

Winter 1-1-2007

## **Take Back the Night: Why an Association of Regional Law Schools will Return Core Values to Legal Education and Provide an Alternative to Tiered Rankings**

Jon M. Garon

Follow this and additional works at: [https://nsuworks.nova.edu/law\\_facarticles](https://nsuworks.nova.edu/law_facarticles)

---

### **Recommended Citation**

Jon M. Garon, Take Back the Night: Why an Association of Regional Law Schools will Return Core Values to Legal Education and Provide an Alternative to Tiered Rankings, 38 U. TOL. L. REV. 517 (2017).

This Article is brought to you for free and open access by the Shepard Broad College of Law at NSUWorks. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of NSUWorks. For more information, please contact [nsuworks@nova.edu](mailto:nsuworks@nova.edu).

# THE UNIVERSITY OF TOLEDO LAW REVIEW

VOLUME 38

NUMBER 2

WINTER 2007

## TABLE OF CONTENTS

### LEADERSHIP IN LEGAL EDUCATION SYMPOSIUM VII

#### ESSAYS BY AMERICAN LAW DEANS

Legal Education and the Tyrannical “Paradox of Choice: Why More Is Less” <i>Hannah R. Arterian</i> .....	495
The Law School Special Event: Lessons Learned in Our Twentieth Year <i>Jeffrey A. Brauch</i> .....	507
Change Is Good <i>Thomas C. Galligan, Jr.</i> .....	513
Take Back the Night: Why an Association of Regional Law Schools Will Return Core Values to Legal Education and Provide an Alternative to Tiered Rankings <i>Jon M. Garon</i> .....	517
Reflections on Leadership <i>Robert H. Jerry, II</i> .....	539
“Lawyer as Problem Solver:” Curricular Innovation at Dayton <i>Lisa A. Kloppenberg</i> .....	547
Size Matters <i>Paul A. LeBel</i> .....	557
The Perils of Glasnost <i>David A. Logan</i> .....	565
Reflecting on the Dream of the Marathon Man: Black Dean Longevity and Its Impact on Opportunity and Diversity <i>LeRoy Pernell</i> .....	571
Not Quite “Them,” Not Quite “Us”: Why It’s Difficult for Former Deans to Go Home Again <i>Nancy B. Rapoport</i> .....	581

**ESSAYS BY AUSTRALIAN LAW DEANS**

Confidentiality, Shadow Boxing and Proper Processes—The FOI Challenge in Recruitment and Promotion Processes in Australian Universities <i>Rosalind F. Croucher</i> .....	599
Deaning Down-Under <i>Arie Freiberg</i> .....	617
The Mysteries of Problem-Based Learning: Combining Enthusiasm and Excellence <i>Gabriël A. Moens</i> .....	623
Building the Dream: Getting New Structures for Old Faculties <i>Leon Trakman</i> .....	633

**BEYOND THE DEAN'S OFFICE—PERSPECTIVES ON LEGAL EDUCATION AND ADMINISTRATION**

Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique <i>Daniel L. Barnett</i> .....	651
Life as a Law School Chief Operating Officer: How Many Hats Do You Wear? <i>George W. Prigge</i> .....	705

**COMMENTS**

Sanctioning Lawlessness: The Need to Apply Whistleblower and Wrongful Discharge Protections to Members of Limited Liability Companies <i>Stephanie Buck</i> .....	711
When Law Enforcement and Medicine Overlap: The Community Caretaker Exception and the Right to Refuse Medical Treatment <i>Paul C Redrup</i> .....	741
Right-to-Refuse Warnings: A Minority's Crusade for Justice <i>Kate Schuyler</i> .....	769

# TAKE BACK THE NIGHT: WHY AN ASSOCIATION OF REGIONAL LAW SCHOOLS WILL RETURN CORE VALUES TO LEGAL EDUCATION AND PROVIDE AN ALTERNATIVE TO TIERED RANKINGS

Jon M. Garon\*

AMERICAN legal education produces tens of thousands<sup>1</sup> of well-trained attorneys who provide competent legal service to the public. Despite our success, the system of legal education is on a path to ruin because of the confluence of American Bar Association (“ABA”) accreditation, *U.S. News and World Report* (“*U.S. News*”) influence, and Association of American Law Schools (“AALS”) hegemony. The system of legal education is fundamentally broken not because of the legal education produced, but because of the social and economic cost to the students and the public. The students have too few price choices and far too much debt while the public has legal services that are too expensive to provide meaningful representation for a significant portion of the population. Moreover, as preferred pedagogical and institutional choices have evolved into baseline accreditation requirements, the ability to reach a broadly diverse group of law students has been stymied. The public is being priced out of legal services,<sup>2</sup> and the racial disparities threaten the credibility and stability of our legal system.<sup>3</sup>

---

\* Dean and Professor of Law, Hamline University School of Law; J.D. Columbia 1988. I would like to thank the many deans and faculty members who have commented on the proposal. The proposal reflects only my personal recommendation, and should not be viewed as an endorsement by Hamline University or Hamline University School of Law.

1. The graduate classes of 2004 held 40,018 students. NAT’L ASS’N OF LAW PLACEMENT, CLASS OF 2004 NATIONAL SUMMARY REPORT (2005) (on file with author).

2. Rhonda McMillion, *A Lighter Load: ABA Urges Congress to Make It Easier for Public Servants To Pay Law School Debt*, A.B.A. J., Aug. 2005, at 64. See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA, THE CURRENT UNMET CIVIL NEEDS OF LOW-INCOME AMERICANS (2005) [hereinafter LSC STUDY], available at [http://www.lsc.gov/press/documents//LSCJusticeGap\\_FINAL\\_1001.pdf](http://www.lsc.gov/press/documents//LSCJusticeGap_FINAL_1001.pdf).

3. Elizabeth Rindskopf Parker & Sarah Redfield, *Law Schools Cannot be Effective in Isolation*, 2005 BYU EDUC. & L.J. 1, 2-4 (2005) (footnotes omitted).

The legal profession and the law schools which support it are in crisis: some 90.3% of the bar is white and from this group come virtually all of our nation’s judges, over half of our U.S. Senators, nearly half of our governors, a third of our representatives to Congress, and about one fifth of our state legislators. Additionally, three of our last seven presidents held law degrees. Although only a small percent of the population, lawyers constitute a large percent of our leadership. Clearly then, the continued failure of the legal academy and

Fortunately, legal education can look back to an earlier period of accreditation to create alternatives in the legal education marketplace. Since accreditation is necessarily a normative process, the task of reorganizing the standards and ideals of legal education remains in the control of schools willing to embrace this change. To accomplish this necessary change, I suggest the creation of a National Association of Regional Law Schools (the "Regional Association"), which can build consensus around a set of appropriate educational goals that will address the growing economic barriers to justice. If done well, these goals can be promoted as an alternative standard by which our consumers—prospective students, their employers, and their clients—will choose to judge our schools.

This article arose out of a workshop conversation held at the 35th Annual ABA Deans' Workshop on February 8-10, 2006. A number of participants identified the potential that an association focusing on the priorities of regional law schools might bring to legal education and the profession. I first suggested a Regional Association in that meeting, and a few of us nearly formed it on the spot. But conversations among my own faculty made me realize that the case must be clear or the first signatory to this declaration of independence may well be shot for treason.<sup>4</sup> I hope this article explains why legal education has become rather undifferentiated, sets out the case for a Regional Association, and identifies the criteria by which its schools should be judged.

The call for a Regional Association is not an attack on elite schools. I am a graduate of such a program, and I believe it has an important place in legal education. Instead, we need to recognize that there must once again be validation for a multiplicity of approaches to competent education, and the ABA Section of Legal Education and Admission to the Bar must embrace this diversity if it wishes to remain the sole national accreditor of legal education.

---

profession to reflect the diversity of the nation's population is a crisis for our future leadership.

....

This disparity between the legal profession and the general population is increasing. In the next 50 years the general population is projected to be about 50% people of color but enrollment in American law schools is less than 20% students of color. These trends suggest that the proportion of minorities in the legal profession is not likely to attain parity with that in the general population in the foreseeable future.

*Id.* at 2-4.

4. See, e.g., Nancy Rapoport, *Symposium: The Next Generation of Law School Rankings: Other Voices in the Rankings Debate: Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools*, 81 IND. L.J. 359 (2006). As Dean Rapoport reports, common faculty comments include: "We want to be one of the schools that are in the top 50. How can we be among the elite if we don't look like—and act like—the other elite schools? ... We want to be recognized for how good we are. We just don't want to have to sell ourselves publicly in order to do it." *Id.* at 359.

A. *The Lack of Differentiation: Cartel v. Social Monopoly*

Broadly speaking, every law school seems to look more or less the same. Critics suggest this is far more than a coincidence. Legal education has been accused of operating as a monopoly to protect faculty salaries, and in an earlier era, to limit access to the profession.<sup>5</sup> It has been described as a cartel, a monopoly, and as a union for law professors.<sup>6</sup> The ABA has been subjected to Justice Department control due to anticompetitive practices.<sup>7</sup> These assessments are correct but incomplete. They suggest an inappropriate attempt to control the marketplace for personal gain or influence. The cartel accusations are inconsistent with the ongoing debate within legal education and contrary to my own observation and experience.<sup>8</sup>

Nonetheless, the structure of the profession leads to collusive conduct, which has become anticompetitive in unintended ways. This conduct is the result of the manner in which the competing interests for the practice of law and legal education gain influence on the marketplace.

Although the judiciary has the primary obligation to protect the public and govern those represented by officers of the court, the judiciary plays only a minor role in the educational end of the pipeline. Similarly, at the urging of the ABA, the legislative branches of government have generally delegated direct supervision despite their interests in access to justice and funding of legal services, and their supervisory role in undergraduate and professional education more generally.<sup>9</sup> The ABA accreditation process necessarily relies upon the

---

5. See Talbot D'Alemberte, *Law School in the Nineties*, A.B.A. J., Sept. 1990, at 52 ("But it's also possible to conclude that we run legal education in a way that is least burdensome to professors, and most advantageous to the university systems, because we allow extremely large classes with a very small number of professors, and we do not require much burden of testing or exchange between students and faculty.").

6. George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2096 (1998).

[O]ur economic analysis shows for the first time that, in substance, the accreditation system is a cartel of law professors. Using a different label for the same economic reality, the ABA's accreditation system has become, in effect, a nationwide union for law faculty. Law faculty have gained control of all levels of the system. The system is, in effect, a cooperative organization of representatives of law faculty. Exercising their authority in the system, law faculty determine the standards for accreditation. Not surprisingly, the accreditation standards have substantially increased salaries and benefits for law faculty.

*Id.*

7. See, e.g., *United States v. Am. Bar Ass'n*, 934 F. Supp. 435 (D.D.C. 1996).

8. I first came to understand ABA accreditation as Associate Dean for Academic Affairs at a California-accredited, for-profit law school working to earn provisional ABA approval. In that experience, as well as my experience serving as a faculty member and dean at other ABA-approved schools, I have seen no evidence of motives that were intentionally anticompetitive, self-motivated or ill-intended.

9. *But see* CAL. BUS. & PROF. CODE § 6060 (Deering 2006) (allowing state accredited schools and study in lawyers' chambers as well as unaccredited schools, provided that students take a first year law school examination). Other states have begun to explore similar models.

expertise of the deans and faculty of ABA-approved law schools. Both legislatures and the judiciary could choose to involve themselves more actively in legal education; however, each institution is influenced by financial constraints and political demands that may make academic self-regulation more appropriate.

Despite the Justice Department's efforts to engage more non-academics in the accreditation process, the role of judges, practitioners, and non-lawyers involved in legal accreditation remains trivial. Non-academic participants are volunteers without the training, expertise, or time to meaningfully influence the overwhelming number of deans, former deans, or future deans who are essential to make the accreditation process operate. While non-academics may serve as a safety check at key points in the process, they have far too little influence to direct the process meaningfully. Moreover, because they are so few in number, there is a real risk that the influence wielded could result in negative rather than positive change.

Within legal education, the duty for regulation falls upon the deans and the faculty. The deans have the largest and most diverse constituency to serve, and therefore, potentially reflect the broadest range of competing influences on legal education and the profession. These constituencies include prospective and current students, universities, the judiciary and the practicing bar as both employers and alumni, and the committees regulating admission to the bar and the practice of law. Because all law schools also operate legal clinics, deans must also be mindful of their institutions' clients and the legal needs of the public. Finally, because most noncommercial legal analysis and commentary is produced by law faculty, deans are engaged in the assessment of the legal profession and access to justice.

In the abstract, the academic leadership should result in the promotion of the best practices in legal education. This leadership should be charged with maximizing the availability of competent legal representation for the public and improving the standards of the practice of law. Unfortunately, the internal and external influences on deans have created a cartel that is as monolithic as any identified by the ABA's critics. The monopoly has been created through professional norms rather than misconduct, but its impact remains as profound and far reaching.

The first norming factor was the need by law faculty to be recognized at their institutions as worthy equals of their Ph.D.-waving colleagues.<sup>10</sup> The external influence of universities had the effect of creating an external standard for legal scholarship. Research and writing recognized by other disciplines was necessary to assist with tenure applications.<sup>11</sup> In the tenure battles that ensued, legal

---

10. See, e.g., Jean R. Sternlight, *Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications*, 50 U. MIAMI L. REV. 707, 708-09 (1996); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992). For an overview of this history with the universities, see ERNEST L. BOYER, *SCHOLARSHIP RECONSIDERED: PRIORITIES OF THE PROFESSORIATE* 9-10 (1990).

11. Other versions of this history focus on the transformations within the legal academy. See Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991).

scholarship shifted in form to compete with peers in other disciplines.<sup>12</sup> Although the shift in the nature of this scholarship has been highly criticized by the judiciary and bar,<sup>13</sup> it was essential to manage the internal tensions at academic research institutions.

A second aspect of this shift has been the rise of the importance of AALS in accreditation and marketing. Although technically a voluntary organization, AALS represents itself in much stronger terms. As stated on its website, "AALS is a resource for the improvement of the quality of legal education by networking law school faculty, professional staff, and deans to information and resources. AALS is the principal representative of legal education to the federal government, other national higher education organizations, learned societies and international law schools."<sup>14</sup> This declaration hardly suggests a voluntary organization intended to its role as a learned society for its members.<sup>15</sup>

In addition to its focus on scholarship, AALS has been involved in many of the positive changes in legal education. For example, AALS is credited for helping spur the growth in clinical legal education<sup>16</sup> and remains quite active on issues such as diversity and anti-discrimination in the military. But it remains a learned society, emphasizing scholarship as the focus of the academy and reminding all comers that membership has its privileges.

12. Most scholars focus on the debate regarding the conflict within legal scholarship rather than the debate about scholarship. This has emphasized elitism and the remainder of the academy to keep up with Yale. "There a dozen or so university law schools in the country that can properly claim to be more than trade schools. ... Among the twelve or so law schools with these larger aspirations, Yale rightly is regarded as the most ambitious." Richard Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1118 (1981) (quoting Yale dean Harry Wellington, YALE L. REV. 7-8 (Winter 1978-1979)). See also Arthur Austin, *Footnote Skulduggery and Other Bad Habits*, 44 U. MIAMI L. REV. 1009, 1021-22 (1990) ("Law professors are chagrined and embarrassed by the fact that the primary vehicle of scholarly publication—the student edited law review—is not refereed by peers."). Posner's discussion for incentives focuses on the incentive for the law professor and ignores the incentives for the institution. Cf. Posner, *supra*, at 1132-34.

13. E.g., Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 753, 763 (2004); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 748-52 (1998); Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993).

14. Ass'n of Am. Law Schs., <http://aals.org/> (last visited Sept. 29, 2006).

15. Cf. Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 ST. MARY'S L.J. 301, 334 (2003) ("The President of the AALS suggested membership in the AALS was helpful in achieving law school distinction, for 'in the competition between schools for students the non-member carries a heavy handicap.'" (quoting ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION FROM THE 1850S TO THE 1980S, at 180 (1983) (quoting 1940 AALS Proceedings 14)).

16. Robert MacCrate, *"The Lost Lawyer" Regained: The Abiding Values of the Legal Profession*, 100 DICK. L. REV. 587, 603 (1996) ("In a sense, the realist movement in legal education reached its culmination in the late 1960s when William Pincus and the Ford Foundation, in cooperation with the organized bar and the A.A.L.S., instituted the so-called C.L.E.P.R. program—the Council on Legal Education for Professional Responsibility—and spurred the attendant development of clinical legal education in the law schools.").



AALS shares its sabbatical inspection process for member institutions, further blurring the distinction between accreditation visits and “voluntary” inspections far beyond separation. The inspection team discussions for accreditation cannot effectively separate out those topics unique to AALS, and the significant overlap in membership between AALS and the ABA destroys any independence one organization has from the other.

The third force on law schools is the implicit focus on elitism within the legal academy. Since Christopher Columbus Langdell launched Harvard’s standard of legal education, other schools have sought after the Harvard model because of its pedigree rather than its pedagogy. Even before *U.S. News*, the law schools of elite universities were presumed to be leaders and, therefore, they have an advantage in selection of faculty and students, resources, and key leadership roles in the ABA, AALS, and other organizations relevant to legal education. Further, the vast majority of law school faculty were themselves educated at these elite institutions, making access to alternative educational models even harder.<sup>17</sup> Despite this, the elite universities do not necessarily share the values of the legal profession, particularly in the area of economic inclusion. “Elite colleges lag in serving the needy,” reads a recent headline from the *Chronicle of Higher Education*.<sup>18</sup> “Harvard certainly is not alone . . . the nation’s wealthiest colleges and universities . . . serve only a small proportion of low-income students. . . .”<sup>19</sup> How can schools aspire to serve their communities while modeling themselves after institutions that have rejected these same constituents?

The fourth and most highly recognized external force for monolithic legal education is the annual survey conducted by *U.S. News*. Within the ranking calculations, the so called “Quality Assessment” accounts for 40% of the score, with 25% coming from law school voters (“Peer Assessment Score”) and 15% coming from lawyer voters (“Assessment Score by Lawyers/Judges”).<sup>20</sup> This again reinforces the elitism of the rankings and the emphasis of reputation. Voters are likely to know more about the football or basketball teams at the universities on the list than anything about clinics, scholarship, or curriculum. The resulting reliability of 190 ‘rate the school’ scores is devoid of any reliability or validity. The academic predictors of Law School Aptitude Test (“LSAT”) (12.5%) and median undergraduate grade point average (“UGPA”) (10%) are the next most important factors, and are closely followed by spending per student.<sup>21</sup> Spending, UGPA, and LSAT are numbers within the schools’ control, so these

---

17. Robert J. Borthwick & Jordan R. Schau, Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 194 (1991) (“Five of the nation’s 175 law schools graduated nearly one-third of all law professors teaching today.... The five law schools are Harvard, Yale, Columbia, Chicago, and Michigan.”).

18. Karin Fischer, *Elite Colleges Lag in Serving the Needy*, CHRON. HIGHER EDUC., May 12, 2006, at A1.

19. *Id.*

20. U.S. News and World Report, Law Methodology, [http://www.usnews.com/usnews/edu/grad/rankings/about/07law\\_meth\\_brief.php](http://www.usnews.com/usnews/edu/grad/rankings/about/07law_meth_brief.php) (last visited Oct. 10, 2006).

21. *Id.*

numbers are heavily emphasized and sometimes manipulated.<sup>22</sup> Of course, it is axiomatic that these numbers have little to do with the quality of education, except at the margin. The academic quality of the student body may be stronger at an elite school with high academic scores, but those students actually require less instruction. Spending money on glossy brochures and faculty travel may similarly have no impact on the quality of the law school, but help boost the rankings.

The insidious aspect of *U.S. News* rankings is to create an arbitrary set of criteria that law schools have legitimized through their conduct. The criteria are not well thought out. They focus on elitism rather than education, reinforcing elitist tendencies within the academy. Most significantly, however, they discourage creativity, diversity, and differentiation. As one recent symposium commentator put it, “[a] corollary of this homogenization effect is that schools will find it unrewarding to seek a market niche. The *U.S. News* formula discourages diversity and specialization in curricula.”<sup>23</sup>

The fifth externality that reinforces the socially derived legal education monopoly is the structure and composition of the accreditation process. Legal accreditation relies upon sabbatical inspections held once every seven years by a qualified team of volunteers familiar with legal education generally, and with particular aspects of the education, such as curriculum, library, clinical education, and finances.<sup>24</sup> The work is hard and intense. New volunteers face a stiff learning curve to understand the details of the standards, the intricacies of report writing, and the subtle warning signs provided by schools under inspection.

The result of these legitimate barriers to participation is a relatively small core group of self-selected volunteers who devote themselves to legal accreditation. Their work is essential and often underappreciated. The process, however, may shape their consensus about the schools. These volunteer law school deans and faculty have a collective, conservative view of legal education because they view each school in terms of its comparison to the others. The inspection teams and their reports are generally looking for how close a school compares to the elite schools from which most have some experience, and assess program variations from the perspective of those elite schools. I am aware of no hidden agenda or intentional bias among the active ABA site inspectors; they are just more likely to share similar experiences and tend to reflect the status quo.

Together, the similar background of law faculty, the ABA accreditation process, AALS and its emphasis, university politics and its academic norms for tenure and status, and the *U.S. News* rankings have combined to squeeze out most room for innovation and diversification.

---

22. See Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES, July 31, 2005, at 4A (discussing Illinois’ brazen use of the alleged fair market value of Lexis and Westlaw to boost spending reporting and other, more common practices).

23. Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 242 (2006).

24. ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2005-06 EDITION 119-20 (2005), available at <http://www.abanet.org/legaled/standards/2005-2006standardsbook.pdf>.

The pattern is clear. Law school faculty members, like faculty members in every discipline, focus on their personal success. Their success is governed in small part by the success of their students, but in much larger part by the salary, tenure, research grants, speaking engagements, and the recognition they earn. Rising rankings improve faculty members' status, publication opportunities, and may help with fundraising or salary negotiations. Extra time in the classroom or clinic is not rewarded by *U.S. News*, parent universities, AALS, or the legal academy. The ABA accreditation process requires a variety of educational opportunities (e.g., curriculum, legal writing, clinical education, etc.), but the faculty status standards reinforce an emphasis on doctrinal education that is understood by the inspectors even if never stated in any interpretation. In other words, faculty members act in both their own self-interest and the self-interest of their institutions in pursuing elitist standards of scholarship despite the costs to students, the practice of law, and access to justice.

Those that seek a different path are increasing, but they have been tolerated rather than embraced. Fortunately, I believe that there are enough faculty members, deans, and university administrators who understand the need for change so that by addressing each of the influences on elitism, those schools which seek a different path can successfully combine their efforts to assert alternative criteria. Once elite schools are no longer unintentionally harming the other three quartiles of educational institutions, their pursuit of sophisticated scholarship and the training of legal faculty will be appropriate and beneficial.

The perniciousness of the current system is that it replaces an assessment of the best law schools with the ranking of the most elite among those schools. While reputation and selectivity may be important to some students, these factors bear no relation to the learning experience, the preparation to practice law, the values of the institution, or the long-term influence the school will have on its graduates. This conflation of elitism and educational quality is reinforced by the other influences listed above. It is captured by a comment in Russell Korobkin's keynote address on the rankings: "Rankings need not attempt to measure the quality of the education offered by the institution, because, regardless, students will continue to seek out highly ranked schools and schools will continue to compete for high rankings."<sup>25</sup> The rankings replace any critical assessment of the ranked institutions with an automatic deference to that ranking system.

#### *B. The Consequence of the Social Monopoly*

Although Yale and Harvard may serve their constituency well, there is a tremendous social cost for society to the extent that the other 189 law schools organize themselves to look like Harvard or Yale. The most obvious cost is money. "Private law school tuition in the United States jumped 130 percent

---

25. Russell Korobkin, Keynote Address, *Harnessing the Positive Power of Rankings: A Response to Posner and Sunstein*, 81 IND. L.J. 35, 43 (2006).

between 1990 and 2004, to an average of \$27,000....<sup>26</sup> The 2003 ABA Commission on Loan Repayment and Forgiveness places average law student debt at \$70,000 to \$80,000 and at least twenty percent exceed \$100,000.<sup>27</sup>

The costs and debt serve as a barrier to enter the profession for those students of modest means who cannot imagine carrying such debt service—typically those applicants from low income families. It places a barrier in front of students who wish to pursue work in fields that are not as lucrative. This forces students to accept higher paying jobs, even if those jobs come with unreasonable billing minimums and difficult lifestyle choices. The “golden handcuffs” of success on the LSAT sends a student to an elite law school where she does well and must take a job at a large, multinational law firm to pay off the debt service, which frustrates the law student and discourages her from continuing in the profession.

The inevitable consequence of the golden handcuff job opportunity is a 77–81% attrition rate among the law firms after five years.<sup>28</sup> This is not the pyramid-scheme process of shedding associates as only a few become partners. The elite law firms are struggling to keep qualified attorneys to complete the work, and as a result, further increase the targets in billable hours.

Another consequence of the cost of law school is the difficulty lawyers have in trying to work in public sector or other less remunerative parts of the profession. The Legal Services Corporation reports that eighty percent of the civil representation need goes unmet because of the lack of attorneys.<sup>29</sup> Even this appalling statistic underreports the real need for legal services in the United States because it focuses on only those qualifying for legal aid. “Millions of moderate-income Americans are similarly priced out of the legal process. . . .”<sup>30</sup> The working poor and lower middle class have too much income to meet the qualification requirements, but generally far too little discretionary income to turn to the neighborhood lawyer.

As law transformed itself into a ninety billion dollar business by 1990,<sup>31</sup> the room for small claims and small clients has been disappearing from the legal landscape. Even as the law itself has grown at exponential rates, the availability of lawyers has declined for much of our society. Computer drafting programs for wills, paralegal divorce centers, and *pro se* mediation programs are filling the void, but these are insufficient. If this is not a moral failing of the profession, then it surely is a market risk. Unless the legal profession reengages the general public, the public will see no need to provide self-regulation or for any need to treat lawyers as more than another big-business, special interest group. If the

---

26. Marcella Bombardieri, *Fewer Looking Toward Law School*, BOSTON GLOBE, Feb. 9, 2006, at B1 (attributing statistics to the ABA).

27. McMillion, *supra* note 2, at 64.

28. NALP—The Association for Legal Career Professionals, Legal Employment Trends for Law School (Feb. 10, 2006) (on file with author).

29. LSC STUDY, *supra* note 2, at 13–14 (“[O]nly a very small percentage of the legal problems experienced by low-income people (one if five or less) are addressed with the assistance of [either] a private [pro bono or paid] or legal aid lawyer.”). Cf. McMillion, *supra* note 2, at 64.

30. DEBORAH L. RHODE, ACCESS TO JUSTICE 103 (2004).

31. MacCrate, *supra* note 16, at 601.

lawyers are only for the rich or the criminals, there is little to encourage a self-interested electorate to protect our autonomy or believe our claims of professional obligation.

C. *The Old Standard Renewed: The Case for Regional Legal Education*

Legal education must lead the profession back from the brink on which it now finds itself. We must teach our law students and engage our alumni on the need to address the systemic issue facing the profession. The needs of multinational corporations must be given due consideration, but they cannot be seen as the only legitimate aspect of the profession. The practice of law is not concentrated in the top twenty markets or multinational practice. The range of ABA sections and forums illustrates this diversity, so it is time the law schools embrace the differentiation that exists at every other level of the profession.

The first step in this process is to address those influences that have led to the elitist structure of law school rankings and hierarchy. By doing this, law students will have a greater choice regarding the nature of the education they will receive, the financial costs they must bear, and the work they will do. Ironically, this is not new. Legal education was once highly diversified, with widely divergent admissions requirements, staffing structures, and schedules. The ABA and AALS, however, sought uniformity and quality control. In particular, the ABA pushed to eliminate the night school model of practitioner education. The 1960s saw the ascension of the modern accreditation system and the end to unregulated part-time legal education by organizations such as the YMCA.

[N]ight law programs operated with limited budgets and part-time faculties. Local practitioners and judges provided the instruction. Admittance typically was conditioned upon only a high school diploma and payment of a nominal, annual YMCA membership fee. Notwithstanding the accessibility and affordability of the early night law school programs, students were evaluated stringently. For instance, here in Columbus, only one in five night law school candidates graduated. This is because, as Capital Professor Emeritus John Sullivan put it, students were not "evaluated at the front door. [They were] evaluated in the class room." . . . By 1960, the demands of the legal profession and the increasingly complex nature of legal education forced the YMCA-funded law schools to reanalyze their affordable, practical programs. . . . For example, the ABA insisted on a solid core of full-time faculty, yet the YMCA had kept costs low by drawing part-time instructors from the ranks of the practicing attorneys and judges. And ABA accreditation standards required schools with minimal facilities and library resources to spend more than the YMCA could allocate in these areas.<sup>32</sup>

---

32. Steven C. Bahls & David S. Jackson, *The Legacy of the YMCA Night Law Schools*, 26 CAP. U. L. REV. 235, 236-37 (1997). See also Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENG. L. REV. 251, 272-73 (2005).

Some commentators raise concerns about the hidden agenda to eliminate these night schools from the academy. Often, the academic concerns were assumed to be used as a pretext to thwart the aspirations of minorities, based on the religious, gender, or racial population served by these night schools.<sup>33</sup> Other commentators have focused on the risk to the elitism that night schools offered. One noted, for example:

Not only did these law schools threaten the status quo by educating non-traditional law students, but these schools educated students in such numbers that the very endeavor of professionalization—the licensing of small numbers of well-trained and select experts—seemed to be at risk. What was the use of being an expert in law when any laborer or clerk could claim equal knowledge and ability?<sup>34</sup>

Regardless of the motivation, the YMCA and many other night schools disappeared or merged and transformed into traditional educational institutions. While part-time education survives, the pricing differentials have been eliminated through merger, library requirements, and standardization of faculty, clinics and other student opportunities.

To rectify the situation, a new set of principles must be adopted by a sufficiently strong group of law schools so that the influences which created the current system are minimized, and the schools are inoculated against the poison of *U.S. News* and the confluence of other forces. In contrast to those who suggest the ABA accreditation is the problem, I anticipate that if the Regional Association is undertaken properly, the ABA will be a vital partner in a transformation which can both legitimize the new association and continue to play its important role as a consumer advocate for law students and the profession. The ABA, however, will need to focus accreditation on the legitimate purposes of the standards rather than on the mechanics or procedures.

For example, a faculty standard that requires full-time faculty is likely to result in better education, but the standard should be revised to focus specifically on the educational impact of the faculty rather than their employment status. Full-time faculty status may create a presumption that these faculty members are more available to their students than adjuncts, but this is merely a presumption and it should be assessed. Similarly, the library standard should focus on the law school's obligation to teach students research skills and the obligation to make a comprehensive set of materials available for student and faculty use. None of these standards suggest a volume count or specify the seating capacity of libraries. Westlaw, Lexis, and wireless Internet access have rendered any such standards irrelevant, if not irrational.

The night schools accomplished certain aspects of legal education that we continue to struggle with today. Most notably, the night schools led the way in creating access to the profession for those of modest income and those from traditionally underserved communities. The part-time schedule allowed working

---

33. See generally JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976).

34. Appleman, *supra* note 32, at 273.

adults to attend law school. Many were open to women, minorities, and different religions. Most had a more liberal academic admissions policy as well.<sup>35</sup> All were much less expensive than their elite counterparts.

The night schools emphasized developing a faculty with strong practice experience, ties to the local profession, demonstrated commitment to legal service, and thoughtful writing highly relevant to the community. In effect, students were mentored into the profession by the same professionals they would see every day. To be successful, the schools heavily emphasized legal service in addition to student education and scholarship. The faculty members were selected from the bar associations and community organizations—judges and attorneys who were part of the community and working to make a difference. Though some were working for the income, the part-time faculty members at these schools were often like the adjunct faculty today, earning a token amount so that they could engage in the joy of teaching and mentoring.

The close tie to the practice has another strong benefit. Regional law schools have encouraged their students to pursue a broad range of professional opportunities after law school, often serving as the key institutions supporting public prosecutors' offices, public defenders' offices, public sector employment, and small law firms.

#### *D. The Criteria for the Next Association*

First, a caveat: It would be antithetical to this article for me to suggest that legal education should now adopt a particular model for all law schools. Ultimately, there is likely to be room in the market for four or five competing "schools" of legal education that all meet our common educational and professional goals and produce effective lawyers under a common accreditation standard.<sup>36</sup> Because of the social monopoly described above, it is not enough for a dean—or even a university—to adopt standards. The standards must be supported and reinforced by a critical mass of institutions. Nor are the priorities for a Regional Association self-evident. The priorities should be the focus of considerable discussion. Some suggestions already exist.

---

35. Expanding the range of academic admissions standards would permit schools to choose to admit a larger body of students and let them succeed or fail in the classroom rather than on a single standardized test. While this would not be my preferred model, it will decrease emphasis on the LSAT and increase the potential for schools to assess a broader range of lawyering skills. The admissions criteria were likely one of the most contentious aspects of the former night-school model of education, and schools hoping to use this model are likely to face significant accreditation scrutiny. California, however, continues to license such schools without the public or the practice of law being harmed.

36. See John Mixon & Gordon Otto, *Continuous Quality Improvement, Law, and Legal Education*, 43 EMORY L.J. 393, 447 (1994) ("The dean and staff must clarify the goals and purposes of the law school, both generally and from the staff's functional standpoint. Some goals are clear—admitting and training students in law courses leading to graduation and eventual certification as members of the bar. But the purpose of law schools is much broader.... Effort spent in defining a purpose might produce surprising results.").

If, for example, a school decides its goal is to enhance legal education in the region, then it must look seriously at cooperating with other law schools in the area, sharing its library with the bar and other law schools, providing post-graduate training for lawyers, and even making empty seats in law classes available to students in business school and other disciplines.<sup>37</sup>

Nonetheless, given the problems facing the public regarding access to lawyers and the profession's need for better professional education, I would suggest that a member school in the Regional Association would organize itself around the following five core principles:

- **Diversity:** Promote diversity to diversify and broaden the profession to the greatest extent permitted by law.
- **Price Sensitivity:** Control costs to financially enable graduates to better serve the profession.
- **Student Learning:** Focus on student learning and competency upon completion of law school, including a strong emphasis on experiential learning.
- **Applicable Scholarship:** Emphasize meaningful scholarship tied to the needs of the profession and society.
- **Regional Engagement:** Promote ties to regional institutions including state and regional bar associations and state supreme courts.

These five key priorities are merely suggestions, and I will leave it to the critics of these standards to propose additional competing models that law schools can choose to add or spurn.

1. *Diversity: Promote diversity to diversify and broaden the profession to the greatest extent permitted by law.*

In *Grutter v. Bollinger*, the Supreme Court recognized that law schools may have a compelling interest in attaining a diverse student body.<sup>38</sup> The Court and most law schools concur “that student body diversity promotes learning outcomes, and ‘better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.’”<sup>39</sup> The *Grutter* Court also recognized that “[t]he diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.”<sup>40</sup>

The values of regional law schools begin with the same recognition made by the University of Michigan that maintaining a diverse student body is a law

---

37. *Id.*

38. 539 U.S. 306, 329 (2003).

39. *Id.* at 330 (quoting Brief for American Educational Research Ass’n et al. as Amici Curiae at 3).

40. *Id.* at 325 (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978)).



school imperative. Because graduates of regional law schools tend to stay within the geographic region, the communities they serve are particularly reliant on the success of these law schools in diversifying the profession.

Member law schools will recognize that from an admissions standpoint, race and ethnic origin is a single, though important, element. The values of public service, demonstrated commitment of access to justice, leadership, and benefits to the regional community can be added to the other whole-person variables, such as the enthusiasm of recommenders, the quality of the undergraduate institution, the quality of the applicant's essay, and the areas and difficulty of undergraduate course selection identified by the Court. Undergraduate grades and the LSAT play a role, but become much less valuable once they predict that the student is likely to succeed. They play little role in evaluating the potential lawyer's qualifications once the level of competency has been achieved.

Regional law schools have long felt the need to provide state and local bar associations the resources and leadership to diversify the profession. As a core principle in the Association, the schools can coordinate these efforts and promote success.

The combination of student diversity with the core principles of student learning, meaningful scholarship, and regional engagement significantly promotes the ongoing commitment to greater diversity among the law school faculty and administration. As law schools increasingly all measure themselves by the same standards, the competition for those who best exemplify those standards intensifies. In seeking to fill all law schools with accomplished research scholars, law schools undervalue many qualified law faculty. By emphasizing diversity, student learning, service, and meaningful scholarship tied to the regional community, law schools can recruit great achievers from a broader range of fields. This expanded pool will result in a stronger overall pool and this pool is likely to be much more racially, sexually, and professionally diverse than the pool of accomplished Supreme Court clerks and academic stars.

2. *Price Sensitivity: Control costs to financially enable graduates to better serve the profession and society.*

As outlined above, the legal profession faces a significant risk of polarization as an ever-increasing percentage of the public cannot afford basic legal services to draft a will, purchase a home, or obtain a divorce. State and federal funding for public defender offices and indigent legal services have similarly eroded in the past two decades.<sup>41</sup> At the same time, the cost of legal education has dramatically increased at a rate far above the rate of inflation.<sup>42</sup>

---

41. See, e.g., Kim Taylor-Thompson, *Individual Actor v. Institutional Player: Alternating Visions of the Public Defender*, 84 GEO. L.J. 2419, 2431 n.59 (1996) (providing various examples of funding reductions for public defender agencies).

42. Internal ABA data suggests nearly a 50% increase in private law school tuition over the past decade, to nearly \$29,000 average for private tuition. See Law School Tuition, Average and Median, 1985-2005, <http://www.abanet.org/legaled/statistics/charts/tuition.pdf> (last visited Mar. 5, 2007).

Although salaries for national and multi-national law firms of 500 or more employees have kept pace with this trend, the vast majority of professional opportunities have not done so. Small firm practice, rural practices, nonprofit opportunities, and the public sector have not seen salary increases to support the financial obligations of law school graduates.<sup>43</sup>

The consequence of the tuition-salary dichotomy may be profoundly negative on the legal profession. The golden handcuff phenomenon is inconsistent with the values held by faculty and administration at many of the regional law schools. Nonetheless, graduates feel compelled to ignore public sector employment because they cannot afford the costs.

Regional law schools recognize the particular importance price sensitivity plays to their students and understands the extreme tuition-salary dichotomy faced by their students. Through budget restraint, part-time programs, paid internships, and other strategies, the regional law schools can work with state and regional bar associations, state supreme courts, and the ABA to address this looming crisis.

3. *Applicable Scholarship: Emphasize meaningful scholarship tied to the needs of the profession.*

A learned community is greatly enhanced by the pursuit of knowledge, and it has become axiomatic that one's teaching is enhanced both by one's own scholarly publications and the intellectual endeavor of engaging in complex scholarship.<sup>44</sup> Regional law schools should continue to embrace scholarship and intellectual inquiry as one of the three core obligations of a legal educator (along with teaching and service).

In recent years, one of the chief criticisms heard from the judiciary and legal practitioners has been a growing rift in the nature of academic scholarship and its relevance to the bench and bar.<sup>45</sup> Perhaps more importantly, regional law schools

---

43. David L. Chambers, *Educational Debts and the Worsening Position of Small-Firm Government and Legal-Services Lawyers*, 39 J. LEGAL EDUC. 709, 722 (1989).

44. But see Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990).

To some degree all of them—whether genuine scholars, would-be wisemen, or coerced clones—are motivated by the gratification of ego, the satisfaction of habit, and the expectations of university image-makers. In turn these traits are fueled by faculty self-studies, administrative mission statements, and fiats laid down by the Association of American Law Schools, most of which become etched in ivory long before their floppy disks ever begin to stiffen.

*Id.* at 927.

45. Edwards, *supra* note 13. See also David Hricik & Victoria S. Salzmann, *Why There Should Be Fewer Articles Like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves*, 38 SUFFOLK U. L. REV. 761 (2005). Cf. Michael J. Saks et al., *Is There a Growing Gap Among Law, Law Practice, and Legal Scholarship?: A Systematic Comparison of Law Review Articles One Generation Apart*, 30 SUFFOLK U. L. REV. 353, 365

may have begun to undervalue the significant contribution made to the profession through meaningful scholarship focused on state and local issues.<sup>46</sup>

Given the unique relationship between the regional law schools and the states in which these schools operate, the Regional Association recognizes that meaningful academic activity must include research and scholarly productivity that supports the needs of the state legislatures, bar associations, courts, and the public. "What we urgently need today is a more inclusive view of what it means to be a scholar—a recognition that knowledge is acquired through research, through synthesis, through practice, and through teaching."<sup>47</sup> Whether through empirical research, interdisciplinary study, or association with courts and bar associations, the regional law schools will enhance the ability of their faculty to engage in research that supports both the academic agenda of the faculty member and the needs of society, both regionally and globally.

The focus on student learning and regional engagement with the legal community does not take away from the need for strong academic scholarship. The need to produce scholarship is both to support the quality of the education and the need to remain part of our learned society. Empirical studies reinforce the self-evident truth that "[s]cholarship keeps one fresh, learning, and up-to-date."<sup>48</sup> The study reinforced the underlying assumption that teacher-scholars are more effective than those that do not engage in scholarship. The study suggests that there is no trade-off between teaching and scholarship. To the contrary, scholarship is needed to make the faculty stronger in the classroom.<sup>49</sup> Also important is the practical need for faculty to engage in meaningful scholarship to retain their place at the academic table with their Ph.D. colleagues.

The need to engage in scholarship, therefore, has both internal and external values. This core principle on meaningful scholarship is further reflected in a continued commitment to academic freedom of each individual legal educator,

---

(1996) (discussing the increasing disparity between the number of articles written by law professors and those written by judges and practicing attorneys).

46. See D'Alemberte, *supra* note 5, at 53 ("Our insistence that we are part of the academy and our insistence that we are not a trade school has actually led us to cut ourselves off from the people who have things to say to our students, people from the profession and people from other schools in the university."). Talbot D'Alemberte was a former dean of the law school of Florida State University in Tallahassee and president of the American Bar Association.

47. BOYER, *supra* note 10, at 24.

48. James Lindgren & Allison Nagelberg, *Are Scholars Better Teachers?*, 73 CHI.-KENT L. REV. 823, 824 (1998).

49. *Id.* at 831. The researchers, however, do suggest one caveat:

Of course, even if these data are reliable, they don't show that an emphasis on scholarship in hiring and retention necessarily promotes teaching. If teaching were the sole goal of American law schools, one would expect to see different cultures for instruction and different people hired. But among those hired and retained, major scholars appear to be better teachers. Not only is the supposed trade-off not present in this data, but the opposite relationship appears: in these data, one can predict who is going to get above average or very poor course evaluations based on scholarly citations.

*Id.*

regardless of rank or tenure. It is also a reflection of the need to engage with the judiciary and the profession in our particular sphere of influence. These complementary needs, therefore, reinforce the strong value of scholarship without dictating the precise shape that scholarship should take.

The direction of the scholarship encouraged may tie directly to the fifth core element of regional engagement. The members of the Regional Association should embrace a broad definition of academic scholarship, one that is gaining respect at more and more universities. In a movement led by Ernest Boyer, four different aspects of scholarship are suggested: “the scholarship of discovery, of integration, of application, and of teaching.”<sup>50</sup> These four categories provide a taxonomy for the broader definition of qualifying faculty scholarship. They have sufficient flexibility to allow law school faculty to critically address legislative and other regional issues while doing so in a public, self-critical manner. While Boyer’s approach need not be the rubric selected to assess applicable legal scholarship, it serves to expand the range of scholarly endeavors in a manner consistent with each law school’s faculty and university community.

4. *Student Learning: Focus on student learning and competency upon completion of law school.*

Based on academic predictors of undergraduate grade point averages and LSAT scores, non-elite law schools educate an academically heterogeneous population of students that tends to include “at risk” students along with students who are predicted to perform exceedingly well in law school and on the bar examination. In addition to the academic diversity, the predominance of part-time programs and creative schedules suggests that some of the students admitted into regional law schools may require significant assistance to achieve their goals of mastering the skills necessary to become a competent lawyer and member of the profession.

Regional law schools must recognize the commitment they make when matriculating a student to engage in the best practices available to enable that student to learn and achieve. If a school admits a student who may be predicted to have academic difficulty, the school must fully inform the student of that risk and provide meaningful resources to give that student the greatest possible opportunity to succeed.

Regional law schools should commit to a student-centered learning model in which the best practices for allowing students to “outperform their predictors” will be openly shared and promoted among the member institutions. Pedagogy, learning methodology, appropriate uses of technology, and other student-based learning approaches should highlight that regional law schools are primarily institutions of student learning. Member institutions have an obligation to work to promote opportunities for students to self-direct their learning and should be measured on their continuing performance throughout law school.

---

50. BOYER, *supra* note 10, at 25.

The emphasis on student learning reflects regional law schools expectations that students master the analytical skills, theory, practice skills, values, and substantive knowledge which are generally acknowledged throughout legal education. This core principle reflects that it is the institution's obligation to assist its students to succeed academically and professionally.

This core principle embraces the best practices in clinical education, experiential learning, legal writing, and various disciplines to the extent they benefit the student learning goals of the member schools.

5. *Regional Engagement: Promote ties to regional institutions including state and regional bar associations and state supreme courts.*

Regional law schools have both the opportunity and the commitment to work at the regional level to improve the quality of legal practice and to promote the best practices in domestic law. Because a regional law school's alumni base may be closely associated with its domestic market, each has a continuing obligation to its alumni to support their professional efforts. As a corporate citizen of the community, each school has an obligation of good citizenship to be engaged in the efforts surrounding quality legal services. As members of a self-regulated profession, we each bear this obligation personally and institutionally.

In addition, regional schools in each market should recognize that there is a professional obligation to support academically the institutions of legal practice. Through close collaboration with state and regional bar associations, the regional law schools can improve the profession. Through close cooperation with the legislative bodies and state supreme courts, the regional law schools can add academic expertise, thoughtful research, and a nonpartisan voice to public policy. By coordinating and cooperating with the nonprofit organizations in each region, the public resources will be improved and student learning enhanced.

This core principle was the historical imperative that grew the profession of law, state by state, into its position of trust. Law schools must fulfill that commitment and continue to earn that trust. Because this core principle does not exist in any other national association of the legal academy, the Regional Association is necessary.

E. *Why a Critical Mass of Schools in the Regional Association Changes the Social Monopoly*

To change the path on which the profession is headed, the Regional Association must play a pivotal role in reshaping the social monopoly controlling legal education. The Regional Association can play such a role by addressing each of the factors which are now leading to the social monopoly. A national association emphasizing the five core principles of diversity, price sensitivity, applicable scholarship, student learning, and regional engagement will add to the quality of legal education across the country without taking away from any law school or existing national organization.

Many of the member schools in the Regional Association will continue to lead legal education through innovation and programming, developing nationally and

internationally recognized programs in various fields. Unlike the national law schools, however, the regional law schools generally endeavor to balance these demands against the obligations to their region and their students. Study abroad programs, international partnerships, and leading programmatic centers of excellence will continue to be part of the academic mix for some regional law schools. Some schools will emphasize part-time education, while others will continue to operate only full-time programs or experiment with accelerated schedules. So long as these add to the legal profession, student learning or school finances, such endeavors are appropriate. Moreover, the Regional Association should not develop into a prescriptive or limiting influence. Regional law schools may differentiate themselves and improve the quality of legal education worldwide without compromising their core principles.

The Regional Association is envisioned to promote the commonly held core values, but should not take on any attributes that limit or constrain its members from pursuing programs beyond that core. These goals are complementary to the goals of both the ABA and AALS. They do not reflect a break with the academy, only a renewed emphasis and revised prioritization. Still, they cannot be achieved within the existing structure.

First, the Regional Association members must work closely with the ABA to assure that the five core principles are identified and valued in the accreditation process. These core principles relate directly to existing accreditation standards, so the articulation by the Regional Association should help to interpret the standards and create new norms for applying those standards. Written standards and their corresponding interpretations are often broad and in need of experience to clarify their meaning. A shared view of particular principles involving teaching, scholarship, service, access for students, and price sensitivity will help shape the standards for current and future law schools.

Second, the ABA inspection teams for Regional Association members should be selected predominately or exclusively from member schools. In this way, the best practices shared by the visiting teams will reinforce the values of the member schools rather than schools with missions unrelated to those of the school being inspected. While the ABA consultant and deputy consultant work diligently to use inspection team members from schools with similar characteristics to the school under inspection, this explicit request will empower the school under inspection to help shape the nature of the inspection team and should help the ABA recruit volunteers for the inspection process.

Both the ABA and the member schools will benefit from the development of a strong roster of seasoned volunteer inspectors to assist with the important process and to assure that the norms and values of the member schools are utilized when processing the sabbatical inspections. Since annual reporting requirements alert the ABA to problems arising in law schools, the sabbatical inspection tends to provide an opportunity for dialogue. When the inspectors are more familiar with the goals and vision of the institution under inspection, both the effectiveness of the visit and the value to the school inspected tend to improve. The role by the Regional Association will simply further this process while providing external comparisons for schools that may be having difficulties.

Like AALS, the Regional Association may seek to have an inspector participate in the process for the purpose of writing a separate report to the Regional Association or otherwise consult more formally with the process. The obligation to write a report to the Regional Association may well emphasize its core principles in a manner far more significant than any action that arises from the report. Just as AALS has used this process to norm the academy towards its particular methodology, the Regional Association should seek to partner with the ABA in order to do the same.

Third, the members of the Regional Association should embrace scholarship on their own terms. By adopting an approach suggested by Boyer or otherwise expand scholarship to include research, empirical study, and thoughtful writings on legal problems facing the states and regions as well as on more intellectually abstract topics, the schools can provide better service to the judiciary and the public without retreating from their obligation to remain a learned profession. If these changes are made cautiously with an eye toward the home university standards, then the tenure-related need for faculty standards on publication will not diminish. In this fashion, law schools can better serve the bar and legal community without losing credibility among their university peers. This concern is more than just a practicality. Since it was this pressure that led to the over-inflated reliance on legal scholarship to begin with, it must be taken into account if the Regional Association hopes to be a sustainable enterprise.

Further, the scholarship requirements must be sufficiently broad so that the schools which are closer to the national schools in scope can continue to participate as members in AALS as well. There must be room within AALS' learned society for those Regional Association member schools that take their scholarship obligations seriously. Although there will undoubtedly be some "second-class status" within AALS for members in the Regional Association, the scholarship requirements must allow schools to choose to remain part of both AALS and the Regional Association.

Fourth, a sufficiently strong Regional Association can meet the *U.S. News* on its own terms. The current *U.S. News* ranking system reinforces the elitist assumptions that name recognition equates to quality. If the Regional Association creates objective criteria regarding its core principles, then those schools should be willing to hold themselves accountable on those criteria. While direct rankings will never be palatable to many, awards and recognitions for best practices or notable achievements will get the attention of the schools, their universities, and the people who rely on external validation to evaluate the law school.

Rather than rankings, students, alumni, boards of trustees, and the profession should pay closer attention to such evaluative criteria as the diversity of the student body, bar passage rates, tuition costs, or the legal scholarship of faculty who have made a difference in court opinions, legislation, or jurisprudence.<sup>51</sup>

---

51. Other criteria are suggested in an annual letter sent by a large majority of ABA deans to prospective law students through a posting on the LSAC website. See Deans Speak Out, <http://www.lsac.org/LSAC.asp?url=lsac/deans-speak-out-rankings.asp> (last visited Oct. 3, 2006) (listing additional criteria including curriculum, breadth and support of alumni networks,

The Regional Association can collect this data and make it available in appropriate form for the public. Beyond this, the Regional Association can recognize the individuals and institutions that are making significant progress in the various areas central to its principles. Awards for “teachers of the year,” “law review most influential in Congress,” “clinical representation of the year,” “best value,” and many other criteria can be developed and assessed. Rather than competing to move one or two points on the *U.S. News* rankings, schools can use their glossy brochure fund for clinical programs, academic support, collaborative scholarship, or need-based scholarships.

Fifth and most importantly, the Regional Association must actively seek to replace the Harvard/Yale elitism with a desire to be more like the best of the regional law schools. As the Regional Association matures, it must encourage the graduates of its member schools to pursue membership in the academy and to become exemplary law professors. It should provide fellowships and invest in other resources to make its core principles the pinnacle of legal education against which the elite schools are merely an alternative and no longer the preferred ideal.

Some of these member schools will emphasize adult learning theory and educational instruction as the differentiating factor. The school that changes the predictive nature of the LSAT because of better instruction will have made a significant impact on legal education and access to the profession. Another school will emphasize low cost, but high-value part-time education and set the standard for how to deliver cost-effective legal education. Yet another may emphasize immersive experiential learning, operating large full-time clinics or externship programs that help provide legal services to their community while offering all students a full-time legal experience before graduation. If the graduates of these programs are encouraged to join our ranks as the next generation of law faculty, the social monopoly will truly be broken and the doors to legal education will once again stand open.

#### *F. Conclusion*

The Regional Association will be made up of ABA-approved and provisionally-approved law schools which share a commitment to the institutional core principles. Although AALS membership will not be required, it is anticipated that most members will see the Regional Association as a complement to their AALS membership.

The Regional Association will directly affect the five influences that have combined to create the current social monopoly in legal education. An effective Regional Association has the potential to diminish the influence of *U.S. News*, create an alternative value to elitism, influence the interpretation of the ABA standards, and change the composition of the volunteer pool available to the accreditation process. Without a strong organization, these external forces will

---

collaborative research opportunities with faculty, size of first year classes, religious affiliation, and many others).



not be modified and no change will occur. The calls for change within legal education are not new. What is different about this proposal is the identification of the systemic influences on the process that need to be altered to end the cartel-like behavior.

Many of the regional law schools will continue to lead legal education through innovation and programming, developing nationally and internationally recognized programs in various fields. Most importantly, however, the regional law schools will endeavor to balance these demands against the obligations to their region and their students. In this way, regional law schools may differentiate themselves and improve the quality of legal education worldwide without compromising their core principles.