



EX ANTE

DEADWOOD REPORT UPDATE: PICK YOUR OWN WEIGHT

In the teaching component of the forthcoming *Deadwood Report* (see 11 GREEN BAG 2D 139), we plan to give substantial extra weight to required courses. That is, a professor will receive more credit for teaching a required course than she will for teaching a non-required (aka “elective”) course. The basic reason is that required courses are the most important ones. Why else would a law school force all of its students to take them? And if a course is important enough to be compulsory, then presumably it is important enough for a school to assign one or more of its better teachers to teach it. To do otherwise would be inefficient, unkind, and maybe even a breach of warranty – assuming that the school (a) promises applicants who enroll a good education and (b) treats production of well-educated graduates as one of its core functions. (A school wishing to challenge these assumptions will be able to do so in the survey described below, as well as in response to the school-specific draft of the *Deadwood Report* that we will send to the dean of each school we study.)

There are other justifications for this weighting too. Even at a school whose faculty consists entirely of deeply committed and highly effective teachers, the pedagogical paragons responsible for teaching required courses will inevitably bear extra burdens:

- the lack of student self-selection and the resulting difficulty of teaching at least some (and perhaps many) students who would prefer to be taking some other course;

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- the labor of grading the many exams or papers and writing the many reference letters associated with large-enrollment classes in general and first-year classes in particular;
- the inconvenience of preparation for a general core course that is unlikely to mesh neatly with publication-related pursuits;

And so on. And so we weight.

Where does this leave elective courses? In our efforts to measure roughly just how much law professors are contributing to their schools' core functions, should we treat all elective courses the same way? Or are there some that merit intermediate weighting (less than required courses but more than run-of-the-mill elective courses)? Are some electives of greater importance than most to the broad educational and narrower pre-professional and social missions of the law school? Do some impose heavier burdens on instructors? For example, should Evidence or Individual Tax be given the same weight as The Law of the Horse or Directed Readings in Legal History? More weight? Less?

There is, it seems to us, one simple answer to all of these questions: Each law school should have some opportunity to take its own stand. And so we are going to invite them to do so.

Here is a rough draft of a survey we plan to send to the deans at the 25 "Best Law Schools" according to *U.S. News & World Report* – Yale, Harvard, Stanford, Columbia, NYU, Boalt, Chicago, Penn, Northwestern, Michigan, UVA, Cornell, Duke, Georgetown, Vanderbilt, UCLA, Texas, USC, Wash U (St. Louis), George Washington, Boston U, Emory, Minnesota, Notre Dame, and Washington & Lee. Why those 25? Because the *Green Bag's* puny resources preclude studying more than a few schools in our first year (we will get to the rest eventually), and starting with the cream of the crop will let the rest of the schools know where the high and mighty stand. Besides, schools with big reputations and big budgets will recover relatively easily from whatever (probably inconsequential) harms might result if the *Deadwood Report* turns out to be bad medicine.

Please tell us what you think of our survey. Send your critiques and suggestions to us at editors@greenbag.org.

GREEN BAG COURSE WEIGHTING SURVEY (rough draft)

For the *Green Bag's Deadwood Report* we plan to give substantial extra weight to required courses. That is, a professor will receive more credit for teaching a required course than she will for teaching a non-required (aka “elective”) course. See *Deadwood Report Update*, 11 GREEN BAG 2D 275 (2008). We also plan to give some smaller but not-insignificant amount of extra weight to a few courses that are not required but are worthy of extra weight at your school – because they are especially important, or difficult to teach, or recognized as otherwise especially worthy within your school. Let us be clear: We are not asking what you think law schools in general do (or ought to) emphasize in the elective curriculum. We are asking which electives really are worthy of special recognition at your school. Put another way, if one of your own students asked you which elective courses she ought to take in order to get the most out of your school, what are the 10 courses that would first come to mind?

<u>Course title</u>	<u>Course number</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

We also welcome your thoughts on the wisdom of weighting courses as we propose, and on the *Deadwood Report* in general. When you have completed this form – supplemented by any comments you are willing to share with us – please mail it to The Green Bag, 6600 Barnaby Street NW, Washington, DC 20015, or email it to editors@greenbag.org. Thank you.

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In conversations with interested readers, we have heard suggestions that deans might not be the best people from whom to gather this information. After all, a clever person who is practiced at tailoring responses to maximize apparent institutional performance in other contexts might apply that skill to a *Deadwood Report* survey. Rumor has it that some deans engage in or subcontract this sort of behavior during accreditation exercises conducted by the ABA and AALS, and in response to surveys conducted by *U.S. News*. Maybe, maybe not, but occasional scandals reinforce that perception.* The sensible point our interlocutors are gently making is that anyone who is willing and able to manipulate those high-powered entities will have no trouble pulling the *Green Bag's* strings.

Nevertheless, we think there are reasons for optimism about a *Deadwood Report* survey: deans are generally honest and the incentives created by the transparency of our reporting are better.

First, the honesty of deans. We suspect that if in fact some deans and their minions do play data-manipulation games, it is not because they want to, but, rather, because they feel they have to. In other words, any gamesmanship that does occur is not a result of some general decanal pathology, but is, instead, a desperate response to forces brought to bear by the ABA, the AALS, and *U.S. News*. The fate of a law school depends in substantial part on its relations with its accrediting authority (the ABA) and its trade association (the AALS), and on its status in the market for applicants (in which *U.S. News* is the dominant force). Small wonder that a dean does her level best to feed information to them that will optimize their perceptions and portrayals of her school.

Second, much of that information is gathered, processed, and stored in secret compartments controlled by the ABA, the AALS, or

* For example, a few years ago the University of Illinois pumped up its “expenditures per student” numbers by reporting to the ABA and *U.S. News* that it was spending \$8.78 million for Westlaw and Lexis when in fact it was spending only about \$100,000. Illinois claimed the inflated number reflected the “fair market value” and “genuine value to students” of Westlaw and Lexis more accurately than did the school’s much smaller outlay of mere cash. Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES, July 31, 2005, § 4A, at 18.

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U.S. News. Those entities value secrecy, and for good reasons. The first two know that secrecy serves bureaucratic power; the third knows secrecy can be profitable. Their carefully sculpted releases of thoroughly masticated information (generally without sharing access to their sources or data) reflect those values. There are solid arguments that secrecy can inspire usefully honest responses, but those arguments depend on an assumption untenable in this context: that forthright responses are in the best interests of respondents.

A dean dealing with the ABA, the AALS, or *U.S. News* confronts a combination of high stakes, high secrecy, and an intensely competitive market. The result is an almost irresistible invitation – perhaps even a game-theoretical command – to provide information with an embarrassingly self-serving slant. (“What,” Dean A asks herself, “might Deans B, C, and D be telling the ABA or *U.S. News*, and can I afford to be any less aggressive than they might be, given that the well-being of my law school depends so heavily on our reported performance relative to those other schools?”) Why else would Illinois engage in such technically-not-quite-impossibly inaccurate but patently dishonest reporting of its Westlaw/Lexis expenditures, and then stop the practice as soon as it was publicized in the *Times*?

This unhealthy dynamic is why we have less to fear from the hypothetical sneaky dean.

First, with the *Deadwood Report* the stakes are not so high, and so the pressure is off. The *Green Bag* is a small law journal with a paid circulation of less than 2,000 – nothing like *U.S. News* with its millions of subscribers. Moreover, we are merely trying to add one more perspective, and a fairly specialized one, to a world heavily dominated by the views of the ABA, the AALS, and *U.S. News*. Second, the *Green Bag* does not care about bureaucratic power or lucre-maximization, and so it is free to freely share its sources or data with the wide world. A warm sun shining on an exercise in institutional pandering or external score-maximization will not reveal the offending dean or her school in a positive light. Thus will the *Deadwood Report* be touched by the better angels of law deans’ natures.

On the other hand, transparency is the bane of successful players in the games described above, and so some deans might ignore our

survey. We will cross that bridge if we come to it, but there are surely others – faculty, alumni, students – willing to give us information on which to base school-specific elective-course weighting. Yet other groups – law firms, for example – might be happy to tell us how schools *ought* to deploy their best teachers, and we could instead weight the courses those firms value. But we like to think that most deans will agree that it would be best for the people we seek to serve – applicants trying to learn as much as they can about law schools – if deans shared with us some of their special knowledge of what makes their schools special.

• *U.S. News & World Report MediaKit2008*, mediakit.usnews.com/audience/circulation.php; Jeffrey Stake, *The Ranking Game*, monoborg.law.indiana.edu/LawRank/index.html.

CALL FOR PAPERS & NOMINATIONS

We are seeking submissions of two sorts for our 2010 *Almanac & Reader*, which will have a baseball-and-the-law theme.

First, we want scholarly essays on topics related to baseball and the law. We hope to select 12 essays, each between 1500 and 5000 words long. Topics in which we are particularly (but not exclusively) interested are: (a) baseball and ... civil rights law; criminal law; defamation law; intellectual property law; international law; labor law; media law; property law; tax law; tort law; transportation law; (b) baseball players who were or became lawyers; and (c) roles played by lawyers in baseball.

Second, we want nominations for a ballot we are preparing to help us identify the best legal writing about baseball. This sort of writing might come from any number of sources, including but not limited to: fiction; journalism; litigation (briefs, judicial and arbitration decisions, etc.); poetry, music, and song; and scholarly works.

In due course – meaning sometime during the 2009 season – you will have an opportunity to vote for your favorites from the ballot we will prepare from your nominations. Balloting will take place online. We will publish the results – perhaps including a few samples from top vote-getters – in the 2010 *Almanac & Reader*.

Please send your proposals for papers and your nominations for the ballot to editors@greenbag.org.