Moreover, NAPLA and SAPLA could consider requiring that law schools that wish to be included in the Book of Law School Lists provide information consistent with the chart set forth above.

### Conclusion

While this article suggests that the non-competitive model of scholarship renewal provides for a less competitive and more supportive law school learning environment, the author recognizes that law schools are not likely

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information on retention of conditional scholarships during the 2011-2012 academic year. Conversation with Dean Art Gaudio, Chair of the ABA Questionnaire Committee, July 27, 2011. The ABA has recently gotten pressure from Congress to address employment statistics regarding graduates and scholarship retention issues. See Letter from Senator Barbara Boxer to President Stephen N. Zack, <http://boxer.senate.gov/en/press/releases/052011.cfm>; Letter from Senator Charles Grassley to President Stephen N. Zack, see <http://grassley.senate.gov/about/upload/2011-07-11-Grassley-to-ABA.pdf>.

53. AALS Bylaw 6-2.3 Recruitment.
54. There are six regional associations of pre-law advisors—the Northeast Association of Pre-Law Advisors (NAPLA), the Southeast Association of Pre-Law Advisors (SAPLA), the Midwest Association of Pre-Law Advisors (MAPLA), the Southwest Association of Pre-Law Advisors (SWAPLA), the Pacific Coast Association of Pre-Law Advisors (PCAPLA) and the Western Association of Pre-Law Advisors (WAPLA).
55. NAPLA-SAPLA Book of Law School Lists, 2009-2010.
56. NAPLA Pre-Law Guide (2008), p. 19, available at <http://www.napla.org/pre-law%20resources.htm>.

to reconfigure their scholarship programs, particularly given the pressure on law schools from the *U.S. News & World Report* rankings, which place great emphasis on objective criteria such as LSAT score and GPA. In addition, some schools may believe a reallocation of scholarship resources is necessary to prevent losing transfer students who performed well as first-year students—out-performing their objective criteria—and may have opportunities to transfer if the school does not come up with scholarship money to make it worthwhile for them to stay. Moreover, to the extent that schools may have restricted gifts—donors who provided scholarship resources for which they imposed renewal conditions at the time of their gift to the law school—such gifts would make it challenging to implement a non-competitive scholarship program.

Nevertheless, given the significant investment of time and resources that students anticipate making when they are considering law schools, and given the economic cost-benefit analysis in which students should be engaged, law schools have an obligation to provide clearer and more accurate scholarship renewal information. This article proposes one specific format for the dissemination of scholarship information designed to assure that applicants have the information they need to make meaningful comparisons of competing scholarship offers. The article also calls upon the LSAC, the ABA, the AALS, the PLANC and the regional associations of pre-law advisors to work collectively to make sure that the LSAC, the ABA, and the AALS implement these recommendations and require more consistent and candid disclosure of scholarship information from law schools.

**Appendix A. Competitive Law Schools**

University of Alabama School of Law  
Albany Law School of Union University  
American University Washington College of Law  
Appalachian School of Law  
University of Arkansas at Little Rock, William H. Bowen School of Law  
Atlanta's John Marshall Law School  
Ave Maria School of Law  
Barry University Dwayne O. Andreas School of Law  
Baylor University School of Law  
Brigham Young University—J. Reuben Clark Law School  
Brooklyn Law School  
University at Buffalo Law School—The State University of New York (SUNY)  
University of California, Berkeley, School of Law  
University of California, Davis School of Law (King Hall)  
University of California, Hastings College of Law  
University of California at Los Angeles (UCLA) School of Law  
California Western School of Law  
Campbell University, Norman Adrian Wiggins School of Law  
Capital University Law School  
Benjamin N. Cardozo School of Law, Yeshiva University  
The Catholic University of America, Columbus School of Law  
Chapman University School of Law  
Charlotte School of Law  
Chicago-Kent College of Law, Illinois Institute of Technology  
City University of New York School of Law  
University of Colorado Law School  
Creighton University School of Law  
University of Dayton School of Law  
University of Denver Sturm College of Law  
DePaul University College of Law  
University of the District of Columbia—David A. Clarke School of Law  
Drake University Law School  
Duquesne University School of Law  
Earle Mack School of Law, Drexel University

Elon University School of Law  
University of Florida, Frederic G. Levin College of Law  
Florida International University College of Law  
George Washington University Law School  
Golden Gate University School of Law  
Gonzaga University School of Law  
Hamline University School of Law  
Hofstra University School of Law  
University of Houston Law Center  
Howard University School of Law  
University of Idaho College of Law  
Indiana University Maurer School of Law—Bloomington  
Indiana University School of Law—Indianapolis  
University of Iowa College of Law  
John Marshall Law School  
University of Kansas School of Law  
University of Kentucky College of Law  
Lewis & Clark Law School  
Loyola Law School, Loyola Marymount University  
Loyola University New Orleans College of Law  
University of Maine School of Law  
The University of Memphis—Cecil C. Humphreys School of Law  
University of Miami School of Law  
Michigan State University College of Law  
The University of Mississippi School of Law  
Mississippi College School of Law  
University of Missouri School of Law  
University of Missouri—Kansas City School of Law  
University of Nebraska College of Law  
University of Nevada, Las Vegas, William S. Boyd School of Law  
New England Law Boston  
University of New Hampshire School of Law  
University of New Mexico School of Law  
North Carolina Central University School of Law  
University of North Dakota School of Law  
Northern Illinois University College of Law  
Northern Kentucky University—Salmon P. Chase College of Law

Northwestern University School of Law  
Ohio Northern University—Claude W. Pettit College of Law  
Ohio State University Moritz College of Law  
University of Oklahoma College of Law  
Oklahoma City University School of Law  
Pace University School of Law  
Penn State University, The Dickinson School of Law  
Pepperdine University School of Law  
Phoenix School of Law  
University of Pittsburgh School of Law  
Quinnipiac University School of Law  
Regent University School of Law  
University of Richmond School of Law  
Roger Williams University School of Law  
Rutgers—The State University of New Jersey School of Law—Camden  
Rutgers University School of Law—Newark  
St. John's University School of Law  
Saint Louis University School of Law  
St. Thomas University School of Law (FL)  
University of San Diego School of Law  
University of San Francisco School of Law  
Santa Clara University School of Law  
Seattle University School of Law  
Seton Hall University School of Law  
SMU Dedman School of Law  
South Texas College of Law  
Southern Illinois University School of Law  
Southern University Law Center  
Southwestern Law School  
Stetson University College of Law  
Suffolk University Law School  
Syracuse University College of Law  
Temple University—James E. Beasley School of Law  
Texas Wesleyan University School of Law  
Thomas Jefferson School of Law  
University of Toledo College of Law  
Touro College—Jacob D. Fuchsberg Law Center

Tulane University Law School  
University of Tulsa College of Law  
Valparaiso University School of Law  
Vermont Law School  
Wake Forest University School of Law  
Washburn University School of Law  
Washington and Lee University School of Law  
Wayne State University Law School  
Western New England College School of Law  
Western State University—College of Law  
Whittier Law School  
Widener University School of Law  
Willamette University College of Law  
William Mitchell College of Law  
University of Wyoming College of Law

**Appendix B. Non-Competitive Law Schools—Merit-Based Awards  
Guaranteed for Three Years or Renewed Based on  
Academic Good Standing**

Boston University School of Law  
Case Western Reserve University School of Law  
University of Cincinnati College of Law  
University of Detroit Mercy School of Law  
Duke University School of Law  
Emory University School of Law  
Fordham University School of Law  
University of Georgia School of Law  
Georgia State University College of Law  
University of Louisville's Brandeis School of Law  
Loyola University Chicago School of Law  
Marquette University Law School  
University of Maryland School of Law  
Mercer University—Walter F. George School of Law  
University of Minnesota Law School  
New York University School of Law  
University of North Carolina School of Law  
Northeastern University School of Law  
Notre Dame Law School  
Nova Southeastern University—Shepard Broad Law Center  
University of Oregon School of Law  
University of Pennsylvania Law School  
University of St. Thomas School of Law—Minneapolis  
Samford University, Cumberland School of Law  
University of Southern California, Gould School of Law  
University of Tennessee College of Law  
Thomas M. Cooley Law School  
University of Utah S.J. Quinney College of Law  
Vanderbilt University Law School  
University of Virginia School of Law  
Washington University School of Law

**Appendix C. Law Schools with Only Need-Based Awards (Need) or with Insufficient Information to Classify Scholarship Program**

University of Akron School of Law  
University of Arizona James E. Rogers College of Law  
Arizona State University—Sandra Day O'Connor College of Law  
University of Arkansas School of Law (Fayetteville)  
University of Baltimore School of Law  
Boston College Law School  
Charleston School of Law  
University of Chicago Law School  
Cleveland State University—Cleveland-Marshall College of Law  
Columbia University School of Law  
University of Connecticut School of Law (Need)  
Cornell Law School (Need)  
Faulkner University, Thomas Goode Jones School of Law  
Florida A&M University College of Law  
Florida Coastal School of Law  
Florida State University College of Law  
George Mason University School of Law  
Georgetown University Law Center (Need)  
Harvard Law School (Need)  
University of Hawai'i at Manoa—William S. Richardson School of Law  
University of Illinois College of Law  
Inter American University School of Law  
Liberty University School of Law  
Louisiana State University, Paul M. Hebert Law Center  
University of Michigan Law School  
University of Montana School of Law  
New York Law School  
University of the Pacific, McGeorge School of Law  
University of Puerto Rico School of Law (Need)  
St. Mary's University School of Law  
University of South Carolina School of Law  
University of South Dakota School of Law



Stanford University Law School (Need)  
University of Texas School of Law  
Texas Southern University–Thurgood Marshall School of Law  
Texas Tech University School of Law  
Villanova University School of Law  
University of Washington School of Law  
West Virginia University College of Law  
William & Mary Law School  
University of Wisconsin Law School  
Yale Law School (Need)