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Recommended Citation

Richard J. Peltz, *Time for a Top-Tier Law School in Arkansas*, Advance Arkansas Institute, Feb. 16, 2011, at 1.

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Time for a Top-Tier Law School in Arkansas

A Research Paper for the Advance Arkansas Institute

Richard J. Peltz*

In 1975, the law school in Little Rock was severed from the flagship University of Arkansas at Fayetteville and affiliated with the University of Arkansas at Little Rock. Various constituencies had persuaded the legislature that, despite the small population in Arkansas, the state needed two public law schools. In the time since separation, each law school has made important contributions to the practice of law in Arkansas. But neither law school has gained recognition as a leading public law school in the United States. Now, thirty-five years later, the conditions that made the separation of the law schools make sense have changed, and the divide between them has become a hindrance to their advancement: an impediment to the realization of students' full potential in Arkansas legal education, and thus a roadblock in the development of a functional market providing affordable legal services to all Arkansans. In the post-recession economy, Arkansas no longer needs two unexceptional public law schools; rather, it is time for a first-tier law school in Arkansas.

I. INTRODUCTION

A recent paper in the economics of legal education concluded that in all likelihood, going forward in the post-recession economy, “there are more law schools than an increasingly competitive environment will support. Contraction in the number of [law] schools seems probable and likely would be efficient.”¹ An *Arkansas Times* cover story in November 2010 reported the challenges facing law-school graduates in finding jobs in an overcrowded market, a local angle on a national story.² The *Times* tagged \$65,000 as the break-even starting salary below which students must think hard about the investment to obtain a law degree,³ while career services at the Fayetteville law school described actual starting salaries as ranging from \$30,000 to \$70,000, averaging well below the break-even point.⁴

Arkansas expends public resources—in excess of \$21 million annually⁵—to perpetuate two law schools. Neither school has been recognized as among the first-tier, that is the top 50, law schools in the United States in the market-definitive rankings of *U.S. News & World Report*.⁶ In the last decade, the law school in Fayetteville moved from the third tier to a firm place in the

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¹ Bernard A. Burk & David McGowan, *Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, ___ COLUM. BUS. L. REV. ___ (forthcoming 2011), available at <http://ssrn.com/abstract=1680624> (last revised Oct. 6, 2010; last visited Nov. 15, 2010).

² Doug Smith, *Over-lawyered?: The Job Market for Lawyers is Tight. Some Say It'll Get Worse*, ARK. TIMES, Nov. 18, 2010, at 11.

³ *Id.* at 12.

⁴ *Arkansas Stats*, ARK. TIMES, Nov. 18, 2010, at 14 (sidebar to Smith, *supra* note 2); see text accompanying *infra* note 81.

⁵ See sources described *infra* note 37; see also American Bar Association, Report on University of Arkansas at Little Rock School of Law February 28–March 3, 2010, at 68 [hereinafter ABA Report] (draft version submitted to Little Rock law school Sept. 27, 2010) (copy on file with author).

⁶ See, e.g., *Schools of Law*, U.S. NEWS & WORLD REP., May 2010, at 28 [hereinafter *U.S. News 2010*]. *U.S. News* divides law schools into the “top 100,” a third tier, and a fourth tier. Within the top 100, the “first tier” customarily refers to the top 50, and the “second tier” to the schools ranked 51 to 100.

second tier of all national law schools in the *U.S. News* rankings,⁷ an important accomplishment, but with ample room yet to improve. The law school in Little Rock in the same decade has languished in the lowest tiers, third and fourth.⁸ The *U.S. News* rankings are oft criticized as a publisher's arbitrary judgments,⁹ and when talking about the difference between number ten and number twelve, there is merit to the argument. But *U.S. News* is not distorting the big picture, and the marketplace in legal education knows that.¹⁰ There can be no serious contention that either Arkansas law school can hold a candle to the leading public institutions of legal education in California, Michigan, Pennsylvania, or Virginia, nor even southeastern neighbors Alabama, Georgia, or Tennessee.

The tragedy is that it does not have to be this way. Arkansas vests substantial resources in its two law schools. The schools have developed unique programs for students and for the bar, and nationally recognized faculty franchises in contemporarily important areas of law and policy, such as agriculture law and appellate practice. Both law schools have cultivated these assets despite limited resources. But resources have been limiting. Both law schools have failed to move forward with important projects, such as distance education and a public health law center, for lack of funding.¹¹

As recently recounted in the *Arkansas Times*, Arkansas does not *need* two law schools. Rather, the state commits the resources to maintain two schools for fear essentially of hurt feelings: that “doing away with either would be so divisive that the cost to the state would exceed any savings.”¹² But “doing away with either” school unnecessarily dramatizes the two-law school issue by painting geographic location as a red herring.

The problem is not an insufficiency of money and is not indecision over where a law school must be located; rather, the problem is entrenched and duplicative bureaucracies that seem to perpetuate themselves through the misallocation of resources.¹³ Operating as two independent institutions, each law school must amass and expend substantial resources simply to maintain its internal administrative services, and to maintain professional and academic accreditations. As a result, the two schools substantially and unnecessarily duplicate resources, especially in the expensive, top-heavy bureaucracy that has little to do with providing students value for their money on a day-to-day basis. In failing to coordinate programming, the schools meet the needs of the legal marketplace with inefficiencies, especially an annual flood of new

⁷ See, e.g., *id.* at [2975](#) (rank 86).

⁸ See, e.g., Detailed Law Ranking Report (Apr. 15, 2010) (UALR) (copy on file with author).

⁹ See generally, e.g., Louis H. Pollak, *Why Trying to Rank Law Schools Numerically Is a Non-Productive Undertaking: An Article on the U.S. News & World Report 2009 List of “the Top 100 Schools,”* 1 DREXEL L. REV. 52 (2009).

¹⁰ See generally, e.g., Mitchell Berger, *Why the U.S. News and World Report Law School Rankings Are Both Useful and Important*, 51 J. LEGAL EDUC. 487 (2001).

¹¹ As early as my service on the Long-Range Planning Committee at the Little Rock law school in academic year 1999-2000, the school has contemplated distance education to enhance opportunities for legal education for students in parts of Arkansas beyond commuting distance to Little Rock or Fayetteville. But the equipment requirements for such an undertaking are substantial and expensive. In the last decade, the law faculty in Little Rock has approved, on an as-funding-is-available basis, centers for the law school in appellate law, water law, and public health law. None has come to fruition. Professors Ken Gould and Diane Mackey, each as individuals, made strides on the latter two causes, but they have announced and taken retirement, respectively, without centers having taken shape.

¹² Doug Smith, *Law-School Front Is Quiet for Now: That Could Change*, ARK. TIMES, Nov. 18, 2010, at 13.

¹³ Such was a fear of those who questioned having two law schools to begin with. As Doug Smith recently recounted in the *Arkansas Times*, “In some circles, Two Law Schools became a symbol of unnecessary government spending, the way Amtrak became a symbol on the national level.” Smith, *supra* note 12, at 13.

lawyers deeply in debt and ill skilled to provide the services that Arkansans need most, in the places where services are most needed. Arkansas winds up with depressed lawyer salaries, wasted talent in unemployed J.D.s, a dearth of counsel for the rural and the poor, and inadequately skilled practitioners in complex cases.¹⁴ These deficiencies in turn fuel the interstate brain drain, torpid economic development, and a perception of Arkansas as a bucolic backwater.¹⁵

The solution is simple: the two law schools should be unified into one school with two campuses. If ever Arkansas needed two law schools—and arguably it did when the two law school system came about in 1975¹⁶—it no longer does. Under unified management, duplicate bureaucracy can be eliminated. Programming can be streamlined. The strengths of each campus, geographic and otherwise, can be capitalized upon, and the expertise of each campus can be brought to bear to alleviate the shortcomings of the other. A unified administration can coordinate the allocation of resources, such as scholarship funds, of programming, such as curricular offerings, and of student distribution, such as full-time and part-time class seats. This coordination would maximize the utility of public resources in Arkansas legal education and would serve more efficiently than at present the legal and policy needs of Arkansans, whether rural or urban, poor or wealthy.

For example, the Fayetteville school is renowned for its National Agricultural Law Center and its specialized journals in food law and policy and Islamic law and culture. The Little Rock school is known for its nationally circulated appellate law journal and its access to state government. Fayetteville has lately fostered superior bar passage rates as Little Rock has struggled to launch a bar preparation program.¹⁷ Fayetteville has nurtured faculty in intellectual property and environmental law, areas in which Little Rock has not had the resources to hire permanent faculty. Fayetteville students have suffered disadvantage in the job market for their geographic isolation from the capital, while Little Rock dedicated a faculty position to externship coordination. Fayetteville offers a full-time curriculum with the resources of a research university, while Little Rock offers a part-time curriculum that allows students with families and capital-city careers to study law at night. Fayetteville offers study abroad programs in Russia and England, while Little Rock has not had the resources to launch a study abroad program.¹⁸

¹⁴ The national annual average salary for a lawyer is \$129,020; the Arkansas average is \$100,620. U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics Database, <http://data.bls.gov/oes/search.jsp> (searched Nov. 15, 2010, for May 2009 data) (copy of results on file with author). Of surrounding states, Arkansas surpasses Mississippi, \$88,360, and Oklahoma, \$91,080, and falls short of Missouri, \$112,380; Tennessee, \$117,400, and Texas, \$130,850. *Id.* Entry-level pay paints a bleaker picture still. *See infra* notes 81-82 and accompanying text. Employment data is discussed *infra* part III.B, and legal services for the rural and poor is discussed *infra* part III.D.

¹⁵ Arkansas ranked fiftieth of fifty-one jurisdictions (ahead of West Virginia) in the American Human Development Index, 2010-2011 data. American Human Development Project of the Social Science Research Council, HD Index and Supplemental Indicators by State, ALL, 2010-11 Dataset, downloadable from <http://measureofamerica.org/maps/> (last visited Nov. 15, 2010) (copy on file with author); *see also infra* note 82.

¹⁶ *See generally* Robert R. Wright, *A Brief History of Legal Education in Arkansas*, 20 U. ARK. LITTLE ROCK L.REV. 833, 848-51 (1998); Smith, *supra* note 12, at 13.

¹⁷ *See infra* part III.B.

¹⁸ In 1998, I proposed to then-Dean Rodney K. Smith a study abroad program that would piggyback on the existing relationship between the UALR main campus and the Universidad Autónoma de Guadalajara in Mexico. A feasibility study I conducted, however, showed that UALR students would not be willing to pay the cost that such a program would require, and costs were driven up prohibitively by the need to qualify the program under rigorous ABA requirements for site review and accreditation. At the same time, Smith launched a study abroad program in Haifa, Israel, in cooperation with the University of Baltimore. The Haifa program was canceled after only two or

Each campus would retain its strengths and focus resources in those veins. Rather than jealously guarding resources developed at public expense, each campus would make its resources available to all students who study law in Arkansas. Meanwhile, administrators on each campus could develop the strengths of that campus without having to expend resources in the other's strengths. Students could change campuses to take advantage of the varied programs in each—perhaps an LL.M. program in Fayetteville, and an externship in Little Rock—without the hassle and often insurmountable bureaucratic hurdles and expenses of transferring from one law school to another.¹⁹ Moreover, some course offerings could be developed for simultaneous presentation on both campuses through state-of-the-art audiovisual technology.

Thus from the student perspective, law school unification would increase educational opportunities, even while bureaucracy is reduced. In one model, for example, each campus would offer the full 1L curriculum. After the first year, students could opt to complete their studies on either campus. Students might go to Fayetteville for upper-level studies in agriculture law, or an opportunity to work on the *Journal of Islamic Law and Culture*. Or students might go to Little Rock to extern in state government and pursue a joint degree with the Clinton School of Public Service. Technologically outfitted classrooms would make some upper-level courses available whether students reside in Fayetteville or Little Rock, and perhaps in the future at other University of Arkansas campuses. A student might engage in an externship with local government or legal services in Fort Smith, Pine Bluff, or Jonesboro, while participating in coursework at a local site. Student services such as career counseling and bar support would be fully available in both Fayetteville and Little Rock. Meanwhile, virtually instantaneous digital communication—not available when the law schools were severed in 1975—would allow administrative functions such as public relations and executive administration to operate out of a single office on one campus, and functions such as admissions to be administered from one campus with only a staff presence at the other campus. For example, there need be only one admissions office, but the other campus can be staffed to give tours and information to prospective students.

Other prominent law schools model dual-campus systems.²⁰ Penn State took over the 1834-founded Dickinson School of Law in Carlisle, Pennsylvania, in 2000. Desiring a law school also at Penn State's flagship University Park campus, the university opened a second Dickinson campus there in 2006. The "unified two-location operation" allows students to complete the first-year curriculum on either campus and then to choose campuses thereafter to access upper-level courses, clinics, and joint degrees, as the student desires. Penn State also offers upper-level "audiovisual classes," using distance-learning technology, for students on both campuses. Widener University has operated a single law school in two states since 1989, with one campus in the financial center of Wilmington, Delaware, and one in the political capital of

three years, ostensibly upon an outbreak of hostilities in Israel. But the program had struggled for viability from the start, and UALR had never met its quota of paying students to keep the program afloat. After Charles W. Goldner became dean of the Little Rock law school in 2001, he told me that UALR would no longer expend resources in support of a study abroad program.

¹⁹ See *infra* part III.A.

²⁰ Information regarding the Penn State and Dickinson programs for this article was checked against information from their websites as publicly available at the time of this writing, in October 2010—see Penn State Law Home Page, PA. STATE LAW, <http://www.dsl.psu.edu> (last visited Oct. 18, 2010); Widener Law Home Page, WIDENER LAW, <http://law.widener.edu> (last visited Oct. 18, 2010); see also Press Release, Pennsylvania State, Applications, Diversity Surge at Law School as Dual-Campus Plan Moves Forward (Jan. 20, 2006) *available at* <http://live.psu.edu/story/15601> (last visited Sept. 3, 2010).

Harrisburg, Pennsylvania. Naturally, the former campus specializes in corporate and business law and also features a Health Law Institute. The latter campus focuses its resources in its Law & Government Institute and a state government externship program. Students in part-time and full-time programs can choose from the clinical programs, study abroad opportunities, and joint-degree offerings of each campus.

Both Penn State Dickinson and Widener University law schools are fully accredited by the American Bar Association. ABA standards provide for “branch campus” arrangements by which the full J.D. curriculum may be completed at either of two campuses.²¹ The unification of the law schools in Arkansas will trigger an ABA approval process,²² but accreditation will be no more at risk than in the ABA re-accreditation processes that both law schools undergo routinely. Indeed, the enhancement of program offerings to students in a dual-campus system, modeled after the successful examples of Penn State and Widener, will only enhance the profile of the Arkansas Law School, both for the ABA and in the legal education market. Accreditation poses no hurdle to unification, but an opportunity to ensure that unification delivers on its promise of greater opportunity for students and a functional legal marketplace for Arkansans.²³ A unified Arkansas law school, serving the entire state, can be a model for other rural states with thinly, geographically dispersed opportunities for legal education.

In fact, the unification of the law schools and accordingly streamlined allocation of resources promises to achieve something that neither law school in Fayetteville or Little Rock has achieved, or possibly can achieve, on its own: to serve the law and policy needs of Arkansans, poor and wealthy, rural and urban, with a *first-tier law school*. The re-allocation of resources and unification of the schools to make the best of both campuses available to all Arkansas law students will enhance *U.S. News* performance on the key factor of reputation—forty percent of the *U.S. News* score.²⁴ The next most important factor, selectivity—twenty-five percent of the *U.S. News* score—will at worst remain the same, or will improve with the implementation of a smarter, coordinated distribution of the student population between the campuses. Per-student instructional expenditures—only fifteen percent of the *U.S. News* score—will stay the same as savings are reinvested, or will decline slightly as bureaucratic excess is trimmed, but that loss also may be recovered with a modest, controlled decline in student population. Fewer students enrolled will in turn restore the market balance for lawyers in Arkansas and, therefore, pay off in higher placement performance—twenty percent of the *U.S. News* score²⁵—and thus moreover in national reputation. Unifying the law schools will end the constant scrapping of each for miniscule improvement in ranking and, instead, will initiate an upward spiral of performance for *the* Arkansas Law School and its alumni.

Planning and careful resource reallocation decisions will be required to fully effect the unification of the law schools into a single, dual-campus institution. Initially, investment will be required to support programs such as AV classes. But cost savings in the unification will amply

²¹ 2010-2011 Standards and Rules of Procedure for Approval of Law Schools, Standard 106(4), at 9, AM. BAR ASS'N, available at <http://www.abanet.org/legaled/standards/standards.html> (last visited Oct. 18, 2010).

²² *Id.* Standard 105, at 7.

²³ *See id.* (requiring that a merger or affiliation of existing accredited law schools, or the opening of a new branch campus, “substantially enhance the law school’s ability to comply with the Standards”).

²⁴ For this and subsequent percentages in this paragraph, see the methodology section of *U.S. News 2010*, *supra* note 6, at 75.

²⁵ Burk & McGowan, *supra* note 1, at 77, predict that in the post-recession market for legal education, among consumers, “[q]uantity and quality of entry-level placement will receive increasing weight for schools not among the super-elite.”

fund investment; roughly speaking, for example, the quarter-million-dollar salary and benefits of *one* law school dean for *one* year will upgrade *six* classrooms with “smart” technology.²⁶ This Article examines additional savings that can be achieved through law school unification and, accordingly, proposes a model for unification, while only increasing opportunities for law students in Arkansas and, therefore, better serving the bar and the people of the Natural State.

II. SAVING MONEY

As the journalist’s mantra instructs, *follow the money*.²⁷ Arkansas invests considerable resources in its two law schools. But there is precious little oversight and less accountability. In the fall of 2010, a legislator requested line-item budget data, including revenues, expenditures, and assets, from both law schools.²⁸ The Fayetteville law school responded with summary data, which is useful for a big-picture analysis, but not sufficiently detailed to audit individual expenditures. The Little Rock law school responded initially with only gross sums and, ultimately, with less detail than Fayetteville.²⁹

Neither school is accustomed to having anyone looking over its shoulder. One hopes that at least the law schools themselves are tracking revenues and expenditures more closely than their data productions suggest. The limited data productions of the two schools make a precise assessment of savings to be derived from unification impossible. But a rough assessment may be derived from an informed analysis of the available data.

The first stop on a tour of the unification budget picture is the reduction of administrative overhead. A comparison of the administrative structures of the current law schools with the dual-campus models of Penn State and Widener University illustrates where cost savings may be achieved in a unified school with a dual-campus system. This study is derived from information about each school posted on its own website at the time of this writing.³⁰ Each row of the following table shows the highest level of personnel currently managing the specified office, ranging downward from administrator to manager, supervisor, coordinator, or assistant, to mere staff. The “Potential Save?” column in each row shows “not applicable,” zero, or a number of dollar signs. “Not applicable” appears where a school does not appear to have an office dedicated to the provision of the specified service. A zero in the savings column indicates that no reduction

²⁶ Based on the compensation package of the Little Rock Dean, *see infra* part II, in comparison with, *e.g.*, *Task Force on Smart Classrooms*, CAL. STATE UNIV., FRESNO, <http://www.csufresno.edu/ait/smart100100.htm> (last visited Sept. 8, 2010), which projected a cost of \$34,550 per classroom upgrade. This upgrade involves the installation of electronic presentation technology; intercampus communication technology would cost more, but is technically feasible and need not be installed in as many classrooms.

²⁷ *See, e.g.*, KEE MALESKY, *ALL FACTS CONSIDERED: THE ESSENTIAL LIBRARY OF INESSENTIAL KNOWLEDGE* 35 (2010) (citing *ALL THE PRESIDENT’S MEN* (Warner Bros. 1976)).

²⁸ Because of the political sensitivity of the two-law-school question, especially with the 2011 legislative session pending, I have agreed to maintain as confidential the details of this transaction, including the identity of the legislator, who provided copies of the records to me in the interest of completing this research. I note that the unpublished working papers and correspondence of legislators is exempt from public disclosure under the Arkansas Freedom of Information Act, ARK. CODE ANN. § 25-19-105(b)(7)(Repl. 2002). All of the responsive records of the law schools collected in this inquiry, as discussed in the main text that follows, are subject to inspection as public records and are on file with the author.

²⁹ Some additional information was culled from public records readily available to the law school, such as ABA Report, *supra* note 5, yet that report was not produced to the legislature.

³⁰ For the Penn State Law and Widener Law home pages see *supra* note 20. For home pages of the Little Rock and Fayetteville law schools, see UNIV. OF ARK. AT LITTLE ROCK WILLIAM H. BOWEN SCH. OF LAW, <http://law.uarl.edu> (last visited Oct. 20, 2010) and UNIV. OF ARK. SCH. OF LAW, <http://law.uark.edu> (last visited Oct. 20, 2010).

in workforce will result from unification. For example, the office of dean of students is a critical, student-centered service that must be provided in person; administrative personnel, therefore, must staff an office of dean of students on each campus.

Dollar signs, from one to four, indicate that savings can be achieved through workforce reduction. A single dollar sign indicates a modest savings. For example, alumni development can be accomplished with a lead administrator on one campus and a deputy administrator on the opposite campus, rather than two lead administrators. A double dollar sign indicates a moderate savings. For example, admissions can be accomplished with a lead administrator on one campus and only staff on the opposite campus, rather than two lead administrators. A triple dollar sign indicates a substantial savings. For example, public relations can be accomplished by a lead administrator on one campus and no one at all on the opposite campus, rather than two lead administrators. Finally, the quadruple dollar sign represents blockbuster savings in having only one general dean, as at Penn State and Widener, to oversee the two campuses.

Survey of Selected Law School Services Distribution

	Penn St. Carlisle Campus	Penn St. Univ. Park Campus	Save ?	Widener Wil'ton Campus	Widener-Harrisbg. Campus	Save ?	Arkansas -Fay'ville School	Arkansas-L.R. School	Potential Save?
Admissions	admin.	admin.	0	admin.	staff	\$\$	admin.	admin. ³¹	\$\$
Alum./ Dev'mt.	admin.	coord.	\$	admin.	asst.	\$	admin.	admin.	\$
Bus. Adm.	admin.	admin.	0	admin.	staff	\$\$	admin.	admin.	\$\$
Career Servs.	admin.	admin.	0	admin.	admin.	0	admin.	admin.	0
CLE Servs.	admin.	none	\$\$\$	admin.	none	\$\$\$	n/a	n/a	n/a
Clinics	admin.	admin.	0	admin.	admin.	0	admin.	admin.	0
Dean, Fac.	admin.	admin.	0	none	admin.	\$\$\$	admin.	admin.	\$\$\$
Dean, Gen.	None	admin.	\$\$\$\$	none	admin.	\$\$\$\$	admin.	admin.	\$\$\$\$
Dean, Studs.	admin.	admin.	0	admin.	admin.	0	admin.	admin. ³²	0
Faculty	Faculty	faculty	0	faculty	faculty	0	faculty	Faculty	0
Fin. Aid	Staff	admin.	\$\$	admin.	staff	\$\$	n/a	n/a	n/a
IT	Staff	admin.	\$\$	mgr.	admin.	\$	admin.	admin.	\$\$
Law Lib./ Gen.	admin.	admin.	0	admin.	admin.	0	admin.	admin.	0
Law Lib./ Spec. Servs.	admin.	staff	\$\$	admin.	admin.	0	admin.	admin.	\$\$
Maintenance	admin.	n/a	n/a	admin.	super.	\$	admin.	admin.	0
Media Servs.	n/a	n/a	n/a	Staff	staff	0	n/a	n/a	n/a
Multi-cultural Affairs	n/a	n/a	n/a	admin.	none	\$\$\$	n/a	n/a	n/a

³¹ The UALR salary schedule identifies this position as “research associate,” but the position in the law school is titled “associate dean.” In a legislative budget hearing on October 28, 2010, Rep. Andrea Lea asked UALR Chancellor Joel Anderson about “research associate” positions in the Little Rock law school, and the chancellor asserted that a “research associate” primarily conducts research. To my experience as a member of the faculty at the Little Rock law school, the two “deans” occupying “research” positions are administrators and are not available to conduct research. Rep. Lea was apparently concerned about the bureaucracy at the Little Rock law school, which has eight deans and twenty non-decanal, doctrinal teaching faculty.

³² The UALR salary schedule identifies this position as “research associate,” but the position in the law school is titled “assistant dean.” *See supra* note 31.

Public Rel'ns.	asst.	admin.	\$	admin.	none	\$\$\$	admin.	admin.	\$\$\$
Rgstr.	admin.	asst.	\$	admin.	asst.	\$	admin.	admin.	\$
Study Abroad	admin.	none	\$\$\$	n/a	n/a	n/a	admin.	n/a	n/a
Web Dev.	None	admin.	\$\$\$	admin.	none	\$\$\$	n/a	n/a	n/a

The chart demonstrates that students will see no reduction in services as a result of the unification. Two deans of students, two directors of career services, two clinic administrations, the general faculty, and general library services will continue to be fully and personally available to students on each campus.

A most conservative estimate of savings derived from these workforce reductions promises ample funds freed for more student-centered purposes. The following table contemplates cuts at the Little Rock law school,³³ illustrating the impact of a workforce reduction focused only on the elimination of lead administrator positions, as indicated by the preceding table.

Example Administration Workforce Reduction Based on UALR Pay Schedule³⁴

Administrator	Compensation/Benefits (rounded)	Potential Savings
Admissions	\$88,000	\$88,000
Alumni/Dev'mt.	\$107,000	\$107,000
Business	\$73,000	\$73,000
Clinic Director	\$121,000	\$0
Dean	\$251,000	\$251,000
Dean/Career	\$82,000	\$0
Dean/Faculty	\$125,000	\$125,000
Dean/Students	\$75,000	\$0
Faculty (TT)	\$100,000 to \$169,000	\$0
Law Lib.	\$73,000 to \$128,000	\$84,000
Registrar	\$67,000	\$67,000
Sum		\$795,000

These lead-administrator savings are, of course, just the tip of the iceberg. With every administrator comes support staff and overhead, such as printing and mailing costs. The elimination of one general dean alone saves a quarter-million dollars annually in salary and benefits, plus perhaps hundreds of thousands of dollars in the elimination of the dean's office.³⁵ Lead admissions personnel can be eliminated, with only a staff presence on each campus to meet

³³ The Fayetteville law school did not provide sufficient data—in particular, identification of which administrators bear which responsibilities, also not shown on Fayetteville's web site—to replicate this analysis for that campus.

³⁴ A copy of the 2010-2011 UALR Law School pay schedule is subject to public inspection and on file with the author. Benefits in addition to salary were calculated at an average of 19.759% based on data provided to the General Assembly by the Fayetteville law school in the public record UA Law School Budget FY11.pdf, at 1 (copy on file with author). All numbers are rounded to thousands of dollars.

³⁵ See *infra* next table and discussion that follows.

prospective students, give tours, and attend local recruiting events. Public relations can be managed from a single location almost entirely electronically.³⁶ Similarly, functions such as alumni development, information technology, and upper management of the law library can be reduced to a unified leadership with only coordinating management on hand at the opposite campus. Other savings will derive from electronic resource unification, from unified communications and publications, and from nearly everything a law school does that is not student-personal. For example, a unified law school will need only one subscription to an electronic database service; will produce, print, and post only one alumni magazine; will fund only a single team to travel to faculty and student recruitment functions; and will prepare and defend only one application for accreditation.

The failure of the law schools to produce line-item data in response to the legislative request makes it prohibitively difficult to project with precision the savings that would result from this broad range of duplicative functions. For example, each law school has released publicly only a sum total of shipping and mailing expenditures; there is no way to know how much of those costs derive from the office of the dean of students or the office of admissions. The following table, though, presents at least a limited list of known summary expenditures at Fayetteville.

Example Non-Administrator Summary Expenditures Subject to Reduction³⁷

Office of Dean	\$363,000
Library/Electronic	\$329,000
Post/Misc.	\$347,000
Pubs./Printing	\$25,000
Travel	\$191,000

Using the Fayetteville data for argument’s sake, if even half of these expenditures on one campus can be cut in these areas alone, savings will exceed a half-million dollars annually. Adding workforce reduction, then, conservatively calculable savings sum about \$1.4 million annually.

A less precise but viable alternative model for estimating savings without line-item expenditures uses workforce reductions as a basis for extrapolation.³⁸ In a rough sense, one might guess that a law school administrator implicates expenditures in proportion to the administrator’s compensation package. The personnel workforce reduction in the table above suggests a reduction to the sum total of \$6.4 million in Little Rock personnel costs of about

³⁶ Indeed, I have never met the director of communications of the law school in Little Rock in person. She and I have communicated only by e-mail and telephone with no impairment of my involvement in public relations initiatives. Similarly, when I was a student at Duke Law School, 1993-95, the communications office was located in a downtown office building remote from the campus law school. In the electronic age, communications and public relations can be managed from any location—here, Little Rock, Fayetteville, or elsewhere—and does not require live contact.

³⁷ Data are derived from public records produced in response to legislative request, namely Legislative Request October 2010.xlsx (copy on file with author) (FY2009-10), UAF_American Bar Association Report.pdf (copy on file with author) (FY2009-10), and UA Law School Budget FY11.pdf (copy on file with author) (FY2010-11). The derivation for Dean’s Office expenditures reduces the departmental budget by non-classified salaries and benefits to avoid overlap with the preceding data on workforce reduction. All numbers are rounded to thousands of dollars.

³⁸ Data in this paragraph derive from the public record the Little Rock law school produced in response to legislative request, UALR School of Law Info.pdf (describing “Consolidated Budget FY ’11”) (copy on file with author).

12.4%. The sum of Little Rock non-personnel expenditures was \$4.6 million. Extrapolating a 12.4% reduction of non-personnel expenditures would allow \$570,000 to be trimmed from the budget in Little Rock. More conservatively, law library and debt retirement costs—little affected by personnel reductions—may be excluded from the non-personnel budget, which yields an estimated savings of about \$404,000. By this method, adding workforce reduction back in, savings run in the neighborhood of \$1.2 million annually—close to the same number conservatively projected by the preceding model.

On the other side of the coin, the revenue picture remains stable. The following table describes principal revenue sources.

Principal Revenue Sources³⁹

Summary Revenue	Fayetteville	Little Rock
State Approp. or Univ. Allocation	\$4,157,000	\$4,461,000
State Filing Fees or Adm. Justice ⁴⁰	\$542,000	\$1,344,000
State Filing Fees or Adm. Justice	\$1,344,000	\$500,000
Tuition and Fees	\$4,307,000	\$5,134,000
Foundation	\$448,000	\$262,000
All Revenues	\$11,383,000	\$11,991,000

None of these revenue sources depend on the existence of two separate institutions, so unification will have no adverse effect on revenues. Within each university framework, each law school at present operates in the black.⁴¹ Thus each university's allocation to each school represents a release of funds as a fraction of state appropriations. The General Assembly, therefore, may direct allocation for legal education to whichever university oversees the unified law school, and that university will release funds to the law school without suffering any loss. Tuition and fees would remain the same, unless the unified institutional governance sought to change the size of the student body in pursuit of a competing efficiency. Appropriations from filings fees and the Administration of Justice Fund generate the same revenue annually regardless of how many times they are divided in allocation. Foundation funds held by each campus may continue to serve each campus, and foundation funds held by the U of A Foundation will remain under the control of the U of A Foundation.

³⁹ Fayetteville data derive from UAF_American Bar Association Report.pdf, *supra* note 37, and Legislative Request October 2010.xlsx, *supra* note 38. Little Rock data derive from UALR_American Bar Association Report.pdf, *supra* note 37, and ABA Report, *supra* note 5, at 67-68. All numbers are rounded to thousands of dollars. Because the data were derived from different sources to achieve comparability, there is mixing of the fiscal years. But changes in these numbers from year to year are modest.

⁴⁰ One of the schools seems to have confused these two sources, as the schools provided numbers in opposite positions. The discrepancy is inconsequential, as the sum from the two sources is roughly the same for each school.

⁴¹ See UAF_American Bar Association Report.pdf, *supra* note 37; UALR_American Bar Association Report.pdf, *supra* note 37.

III. BETTERING LEGAL EDUCATION AND PROVIDING AFFORDABLE LEGAL SERVICES FOR ARKANSANS

Budget savings alone would not justify unification of the two law schools. Regardless of the financial picture, the unification should occur only if it is in the best interests of Arkansas students, and most importantly, Arkansas consumers of legal services.

In fact, unification of the law schools will vastly improve the opportunities and quality of legal education for students, giving them access to the best resources of both campuses and both locations. A higher quality of legal education will improve the quality of law practice in Arkansas and thereby trigger an upward spiral of performance, reputation, recognition, and in turn, enrollment potential, and thus again, performance, and so on. If the Fayetteville law school alone was able to boost its performance to the second tier, there is no reason to think that a unified Arkansas law school cannot join the ranks of first-tier legal education. Situated relatively in rural and urban environments, and in commercial and political centers, Fayetteville and Little Rock are ideally positioned to model the advantages of a dual-campus system for public legal education everywhere. Parts A and B below respectively address programmatic range and quality as well as reputation and ranking.

Finally, there is the legal client. Of course, a superior quality of legal practice will benefit the people of Arkansas. But the problem in Arkansas at present is not as much a poor quality of legal services, as a dearth of legal services, especially for the poor and for persons outside the urban centers of Little Rock and Fayetteville. At present, each law school races to fill seats in the fall to keep revenue streams running, then in the spring churns out a flood of indebted job seekers to already saturated local markets.⁴² The law schools maintain a system of “pseudo-competition,” in which they genuinely compete for talented prospective students, but disregard public needs and, after admissions, stall competition in a quicksand of coexistence. In contrast, a unified administration over admissions and scholarships would be better positioned to effectuate thoughtful enrollment and incentive structures to provide Arkansans with the legal services they need, where they need them. Parts C and D below respectively address pseudo-competition and legal practice and services.

A. Programmatic Range and Quality

As stated in part I, law school unification would allow students on each campus to take advantage of programs on either campus. At present, a student who wishes to transfer from Little Rock to Fayetteville or vice versa must go through the same substantial hurdles as a student transferring from any ABA-accredited law school to another, whether in the same city or across the country.⁴³ That means completing an application; possibly suffering lost credits and class standing, and having to retake courses; and being excluded from law review leadership and other important educational experiences. Those costs are prohibitive for most students. In a unified

⁴² Cf. Burk & McGowan, *supra* note 1, at 74 (“In turn, many graduates of less prestigious law schools . . . are having a very hard time finding jobs remunerative enough to support the levels of student-loan debt common among recent graduates, let alone recoup the investment of time and money law school represents for them. Some are finding that the only law-related jobs available to them (other than . . . solo practitioner . . .) involve the low-wage legal process and routine work that increasingly is being pushed down and out to contract lawyers, staff attorneys, temps and outsourcing companies.”). Burk and McGowan furthermore predict no abatement of these economic conditions. *Id.*

⁴³ See, e.g., *Application Instructions*, UNIV. OF ARK., <http://law.uark.edu/prospective/jd/application-instructions.-html> (last visited Nov. 15, 2010) (Transfer Students); *Transfer & Visitor Applicants*, UNIV. OF ARK. AT LITTLE ROCK WILLIAM H. BOWEN SCH. OF LAW, <http://www.law.ualr.edu/admissions/transfer.asp> (last visited Nov. 15, 2010).

Arkansas law school, a student could transfer between campuses virtually at will, taking advantage of an externship in the capital during the legislative session and then a study abroad in the summer. The best that each law school has to offer would be available to every student.

Selected Unique Programs⁴⁴

Fayetteville	Little Rock
Agriculture Law–Center	Arkansas Territorial Records
Agriculture Law–LL.M.	Clinic–Mediation
Externships–Corporate	Clinic–Tax
Journal–Food Law & Policy	Joint Degree–UALR Business
Journal–Islamic Law & Culture	Joint Degree–UAMS Medical
Research University	Joint Degree–Clinton Pub. Serv.
Study Abroad–England	Journal–Appellate Prac. & Proc.
Study Abroad–Russia	Political Capital
United Nations Depository	

Students would have broader opportunities for both employment during school and career placement after school with the flexibility to network in both northwest and central Arkansas business and legal communities. Little Rock-originating students would at last have access to the booming economic centers of northwest Arkansas, while Fayetteville students would have competitive entrée in the public service and political sectors of the capital city.

Meanwhile unification would have no effect on student-intensive services. As posited by the workforce reduction studies in part II, *supra*, substantial cost-savings can be achieved through unification with only a reduction in redundant bureaucracy. Student-intensive services such as career services, academic support, and clinical programs would remain fully staffed with lead personnel to meet student needs locally and in person on each campus. A full law library, staffed with the usual array of patron services, would be available on each campus, though savings would be effected through the rapidly increasing volume of electronic collections and subscriptions, which can be instantly and simultaneously available on both campuses. Faculty instruction on each campus would cover the range of essential first-year and bar courses, but each campus would be able to invest in faculty expertise—in important but non-essential areas such as agriculture, civil liberties, environment, intellectual property, race and gender studies, and securities—without duplicating precious resources.

B. Reputation and Ranking

A look at *U.S. News* data further demonstrates the potential of a unified law school. In the table below are data from the *U.S. News* survey for the two law schools from the most recent assessment cycle, “2011,” or newsstand 2010, along with rough second and first tier thresholds, and for comparison’s sake, data from the Little Rock law school.

⁴⁴ These lists of programs were culled from the schools’ web sites, cited in note 30, *supra*.

U.S. News Data (Newsstand 2010)⁴⁵

Value	Rank (/188)	Overall Score (/100)	Peer Assessment (/5.0)	Lawy./ Judge Assessment (/5.0)	Undergrad. GPA, 25-75 th %iles	LSAT Score, 25-75 th %iles	Acceptance Rate (lower better)	Stud.-Fac. Ratio (lower better)	Grads Empl. at Grad.	Grads Empl. 9 mos. after Grad.	Bar Pass. Rate in Jx.	Other ⁴⁶
Wgt. %	—	100.0	25.0	15.0	10.0	12.5	2.5	3.0	4.0	14.0	2.0	12.0
L.R. 2010	123	35	2.2	2.6	2.90-3.67	150-157	26%	16.2	37.5	95.8 %	81.3 %	—
2d tier⁴⁷	100	42	2.2	2.7	3.12-3.57	154-160	41%	15.1	74.9 % ⁴⁸	93.8 %	86.5 %	—
Fay. 2010	86	44	2.3	2.8	3.16-3.74	153-158	34%	12.2	— ⁴⁹	95.7 %	82.0 %	—
1st tier⁵⁰	50	55	3.0	3.2	3.23-3.70	158-165	25%	13.5	80.5 %	95.0 %	87.9 %	—

Upon initial unification of the two law schools, Little Rock’s figures will exert downward pressure on Fayetteville’s higher ranking, especially in key reputational assessments, which sum forty percent of the *U.S. News* analysis.⁵¹ Fayetteville law school and University of Arkansas System officials may be expected to oppose unification as a political matter, for fear of jeopardizing the well-earned second-tier status solidified under the leadership of Dean Cynthia Nance. But combined numbers between the schools are not far off the second-tier threshold and more likely will exceed the threshold given the larger size of the Fayetteville law school.⁵² The unified law school will, anyway, recover quickly and be well positioned to exceed the performance of the Fayetteville law school alone. Most importantly, smart public-relations management of the unification will provide a golden opportunity to boost the forty-percent-weight reputational score of the unified school from the outset, bringing national attention to a dual-campus model and the remarkable multiplication of programs and resources that unification makes available to students.

⁴⁵ U.S. NEWS, AMERICA’S BEST GRADUATE SCHOOLS 2011 EDITION 28-32 (2010).

⁴⁶ Not shown in the top-100 table as published in the *U.S. News* magazine are the following additional factors: instructional expenditures per student, 9.75 percent; other expenditures per student, 1.5 percent; and library volumes, 0.75 percent.

⁴⁷ The second tier-low numbers here are an average of the scores of the five schools that tied for 98th place in the newsstand-2010 rankings: Catholic University of America, DePaul University, University of San Francisco, University of the Pacific, and William Mitchell College of Law.

⁴⁸ *U.S. News* reported no data from University of San Francisco, University of the Pacific, and William Mitchell College of Law.

⁴⁹ *U.S. News* reported no data from the Fayetteville law school.

⁵⁰ The first tier-low numbers here are an average of the scores of the four schools that tied for forty-eighth place in the newsstand-2010 rankings: American University, Southern Methodist University, Tulane University, and University of Maryland.

⁵¹ Burk & McGowan, *supra* note 1, at 76, furthermore, predict that prestige will dominate indicators of law school quality in the post-recession economy.

⁵² In legislative budget hearings on October 28, 2010, Rep. Andrea Lea asked UALR Chancellor Joel Anderson why the Little Rock dean makes about \$10,000 more annually than the Fayetteville dean, given that the Little Rock dean supervises a smaller faculty and a smaller school. The chancellor initially countered that the Little Rock law school in fact has more students, estimating about 450 to Fayetteville’s roughly 400. But that estimate counts enrolled students to the person, not full-time equivalent. Taking into account Little Rock’s part-time program at a fifty-percent rate, using academic year 2006-07 numbers, Little Rock enrolled 364 full-time-equivalent students to Fayetteville’s 428 full-time students.

The *U.S. News* data demonstrate the wisdom of having the Fayetteville law school take the lead in the unification—a subject explored in more detail in part IV. In part, the *U.S. News* assessments are interrelated: A school with superior ranking and reputational assessments will attract students with higher undergraduate GPAs and LSAT scores. Better incoming classes will in turn boost ranking and reputation. Regardless, though, of whether the chicken or the egg came first, the Fayetteville law school has the proven track record in boosting its performance. The admissions function is slated for reduction to a single leadership in the unification process, and that leadership must come from the school that has been most successful. Fayetteville enrollees simply have better scores. The superior performance of the Little Rock law school on acceptance rate—only 2.5 percent weight anyway—is more likely a function of capital-city location, night program accessibility, and smaller size than of any extraordinary effort on the part of admissions officials. Fayetteville will be able to bring its expertise to bear to raise the admissions credentials—22.5 percent weight—of the unified law school up to the former performance level, if not better. Indeed, the schools’ borderline-high LSAT scores at the seventy-fifth percentile offer a taunting lure from the first tier.

Student-faculty ratio should remain above the second-tier line, but at three percent weight, it is not a critical factor.⁵³ The schools show little difference in performance on fourteen-percent-weight employment nine months after graduation, and near-ten-percent-weight expenditures per student initially will remain unchanged by unification. In time, the unified administration will be able to balance cost savings with planning on class size and distribution so as to maximize efficient performance in these areas.

Bar passage matters much more than the *U.S. News* allocation of two percent weight indicates, because it is a factor in which prospective and enrolled students take an exaggerated interest. Bar passage also is important as a public and well publicized assessment of law school performance. The pass rate, therefore, works a strong influence indirectly on the facially much more important scores of entering class statistics and reputational assessments. While bar performance in the *U.S. News* assessment here shows Little Rock not far behind Fayetteville, Little Rock has struggled in the last two years to make the grade.⁵⁴ On the July 2010 examination, for example, Little Rock first-time takers performed at 64 percent (and 56 percent for all takers), to Fayetteville’s 78 percent.⁵⁵ Little Rock takers’ performance has prompted the dean in the fall of 2010 to appoint a special committee to investigate the problem.⁵⁶ Through

⁵³ Admittedly, though student-faculty ratio does matter to students. In legislative budget hearings on October 28, 2010, Rep. John Burriss asked UALR Chancellor Joel Anderson to explain the Little Rock law school’s inferior student-faculty ratio. The chancellor said that he was not familiar with the data and declined to comment.

⁵⁴ Earlier in the last decade, ironically before Little Rock created a new administrative position focused on bar support, the schools traded top spots. Compare Internet Legal Research Group, 2009 Law School Profile – University of Arkansas-Fayetteville, <http://www.ilrg.com/rankings/law/view.php/107> (last visited Dec. 22, 2010), with Internet Legal Research Group, 2009 Law School Profile – University of Arkansas-Little Rock (Bowen), <http://www.ilrg.com/rankings/law/view.php/108> (last visited Dec. 22, 2010).

⁵⁵ E-mail from Valerie Nation to Little Rock law faculty listserv (Sept. 9, 2010) (copy on file with author).

⁵⁶ Professor Frances Fendler was appointed chair in mid-September 2010, but at the time of this writing, more than a month later, the dean has not yet appointed the committee membership. Personal interview with Fendler, Little Rock, Ark., Oct. 21, 2010. Little Rock employs an assistant dean of students, *see supra* note 32, who is responsible for student bar preparation, but that person, hired only a year after graduating from the Little Rock law school and passing the bar herself, brought no specialized bar preparation experience to the job, *see* UALR Law School, <http://www.law.ualr.edu/faculty/bios/VNation.asp> (last visited Oct. 22, 2010). In contrast, for example, when I visited at the Columbus School of Law at the Catholic University of America (CUA) in Washington, D.C., in the spring semester of 2006, academic support and bar preparation were overseen by Nerissa Skillman, an

whatever different means, Fayetteville has performed better than Little Rock as measured by the critical assessment of graduates' performance on the Arkansas Bar; unification will allow the expertise Fayetteville has developed in this area to benefit students on both campuses.

Unification, therefore, would best serve the interests of Arkansas law students, and in turn, Arkansas lawyers. But more importantly, unification would best serve the interest of Arkansans, that is, the people who need legal services.

C. Pseudo-Competition

The two law schools have fallen into a pattern of dysfunctional pseudo-competition. Ideally, the two would compete in Arkansas to recruit the best and brightest students, to offer the best curricular programming, and to turn out the best Arkansas lawyers. But public funding with only the faintest public oversight is a formula for pseudo-competition: the appearance of competition, or a controlled and modest competition only, which yields readily to higher priorities, namely the schools' own survival as bureaucracies.

The schools engage in a modest competition for prospective students, because incoming class statistics feed directly into the *U.S. News* analysis, and because highly qualified students will succeed in law school, and their accomplishments reflect well on the law school. These are significant objectives. A law school looks good in part because it *is* good, made better through the contributions of high-achieving students and alumni. But *U.S. News* rankings and *looking good* are not worthy objectives *per se*. The public defender who saves the innocent from wrongful condemnation and whose defense of the guilty inspires confidence in justice is successful; the corporate lawyer who earns great personal wealth while helping to turn the engines of economic development and employment also is successful. But the *public* law school ought to be more concerned with generating the former than with generating the latter, which the private marketplace will more readily supply. And the two law schools' incentives and assessments at present fail to account for that priority of public mission.

After the hard work of admissions is finished, incentives to better Arkansas legal education and practice break down rapidly. Competitive forces are overwhelmed by an entrenched status quo. For example, one might hope that law faculty would drive the pursuit of betterment beyond students' achievements. Some faculty do. But many high achievers are motivated by the desire to find work elsewhere. Not all administrators and tenured faculty share that drive. In a recent re-accreditation report with respect to the Little Rock law school, the ABA observed, "Six of the 23 tenured and tenure-track faculty members have not published any scholarship in the past three years"⁵⁷—even while school standards plainly state, "Each faculty member 'is expected to produce at least one law review article of publishable quality or its equivalent [at minimum] every two years.'"⁵⁸ Faculty productivity is not measured directly by *U.S. News*, and its impact on reputation is too diffuse to afford personal accountability. Meanwhile, faculty pay is nearly lock-step with years of service. Every incentive supports stagnation, and having two theoretically competitive law schools has not altered bureaucratic reality.

accomplished specialist in the area who has since left CUA in furtherance of a career in bar preparation. See *The Skillman Method Home Page*, <http://www.theskillmanmethod.com/index.asp> (last visited Oct. 31, 2010). The contrast raises doubts about the efficacy of expenditures at the Little Rock law school that duplicate services offered by the Fayetteville law school with apparently greater affirmative impact for students there; a unified administration would ensure access for students on both campuses to the best resources.

⁵⁷ ABA Report, *supra* note 5, at 33.

⁵⁸ *Id.* at 30-31.

One might hope that the budget process would have fueled competition between the law schools, but there again, theory has given way to reality. Since I began working at the Little Rock law school, there have been seven legislative sessions. In every session, the law schools cooperated—“colluded” would be the skeptic’s term—in their approach to the General Assembly for renewal and enhancement of public support. The law schools agreed *not* to compete for new funding, rather to insist that each receive no more and no less than the other. As Little Rock Dean Charles Goldner told the faculty during his deanship, he would go to the legislature “arm-in-arm” with the dean from Fayetteville. If the two deans are working “arm in arm,” why does Arkansas need two deans? This is not competition; this is a mutual survival pact. “Arm in arm” is a rational course for two actors pursuing a limited resource when each actor has reason to doubt his or her own claim on it. In fact, there is no reason to believe, *ex ante*, that an equal distribution of resources between the two law schools is an efficient allocation; to the contrary, competition renders the most efficient distribution of public money. Suppressing competition in the budget process has served only to preserve the officials and privileges of entrenched bureaucracy.

The profession of law is regulated for a reason: because a purely free market dynamic does not yield the socially desirable result of access to justice for all persons.⁵⁹ That purpose argues powerfully for the existence of a publicly subsidized law school in the State of Arkansas.⁶⁰ It does not support having two. True competition between two law schools would achieve market efficiency but at the expense of social altruism; that competitive dynamic characterizes the admissions process of the Arkansas law schools. Cooperation to suppress competition between two publicly subsidized law schools achieves no objective at all, whether efficient or altruistic; that anti-competitive dynamic characterizes the finance and administration of the Arkansas law schools. The hybridization of these models in a pseudo-competition achieves a limited competition to enroll students who could succeed anywhere and little else; the social objectives that justify the public funding of a law school are marginalized. Arkansans cannot afford lawyers, if even lawyers are to be found, so the people whose taxes and fees pay for the legal education system are denied access to justice.

Meanwhile, market dynamics are severely impaired. No third party could conceive of starting a truly competitive law school in Arkansas, because the upstart could not compete with the hegemony of the present, publicly subsidized oversupply in legal education. The priority for public subsidies in legal education must be access to justice. If, with that priority in place, a single Arkansas law school cannot meet the demand for high-end legal services, then with the public hegemony broken, the market will supply a competitor in legal education—naturally, and at no cost to the taxpayer.

⁵⁹ The mission of the American Bar Association, which accredits law schools, states: “To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession.” *E.g., About the American Bar Association*, AM. BAR ASS’N http://www.abanet.org/about/?gnav=global_about_lead (last visited Oct. 25, 2010).

⁶⁰ In comparison, Massachusetts has *eight* private law schools, yet the University of Massachusetts system just this year, in fall 2010, opened the doors of the state’s first public law school, UMass Dartmouth. Despite the wealth of opportunities in legal education available to the 6.6 million people of Massachusetts, the university system believed in the need for a public law school to support the system’s particularly public mission: “to provide an *affordable and accessible education of high quality* and to conduct programs of research and public service that advance knowledge and improve the lives of the people of the Commonwealth, the nation, and the world.” *The UMass System*, UNIV. OF MASS., <http://www.massachusetts.edu/system/about.html> (last visited Oct. 31, 2010) (emphasis added).

The better course is a unified law school: one leadership to lead one Arkansas law school to accomplish its social mission foremost. With the amount of resources available for legal education in Arkansas, the state truly can have it all: a law school with a national reputation and “first tier” potential; a dramatically expanded range of opportunities for law students; a more widely experienced and more appropriately prepared quality of lawyer; and competent, affordable legal services for the rural and poor, as well as the urban and wealthy.

D. Legal Practice and Services

The voiceless stakeholder in the saga of the two law schools is the people of Arkansas. If the 1975 enterprise of two law schools for the state is to be assessed meaningfully, one must examine how well the two public schools have met Arkansans’ needs for legal services, especially with regard to the state’s politically disaggregated rural populations, and to the state’s socioeconomically disadvantaged populations. In theory, the General Assembly represents the interests of these stakeholders. In reality, the two law schools have escaped meaningful public accountability. The General Assembly has relied on the accreditation process to ensure academic performance, conducting no thorough audit and virtually rubber-stamping budgets. But out-of-state accreditors who fly into Little Rock and Fayetteville once every five or ten years make only the barest inquiry into how the law schools fare in relation to Arkansans who are not lawyers. There is, furthermore, nothing in the *U.S. News* analysis that holds public law schools accountable for actually meeting *public* needs. Thus in the schools’ pursuit of accreditation and recognition, it is easy to marginalize the real people whose need for legal services is the *raison d’être* of the public law school.

It might seem at first blush that if there is a deficiency in access to justice in Arkansas, the answer is not in law school unification and potential reduction of new lawyers entering the market, rather an increase in the industry of legal education and admission to the bar. That calculus is wrong, however, because of the unusual dynamics of pseudo-competition, as discussed in part III.C. A competitive dynamic governs the two schools’ recruitment of prospective students, and that dynamic operates in disregard of public service priorities. Competition thereafter wanes, and the schools’ priorities shift to bureaucratic self-preservation. Lost in the shuffle either way is the public purpose of these public institutions: to do what the market naturally cannot; to deploy collective resources to ensure the availability of affordable legal services for all Arkansans. A free-market approach would be too slow to ensure access to justice and would come up short qualitatively; the unaccountable bureaucracy then has no incentive to public service. Instead, a unified administration with an explicit mission to provide access to justice, free of the financial drain of pseudo-competition, would be best positioned to allocate resources in furtherance of the public good.

In the present market, the two law schools compete for overlapping pools of qualified students who wish to practice law in Arkansas. The need to get those students in the door and to fill class seats to generate enough revenue to keep both institutions running compels the schools to prize statistical indicia of success in the practice of law over a deeper inquiry into student applications. Factors such as a student’s desire to serve underrepresented segments of Arkansas society, including rural and poor populations, figure into an admissions decision only on the fringes, perhaps if an academically borderline applicant happens to mention such an ambition in an application essay, and then only if the application is reviewed in detail. Fayetteville, which centralizes admissions decisions in an administrator, moves quickly to snatch up applicants who are highly qualified on the numbers, that is, with promising LSAT scores and undergraduate

GPA. Little Rock reviews applications with a faculty committee, which promises more eyes, but a slower process. Before the U.S. Supreme Court disallowed race as a dispositive factor in admissions in 2003,⁶¹ Little Rock employed an automatic admissions process for most of the entering class, based on numbers, and cherry-picked only the remainder by reviewing applications for other factors. Since 2003, the school has purported to conduct a “holistic” review of all applications,⁶² but numbers still weigh heavily behind the scenes, with the bulk of applications not circulating to all faculty committee members.⁶³ Either way, competition between the schools incentivizes both to rely heavily on numbers to make fast decisions without letting enrollment statistics slide.⁶⁴

With consideration of professional objectives only possibly and tangentially a part of the admissions process, the law schools together produce approximately 280 new lawyers annually,⁶⁵ and these new lawyers need jobs. A student who borrowed his or her way through school will owe in excess of \$75,000.⁶⁶ Meanwhile, there are more lawyers than jobs in the state’s urban center of Little Rock—note the Little Rock law school’s 37.5 percent rate of employment at graduation⁶⁷—which depresses wages. At the same time, new lawyers burdened with debt and holding onto the aspirations of upward socioeconomic advancement that drove them to law school to begin with are not keen on rural relocation to practice law. Waiting tables in Little Rock and waiting one’s turn for employment in state government can be more lucrative in the short-run *and* in the long-run than setting out the shingle in Perryville.

The annual glut of graduates has yielded one attorney for every 400 Arkansans.⁶⁸ And despite this oversupply, an affordable lawyer is hard to find.⁶⁹ About 550,000 Arkansans live in

⁶¹ Grutter v. Bollinger, 539 U.S. 306, 334 (2003).

⁶² UALR Law School Admissions, <http://law.ualr.edu/admissions/> (last visited Oct. 24, 2010). The school claims in this process to consider “diverse ethnicities, life experiences, and professional backgrounds,” but not professional objectives. The claim is not verifiable anyway because of the school’s refusal to comply with a Freedom of Information Act request. See Richard J. Peltz, *From the Ivory Tower to the Glass House: Access to “De-Identified” Public University Admission Records to Study Affirmative Action*, 25 HARV. BLACKLETTER L.J. (now HARV. J. ON RACIAL & ETHNIC JUST.) 181, 185-87, 196-97 (2009); cf. *id.* at 185 n.23 (reporting challenge by leader of African-American attorneys’ organization to school’s adherence to racial non-discrimination policy).

⁶³ The committee this year is considering more faculty involvement with more applications, as the school continues to struggle to balance meaningful faculty input with the burdens of the credentials game.

⁶⁴ Personal interview with Fendler, *supra* note 62.

⁶⁵ See University of Arkansas at Little Rock, LAW SCHOOL NUMBERS, <http://arkansas.lawschoolnumbers.com/> (last visited Oct. 24, 2010) (reporting 2006-2007 enrollment); University of Arkansas Fayetteville, LAW SCHOOL NUMBERS, <http://arkansas-fayetteville.lawschoolnumbers.com/> (last visited Oct. 24, 2010) (reporting 2006-2007 enrollment).

⁶⁶ See Costs & Financial Aid, UNIVERSITY OF ARKANSAS LAW SCHOOL, <http://law.uark.edu/prospective/jd/costs-financial-aid.html> (last visited Oct. 24, 2010); University of Arkansas Fayetteville, LAW SCHOOL NUMBERS, *supra* note 71 (reporting 2006-2007 cost of living).

⁶⁷ See table accompanying *supra* note 51. The economic downturn has been no help, but this number still comes in at only about half the rate of the second-tier low in the *U.S. News* rankings. See *id.*

⁶⁸ See CENTER FOR ARKANSAS LEGAL SERVICES & LEGAL AID OF ARKANSAS (CAL S & LAA), THE VOICES OF JUSTICE 2009 ANNUAL REPORT 1 (2009), available at <http://www.arlegalservices.org/files/ALSP%202009%20Annual%20Report.pdf> see also 2009Combined-CLOSED.xls (2010), a record of the Center for Arkansas Legal Services created in support of organization’s annual report, *infra* note 76, and provided to the author (copy on file with author).

⁶⁹ Smith, *supra* note 2, at 14 (quoting Little Rock Dean John DiPippa: “We’re turning out more graduates for jobs with big law firms than we need. . . . [But t]ravel to the small towns across Arkansas and you’ll find that people do still need people-to-people law.”).

poverty.⁷⁰ With attorney billing rates in the hundreds of dollars per hour,⁷¹ many Arkansans are wholly priced out of the market and turn to legal services for free aid. The 2009 Annual Report for Arkansas Legal Services reported having had “to turn away almost 50 percent of those who sought our help.”⁷² The Little Rock main office of the Center for Arkansas Legal Services (CALs) covers Faulkner, Lonoke, Perry, Prairie, Pulaski, and White counties, a population of 587,000, with only five staff attorneys.⁷³ Starting pay at CALs in Little Rock in 2009 was \$35,000, and each staff attorney manages 50 to 150 cases at a time.⁷⁴ The annual pay for a legal services attorney is considerably lower than the 2009 entry-level average in legal practice in Arkansas, \$49,500,⁷⁵ and the workload is considerably greater. An investment of \$75,000 and three years in obtaining an Arkansas legal education seems a questionable choice for the person who wants to help the poor, when an entry-level legal assistant in Arkansas already makes \$25,580.⁷⁶ By comparison, an entry-level primary-school teacher in Arkansas earns \$34,000.⁷⁷ No wonder that at the time of this writing in October 2010, amid a surfeit of unemployed law school graduates, only three of the five staff positions at CALs in Little Rock are filled.

The picture is worse when analyzed geographically. Twenty-three of Arkansas’s seventy-five counties have fewer than ten attorneys, in all.⁷⁸ Ashley and Randolph counties have no attorneys to serve their 42,000 residents.⁷⁹ Calhoun, Cleveland, Newton, and Scott counties have only one to three attorneys each for their 34,000 residents.⁸⁰ Attorneys standing by to offer *pro bono* services are thinner still: zero in eleven counties, and only one to three in twenty-two counties more.

⁷⁰ THE VOICES OF JUSTICE, *supra* note 74; *see also* 2009Combined-CLOSED.xls, *supra* note 74.

⁷¹ According to a 2009 survey, the national billing average lawyer billing rate is \$284 per hour. *How and How Much Do Lawyers Charge?*, LAWYERS.COM, <http://research.lawyers.com/How-and-How-Much-Do-Lawyers-Charge.html> (last visited Oct. 31, 2010). I could find no data specific to Arkansas.

⁷² CALS & LAA, *supra* note 76, at 1.

⁷³ Directory of Information for the Little Rock Office of the Center for Arkansas Legal Services (Main Office), ARKANSAS LEGAL SERVICES PARTNERSHIP, <http://www.arlegalservices.org/node/10> (last visited Oct. 24, 2010); 2009Combined-CLOSED.xls (2010), *supra* note 74.

⁷⁴ My wife, Misty Peltz-Steele, began work as a staff attorney in the Little Rock office of the Center for Arkansas Legal Services at this annual wage in 2009. At the time of this writing in October 2010, she is representing clients in sixty-five cases. The starting salary since has increased toward \$37,000.

⁷⁵ Arkansas Department of Workforce Services, *Occupational Wages*, DISCOVERARKANSAS.NET, <http://www.-discoverarkansas.net/cgi/dataanalysis/AreaSelection.asp?tableName=Oeswage> (last visited Oct. 24, 2010) (2009 data) (copy of query results on file with author).

⁷⁶ *Id.* (query result for search for “Paralegal and Legal Assistants”) Indeed, at the national level, \$65,000 has been cited as the break-even starting salary to make a legal education worthwhile. Burk & McGowan, *supra* note 1, at 73. Arkansas is therefore likely to export and not import entry-level legal talent.

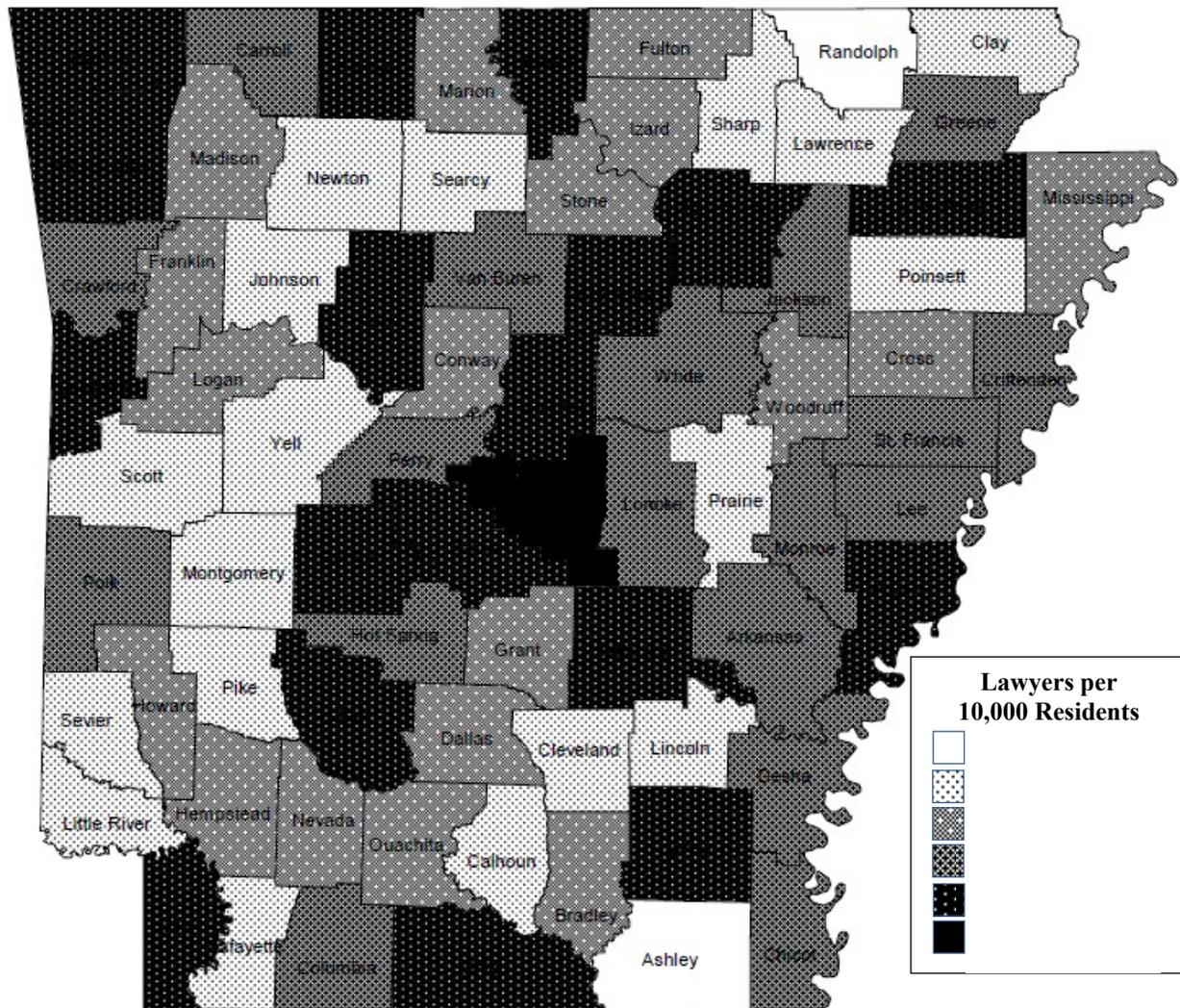
⁷⁷ Arkansas Department of Workforce Services, *supra* note 81 (query result for search for “Elementary School Teachers, Except Special Eductaion”).

⁷⁸ 2009Combined-CLOSED.xls (2010), *supra* note 74.

⁷⁹ *Id.*

⁸⁰ *Id.*

Arkansas Lawyers by County⁸¹



Even insofar as legal aid providers can meet the demand for legal services in Arkansas, the demand is met for only a small range of cases, by subject matter and by client income eligibility. Legal aid attorneys struggle to meet clients' absolute needs, to provide services in family law, in consumer protection and bankruptcy, in health and housing, in juvenile neglect and abuse, and in social security. To be eligible for legal services in Arkansas, an individual must have an annual income under \$13,538, or a household income under \$27,564 for a family of four.⁸² While within these limits, many Arkansans receive vital assistance, a vast range of wrongs are never redressed. Low-income clients cannot pursue meritorious actions such as invasion of privacy, wrongful termination, or breach of contract; to get help setting up a small business; or to enjoin public officials from deprivations of civil liberties. At the time of this writing, owing to staff shortages in Little Rock, even an income-eligible applicant must be turned down for aid in getting a divorce absent an exigency such as abuse. Meanwhile, the income

⁸¹ *Id.*

⁸² Income Guidelines, ARKANSAS LEGAL SERVICES PARTNERSHIP, <http://www.arlegalservices.org/guidelines> (last visited December 20, 2010).

limitations, however necessary to shrink demand for free legal services to a manageable burden, leave plenty of Arkansans, including small business owners, too rich for free help but too poor to hire a lawyer.

At present, then, the legal marketplace is overrun with lawyers, yet it remains hard for the ordinary Arkansan to find an affordable lawyer. This paradox is a direct result of funding two public law schools in a model that prizes revenue-generating classes and statistics without sufficient regard for the socioeconomic implications of turning out 250 to 300 new lawyers a year, too many lacking the financial flexibility and social will to provide the legal services that Arkansans need, where they need them.

Opponents of unification will contend that boosting reputation and national ranking are not compatible with emphases on public service in admissions and curriculum, because recruiting prospective students willing to serve the underprivileged will constrain selectivity to the exclusion of the most highly qualified candidates. That argument is wrong on its face and does not support opposition to unification anyway. First, there is no reason to conclude that public service and quality student recruitment are incompatible. A public-service-oriented program will appeal to a different pool of prospective students, but by no means a necessarily a less qualified pool. In fact, as the Clinton School of Public Service has demonstrated, a public-service-oriented product in the education market can attract a diverse, international, and highly qualified student body. Second, even if there must be a contest between rankings and the public interest, then the public interest must prevail. Either way, the objective is attained best through a single institution.

Unification of the law schools would free them from the perverse incentive structure of pseudo-competition and its wasteful duplication of expenditures. Under a single administration, admissions officials would not worry over losing candidates to an in-state competitor for having taken the time to make a meaningful qualitative assessment of applications. The unified office of admissions would have the flexibility to consider professional objectives, such as a willingness to help rural and poor populations, even if doing so might advantage a non-traditional applicant over a college-fresh competitor with a higher LSAT score or undergraduate GPA. The unified law school would be able to engage in statewide planning, without duplication of resources, to meet the legal-services needs of all of Arkansas. For example, incentives such as scholarships may be deployed not only to enhance enrolling class credentials, but to ensure that graduating classes are equipped and prepared to practice law in rural as well as urban Arkansas, and to serve the poor and working class, besides the wealthy and corporate sector. The University of Arkansas for Medical Sciences offers a working model in its efforts to ensure the availability of medical services for all Arkansans, through geographically sensitive admissions policies and programs such as the Arkansas Rural Medical Practice Student Loan and Scholarship Program.⁸³

⁸³ See *Arkansas Rural Medical Practice Student Loan and Scholarship Program*, UAMS, <http://www.uams.edu/rmsla/ruralmedicinepractice.htm> (last visited Oct. 24, 2010). See generally THOMAS ALLEN BRUCE & W. RICHARD NORTON, *IMPROVING RURAL HEALTH: INITIATIVES OF AN ACADEMIC MEDICAL CENTER* (1984) (writing from Arkansas and urging, for example, special admissions tracks and rural practice scholarships and loans); Robert C. Bowman, *Physicians Can and Will Choose Rural Practice*, formerly available at University of Nebraska Medical Center, *Rural Medical Education*, http://www.unmc.edu/Community/ruralmeded/model/physicians_can_choose_rural.htm (retrieved from Google cache on Nov. 15, 2010) (copy on file with author). Dr. Bowman (who has since relocated to the A.T. Still University School of Osteopathic Medicine in Arizona and now maintains Rural Medical Education at <http://www.ruralmedicaleducation.org/> (last visited Nov. 15, 2010)) observed more broadly that an “injection of young professionals” into an underprivileged community promises an array of beneficial effects, such as the emergence of community leaders. *Id.*

IV. MECHANICS AND POLITICS OF UNIFICATION

The unification of the two law schools, after thirty-five years of independent administration and growth, will not occur overnight. The unification process will require expert academic decisions on matters such as the distribution of student load and instructional offerings on the two campuses. The unification process will require financial management in the disentanglement of one of the two law schools from its affiliated university, whether in Little Rock or Fayetteville, in areas such as payroll, financial aid, and student records. Importantly, decisions will have to be made about workforce and resource reductions in non-student-intensive functions, eliminating unnecessary duplication and reallocating resources to unification initiatives such as distance education.

It will be impossible for the General Assembly to micromanage this process, but the most advisable direction is evident: the General Assembly can charge one campus administration—better Fayetteville—with taking the lead. If implementation is sluggish, the legislature can push the process along in a subsequent session with budget cuts or further statutory direction. Initially, the process can be started simply by amendment to the state code.

The required bill would be neither lengthy nor complex. Such a bill would amend § 6-64-602 of the Arkansas Code so as to transfer the Little Rock law school to the University of Arkansas at Fayetteville, by what is known as a Type 2 transfer under § 25-2-105,⁸⁴ and further specify that the Little Rock law school would be under the control and direction of Fayetteville. The only other substantive legislative requirement would be to amend § 6-64-604 so as to combine the state's two current legal education funds (one for Little Rock, the other for Fayetteville) into one.⁸⁵

Fayetteville is the better choice to take the lead in unification for many reasons. As a practical matter, it is easier to undo the separation of the Little Rock law school and restore the *status quo ante* than to create a wholly new arrangement. Fayetteville was first in time, and the older institution has earned some privilege as progenitor. Moreover, it would be absurd to have the Fayetteville law school, with its impressively renovated facility, sitting amid the Fayetteville campus but not be part of that institution. The law school in Fayetteville is, accordingly, a vital presence in campus life at the University of Arkansas. In contrast, the Little Rock law school is physically remote from the main campus of the university in Little Rock, and the two have sparse connections at best.⁸⁶ Indeed, the financial-autonomy agreement between the Little Rock law school and main campus has ensured that the two remain at arm's length, simplifying disentanglement. The Little Rock higher education community already has the experience of neighborly coexistence with the independent University of Arkansas for Medical Sciences and University of Arkansas Clinton School of Public Service.

Of course the best and most obvious reason for giving Fayetteville the lead in unification is simply that Fayetteville is, of the two, the qualitatively superior institution. Under Dean Cynthia Nance, Fayetteville fixed itself firmly in the second tier of the *U.S. News* rankings. Its

⁸⁴ Speaking loosely, a Type 2 transfer moves the powers and the property of one institution into another.

⁸⁵ Further non-substantive amendments within other titles of the code to accommodate the change in structure and nomenclature of the two law schools would likely be needed.

⁸⁶ I have taught as an adjunct in the School of Mass Communication and repeatedly offered to non-law, main campus students a cross-listed law and mass communication course in freedom of information law and policy. I believe these experiences have enriched the coursework of my students in both departments, and, certainly, they have enriched my own experience as a teacher. But my interaction with the main campus is exceptional outside the dual-degree programs and has not been affirmatively incentivized by the law school.

resources in the heart of the state's flagship university campus,⁸⁷ a research institution, are unparalleled in Little Rock. The unique programs developed in Fayetteville, such as studies abroad, niche journals of current national interests, and the renowned agricultural law center and degree all serve to distinguish the Fayetteville law school nationally and internationally. With the exception of a secondary journal that is faculty-edited and, therefore, not a student-intensive enterprise, the accomplishments of the Little Rock law school, such as the Arkansas territorial records project, are local in nature and do little to distinguish the law school beyond Arkansas borders. The contributions of the Little Rock law school are important to the state and should not be undervalued, but they are not on par with Fayetteville's achievements in outlining a course for a law school of national and international renown.

That Fayetteville has the superior reputation is beyond dispute.⁸⁸ Under the unification plan, the alumni of either law school may be invited to surrender their diplomas in exchange for diplomas from the new institution. Frankly, it is difficult to imagine that any graduate of the Fayetteville law school would be keen to exchange his or her diploma for one from the University of Arkansas at Little Rock; in contrast, many Little Rock law graduates would be eager to increase their currency in the legal marketplace by obtaining diplomas from the flagship University of Arkansas. Given this reputational disparity, the unified Arkansas law school surely would start off on the right foot under the aegis of the better known and better regarded institution.

The law school in Little Rock has been marred in recent years with difficulties suggesting that politics have become higher priorities for the school than academics. In a matter dating to 2005 with ongoing repercussions, certain Little Rock faculty members, editor-alumni of the *Law Review*, and other student leaders were involved in an unfortunately highly publicized dispute involving ugly charges of racism.⁸⁹ The school's longstanding unwillingness to resolve the matter⁹⁰ engendered a generation of bitterness among faculty, administration, and alumni.

⁸⁷ I am reminded of Little Rock Dean Rodney K. Smith's oft recited joke that if Fayetteville insisted on being known as "the flagship campus," then Little Rock would strive to be "the starship campus." I was never clear that starships are more impressive than flagships—he was only joking after all, and he made his point—but either way, the clearly subordinate role of Little Rock, not to mention every other campus in the University of Arkansas system, has not changed since Smith's departure in 2000.

⁸⁸ Besides my many years of having to clarify the matter even among fellow legal educators, the anecdote of a colleague is exemplary. In 2006, a Professor Robert Steinbuch from the Little Rock law school testified in a hearing of the U.S. House of Representatives. Upon Steinbuch's introduction as a law professor from the University of Arkansas at Little Rock, Rep. Howard Coble (R-N.C.) asked, "Professor, is the School of Law not at Fayetteville?" *Death Penalty Reform Act of 2006: Hearing on H.R. 5040 Before the Subcomm. on Crime, Terrorism, and Homeland Security of the House Comm. on the Judiciary*, 109th Cong., 2d Sess., GPO Access Doc. ID No. f:26769.wais (Mar. 30, 2006), transcript retrieved from GPO Access, Congressional Hearings: Main Page, <http://www.gpoaccess.gov/chearings/index.html> (retrieved on and last visited Nov. 15, 2010).

⁸⁹ A former student, since hired as assistant dean of students, *see supra* note 32, was among persons who accused me, another faculty member, the then-editorial board of the *Law Review*, and other student leaders of racist conduct. *See generally* Mark A. Schneider et al., *Peltzing in Arkansas*, WORKPLACE MOBBING IN ACADEME, <http://arts.uwaterloo.ca/~kwesthue/AALS10.html> or <http://tinyurl.com/PeltzinginArkansas> (both last visited Oct. 25, 2010).

⁹⁰ My faculty colleague and I were fully exonerated, but only after the law school refused redress for a year and left no option but to file an unfortunately nationally publicized lawsuit. *See generally* Workplace Mobbing in Academe, *supra* note 93. The dean ultimately concluded with regard to my colleague that he "did nothing inappropriate whatsoever in teaching the class [at issue]," and that related accusations by the president of the W. Harold Flowers Law Society were "without merit." Letter from Charles Goldner to Professor Y, June 30, 2008 (copy on file with author). (I decline here to identify Professor Y, as there is no need to associate him further with offensive and groundless accusations. His identity is readily discernible from public records for those so inclined.)

Furthermore, in the aftermath, the law school impeded efforts by persons accused of racism to clear their own names.⁹¹ The school seemed more concerned about quieting the matter in accordance with a political agenda than with achieving a fair and just result for all students, as would befit an environment of pervasive academic integrity.⁹² The school's handling of the matter overall suggests a mission of partisan agenda-setting far removed from the best interests of students, faculty, and the people of Arkansas.⁹³

Beyond the issue of mechanics and policy, there are, at last, simply matters of politics. "Bureaucracy defends the status quo long past the time when the quo has lost its status,"⁹⁴ and "[h]ell hath no fury like a bureaucrat scorned."⁹⁵ The General Assembly that tackles the two-law school question will face a determined opposition. Administrators at both law schools will fear the workforce reductions that unification would expose as essential. Non-productive faculty will fear the scrutiny that unification would entail. The Little Rock law school will fight against a grant to the Fayetteville flagship of control over resource reallocation that may result in Little Rock suffering cuts where duplication occurs. The Fayetteville law school will not want its hard-

As to me, the dean concluded, after a year and half of flat refusal to investigate: "[T]here is no evidence that you are or have been a racist or acted in a racist fashion during your employment at the law school." Letter from John DiPippa to author, Oct. 2, 2008 (copy on file with author), *available at* <http://arts.uwaterloo.ca/~kwesthue/peltz08-03.pdf> (last visited Oct. 25, 2010). The students accused of racism were never cleared and now must practice law dogged by clouds of suspicion.

⁹¹ One Little Rock alumna, having been accused falsely of racism and never cleared, sought to investigate the matter through the Arkansas Freedom of Information Act, until she was intimidated into silence by an official of the law school. Peltz, *supra* note 68, at 187. The law school has refused to produce public records regarding admissions, apparently in violation of the Arkansas Freedom of Information Act. *See* Peltz, *supra* note 68, at 185-87, 196-97. Meanwhile, Dean Charles Goldner, speaking for himself, Dean John DiPippa, and University Counsel, informed me that I would be fired from my tenured faculty position if I would not drop the private civil lawsuit I had filed to defend myself against false charges of racism. Personal meeting with Charles W. Goldner, Jr., Dean, William H. Bowen School of Law, University of Arkansas at Little Rock, Little Rock, Ark., June 17, 2008. I dropped the lawsuit accordingly, but to date the threat has not been retracted. *See generally* Schneider, *supra* note 93. Thus all faculty at the law school effectively have been stripped of academic freedom as protected by the tenure contract and the First Amendment, rendering a broken educational environment in which freedom of thought, expression, and conscience have been bent to the bureaucratic will. *See generally* Richard J. Peltz, *Penumbra Academic Freedom: Interpreting the Tenure Contract in a Time of Constitutional Impotence* (forthcoming 2011), *early draft available at* <http://ssrn.com/abstract=1467221> (last revised Oct. 19, 2010; last visited Nov. 15, 2010).

⁹² The hiring of one party in the dispute to an administrative position, *see supra* note 93, upon questionable qualifications, *see supra* note 62, was certainly perceived by alumni who had been accused of racism as the law school's final and irrevocable act of choosing sides.

⁹³ While these events unfolded, the Little Rock law school took fire on yet another front. In a series of letters between WHFLS President Eric Buchanan and Little Rock law Dean Charles Goldner, Buchanan accused the law school of "discriminatory mistreatment of African Americans" and "attempts to thwart the advancement of African Americans in the field of law." Peltz, *supra* note 68, at 185 n.23. Buchanan furthermore expressed concern in a WHFLS meeting that law school grading might not be as anonymous as advertised, and that the law school was turning a blind eye while "[w]hite people seem to cheat all the time." WHFLS Meeting Minutes, Oct. 14, 2006 (copy on file with author). Meanwhile, records of decision-making within the Little Rock law school only complicated Buchanan's charges. In an internal memo, an administrator implored of the dean, "PLEASE don't put someone on [the Admissions Committee] who lacks common sense (you know who they are) or doesn't believe in affirmative action." Peltz, *supra* note 68, at 185 n.23. If admissions and instruction in Little Rock have become concerned more with indulging influential outside organizations than with education, then whoever the beneficiary, the school is furthering neither market efficiency nor access to justice, not to mention civil rights.

⁹⁴ Famous quotation attributed to educator Laurence J. Peter, author, with Raymond Hull, of *The Peter Principle* (William Morrow & Co. 1969). *E.g.*, Michael Moncur, *Dr. Laurence J. Peter*, The Quotations Page, Aug. 23, 2000, <http://www.quotationspage.com/special.php?file=w000823> (last visited Oct. 31, 2010).

⁹⁵ Famous quotation widely attributed to Milton Friedman, economist and free-market advocate.

won second-tier status in the *U.S. News* rankings jeopardized, even for a time. And neither school will want its way of doing business changed, regardless of how well or poorly the school presently serves the people of Arkansas. The schools will wail loudly that accreditation will be made impossible upon unification, and that no dual-campus model can work for Arkansas. But these objections hold no water. They admit only a lack of creativity, a blind deference to inertia, and a confession of objectives that do not necessarily accord with the best interests of Arkansans, be they for the efficient use of public resources, or for the commitment of public resources to achieve social justice.

V. CONCLUSION

At one time, two public law schools made sense for Arkansas. Fayetteville and Little Rock are far apart, and there was no realistic way to coordinate the schools across the geographic distance. Both growing economic markets needed a healthy supply of lawyers. But economics and technologies have changed. Today, two law schools consume a wasteful duplication of public resources. The economy of the state and the well-being of the marketplace demand that public funds be used with maximum efficiency to accomplish socially worthy objectives. Technology makes possible instant, high-volume communication regardless of distance, and no practical purpose by denying Arkansas students at one institution the advantages of the other. Instead of two institutions struggling over limited resources, each to advance its own interests, Arkansas can build a whole public institution that is greater than the sum of its parts: a unified Arkansas Law School.

VI. AFTERWORD: A NOTE ON ACADEMIC FREEDOM AT THE UALR BOWEN SCHOOL OF LAW

This Article initially was prepared for publication in the *UALR Law Review*. It appears here, and not there, because of intervention by the Dean of the Law School in the editorial independence of that publication. This Afterword explains the unfortunate course of events that led me to pull the article out of the *Law Review* process.

Early in the fall semester of 2010, the *UALR Law Review* articles editor asked me whether I might publish a research work with the *Review* this academic year. I initially said no, because I had many other projects in the pipeline already committed to other publishers.

I then reconsidered. In service to members of the Arkansas General Assembly, I was working on a research project on Arkansas legal education. I was not slated to write a publishable article as a result of that project, but I would have the research to do so. I contacted the articles editor and asked whether that would be a subject that would interest the *Law Review*. He responded enthusiastically yes, that the topic would be of great and current interest to students and the Arkansas legal community. To accommodate my research schedule and the *Review* publication schedule, we agreed on a November 1 deadline for the piece, anticipating its publication in January 2011, or mid-February at latest.

I worked hard in October to prepare the research findings sought by legislators while collaterally drafting a research piece of publishable quality for the *Law Review*. I met the November 1 deadline. The article was returned to me with a first round of edits later in November, and I turned around in about a week. The article was returned to me with a second and final round of edits in December, and again, I turned it around in about a week. The second round of edits included feedback from the full Law Review Editorial Board. The articles editor then wrote to me in a December 22 e-mail, “[T]here shouldn’t be any more changes made (other than minor changes that could include internal cross references or citation maintenance). The next time you should be hearing from us is when you get a copy of your piece from our executive [e]ditor.”

Meanwhile and unbeknownst to me at the time, UALR Law Dean John DiPippa contacted the editor-in-chief (hereinafter, the Editor) of the *Law Review* about my article, according to a December 22 e-mail from the Editor to me. Apparently my article, or at least its thesis, had been leaked, pre-publication, by someone within the *Law Review* to UALR administrators. The Editor relayed parts of her conversation with Dean DiPippa: “He asked if he could submit a proposal about why the two law schools should remain separate.” The Editor told me that regardless of any addition to the issue, “we plan to turn things around as quickly as possible,” anticipating publication mid-February 2011.

I found this decision by the *Law Review* irregular, but I lodged no objection. Trained in journalism and versed in the law of the student press, I find the notion of prior review by public officials a repugnant hallmark of censorship. If a reader wishes to respond to a published work, the reader must submit a response *after* publication, as in the usual case of a newspaper “letter to the editor,” unless a pro-con debate is specifically contemplated and consented to by editorial staff and writers at the outset of the project. I had never discussed a pro-con arrangement with the *Law Review*.

Still, the Editor told me in her December 22 e-mail that the DiPippa piece was not directly responsive to mine. She wrote, “I understand his article to be an alternative proposal, not a response to yours.” And she added that there would be no prior review: “*I have not given Dean DiPippa a copy of your article and do not plan to do so*” (emphasis added).

Again (and unbeknownst to me at the time), Dean DiPippa contacted the Editor at some time between December 22 and 30, as did *Law Review* advisor Professor Lindsey Gustafson. I do not know the substance of their discussions, but the Editor's position and tone changed dramatically.

In a December 30 e-mail, the Editor informed me, "[It] is very important that Dean DiPippa be able to write a piece that is responsive to yours and that it be published in the same issue. . . . *We cannot proceed with publication unless Dean DiPippa writes a responsive piece to be published in the same issue*" (emphasis added). In a January 1, 2011, e-mail, she reiterated, "[The *Law Review*] won't publish your article without a response from Dean DiPippa in the same issue."

Moreover, publication was now to be delayed to give DiPippa more time. Where I had struggled to meet my November 1 deadline to oblige the *Law Review's* desire to publish as early as possible in 2011, the Editor wrote, "[T]he process will be stalled in order for there to be enough time [for DiPippa] to write an article." She estimated, "[P]ublication will be delayed until the end of March."

When I asked what caused the turnabout, the Editor, in a January 17 e-mail, skirted the issue: "[T]he Editorial Board has a desire to make each issue as strong as possible and, in furtherance of that goal, has the editorial discretion to accept and reject articles for each issue." In fact, the Editorial Board never met to authorize the Editor's change in position; I only found out from third parties later about the faculty contacts with the Editor over this issue. All of this invites the inference that a dean and a faculty member had more influence than the Editorial Board did with respect to this editorial decision.

I have no objection to a response from DiPippa or anyone else to this Article, nor to a constructive dialogue on its subject. But as an advocate for the First Amendment freedom of speech and press and for academic freedom, I do not condone prior review. The law school administration's insistence that this Article could not be published (an article that posits an overabundance of law school administrative personnel, salaries, and privileges) without a "responsive piece" in the same issue is unprecedented and indefensible. Indeed, that insistence underscores the central theme of this Article. At its most general level, this Article is about the classic problem of agency costs: namely, that institutions need to be designed to prevent their agents from pursuing special, personal, or private interests, especially at the expense of the larger interests of the institution. The larger interests here which deserve primary respect are those of the citizens of the state of Arkansas, not just those of a small number of administrators. In this case, it looks to me as if the law school administration has confused the public interest of the state, the public, and the legislature – which lie in public economy, student welfare, the health of the Arkansas bar, the availability of legal services in our state, and open and free debate -- with the private interests of a clique of state employees.

On January 22, 2011, I pulled this Article from the *Law Review*. DiPippa's interest in authoring an "alternative proposal" apparently evaporated after my withdrawal. I remain grateful to the *Law Review* foot soldiers whose work improved the quality of this piece, and to the members of the editorial board who understood this Article's importance to Arkansans. Unfortunately, it appears, DiPippa understood its importance too.

Richard J. Peltz
3 February 2011