

Tragedy of the Student Commons: Law Student Transfers and Legal Education

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I. Introduction

Courtesy of the American Bar Association (ABA), we have a lot of data on law students. We know the profile of each school's entering class in terms of ethnicity, gender, LSATs, and undergraduate GPAs. We know how many would-be students apply to each school and how many those schools accept. At the other end of the educational process, we have bar passage and employment statistics for each school's graduates. But we have relatively little data on a subset of law school students, those who begin their studies at one school and transfer to another. The ABA does provide the total number of transfers for each school, but we know nothing of their composition. Who are they? Which schools are they coming from? What are their academic indicators (law school GPA and LSAT)? What is their ethnic and gender composition?

This article is an attempt to fill in some of these blanks. While the ABA does not provide anything close to granular detail for law school transfers, we can identify from ABA data those schools that are net gainers and net losers of transfer students and then examine the characteristics of those schools. This tells us something about the schools that are heavily involved in the transfer process. It also allows us to make some educated guesses about the transfer students themselves. While we cannot know the individual characteristics of the water molecules that make up the river, we can see how it flows.

Collecting and analyzing some basic data on transfers also helps us to understand the nature of the transfer phenomenon. One type of student who transfers does so to be nearer family or because of a job relocation. Others may have an interest in a particular practice area and seek to transfer to a school that offers a noted program in that field. For example, a student might transfer

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from Michigan to UCLA because he or she wants to practice entertainment law. What these two types of transfers have in common is that they are blind to the overall reputation of the school to which the student is transferring. Other transfers are what one might call “trophy wife” transfers: The student’s goal is to increase his diploma’s status and his subsequent career opportunities by graduating from a school with a better reputation. Anecdotally, those of us in legal education are aware of both types of transfers. The reputational transfers, in particular, may be in part a by-product of some schools gaming to raise their *U.S. News & World Report* ranking. The extent to which transfers are driven by *U.S. News* rankings is much discussed, but typically only informally. It is the stuff of gossip at professional receptions. One aim of this research is to gain a clearer understanding of the degree to which *U.S. News* drives transfers.

Finally, there is the question of whether transfers are a good thing or a bad thing. This article will also take a stab at answering that question. Because they are consensual transactions, transfers probably benefit the individual students who transfer, assuming they have adequate knowledge of the costs and benefits, and they also presumably benefit the receiving schools, again assuming accurate knowledge on their part. They come at a cost, however, to other participants in legal education, in particular to the school that loses the transfer and to its students and alumni. After establishing a portrait of the flow of transfers in Part II, this article will attempt to draw some conclusions in Part III about whether the net gain of transfers outweighs its net cost. While this analysis is unlikely to convince students who transfer and schools that receive them to change their behavior, examining the costs and benefits at least allows us to have a discussion that rises above one based solely on parochial self-interest.

II. The Flow of Student Transfers: Basic Descriptive Statistics

The data for this analysis is drawn from the data contained in the *ABA-LSAC Official Guide to ABA-Approved Law Schools*.¹ I have used the *Official Guides* from 2008, 2009, 2010, and 2011.² The *Official Guides* are significantly time-lagged. The 2010 *Official Guide* is, for example, based upon data supplied in the fall of

1. See 2011 ABA-LSAC Official Guide to ABA-Approved Law Schools (American Bar Assoc. and Law School Admission Council 2010); 2010 ABA-LSAC Official Guide to ABA-Approved Law Schools (American Bar Assoc. and Law School Admission Council 2009); 2009 ABA-LSAC Official Guide to ABA-Approved Law Schools (American Bar Assoc. and Law School Admission Council 2008); 2008 ABA-LSAC Official Guide to ABA-Approved Law Schools (American Bar Assoc. and Law School Admission Council 2007) [hereinafter *Official Guides*].
2. The data underlying the 2008 Official Guide, in the form of spreadsheets, is publicly available at <http://www.abanet.org/legaled/statistics/stats.html>.

2008,³ some of which looks back to the preceding (2007-08) academic year.⁴ For clarity, it should be noted that the titles of these guides carry the year following their actual publication dates. The *Official Guide* published in 2010 is, for example, titled the *2011 Official Guide*.

A. How Many Transfers?

For the last four reporting years, between 2,265 and 2,400 students transferred into an ABA accredited law school. Using the *Official Guides* from 2008, 2009, 2010, and 2011, the totals are, respectively, 2,265, 2,324, 2,400, and 2,333.⁵

These raw numbers are more meaningful if compared to the population of law students in general. The size of the 2006 entering class of all law schools can be calculated from matriculants in the GPA and LSAT tables of the *2008 Official Guide*. Attrition on that class can be found in the *2009 Official Guide*. From these numbers, one can calculate the size of the 2L class nationally for the fall of 2007 by subtracting the total attrition from the prior year's matriculants, then adding back in 2007-08 transfers from the *2010 Official Guide* (since transfers persist in their enrollment, albeit at another school). One can then express the 2007-08 transfers as a percentage of the 2L class. The 2006 entering class consisted of 47,471 students. The attrition on that class in total was 4,794. If one adds back in the transfers (2,400), there were a total of 45,077 2L students in 2007. The 2,400 transfers then constitute 5.32 percent of the 2L class nationally. Similarly, the 2,333 transfers for the 2008-2009 year were 5.15 percent of the 2L class. In summary, transfer students are nationally about 5 percent of the 2L class⁶ (and also 5 percent of the 3L class if one assumes a normal rate of persistence in law school).

Whether this number, 5 percent, is significant depends upon the reader's view of significance. But to give perspective, this cohort of transfers is of comparable size to other elements of the law school student body with which we are customarily concerned. Averaging the numbers from the *Official Guides* for the last two years, African-Americans comprised 6.59 percent of the

3. See 2010 *Official Guide*, *supra* note 1, at 72 ("The two pages of numerical data about each school were compiled from questionnaires completed during the fall 2008 academic semester...").
4. See *id.* at 73 ("This section refers to the number of students who transferred in and transferred out of the law school in the 2007-2008 academic year.").
5. Derived from the 2008, 2009, 2010, and 2011 *Official Guides*, *supra* note 1. Throughout this analysis, I have excluded data from the Puerto Rican law schools (the Pontifical Catholic University of Puerto Rico, Inter American University of Puerto Rico, and University of Puerto Rico) even though they are included in the ABA counts. I chose to do so because those schools operate in a different market for legal education than do U.S. law schools, among which there is more interchangeability of law students. I have included schools that received provisional accreditation because their students form a part of the pool of students transferring out.
6. Derived from 2008, 2009, 2010, and 2011 *Official Guides*, *supra* note 1, using respectively the matriculant, attrition, and transfer portions of those sources.

population of law students. Asian-Americans accounted for 7.46 percent of the students. Hispanic, Puerto Rican, and Mexican-American students combined were 6.22 percent of all law students.⁷

Some schools take more transfer students than others. In schools taking more transfers, the effect of transfer students on the composition of the student body is correspondingly larger. Using the *Official Guides*, one finds that for the class that entered in 2006 and returned as 2Ls in 2007, a total of 26 schools had a 2L class consisting of 10 percent or more transfers. For the 2007 entering class, 18 schools had a 2L class consisting of at least 10 percent transfers. The following table shows the top 18 schools based on the percentage of transfers in the 2L class (using the entering classes of 2007 and 2006). The first column, "School ID," is a randomly generated number created to mask the individual identities of the schools. It is not my purpose here to name names.⁸

**Transfers as a Percentage of 2L Class
Top Schools**

School ID	Transfers into 2007 Entering Class	PCT of 2L Class	School ID	Transfers into 2006 Entering Class	PCT of 2L Class
18	45	19.48	18	61	24.60
119	46	18.11	171	29	21.80
121	47	17.54	121	52	21.22
196	79	17.52	3	30	20.41
176	31	17.42	92	59	20.27
162	45	14.61	98	30	14.63
127	41	14.34	111	43	14.38
22	41	13.99	196	62	13.93
92	37	13.45	35	93	13.78
81	46	12.99	119	37	13.70
8	17	12.32	23	20	13.70
35	81	12.27	162	39	12.96
73	19	11.45	164	21	12.73
44	48	11.40	150	15	12.61
178	24	11.27	22	32	11.72
66	36	11.25	141	66	11.56

7. Derived from 2010 and 2011 Official Guides, *supra* note 1, using the J.D. Enrollment and Ethnicity tables.

8. Derived from 2008, 2009, 2010, and 2011 Guides, *supra* note 1, using respectively the matriculant, attrition, and transfer portions of those sources. The methodology is the same as described in the text accompanying note 6, *supra* (matriculants for a given year minus attrition in that class plus transfers yielding the 2L class size).

**Transfers as a Percentage of 2L Class
Top Schools**

School ID	Transfers into 2007 Entering Class	PCT of 2L Class	School ID	Transfers into 2006 Entering Class	PCT of 2L Class
143	30	10.34	127	32	11.55
86	27	10.00	73	18	10.78

The schools that take the most transfers appear to be repeat players in the market. Of the top 18 transferee schools for the 2007 entering class listed above, 10 are also among the top 18 for the 2006 class. Of the remaining 8 schools in the 2007 top list, 6 are among the top 27 for the 2006 class.⁹

On the other hand, there are many schools which take very few transfers. While the table above shows the top schools, for the vast majority of schools—120 schools for the 2007 entering class and 119 schools for the 2006 entering class—transfers amounted to less than 5 percent of the 2L class.¹⁰

Another way of expressing a school's appetite for transfers is to compare the number of transfers it takes to number of its first-year matriculants. This is done by taking the total of a school's transfers received over the last four reporting years and the total over that same period of its 1L matriculants and expressing the two as a ratio. Schools on the high end take one transfer for every 4 or 5 matriculants.¹¹

The raw numbers of transfers are also useful in order to demonstrate that different schools have different appetites. Over the last four years, there have been a total of 9,322 transfers. The ten schools with the highest total transfer volume took almost a quarter (22.31 percent) of all transfer students. The top 20 most ravenous transfer-takers account for about one-third (36.12 percent) of all transfers. In fact, one need only go through the top 35 most transfer-friendly schools to account for over half of all transfers.¹² It thus appears that reliance upon transfer students is unevenly distributed among law schools.

B. Characteristics of Net Losers and Net Gainers

Schools are not required to report to the ABA any information about transfers other than their total number. As a result, we know little of the

9. *Id.*

10. Derived from 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1, using respectively the matriculant, attrition, and transfer portions of those sources.

11. Derived from 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1. The biggest consumer of transfers under this measure took 3.93 matriculants for every transfer. The next highest school took 4.94 matriculants for every transfer. The tenth heaviest consumer of transfers under this measure took 7.63 matriculants for every transfer.

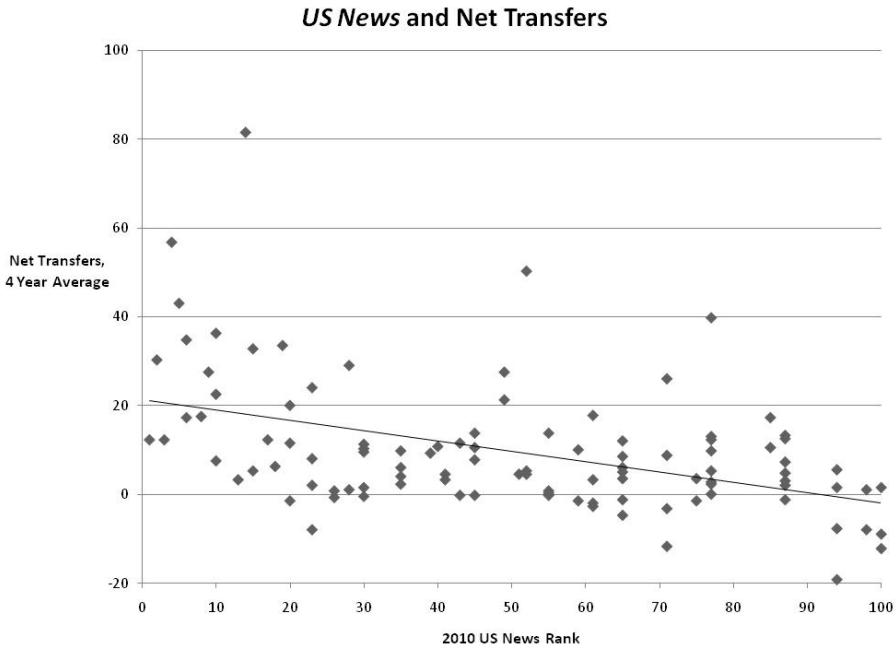
12. Derived from 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1.

characteristics of transfer students. But one can assess the characteristics of the schools which generate transfers out and receive transfers in. Grouping schools as net gainers and net losers allows us to see the directional flow of the transfer stream. I will frequently use the term “net transfers.” This refers to the difference between a school’s transfers in and transfers out. A positive net transfer number means that the school is getting more transfers than they are losing.

1. *U.S. News* Rankings and Transfers

The general flow of transfer students is from lower to higher ranked schools as measured by the *U.S. News & World Report* system. There is a positive correlation (.453) between the net transfers over four years of a school and its 2010 *U.S. News* ranking.¹³ For the uninitiated, a correlation of 1 is perfect. By way of comparison, the LSAT’s correlation to first-year law school GPA is about .33 or .34.¹⁴ So, a correlation of .453 between *U.S. News* rank and net transfers shows a relatively strong connection. The following chart shows the relationship between net transfers and *U.S. News* rank graphically. Each point on the chart is a law school in the top 100 *U.S. News* rankings. Each school’s ranking is reflected on the horizontal axis. The number of net transfers (averaged over a four-year period) is reflected upon the vertical axis.

13. Derived from the America’s Best Graduate Schools 2010, *U.S. News & World Report* (2009) [hereinafter *U.S. News*] and the 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1. For net transfers, I used an average of each school’s net transfers over the last four years. I chose to use the 2010 *U.S. News* rankings, rather than some combination of multiple years, because of the glacial rate of change in the rankings and because 2010 represents one of the middle years of the dataset. The correlation is actually negative because transfers decrease as the *U.S. News* number increases. For ease of understanding, I have described a positive correlation. The correlation is based only on the *U.S. News* top 100 schools; I have not attempted to correlate transfers and schools in the third and fourth tier.
14. See Lisa Anthony Stilwell, Susan P. Dalessandro & Lynda M. Reese, Predictive Validity of the LSAT: A National Summary of the 2005-2006 Correlation Studies 6 (Law School Admission Council, 2007) available at <http://www.lsac.org/LsacResources/Research/TR/TR-07-02.pdf>.



On the one hand, that transfers flow in the direction of higher *U.S. News* ranked schools is hardly surprising. One would assume that a student transferring would prefer to go to a higher ranked school and would be unlikely to transfer to a lower ranked school. On the other hand, this data puts to rest some of the anecdotal canards about transfers. I have heard it argued that transfers are good because they allow a student to relocate geographically when an important element of his or her life situation changes. But if this were the only reason for transfers, we would not expect to see much of a correlation to *U.S. News* rankings. The correlation is likely the result of transfers that are not for such reasons but are instead instances of students seeking to attain a more highly valued credential, a degree from a higher ranked school. It should also be noted that the definition of a “higher ranked” or “better” school is by default based on the *U.S. News* rankings. That is, the above data shows a correlation between transfers and law school quality solely as measured by the *U.S. News*. In the absence of other competitive ranking systems, transfer students appear to be relying upon the *U.S. News*.

2. Bar Passage

The flow of student transfers is toward schools with higher bar passage rates. I created a four-year average of each school’s pass rate in the jurisdiction in which it has the most bar examinees and also the four-year average pass rate

for that state. I then grouped the schools by whether they were net gainers or net losers of transfer students over the four-year period. I then averaged the group of net gainers' average pass rates and the group of net losers' average pass rates. Over this four-year period, the schools that were net gainers of transfers had an average pass rate of 88.21. The net losers had an average pass rate of 78.86. The average of the gaps between the schools' rates and the state rates in the predominant jurisdiction was 6.52 for the net gainers. It was -1.65 for the net losers.¹⁵

These results should come as no surprise. Students seeking to transfer (other than for geographic reasons) no doubt seek higher quality schools. One measure of quality perceived by prospective transfers is a school's bar passage rate. So, transfers are naturally drawn to schools with higher pass rates. Second, higher bar passage rates correlate to another factor that goes with a higher prestige school, the LSAT credentials of its entering class. A school's higher LSAT median will result in higher third-party perceptions, such as those voting in *U.S. News* surveys, which results in the school being more attractive to the transfer student.

3. LSAT Scores

Transfers flow from schools with lower to higher LSAT medians. For instance, schools with a four year average median LSAT between 145 and 149 have -774 net transfers in the average year for that time period, while schools with a four year average median LSAT between 170 and 174 have +781 net transfers.¹⁶

There is in fact an incredibly strong correlation of .632 between median LSAT and aggregated net transfers.¹⁷ This is illustrated by the following chart,¹⁸ which shows the number of net transfers increasing as LSAT medians increase. Each point represents a cluster of schools whose LSAT median (averaged over four years) falls at a given point on the horizontal axis. They are positioned on the vertical axis by the sum of those schools' average net transfers over a four-year period.¹⁹

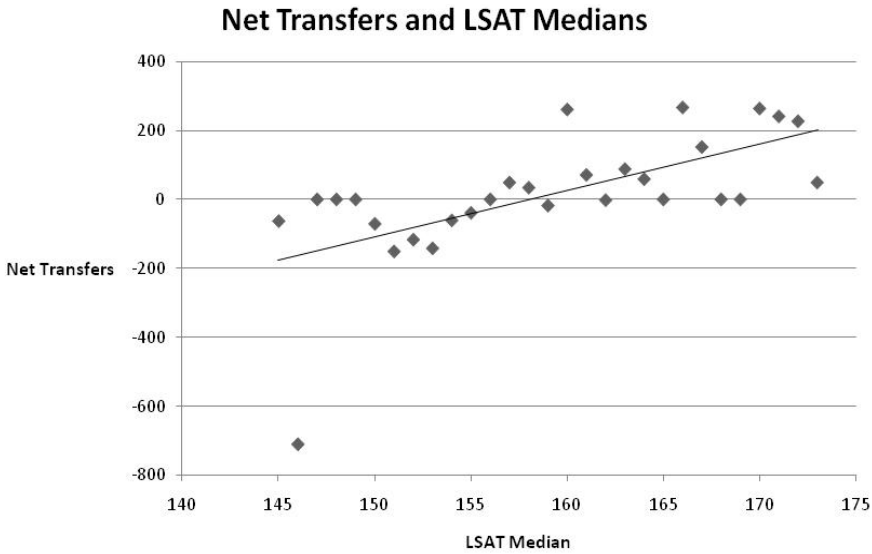
15. Derived from the 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1.

16. *Id.*

17. *Id.* I averaged the LSAT median for each school over the last four reporting years. All schools were then grouped by their four-year average LSAT median. I then averaged for each school its net transfers over the last four reporting years. For each LSAT median, I grouped together the schools in that median and added together those schools' average net transfer number. The correlation is based upon the aggregated average net transfers produced by schools at each LSAT median.

18. *Id.*

19. The 146 LSAT data point is an obvious outlier. But even excluding that data, the correlation between LSAT and transfers remains high (.659).



The majority of transfer students come from schools with lower LSAT medians. Over the last four years of *Official Guides*, the average of all schools' median LSATs is about a 157.²⁰ In each of the last four years, those schools with below average LSAT medians account for a little over two-thirds of the total transfers.²¹

4. Public versus Private Schools

Somewhat surprisingly, transfers also flow in the direction of public schools and away from private schools. Based on what has been seen this far, one would expect transfers to flow toward private schools, many of which are higher ranked than public schools. In the 2011 *U.S. News* rankings, for example, private schools fare slightly better than public schools, accounting for 18 of the 26 schools which have a ranking better than 25.²² Of all ABA-approved law schools, 117 are private and 79 are public;²³ private schools thus comprise about 60 percent of all ABA schools. But the 18 private schools in the *U.S. News* top 25 account for about 70 percent of that group. Notwithstanding the high rankings of many private schools, in the aggregate, the flow of transfers is overall strongly in the direction of public schools.²⁴ I calculated each school's

20. Derived from the 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1. To be precise, the average of the median LSATs for the 2008 to 2011 Official Guides are 157.48, 157.47, 157.43, and 157.69 respectively.

21. Derived from the 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1.

22. See *America's Best Graduate Schools 2011* (U.S. News & World Report 2010).

23. Derived from 2011 Official Guide, *supra* note 2. Again, to be clear, I have excluded the Puerto Rican law schools.

24. Derived from the 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1.

net transfers for the last four years (their total transfers in minus their total transfers out over that time) and then added together this gain or loss for all private schools and also for all public schools. Private schools lost 1,122 net transfers over this time. Public schools, as a group, gained 1,528 transfers.²⁵

If one examines the data more closely, it appears that the trend toward transfers to public schools is driven by the net losers of transfers, not the net gainers. That is, the reason private schools show poorly on net transfers is because they dominate the lower end of the net transfer statistics. Using once again the four-year total of net transfers, of the top 50 gainers of net transfers 28 (or 56 percent) are private schools and 22 (or 44 percent) are public, a division roughly proportionate to the composition of all ABA-approved law schools. But among the 50 schools that lost the most net transfers over this time, private schools are vastly overrepresented: Private schools account for 43 of the bottom 50 (or 86 percent) as opposed to only 7 (or 14 percent) for public schools.²⁶ Thus, one characteristic of transfers is a very pronounced flow away from certain private schools. The most obvious commonality among these net losers is their *U.S. News* rank. Of the 50 schools which are the largest net losers of transfers, 27 are tier four and 16 are tier three schools in the 2011 *U.S. News* rankings.²⁷ Thus, the largest producers of transfers are private schools with low *U.S. News* rankings.

5. Tuition

On the whole, transfers slightly increase the cost of legal education for those transferring. Moreover, the financial effect on schools which receive high volumes of transfers and schools which lose high volumes of transfers is large.

The first question is whether transfer students are moving to more or to less expensive schools. I have calculated the average full-time resident tuition for schools that are net gainers and for those that are net losers of transfers. The average full-time resident tuition for net gainers of transfers is \$26,389.82. For the net losers of transfers, the average is \$26,679.87.²⁸ This is probably due to a general flow of transfers from private to public schools, an aspect of the data which is discussed above.²⁹

25. *Id.*

26. *Id.*

27. Derived from America's Best Graduate Schools 2011, U.S. News & World Report (2010).

28. Derived from the 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1. The tuition is based upon a four-year average for each school. The schools are then grouped as net gainers or net losers of transfers and the average tuition for each group is then calculated. I have not attempted to calculate an actual student cost based on tuition minus scholarships. Tuition net of scholarships would be more meaningful if it were possible to assess the apportionment of scholarships to students who transferred out of a school and into a school. But because that information is not available, I have not included scholarships in the analysis.

29. See *supra* notes 22-27 and accompanying text.

But the analysis can be more granular. The *Official Guides* provide each school's tuition, transfers received, and transfers lost. From this one can calculate the gain or loss in tuition for each school. Taking the number of transfers out times that school's tuition yields the loss in revenue caused by transfers. Similarly, multiplying transfers received by the school's tuition generates that school's tuition gain. Totaling the gain and loss for all the schools reveals the aggregate effect on the cost of legal education.³⁰ The data shows that transfers actually increase the cost of legal education.

Official Guide Year	Tuition Loss (Transfers Out* FT Resident Tuition)	Tuition Gain (Transfers In* FT Resident Tuition)	Net Increase in Tuition	Cost per Transfer Student
2008	\$60,837,933	\$64,353,328	\$3,515,395	\$1,552.05
2009	\$63,532,172	\$69,221,020	\$5,688,848	\$2,447.87
2010	\$68,731,752	\$75,852,500	\$7,120,748	\$2,966.98
2011	\$70,808,610	\$77,221,475	\$6,412,865	\$2,748.76

From the students' standpoints, it does not appear that cost savings is a significant driver of transfers. The effect on transfer students in the aggregate is in the millions of dollars, but when that cost is spread across the several thousand annual transfer students, the cost per student is relatively modest. It is on the order of a few thousands of dollars as against a total tuition cost of tens of thousands (or even over a hundred thousand dollars at the most expensive schools). But schools that gain or lose high volumes of transfers and which have a high tuition level experience a large financial effect. The table below shows the top ten transfer revenue gainers and losers for the most recent years.³¹ As with the data above, it calculates revenue loss and gain by multiplying full-time resident tuition times transfers out and times transfers in and netting the gain or loss.

30. Derived from the 2008, 2009, 2010, and 2011 Official Guides, *supra* note 1.

31. Derived from the 2011 Official Guide, *supra* note 1.

Top Ten Revenue Gainers	Top Ten Revenue Losers
\$3,456,288.00	\$5,201,940.00
\$3,106,250.00	\$2,416,988.00
\$1,756,014.00	\$1,274,520.00
\$1,615,815.00	\$1,195,980.00
\$1,570,664.00	\$1,128,060.00
\$1,499,610.00	\$986,832.00
\$1,471,632.00	\$949,625.00
\$1,439,220.00	\$943,800.00
\$1,307,099.00	\$889,440.00
\$1,139,535.00	\$884,500.00

I will consider below some of the reasons that law schools seek transfer students. But for now it should be noted that revenue cannot be discounted as a motive for taking transfers. Taking a transfer, of course, is not all tuition profit. There are also the costs of providing education to transfer students, such as the faculty and student services resources that must be allocated to transfers. But the marginal cost of taking additional transfer students should be very small. From the standpoint of the transferee school, a transfer is all but pure financial gain.

III. Some Effects of Student Transfers

Whether law student transfers are a good or bad thing is obviously in part a matter of one's perspective. Presumably, each instance of a transfer is good for the individual student and for the receiving school. It is as to them a consensual transaction, so if it were not good for both parties, they would not have participated in the transfer. But the larger question is whether student transfers are good for legal education as a whole. The gain experienced by the student and the receiving school should be measured against the loss to the transferor school and to the students at that school who are left behind. Is the aggregate gain to the students and the receiving schools greater than the aggregate loss to the transferor schools? The ultimate answer to this question is difficult if not impossible to answer in a comprehensive quantitative manner, but the following offers some thoughts on the matter.

A. Effects on Transferor Schools

1. Transfers and Bar Passage

One would expect that the loss of students via transfer has a negative effect on a school's bar passage rate. Based on an assumption that the students who succeed in transferring have high law school GPAs, every transfer out is a loss of a probable bar passer to the transferor school.

The two best predictors of bar passage are LSAT score and law school grade point average (LGPA). The latter, LGPA, is much more strongly predictive than LSAT.³² Linda Wightman, in an LSAC study, reports a correlation of .41 between bar passage and adjusted LGPA and .30 between bar passage and LSAT score.³³ Sander reports a correlation coefficient of 0.76 between LGPA and bar passage and 0.28 between bar passage and LSAT.³⁴

The relevance of law student transfers to bar passage is based on a premise about the credential that is most important to transfer decisions by the receiving school. My premise is that the decision to admit a law student transfer is based largely on that student's first-year law school grades—that is his or her LGPA. An analysis of the credential that is most important to transferee schools must rest upon a premise because the credentials of transfer students are not available. I believe it safe to assume that a transfer acceptance is *not* chiefly based on the student's undergraduate GPA, LSAT, or other factors that were available at the point of initial matriculation. If the student had credentials of that type that made him or her attractive to the transferee law school, he or she would have been admitted to that school in the first instance as an entering student. What makes the student attractive later must be a new factor, and that can only be the student's LGPA.

In addition, one would think that schools accepting transfers would believe that the best predictor of a student's success at their school is his or her first-year grades at the transferor law school. I agree; the best predictor of law school success is prior law school success.³⁵ Even if this assumed correlation between first year grades and second and third year grades is untrue, the precise question is whether law schools who accept transfers believe it to be true. And I think it reasonable to assume that there is a widely held belief that a student who has achieved good grades in his first year will likely continue to do so in subsequent years. Therefore, we can safely assume that schools

32. See Linda F. Wightman, LSAC National Longitudinal Bar Passage Study 37–38 (Law School Admission Council, Inc. 1998), available at <http://www.lzac.org/LsacResources/Research/RR/Wightman-LSAC-98.pdf>; Richard H. Sander, A Systemic Analysis of Affirmative Action in American Law Schools, 57 *Stan. L. Rev.* 367, 443 (2004).

33. See Wightman, *supra* note 32, at 37.

34. See Sander, *supra* note 32, at 444.

35. I wish to make clear that I have not based this statement on any data. It is an assumption that second- and third-year grades correlate strongly to first-year grades, but only an assumption. The premise seems so obvious that I have not sought to verify it empirically.

accepting transfers are doing so largely on the basis of those students' LGPAs. From the premise that LGPA is the single most important criteria in accepting a transfer, an important conclusion flows. Because higher LGPA students have a greater chance of passing the bar, accepting high LGPA transfers increases a school's overall bar passage rate. Conversely, losing high LGPA students as transfers out reduces a school's overall bar passage rate.

As against the negative effect on bar passage on the transferor schools, one could argue that this loss is offset by the presumed gain in bar passage at the transferee school. But as the material in section II.B.2 shows, the schools that have a net gain in transfers already have a high bar passage rate. The net gainers have an average pass rate of 88 percent versus the 79 percent of the net losers. The net gainers are on average over 6 percent above the relevant state average while the net losers are below the state average pass rate by about 1.5 percent. An improvement of a few percentage points in bar passage, I would argue, is of little significance to a school which already has a pass rate of say, 90 percent. No one is going to give the dean a big raise for moving from a 90 percent to a 92 percent pass rate. But the loss of a few percentage points in pass rate is much more significant to a school that is already struggling with a pass rate below its state average. In short, as to bar pass rates, transfers have the effect of making the rich richer and the poor poorer; and in the context of bar pass rates, poverty is more significant than wealth.

2. Transfers and the Classroom

Again assuming that transfers leaving a school represent higher LGPA students, one would expect transferor schools to experience a decline in the educational quality of the classroom. Put simply, if the cream of the academic crop is removed, the classroom experience will suffer.

This degradation of the classroom experience cannot be quantified, but every law school professor would attest to the fact that the classroom experience is enhanced by having at least a few, and hopefully more than a few, high-performing students. Law students with good grades typically work hard. They are prepared for class. This level of preparation has a modeling effect for the rest of the class. It sets the bar for the level of work and attention to law study for the entire class. Moreover, classroom discussion is impoverished by removing those who have the most to contribute. Issues which might gurggle up naturally from a bright student lie dormant unless the professor raises them. Law students are often more engaged by issues raised by one of their peers than by their professor, who is put in the position of asking the class if they have thought of a particular question and then answering that question. That is not a formula for creating an engaging classroom.

As with bar passage, I suspect that the gain to the transferee school is not as great as the loss to the transferor school. One does not need an entire roomful of high level students to have a robust discussion. A handful will leaven the

remainder. Having one more bright and creative voice in the classroom at a top tier school adds little. But it subtracts greatly from the lower tier school that has lost this voice.

It is important to note that the losers here are not the schools as institutions but the students who have not transferred. It is their educational experience which suffers. The analogy is to law student diversity. The accepted belief in that context is that the educational experience for all students, including non-minorities, is enhanced by the presence of minority students.³⁶ The educational experience of those students left behind by the transfer students similarly suffers.

3. Loss of Future High-Performing Alumni

Whatever the precise basis of selection used by transferee schools to accept transfers, whether it is LGPA or some other measure, transferee schools are taking high quality students from transferor schools. This follows from the selection made by the transferee schools. There is *some* quality, most likely academic aptitude, about the transfer student that makes him or her attractive to the transferee school.

The effect upon the transferor school is not limited to interaction in the classroom and bar exam performance. The same dilution of the strength of the student body at the transferor school also has an effect upon the post-graduate careers of its alumni. Students transferring out will have a future beyond the classroom and the bar. If one systematically removes some of the highest performing students from a school, the projected future achievements of its graduates will be lower. The simple fact is that a given high caliber student shifts from being an alumnus of school *X* to an alumnus of school *Y*.

Law schools are stronger when their alumni are stronger. An alumnus who is an especially successful practitioner, an esteemed judge, or even an academic adds to the reputation of the school. To the extent that the projected income of higher performing students after graduation is greater than their lower-performing peers—and there is a correlation between law school academic success and at least the first job out of law schools³⁷—success in law school translates into a greater ability to become a significant donor to the school.

As against these losses to the transferor school, what is the transferee school gaining? It will gain another potentially high-achieving alumnus with all that is embedded within that status. But how much value is added to a higher ranked school by having one more graduate get a coveted job at a large law firm or one more graduate go on to clerk for an appellate court? These schools already have many such successful alumni. Having one of its graduates clerk

36. See *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (“[C]lassroom discussion is livelier, more spirited, and simply more enlightening and interesting when the students have the greatest possible variety of backgrounds.”) (internal quotation marks removed).

37. See Sander, *supra* note 32, at 460 (“[L]aw school grades are quite important, perhaps more important than law school prestige in determining who gets what jobs.”).

on a federal court of appeals is not a breakthrough for them. It is mundane. That school already has associates and partners placed in all the most desirable law firms. It already has alumni holding significant judicial positions. But for the transferee school, which is lower ranked, such achievements may be a breakthrough and add greatly to the school. But the breakthrough never happens because the student who would have made it is gone.³⁸

4. Replacement Costs and Lost Investments

The loss of transfers requires transferor schools to replace the tuition stream that the transferring student would have paid. This requires either taking a transfer from another, presumably downstream, school and passing on one's troubles to another or taking an extra student in the next first-year class.

The problem for the transferor school is not in finding a student to take the place of the transferring student. In all but the worst years, there are plenty of applicants to law schools. But if the school replaces the transfer with an additional 1L, the school is replacing a proven and successful student with one who may or may not be as successful, or may not succeed at all. At the point of matriculation, schools assess probable law school success on the basis of many factors, such as LSAT scores, undergraduate GPA, and personal achievement. All of these have some predictive value. But any predictor is subject to error based on unknown factors. Highly qualified students sometimes do not do as well in law school as one would expect. But a student who has already achieved at a high level in law school is no longer a student with mere potential. Success has been attained. As the saying goes, nothing succeeds like success.

Moreover, the students that a transferor school must take to replace its losses have a lower value in the market of law school applicants. One can assess the value of a good from the offers made to acquire it. Since the transfer students are likely going to a higher ranked school, their value in the market is generally greater than that of the students that the transferor school admits to replace them. If the replacement student had an equal or greater market value, he would have been offered admission by higher ranked schools and would likely not have matriculated at the transferor school.

Furthermore, the transfer student did not become attractive to the transferee school solely by dint of his own efforts. It wasn't as if the student locked

38. The above assumes that a student who remains at his lower ranked school rather than transferring to a higher ranked school will have the same opportunities for success—coveted clerkships for example—at either school. It is entirely possible that due to the diploma screening process in hiring, the same student with the same abilities would attain the coveted position only if he or she transferred. If this is true, the transferor school does not in fact lose a high performing alumnus because certain positions are simply unavailable to graduates from certain schools. On the other hand, even if precisely the same clerkship or coveted law firm job is unavailable to a graduate of the lower-ranked school, some high quality position should be available. The ultimate career trajectory of the student, one would hope, has at least something to do with his innate abilities and is not driven entirely by the pedigree of his diploma. Thus, in the end, talent should play out and the high performing student will become an alumnus who is high performing in whichever career he or she pursues.

himself in a broom closet for a year and suddenly emerged as a student that the transferee school was interested in. The transfer student was *educated* by the transferor school. It was this educational process which contributed to the transfer student's ability to move to another school. It is not a matter of ingratitude by the transfer student toward his first school. Instead, it is that the transferor school has invested significant educational resources in a student only to see him or her leave. Moreover, the investment predates the actual education. Evidently, the transferor school did an exceptional job of talent spotting. It admitted a student that could not initially get into the transferee school, seeing some qualities in that student that were overlooked. Or perhaps it simply took a risk on a student with some academic blemish, believing that he or she could be a diamond in the rough. In short, the transferor school has selected its seed and has planted, fertilized, and watered its crop. But when the crop begins to show the bud of fruit, another comes along and takes. Not all is taken, but sadly the most promising is. For this loss of investment in the student who transfers, there is no protection.

5. Collateral Effects

Faced with the prospect of losing something of value and having no enforceable right to prevent this loss, people and institutions will develop strategies to minimize their losses. One such strategy is to reallocate resources toward keeping the item at risk. Another is to create fences to keep others out.

In the context of law student transfers, a school may attempt to retain potential transfers in a number of ways. First, it may simply offer them money to not transfer, or, in the parlance of higher education, it will offer them scholarships. The concern, however, is that schools have a finite pool of scholarship money to distribute. If a school decides it needs to offer more money to potential transfers in order to retain them, there is less money available to distribute to others. Some money is no doubt set aside for merit scholarships for entering students. Some money may well be set aside to aid minority students. Perhaps some money is allocated on the basis of need. Any increase in scholarship aid that a school feels it must pay to retain potential transfers must necessarily come out of these funds, making less money available to students that the school otherwise believes should receive some assistance. In short, the problem of law student transfers may warp schools' scholarship structure.

I have said that the pool of funds for scholarships is finite. This is of course only partially true, as the resources may grow through gifts to the school. But the pool of gifts is itself a limited resource. An appeal to donors encouraging them to give in order to fund scholarships in general or scholarships targeting potential transfers reduces the opportunities to appeal for gifts for the many other purposes, such as clinics, facilities, and endowed chairs, for which law schools raise money.

In addition to raising more money through gifts, there is one other source of fresh money for scholarships: One can raise tuition. A school can generate more money for scholarships by an across the board increase in tuition. The increase in revenue is then used to fund scholarships. This of course is making some students, those who receive no additional scholarship aid, subsidize the tuition expenses of other students who are receiving the newly minted scholarships. It has the perhaps unfortunate consequence of the least qualified students paying higher tuition to subsidize the costs of their more qualified colleagues. In the context of transfers in particular, a school could feel pressure to raise tuition on all students in order to award additional monies to those students who are excelling in law school and who, ironically, have the best career prospects.

Another solution for a law school worried about losing transfer students is to create fences around their potential transfers. Anecdotally, I have heard of schools placing an unusually large fee on transcripts to raise the cost to the student of transferring and thereby discouraging it. I have heard of one school that has a differential transcript fee, charging a higher rate only to those students who request a transcript for purpose of applying to transfer. Another barrier to transfer is the curriculum. Transferee schools commonly require transfers to have completed the basic first-year courses. A school could rather arbitrarily take a course out of the first-year curriculum, say Torts, in order to make its students unqualified to transfer. But as with scholarships, this has the effect of changing the law school's program of education not for intrinsic pedagogical merit but instead solely to defeat transfers.

B. The Tragedy of the Student Commons

i. The Effect of Transfers on Law Schools

While the foregoing identifies some problems with law school transfers, I am not suggesting that the ABA or anyone else directly attempt to stop or limit them. Such an attempt would impinge greatly on students who have an interest in transferring. Moreover, an ABA standard limiting transfers could be an antitrust violation, inhibiting the free market interaction between schools and students. Even if it does not violate the law, a regulatory restriction on transfers has an anti-competitive effect and raises serious policy concerns. But, to explain the title of this article, I do wish to make the point that the current structure of law student transfers is ripe for inefficiency. In the absence of restraints on transfers, law schools are free to "poach" from other schools. A school which has educated a student through the first year has no way of protecting its investment in him. Law students are in this sense analogous to animals *ferae naturae*³⁹ and subject to the rule of capture. This can lead to inefficiencies.

39. See *Pierson v. Post*, 3 Cai. R. 175 (N.Y. 1805).

In the absence of protectable rights in a resource, that is when resources are held in common, there is a danger of over-exploitation of the resource. Consumers of the resource may not consider all the costs of their consumption. In particular, they may not consider the cost to other potential users created by their removal of an instance of the resource from the common pool. This is the tragedy of the student commons. Law schools that take transfers impose a greater cost on the transferor schools than they receive in benefit.

The law of property deals with resources previously unowned (and hence common to all potential users), such as wild animals and marine life, with a rule of first appropriation.⁴⁰ A wild animal is a part of nature and unowned. Whoever first takes possession of the resource removes it from the common domain and acquires property—a legally protectable interest. But if the animal escapes, it returns to nature and is again a free resource and subject to acquisition by another’s capture.⁴¹ One criticism of this regime is that it can lead to inefficient overharvesting of the resource because the cost to another of taking the resource is not considered by the actor. The loss to other potential takers from the common pool of fugitive resources is external to the actor’s decision-making. In the case of law student transfers, transferee schools may take more than is efficient because the cost to others (the transferor law school) is not taken into account.

Of course students are human beings, not wild animals, and are not subject to the rule of capture. It is not that they were acquired and then lost through escape. Rather, as autonomous human beings they were never subject to capture in the first place. So, a transferor school lacks any “property” interest in the student. But this criticism misses my point. I do not argue that law schools own their students. Instead, the point is that the market for law students operates similarly to one in captured and escaped animals. The policy problems are similar. The school of initial matriculation has made an investment, which deserves some type of protection in order to encourage it (recruiting and matriculating law students, it is assumed, is socially useful behavior and thus is to be encouraged).

The law does on occasion provide protection for investments in human capital. I am here thinking of tortious interference with contract or with prospective economic advantage.⁴² I am not arguing that transferee schools are liable under these theories to transferor schools. The point instead is that there are recognized policy reasons for protecting an investment made in a human resource. In particular, when one provides training and opportunities

40. See Abraham Bell & Gideon Parchomovsky, *Reconfiguring Property in Three Dimensions*, 75 U. Chi. L. Rev. 1015, 1056-59 (2008).

41. See Dale D. Goble, *Three Cases/Four Tales: Commons, Capture, the Public Trust, and Property in Land*, 35 *Envtl. L.* 807, 813 (2005).

42. See generally Restatement (Second) of Torts §§ 766, 766B (1979).

to another who may be lured away, there is a strong argument for some restraint on poaching. In the context of the music industry, David Partlett has argued that if

the rising young artist may walk away from the first contract on pain of paying contract damages only, the first record company or producer will be disadvantaged. Damages are unlikely to approach the costs of search and development of untried artists. The record company will bear the losses of failing artists it signs without gaining a great deal on the few who are successful but are “poached.” The incentives for search and development are undermined. This is particularly unfortunate since it is likely that the small record companies—the “mites”—possess the entrepreneurial zeal and eye for talent. The behemoths tend not to be risk takers or innovators; their comparative advantage is in distribution and publicity. They have a greater capacity to publicize nationwide or globally and possess comprehensive wholesaling and retailing networks to meet national and international demand so stimulated.⁴³

One could easily substitute law schools and law students into Partlett’s analysis. Transferee schools are systematically benefitting from the “research and development” invested in the matriculated students of transferor schools.

On the other hand, one could argue that law student transfers are simply a matter of market competition. If a student is such a valuable asset to a transferor school, one would expect that it would compete to retain him or her. And if the transferor school loses out in the market competition, that is simply the way of markets. Normally, one would expect that in a competitive transaction involving one seller (the student) and two buyers (the transferor and the transferee school), an efficient outcome would result from successive negotiations. If Acme Corporation has an employee about to be hired away by Beta Corporation, Acme is free to match any offer made by Beta. If the employee is truly worth more to Beta than she is to Acme, then Beta will win the bidding by agreeing to pay a higher wage than Acme would be willing to offer. If on the other hand the employee is a resource highly valuable to Acme but would only slightly improve Beta, Acme would offer to pay more and retain the employee. In either event, the employee takes the job in which she has her highest utility.

But this does not quite work out in the law school transfer setting. If a student is considering transfer, the transferee school will offer him a seat in its 2L class at a given tuition, less, perhaps, a scholarship amount. If the potential transfer is so valuable to the transferor school, why does it not just match the bid by offering a large enough scholarship so that the cost of attendance at its school is less than the cost of attendance at the potential transferee school? No doubt schools faced with potential transfer losses do in fact make such offers, but they may not be effective to retain the student. Law students are driven to select a school by factors in addition to cost. In particular, students will

43. See David F. Partlett, *From Victorian Opera to Rock and Rap: Inducement to Breach of Contract in the Music Industry*, 66 *Tul. L. Rev.* 771, 818 (1992).

willingly pay more net tuition (tuition minus scholarship money) to attend a higher ranked school. Their perception is that the more expensive school is worth the increase in cost because of the potential for higher post-graduate salaries and better job prospects. But this is a currency, reputation, in which a lower ranked transferor law school cannot trade. It cannot offer to increase its reputation. And so it cannot compete for the student, even if that student would be worth more to it than the student is to the transferee school.

But if one views the law schools as competitors for students, why not say that the transferor school has simply lost a negotiation for a student because it has fewer resources, taking reputation as simply another resource? The transferee school successfully relies upon the use of a reputational asset that it has acquired and this proves decisive in the negotiation. That the transferor school lacks this asset is simply too bad; it is no different than the school lacking scholarship dollars to match the offer of the transferee school. To carry forward the employment analogy, if employer Beta has a better physical location, Acme cannot compete on that ground (at least not without the exorbitant cost of relocating) and so loses.

Although this is a cogent point, there are two responses. First, the reputational resource that the transferee school uses is, it must be remembered, only reputational. Reputation is not the same thing as actual quality. An institution may have a better reputation than another competitor because it is in fact superior, but it may also have a reputation that inaccurately reflects reality. Perhaps it merely markets itself better. So, to compete on reputation, a potential transferor school may be induced to redirect resources toward reputation; and again that is not necessarily the same thing as redirecting resources toward actual improvement. Moreover, as I will discuss below, reputational expenditures by the transferee school are hidden by the current reporting and ranking structure. As a consequence, the transfer is free of actual reputational costs to the transferee school.

Second, although I generally tend toward free market approaches to resource allocation and am in no sense an ardent communalist, law schools are in significant ways different from ordinary commercial competitors. If Apple's latest gadget so far outsells that of its competitor that the latter is harmed or even goes out of business, no one, or at least no one with any commitment to free markets, complains. Apple has delivered a better product to the consumer, which should more than offset the harms cause by the decline in business of the competitor. But law schools are not merely commercial enterprises. Different law schools serve different markets for legal education. Graduates from highly ranked law schools have potential careers different from those of other schools. Lower ranked schools turn out lawyers who provide important but perhaps routine day-to-day legal services for consumers and individuals. Higher ranked schools provide future federal judges, private business executives, and executive branch public policy makers. The vast array of different types of lawyers society needs requires different types of schools. Society is better off if all are healthy.

In addition, the cost to the transferee school of taking a transfer is in some degree subsidized by the ABA's current reporting regime and the *U.S. News* ranking system. When a school offers to admit a student, it is spending a reputational resource. If a school puts out more offers, it is less selective, which is one measure of reputation. This method of law school assessment is easy to manipulate by enrolling students not accounted for in the rankings. The following example provides an illustration. A school has decided on a total student body size of 600. The school must take 200 entering students every year (I have assumed zero attrition to simplify the example). Let us further assume that the school has an applicant pool of 1,000 and a yield rate (the percentage of students who accept the offer of admission and matriculate) of 50 percent. To get the targeted first-year class (200) and overall student body (600), the school would have to accept 400 students, or 40 percent of its pool. But what if the school takes transfers into the second-year class and reduces the size of its first-year class? Its selectivity magically goes up! If it plans to take 30 transfers each year, the school needs only 180 1L students since its 2L and 3L classes will have 210 students after transfers are added in. It therefore needs to make only 360 1L offers, and will therefore report admitting only 36 percent of its pool. If it takes 45 net transfers each year, the school will report admitting only 34 percent of its pool.

Now, this is a little bit of Enron bookkeeping. The school is not in fact more selective if it admits 30 or 45 transfers. The school is trading lower second-year selectivity for higher first-year selectivity. While *U.S. News* gives data on 1L admissions, it provides no information on 2L admissions, i.e., transfers. The decreased selectivity that occurs in the second year is invisible. If a school ruthlessly pursued this strategy, it could well take students with not only mediocre (by the standards it applies to its first-year class) LSATs, but also mediocre law school GPAs as well (so long as they are high enough to not harm bar passage results). Transfer students under an aggressive use of this model could be taken chiefly to achieve a student body of sufficient size to support the necessary tuition revenue. Their chief virtue is as an income stream. Whether there are such schools is an unknown, since we have no available data on the LSATs or law school GPAs of transfer students.

The same manipulation can work for another element of law school rankings, entering LSAT scores. Accepting lower credentialed students has a negative impact on the school's reputation. Its LSAT medians go down. It may even fall in the *U.S. News* rankings. But these reputational costs to the transferee school are removed for transfer students because the reporting and ranking system is blind to the characteristics of these students. A top ten law school could, if it wanted, admit scores of transfers with a 148 LSAT and no one would be the wiser. It should be remembered that approximately 70 percent of transfers in the last three years were produced by law schools with

below average LSAT medians.⁴⁴ The flow of transfers is from lower LSAT to higher LSAT schools. There is thus a probable overstatement of the median LSAT in schools that take large numbers of transfers.

If schools that traffic heavily in transfers had to report the LSAT scores and law school GPAs of their transfers, the cost to the school of accepting transfers would increase by way of a charge against their reputation. There is anecdotal evidence that at least some law firms base their interview structure on a school's LSAT profile.⁴⁵ More broadly, employers appear to rely heavily on the quality of inputs in making hiring decisions, assuming that whatever school educates the student does a fair job but that what really matters is the student's entering credentials:

When law firms rely upon the *U.S. News* rankings to set their hiring practices, they are basically concluding that the quality of educational inputs (entering credentials) is functionally the same as educational outputs (law school graduates). This is remarkable, for they appear to believe that little that law schools do (or fail to do) during three years of instruction affects students' relative desirability in the job market. In short, employers appear to operate on a model of "good quality in, good quality out."⁴⁶

Under the current structure, there is no damage to a school's reputation by taking large numbers of lower credentialed transfers. Likewise, rankings based on selectivity in admissions fail to account for transfers. If LSAT credentials and selectivity were calculated to take into account transfers as well as entering first-year students, transfers would lose their reputationally free character.

2. The Effect of Transfers on Law Students

The foregoing states a case for being concerned about law student transfers based on the imbalance between the detriment to law schools losing transfers and the gain to those taking the transfers: From the standpoint of the law schools, the harm exceeds the good. But one other perspective obviously must be considered. Are transfers good for law students? Any gain to them must be considered in assessing transfers.

First, it should be noted that the question should be broader than the value of transfers to the transferring student. The effects of transfers are also visited upon other students who do not transfer. An earlier part of this article discussed the loss of quality in classroom discussion caused by removing

44. See *supra* note 21 and accompanying text.

45. See William D. Henderson, Transfers, U.S. News Gaming, and Brand Dilution, available at http://www.elsblog.org/the_empirical_legal_studi/2007/10/transfers-us-ne.html#more (October 18, 2007) ("During a recent conversation, hiring partners at one of the nation's largest and most prestigious firms (biglaw X) complained to me that they were running across a lot of transfer students at elite law school Y (where pre-screening is not permitted) with nondistinguished 1L records from Tier 2 or 3 schools.").

46. See William D. Henderson & Andrew P. Morriss, Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era, 81 *Ind. L.J.* 163, 199 (2006).

the top students as a result of transfer.⁴⁷ This has an obvious and negative effect on the educational experiences of the students left behind. Moreover, the loss of the academic characteristics of the good students who have left, their work ethic, and aspirations, also negatively affect the non-transferring students. After graduation the non-transferring students have a degree that is weaker than it would have been had the transfers not occurred. A degree from a school is valued in part by the achievements of the pool of alumni who graduated from that school. Higher career achievements for one alumnus thus benefit all alumni by increasing the value of the degree. Transfers, by taking off the top of the class, remove those future shared achievements that would have been generated by the students who transferred.

As to the transfer students themselves, one would expect to find that the transfer benefits them unless they misperceived its costs. 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.⁴⁸ 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. It may be that graduating without any particular distinction from a higher ranked school gives one greater career opportunities than graduating near the top of the class at a lower ranked school. That is an empirical question for which I lack data. No doubt the answer depends on the extent of the reputational gap between the two schools. The higher ranked school may be a top 10 school or it may be in the top 70. Presumably the raw value of the degree independent of a particular alumnus's achievements at the school varies significantly depending on how high the higher ranked school is ranked. In any event, it is likely that at least some transfer students overestimate the enhanced value of their degree by transferring.

47. See *supra* part III(A)(2).

48. See William D. Henderson, Are We Selling Results or Résumés?: The Underexplored Linkage Between Human Resource Strategies and Firm-Specific Capital (2008), available at <http://ssrn.com/abstract=1121238> (discussing the "Cravath" model of hiring, which places great emphasis on law school reputation). See also William D. Henderson, How the "Cravath System" Created the Bi-Modal Distribution, available at http://www.elsblog.org/the_empirical_legal_studi/2008/07/how-the-cravath.html (July 18, 2008) (pointing out the bimodal character of starting lawyer salaries and positing that it is part caused by hiring practices that emphasize law school reputation); Sander, *supra* note 32, at 458-59.

IV. Conclusion and Implications

Law school transfers impose a cost upon legal education. I have argued that the harm to the transferee school exceeds the gain to the transferor school. From the standpoint of legal education as a whole, this is a bad thing. It may be and probably is good for the student who transfers, but it also imposes costs on those who do not transfer.

To the extent there is a solution here, I believe it is more information. The current ABA reporting and *U.S. News* ranking systems create an incentive to harvest transfer students. If some portion of the pool of transfers occurs solely from an effort to enhance rankings, then the cost of transfers in that respect is not tied to any intrinsic improvement in legal education but only to a hollow effort to appear better. If more information were provided about transfers, these problems would be reduced. Specifically, if the ABA would gather and *U.S. News* would take into account data on the credentials and other characteristics of transfer students, consumers (law students as well as employers) could make more informed choices. The current structure is blind to the qualities of transfers. There is simply no data on that question. While data is made available by the ABA on the volume of transfers, that data plays no role in the *U.S. News* system. In the absence of such a change, transfers will continue to diminish the aggregate value of legal education as a whole.