

FAIR WARNING TO LAW SCHOOLS ...

The *Deadwood Report* is coming. Keep your web sites up to date and your faculty hard at work. Because this spring, the *Green Bag* will begin gathering information for our first substantial effort to help applicants for admission to (or employment by) law schools.

Here is the basic and uncontroversial problem: Aspiring law students and law professors should have more and better information about the relative quality of law schools, information that would help them decide which schools might be best for them. Unfortunately, the people in the best positions to provide that information have powerful reasons to avoid doing so.

The obvious sources of information – the American Association of Law Schools (AALS) and the American Bar Association (ABA) – appear to be committed to obfuscation. This is not surprising. The AALS is a dues-based entity. If it published law school rankings its membership would probably drop precipitously. There's no money in that, and certainly not much in the way of upside for the association's leaders, or for the deans of most member schools. The ABA would have the same sort of problem, albeit with consequences perhaps less severe. And so both organizations take the Lake Wobegone tack: Every law school is above average at some thing or by some measure, and so they are all above average. Good for a laugh on *The Prairie Home Companion* and even better for institutional/executive self-preservation. Not so good for consumers.

The void has been filled in part by the *U.S. News* rankings. We could go on and on about their defects and limitations, but we have done that before and plenty of other folks continue to carry that torch. In any event, the biases catered to and incentives perpetuated by those rankings are laughably obvious (as the ones fostered by the *Deadwood Report* surely will be). *U.S. News* could improve its product, but why bother? Doing so would be costly, and in the absence of a competitive threat there is no reason to make the investment.*

* Brian Leiter of the University of Texas School of Law (he is moving to the University of Chicago in autumn 2008) is engaged in an admirable ongoing effort to rank law schools by a variety of useful and interesting measures. See *Brian Leiter's*

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Nevertheless, the *U.S. News* rankings are better than the nothing or worse offered by the AALS and ABA. And besides, some of the most objectionable features of the rankings are not-entirely-inaccurate reflections of biases operating more generally in the legal profession. We have met the enemy and it is us.

Enter the *Deadwood Report*, in which the *Green Bag* will provide rough and admittedly partial but transparent measures of law school faculty quality. We will do this by crudely measuring whether faculty members do the work that the law schools say they do. Aspiring law students should find this information useful because the faculty of the law school to which they end up paying tuition will be (or are supposed to be) teaching them the law. Aspiring law professors should find this information doubly useful because the faculty of a law school to which they apply will be evaluating them, and the faculty of the law school where they end up working will be their colleagues and collaborators.

So, what work will the *Deadwood Report* be measuring? That's easy: teaching, scholarship, and (eventually) service.

Law schools generally hold themselves out as institutions led by faculties whose members are committed to teaching, scholarship, and service. This does not mean that law schools employ some faculty to teach, some other faculty to engage in scholarship, and some other faculty to engage in service. Rather, faculty members contribute in all three areas. They teach law students, they write scholarly works in the law, and they provide legal services to those in need and other worthy causes. Why? Because – according to the law schools and many leaders of the profession – the best teachers tend to be active scholars, and the best scholars tend to be active teachers, and all the best lawyers of every stripe engage in service for the public good. In a word, synergy. Evidence of the law schools' com-

Law School Rankings Website, www.leiterrankings.com. So far, however – and for a variety of reasons beyond the scope of this little notice – Leiter's rankings have not yet threatened to displace the *U.S. News* rankings or otherwise inspired the magazine to upgrade its product in a noticeable way. Still, he has probably done more than anyone other than the people at *U.S. News* to heighten public and professional appreciation of law school variability.

mitment to this view is reflected in the practically universal requirement of high achievement in all three areas for tenure. And so we should be able to say with some confidence that a good law school will have a faculty consisting of hard-working teacher-scholar-humanitarians.

The *Deadwood Report* will simply test the accuracy of that picture.[†] Our focus will be on the most dully objective of measures: whether the work is being done – whether each law school faculty member is teaching courses, publishing scholarly works, and performing pro bono service. We will not venture (at least not yet) to answer the trickier and more entertaining subjective questions: whether the teaching is effective, whether the scholarship is sound, whether the service is in the public interest, and the like. And we will start small. We expect to have data on the first two measures – teaching and scholarship – for some schools available by 2009. As human and other resources permit, we will expand the *Deadwood Report* to cover all law schools and all three essential measures of faculty performance. After that, who knows?

As to method, we will be starting small – or at least simple – with that as well. We have test-driven the basics of our process with a few schools' web sites, and it seems to work pretty well – although we have yet to visit a consistently accurate web site. Bearing in mind that we will inevitably have to work out kinks as we go along, we plan to proceed roughly as follows:

- Step 1: We will download a law school's web pages containing
- (a) its list of "faculty";
 - (b) its current and recent course schedules and catalogs; and
 - (c) its individual faculty profile pages containing vitas or lists of publications.

[†] Legal scholars themselves (other than Leiter) are mostly useless on the subject. They grouse about the absence of data on which to base intelligent commentary about deadwood, but that does not prevent them from commenting. Try searching "facult!" within ten or twenty words of "deadwood" in a database of law reviews for a nice example of the usual proportion of heat to light directed at a topic on which academics have warm opinions to share but little in the way of illuminating scholarship to back 'em up.

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Step 2: We will compile our data. We are interested in providing information about the current state of a school's faculty, so our focus will be on recent scholarship and recent teaching (and, in due course, recent service). A school whose faculty is heavy with people who used to be active might do well in a citation or reputation study, but it will do poorly in the *Deadwood Report*. After all, should today's students be enrolling in schools where the faculty used to be engaged, or in schools where the faculty is engaged now?

Step 3: We will analyze. We are still working on the finer points of our sorting and weighing of various kinds of teaching and scholarship, but we are committed to a few basic ideas, including the following: First, we are interested in well-rounded, active faculty members, and so we will give more weight to the moderately active teacher-writer than to the hyper-writer who neglects teaching or the hyper-teacher who neglects writing. A specialist in neglecting both won't be worth much. Second, we are interested in well-rounded, active faculties, and so we will seek to avoid perpetuating illusions of faculty strength that can result when one or two or a few members of a faculty publish and teach a great deal, while the rest do relatively little or nothing. Third, we are interested in honest, useful self-promotion by law schools, and so we will go out of our way to reward accuracy and penalize its absence.[‡]

Step 4: We will send each school's dean our school-specific preliminary results, and invite him or her to send us a reasonably quick response identifying any inaccuracies in our work or on the school's website.

[‡] A word about transparency and the raw data: The *Deadwood Report* will be transparent because we will disclose the sources of our data, and because we will disclose how we process that data to get our numbers and rankings. Anyone who wants to replicate our work and test our results will be able to do so by going to the same sources and utilizing the same processes. That does not mean that we will give away our raw data. Gathering data calls for substantial investment of material and human resources, both of which are in short supply at the *Green Bag*. If you want raw data, either collect it yourself or make us an offer that's too good to refuse.

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Step 5: We will correct our errors. Then we will re-visit each law school's website and incorporate any corrections we find there.

Step 6: We will publish our results.

Step 7: We will do it all over again for the next school year.

In the meantime, it is in our best interests, the best interests of eventual users of the *Deadwood Report*, and – we hope – the best interests of most law schools that we have complete and accurate information about faculty teaching, scholarship, and service. To that end we offer the following thoughts to law school deans:

An up-to-date web site is a wonderful thing. That is where we will gather all of our information. This seems reasonable to us because your web site is surely where most applicants and other inquisitive people go for information about your law school. If a school cannot be bothered to provide accurate information about the teaching, scholarship, and service of its own faculty on its own web site, it deserves to be haunted by any inaccuracies.

Puffery is double-edged. For example, if a click on the “Faculty” link on your web site takes us to an impressively long list of names, we will take you at your word. We will include all of the listed “Faculty” in your school's deadwood numbers. Many of those deadwood numbers will be ratios, and inflated denominators will not be helpful to you. If you have employees who are employed to teach but not to write, or to write but not to teach, or who did one or both for many years but now do little of either, or who perform important functions other than teaching and writing, or who are on leave, you might be well-served – and people visiting your web site would certainly be better-informed – if you moved those folks off your list of “Faculty” and onto lists labeled, perhaps, “Instructors” and “Researchers” and “Emeriti” and “Administrators,” and “On Leave.” Visiting faculty are a different matter. We will do our best to credit their teaching and scholarship to the school where they are working at the time of the study. A school that does a good job of attracting high-quality visitors deserves credit for doing so, while a school that is a net exporter of faculty talent to other institutions

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should not get credit for faculty who are not present to share their teaching or scholarship with their home-school students and colleagues. In the same vein, please do not list courses on your course schedule for a term in which those courses are not being taught, and do not list teachers who are not actually doing the teaching.

Not all teaching is the same. Teaching Property or Torts or Individual Tax to an auditorium filled with students is not the same as co-teaching a half-semester seminar on a highly specialized topic with three colleagues, a weekly guest speaker, and enrollment limited to twelve. Do not expect us to give them the same weight in our analysis.

Not all writing is scholarship and not all scholarship is the same. We will be taking account of scholarly books and articles in scholarly journals. Not novels. Nor editorials, even if they appear in the *New York Times* or the *Wall Street Journal* or the *New Republic* or the *National Review*. There is an exception: If we find on your web site official regulations indicating that for tenure purposes your law school equates works of fiction, letters to the editor, and the like with conventional works of scholarship, and if further inquiry reveals that your school has actually awarded tenure on the basis of such publications, then we will take account of them in our measurement of your faculty – with a flag and a note about your interesting tenure policy. We will do our best to fairly measure the extent of each individual’s scholarly labors. Editing a book is not the same as writing a book, just as editing a journal is not the same as writing all the articles in it; “forthcoming” publications do not count until they actually arrive; and so on and so on. You get the idea.

Inbreeding is bad policy. Works appearing in organs published by your school or your students, or on which a member of your faculty serves as an editor or in some similar capacity, do not count. The pressure to make publication decisions on grounds other than scholarly merit is too great, especially when relationships between students and teachers (and writers of reference letters) are in play. In that same spirit, we will not count anything published by the *Green Bag*, not because we do not publish scholarly works, but because we are wed to Caesar for this project.

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“*Deadwood*” is only nominally pejorative. The fact that some members of a faculty are deadwood does not mean that they are bad people or bad citizens of their law school. It just means that they are not performing as advertised. They might well be doing worthy things with their time, but applicants deserve to know that whatever such people might be working on, it is not the work with which the term “faculty” is commonly and reasonably associated.

We would be grateful for your comments. We are trying to do some good here, and we are eager to do as much of it as we can. If you have suggestions for improving the concept or execution of the *Deadwood Report*, please write to us at editors@greenbag.org.

We do not expect the *Deadwood Report* to replace the *U.S. News* rankings. We do hope that it will help law school applicants make better decisions about where to study or work. And we hope that we will so irritate the AALS and the ABA that they will swing into action. If they manage to destroy the *Deadwood Report* by producing better rankings of their own, we will have succeeded.

• *Dropping the U.S. News Fig Leaf*, 9 GREEN BAG 2D 8 (2005).

... AND AN INVITATION TO 1LS, 2LS & 3LS

We would like to illustrate the *Deadwood Report*. Perhaps with pictures of law school commencement ceremonies. After all, one way to get a sense of how seriously your professors take their teaching responsibilities and their students’ accomplishments is by monitoring their willingness to spend one weekend afternoon each year honoring their graduating students. To that end we encourage you to attend your school’s spring 2008 graduation and take a high-resolution, in-focus photograph of the faculty in attendance. (They will probably be on the stage or in the first few rows of the audience, and they will definitely be wearing robes.) Please send us the image, along with a caption identifying everyone sitting on stage or in the faculty section. If we use your photo – and perhaps even if we don’t – we will send you an entertaining *Green Bag* knickknack. Of course, we will not identify a photographer by name in the *Deadwood Report* unless we have permission from the photographer.