

From the Executive Director: Meeting Our Professional Responsibility

by James G. Leipold

It is one of the profound ironies of our time that the Law School Transparency (LST) organization might end up being responsible for there being less transparency surrounding law school employment outcomes.

Because of the demands that organization has made to every law school to produce and release its complete NALP employment report for the Class of 2010, a number of schools are actively considering not reporting that data to NALP in the future. The reasoning for such a decision, driven by risk-averse general counsel in some cases, is that if the data is not submitted, the NALP report cannot be produced, and a report that does not exist cannot be made public, under threat of law or otherwise.

I find that line of thinking both startling and staggering. Are we really so ashamed of our law school employment outcomes that we would choose not to produce the data that describes those outcomes? If that is the case, we have far larger problems on our hands than the potential burden of having to respond to a potential Freedom of Information Act (FOIA) request.

Of course every law school should work with its general counsel in determining how to respond to the LST request, and I cannot give legal advice to law schools, but I think there is a strong Family Educational Rights and Privacy Act (FERPA) argument that would protect these reports from FOIA requests. Certainly the individual student record level data that law schools submit to NALP and the ABA is FERPA protected. I would argue that

in most cases the resulting NALP employment reports that are sent back to schools ought to be protected as well. Because the reports break down the data so granularly by race and ethnicity and gender and even by age, among many other variables, the cell size of many report line items becomes very small very quickly, and for many schools, individual student identity could be easily revealed or discovered through the use of the reports.

Regardless, the individual school NALP employment reports are no more discoverable now in 2012 than they have been for the nearly 40 years that law schools have been submitting their employment outcomes data to NALP and that NALP has been compiling the data and returning these reports to the law schools. It is true that the political climate has changed, and the tone of the conversation is considerably less civilized than it once was. The risk is that law schools would respond to the current hostile environment by choosing not to report their employment data to NALP. I would argue that such a decision would result in a failure of that law school to meet its professional responsibility.

The Honorable Jose A. Carbranes, a judge on the U.S. Court of Appeals for the Second Circuit, speaking as the keynote at last month's Association of American Law Schools Annual Meeting, said that law schools have an absolute responsibility to provide prospective students and their families with complete and reliable information about the debt burden students are likely to sustain completing their legal education and about their rea-

sonable employment prospects upon graduation. I would argue that obligation can only be met by submitting a school's employment outcomes data to both the ABA and to NALP.

As NALP President Marcy Cox points out in her *Bulletin* column this month, if schools do not provide the data to NALP, NALP cannot produce the comprehensive analysis of the entry-level employment market that it now does on an annual basis. It is that set of national and regional benchmarks — published annually in the comprehensive *Jobs & JDs* report but also published in part in many other places, much of it for free on the NALP website in order to provide free public access to the data — that provide the most important consumer information about the legal employment market for prospective law school students and the public in general.

The ABA has no intention of reporting out the data schools submit to the ABA in any form other than the individual school results that will appear online in the *ABA/LSAC Official Guide to Law Schools*. There is no intent on the part of the ABA to aggregate that data and report out on it annually, or to analyze the data and report out on changes in the employment market over time. In

fact, the ABA is relying on being able to point students toward the NALP national and regional salary data — data which, ironically, will no longer be available if schools do not submit that data to NALP.

Individual school data reported without the context of the national and regional data sets as a point of comparison will be far less meaningful as consumer information. It would be a particularly egregious failure of professional responsibility if collectively our industry fails to provide future law school prospects with collective data from our public law schools (those who, subject to FOIA requests in a way private schools are not, seem to be the ones whose general counsel have suggested not reporting employment data to NALP).

As legal career professionals individually and collectively one of our primary professional responsibilities, as Judge Cabranes has noted, is to provide prospective law students and their families with complete and reliable information about their reasonable employment prospects upon graduation. That responsibility can only be met by reporting individual student employment outcomes to both the ABA and NALP on an annual basis, regardless of the political climate.