

Chapman University Dale E. Fowler School of Law

From the Selected Works of Denis Binder

2007

The Changing Paradigm in Public Legal Education

Denis Binder



Available at: https://works.bepress.com/denis_binder/7/

THE CHANGING PARADIGM IN PUBLIC LEGAL EDUCATION

PROFESSOR DENIS BINDER¹

© 2005

DENIS BINDER

Chapman University School of Law

One University Drive

Orange, CA 92866

(714) 628-2505

dbinder@chapman.edu

¹ Professor Binder received law degrees from both a private law school, the University of San Francisco (J.D. 1970) and a public law school, the University of Michigan (LL.M. 1971, S.J.D. 1973). He is exceedingly grateful for the assistance provided by Ms. Elise O'Brian in obtaining the 1983-84/1984-85 tuition figures, and Dave Rosenleid of the ABA Office of the Consultant on Legal Education, Larry Reiley of Temple, Lourdes Aguila-Meneses of Florida International, and Brian Baker of the University of District of Columbia for filling in gaps. He further appreciates the comments of Deans Katherine Shelton Broderick of the University of the District of Columbia, Leonard Strickman of Florida International, Heidi Hurd of Illinois, John C. Jeffries, Jr. of Virginia, and W.H. Knight, Jr. of Washington. He is indebted to Dean Evan Caminker of Michigan for his prompt responses to a year of questions. Professor Binder is very certain of the accuracy of the tuition figures for the 1999-2000 and 2004-05 academic years. They have been double checked with the tuition figures published by the American Bar Association in its annual ABA-LSAC Official Guide to ABA-Approved Law Schools. He is not though as confident in the figures from twenty years earlier, but any inconsistencies are undoubtedly minor in light of the relatively low tuition of that era.

INTRODUCTION

The Twenty-First Century, the New Millennium, has started out poorly for the public universities. Public financing has fallen sharply² while tuition has risen by double digits.³ Full-time faculty rolls drop while student-faculty ratios rise, and sections, courses, and even programs are slashed.⁴

² The Illinois State University Center for Educational Policy reported that aggregate state higher education appropriations dropped 2.1% to \$60.3 billion for 2003-04. Center for the Study of Education Policy, Illinois State University, Grapevine: An Annual Compilation of Data on State Tax Appropriations for the Operation of Higher Education. The decrease was 4% from two years earlier. *Id.* at Table I. State funding decreased in 23 states, and did not keep up with inflation in most of the remaining states. *Id.* at Table II. The National Conference of State Legislatures also reported that some states reduced by 9% their funding on higher education. From 1978 to 1988 “direct state appropriations as a proportion of the total revenue” of the public universities dropped by about 25%. James J. Duderstadt & Farris W. Womack, *The Future of the Public University in America: Beyond the Crossroads* 103 (2003). Taxpayers covered about half the cost of a public education in 1980. That figure dropped to one-third by 2000, and is continuing to decrease. June Kronholz, *College Costs Play on Stump*, Wall St. J., February 4, 2004 at p. A4, col. 2.

2003-04 probably represents the cyclical low in state budget. The picture changed for 2004-05 with state appropriations for colleges and universities rising 3.8% to \$63 billion. Florida and Virginia led the way with 11% increases. Anna Marie Chaker, *States Increase College Funding*, Wall Street Journal, December 22, 2004 at D2, col. 1. The Virginia increase followed three straight years of cuts. *Id.*

³ A College Board survey found public institutions raised tuition and fees an average of 14% in 2003 versus 6% at the private institutions. James J. Kim, *Putting a Cap on Tuition Expenses*, Wall St. J., July 27, 2004 at p. D2, col. 1,3. Of course, the differential in percentage increases may be deceptive because the smaller private university percentage increases are on a much higher base, and hence may be greater in actual dollars. The increase was 10.5% for 2004-05 versus 5.7% for the private universities. College Board, *Trends in College Pricing: 2004* at 3. Over 30 states averaged tuition and fee increases above 10% for the 2003-04 academic year. American Association of State Universities and Land-Grant Colleges, *2003-04 Student and Financial Aid Charges*. The community colleges also raised tuition an average of 14%, Greg Winters, *Public College Tuition Rose 14% in '03, Survey Finds*, New York Times, November 22, 2003 at p. A16, col. 5, and 8.7% in 2004-05, June Kronholz, *Tuition Rises 11% at Pubic Colleges: Increase is Less Than Last year' but Students are Borrowing More; Private Universities Up 5.7%*, Wall St. J., Oct. 20, 2004 at p. D1, col. 5. Tuition at public universities rose 48% in three years. *Id.* The AAUP reports that public four-year institutions raised tuition 29% above the rate of inflation over the past five years compared to 20% for their private rivals. AAUP Press Release, *As College Costs Go Up, Support for Teaching and Research Goes Down*, April 19, 2004, <http://www.aaup.org/newsroom/press/2004/2conf.htm>.

⁴ The examples are almost infinite. Twenty percent of the members of the National Association of State Universities and Land Grant Colleges (NASULGC) made academic cuts during 2003, including eliminating majors. Universities merging or eliminating programs range from Bowling Green State University to the University of Virginia. The University of Texas, one of America's academically and financially strongest universities, cut 200 faculty and over 500 staff positions. Stephanie Simon & Stuart Silverstein, *Colleges Rethink Goals as They Cut*, Los Angeles Times, October 12, 2003 at p. A1, col. 5-6. A similar impact occurred with the University of Illinois System. State appropriations dropped 8% (\$58 million) in 2003-04. The University responded by cutting 2,000 positions, eliminating hundreds of courses, and launching a comprehensive review of administrative and support positions with a goal of cutting expenditures 25%. NASULGC, *Changes in Annual Tuition and Fee Charges at NASULGC Institutions, Academic Year 2004/2005* at 4. The flagship University of Illinois at Urbana-Champaign had its state appropriations cut 17% (\$132 million) over the past two years. *Id.*

The pattern of tuition increases is national, ranging from economically depressed states, such as Michigan, financially mismanaged states, such as California, and fast-growing sunbelt states, including Florida and Texas. The increases affect the most prominent flagship universities and the less prestigious masters and community colleges. They do not discriminate.

Public universities are facing a systemic, structural change in government financing from discretionary to mandated expenditures. Higher education is often the largest discretionary item in a state's budget, but mandates, such as Medicaid,⁵ are growing rapidly and displacing the discretionary accounts.⁶

In spite of, or more aptly because of, their success, the public law schools have disproportionately borne the financial cuts and tuition increases. Legislators, regents,

⁵Like many entitlement programs, Medicaid started out small, but the subsequent growth has been exponential. The total expenditure in 1967 was \$1.9 billion, rising to \$3.3 billion in 1968, and only \$25.8 billion by 1980. Medicaid was \$72.5 billion in 1990, but then the great growth commenced. By 1999, Medicaid was consuming \$180.4 billion. U. S. Department of Health and Human Services, 2003 CMS Statistics 25 (table 26). Medicaid currently accounts for 20% of all state spending. Association for Health Center Affiliated Health Plans, State Budget Overview: Continuing Budget Crisis 2. Medicaid provided health coverage in fiscal year 2002 for 51 million low-income Americans. Total expenditures approximated \$244 billion, of which the federal share was \$139 billion, leaving \$105 billion for the states to provide. U.S. General Accounting Office, *Medicaid Program Integrity: State and Federal Efforts to prevent and Detect Improper Payments* 1 (GAO-04-707). The federal share is determined by a formula which provides a greater allowance to states with lower per capita income. The total state and federal Medicaid spending in 2003 was \$286 billion. Association for Health Center Affiliated Health Plans, State Budget Overview: Continuing Budget Crisis 2. The estimated budget for 2004 is \$311 billion, of which the state share is \$134 billion. White House Office of Management and Budget, Bush Fiscal Year 2004 Medicaid and SCHIP Budget, http://www.policyalmanac.org/health/archive/medicaid_budget_fy04.shtml. The problem with Medicaid is not its present cost, however great, but the exponential increases in spending. California's program, Medi-Cal, is a \$31 billion program compared to \$9.4 billion for higher education. About half of Medi-Cal is funded by the federal government. It has grown 73% from 1994 to 2004. The state growth rate in 2002 was 13%, followed by an additional 8% in 2003. The estimate for 2004 is 4.9%. Association for Health Center Affiliated Health Plans, State Budget Overview: Continuing Budget Crisis 2.

⁶Higher education has become the largest discretionary account in many states, such as Washington, and hence the most visible target for budget cutters. Theo Yu, the governor's higher education, budget assistant in Washington, explained: "It's not mandated in the state Constitution. It's the final thing that is decided. Once all the other decisions are made, the legislature will look at the table, see what change is left, and that's what goes to higher education." ⁶ Jeffrey Selingo, *The Disappearing State in Public Higher Education*, CHRONICLE OF HIGHER EDUCATION, February 28, 2003, at 2, <http://web.lexis-nexis.com/universe/printdoc>. Similarly, the University of Wisconsin System accounts for only 9% of the state's budget, but it incurred 23% of the budget cuts in 2003-04. *Id* at 5.

trustees, and administrators are increasingly shifting the financial burden to academic units best able to charge market-based tuition, especially law and business. Thus, the state funding that previously supported legal education is now redirected to other schools and colleges. Public institutions, especially law schools, talk of “privatizing” or “quasi-privatizing,” following the leads of the Universities of Michigan and Virginia.⁷

For example, the University of California at Berkeley School of Law (Boalt Hall) has seen the state share of its budget drop from 60% in 1994 to 30% in 2005.⁸ Even more extreme is the situation of the University of Michigan in which the law school receives less than 4% of its funding from the state of Michigan.⁹ The drop in state contributions varies dramatically between state law schools, but a constant is the substantial rise in tuition, even for state residents.

The public law schools face a major challenge in preserving their ethos as public institutions. Their short-term response is to sharply raise tuition. The public law schools were established to provide a quality legal education to state residents at nominal tuition. The long term risk is a radical change in the paradigm governing public legal education -

⁷ Dean Christopher F. Edley, Jr., Boalt’s Dean, advanced the changing paradigm to quasi-privatization of the public law school in statements to alumni and in an op-ed in the Los Angeles Times. Tuition doubled in four years to \$22,000 for state residents and \$34,000 for non-residents. He recommended substantial fund raising and tuition increases. He even raised the possibility of legacy admissions. Dean Edley called for “substantial structure change in the way we do business.” He said the school needs to raise \$300 million and that the state orphaned the law school. Christopher Edley, Jr., *A Needy Boalt Hall Looks to Private Money*, Los Angeles Times, Jan. 17, 2005 at p. B1, col. 4, Rick Jurgens, *New Dean Seeks Private Money for Berkeley, California Law School*, Contra Costa Times, Oct. 3, 2004, 2004 WL 78211951, The Chronicle of Higher Education, Jan. 14, 2005 at p. 25. A representative of the office of the UC president subsequently stated that Boalt’s goals are not a “privatization plan.” Instead, Dean Edley’s remarks were construed to mean that Boalt is seeking increased private support, 1/20/05 U-Wire, 2005 WL 61946696.

⁸ CHRONICLE OF HIGHER EDUCATION, Jan. 14, 2005 at A25. The University of Minnesota Law School currently receives 12% of its annual budget from the state, down from 82% in 1968. University of Minnesota Law School, *Fund Raising Priorities: Unrestricted Operating Support 1*, <http://www.law.umn.edu/giving/priorities.html> (June 16, 2005).

⁹ The University of Michigan Law School’s support from the central campus dropped from 48.8% of its budget in 1935 to 40.9% in 1953 and only 3.9% in 2004. Building on the Campaign for the University of Michigan Law School: Law School Fund, <http://www.law.umich.edu/campaign/why/fund.htm> (July 11, 2005).

from one of low-tuition and access to all qualified state residents to one of high-tuition and limited access. This risk is a substantially different model of legal education - one which is more elitist than egalitarian.

BACKGROUND OF PUBLIC HIGHER EDUCATION IN AMERICA

The nation's founding fathers viewed education as critical to the success of the fledging republic. Thomas Jefferson, for example, envisioned an America built upon a widely educated population. He founded the University of Virginia while Ben Franklin established the University of Pennsylvania. The University of North Carolina was established in 1789 as the nation's first public university, although William and Mary, Delaware, and Rutgers preceded it as private universities.¹⁰

The concept of land grants to fund education originated with the Northwest Ordinance of 1787. A watershed in the national commitment for higher education was the Morrill Act of 1862, which created the public land grant universities initially funded by the sale or lease of federal lands.¹¹

The combination of existing public universities and the new land grant institutions marked the ascendancy of public higher education outside the Northeast. Indeed, in many states public higher education was preferred to private education – the opposite of the east coast preference. A social compact developed between the states and their citizens – a quality education would be offered to all qualified state residents at nominal tuition.

¹⁰ Other public universities that predate the Civil War include Alabama, City College, Florida, Georgia, Indiana, LSU, Maryland, Michigan, Minnesota, Mississippi, Missouri, Penn State, South Carolina, Tennessee, Vermont and Wisconsin.

¹¹ Some of our major public universities, including Arizona, Arkansas, Auburn, Connecticut, Georgia, Illinois, Kentucky, Massachusetts, Michigan State, Nebraska, Ohio State, Purdue, Texas A&M, and the University of California, are land grant universities.

Public universities spread like prairie fires through the Plains states. The great public universities of the Midwest represented the rise of democracy, the prairie populist antipathy to the east, the opportunity for the waves of immigrants who settled much of America in the aftermath of the Civil War, and opening the doors of higher education to all classes rather than a narrow class. They led the country in integration and diversity.¹² The South and West echoed the call for quality public education. The flagship public universities became the premier institutions of higher education in most states outside the East.

As they grew, the public universities added professional schools in business, dentistry, engineering, law, medicine, nursing, and pharmacy. The goal was to offer quality professional education to state residents at nominal tuition. The public law school would also serve as a vital resource for the people of the state, engage in public service, and pursue the public interest.

Higher education received another boost at the end of World War II when Congress enacted the Servicemen's Readjustment Act of 1944, commonly referred to as "The GI Bill." The federal government paid the college tuition of millions of returning veterans. Existing universities expanded, and new public institutions, especially the masters (state) colleges, mushroomed. 80% of all students attending college, including community colleges, and 60% of the nation's graduate and professional students are in public universities.

¹² For example, the University of Michigan graduated its first African American law student in 1870. Howard H. Peckham, *The Making of the University of Michigan: 1817-1967*, 58 (University of Michigan 1967). It graduated its first African-American medical student in 1872 and first female African-American medical student in 1885. Many public universities did not practice the anti-Semitism of several private universities in the early 1900's. The University of California (Berkeley) admitted female students, on an equal basis with male students from its founding. More recently the University of Michigan and the University of Michigan Law School were in the forefront of the affirmative action debate. See *Grutter v. Bollinger*, 539 U.S. 306 (2003).

The Twentieth Century marked the ascent of public higher education, fulfilling the vision of our founding fathers. By the end of the Twentieth Century, public higher education served as a vital counter balance to the private universities.

The private universities served as a model to raise the quality of the flagship public universities. The success of public higher education in turn encouraged the private universities to adopt a more egalitarian model and offer admissions to all qualified applicants.¹³

The private law schools also pursued public interest goals similar to those of the public law schools as the educational models coalesced.¹⁴ Thus, to a large extent the academic programs and public interest and service goals of public and private law schools were substantially similar by the end of the Twentieth Century. The major differences remained in access and affordability.

TUITION EXPLOSION

Tuition and fee increases at professional schools have sharply escalated in recent years, jeopardizing the goal of affordable education for state residents.¹⁵ The average resident tuition at public law schools increased 234% from 1990 to 2003, from \$3,236 to

¹³ Ironically, in light of today's controversy over the SAT and LSAT standardized tests, President Conant of Harvard was the driving force behind the creation of the SAT. His goal was to force the elite Eastern universities to admit a diverse student body, and reduce the dependence on GPA's and recommendations at certain prep schools. He was particularly impressed with the success of the large public universities in the Midwest. For a history of the SAT, see Nicholas Lemann, *The Big Test: The Secret History of the American Meritocracy* (Farrar, Straus & Giroux 1999).

¹⁴ See especially AALS Equal Justice Project Report, [Pursuing Equal Justice: Law Schools and the Provision of Legal Services](#) (2002) and AMERICAN BAR ASSOCIATION SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (MacCrate Report).

¹⁵ Relying solely on percentage increases can be deceptive because the tuition increases for most public universities are on a much lower tuition base than for private law schools. For example, a \$1,000 increase on an existing tuition of \$25,000 will be only "4%," but if applied to a \$10,000 tuition, it will show up as a 10% increase. However, the tuitions for Michigan, Virginia, and the four University of California law schools are comparable to most private law schools.

\$10,820.¹⁶ The increases are even sharper at some of the nation's most prestigious public law schools. For example, tuition and fees at Boalt in 1987 totaled \$1500. Non-resident tuition was \$5,796, a 50% savings over Harvard or Yale.¹⁷ The in-state tuition at the 4 UC law schools is \$22,943 for 2004-05.¹⁸ The University of Michigan imposed even greater increases such that resident tuition for 2004-05 is \$29,170 with non-resident tuition an additional \$5,000 at \$34,170.¹⁹ The non-resident tuition is comparable to that of the most elite private law schools, and even the resident tuition is high up on the list. The 2003-04 entering class was slightly less than 25% Michigan residents. Obviously, the University of Michigan is de facto a private law school.²⁰

The University of Virginia has also privatized its law and graduate business schools. Resident tuition in 2003 at the law school is \$23,798 and \$29,201 for non-residents. 56% of the entering class was from out of state.²¹

The social compact with the state is over. Michigan, Virginia, Boalt, and UCLA are among the premier law schools in the nation and can command premium tuition. The effect though is to call into question the social compact to provide affordable education, including professional education, to the residents of the state.

¹⁶ John A. Sebert, *Cost and Financing of Legal Education*, SYLLABUS at 1, 4 (vol. 35, no. 2, February 2004).

¹⁷ *Brains For The Bar*, U.S. News & World Reports, Nov. 2, 1987 at p. 72, 73, col. 2. Tuition at Yale was \$12,450.

¹⁸ Minor differences exist between the four law schools reflecting differences in fees.

¹⁹ University of Michigan, Office of the Registrar, Tuition and Fees for Academic Year 2004-05, at 6; <http://www.umich.edu/~regoff/tuition/full.html> (July 29, 2004).

Similarly, the graduate MBA tuition and fees are \$33,688 for residents and \$38,688 for non-residents

²⁰ Ronald Alsop, *The Real World: What Sets the University of Michigan Apart from Other Schools? Its Emphasis on Practical Experience*, WALL ST.J. September 22, 2004, at p. R4.

²¹ The respective tuition rates for the graduate business school are \$29,000 and \$33,000.

Not just the premier public law schools are raising tuition. The top 12 tuition increases for law schools in 2003-2004 were all at public institutions with the University of Arizona leading the way with an 81.5% increase for in-state residents to \$10,604.²²

A full listing of the tuition figures for the years 1983/1984, 1999-2000, and 2004-2005 for state residents is found in Appendix A and for non-residents in Appendix B. A Summary Table appears here:

	Resident Tuition		
	Low	Median	High
1983/84	\$ 120	\$ 1,640	\$ 4,250
1999-2000	\$2,072	\$ 6,695	\$19,115
2004-2005	\$3,891	\$11,118	\$29,358

	Non-Resident Tuition		
	Low	Median	High
1983/84	\$ 1,200	\$ 4,256	\$ 7,940
1999-2000	\$ 8,382	\$15,035	\$25,085
2004-2005	\$10,156	\$21,577	\$34,358

Obviously, not all public law schools have been affected equally. However, almost all have steadily, and at times exponentially, raised tuition, even for state

²² THE NATIONAL JURIST, January 2004, at 16.

residents. The increases in absolute dollars if not necessarily by percent, have been most pronounced in the past five years. For example, the median tuition charged state residents has risen by 66.7% in the past five years, from \$6,695 to \$11,118, a \$4,423 increase. By way of comparison the dollar increase in 15 years from 1983/84 to 1999-2000 was \$5,055. The annual increase for 15 years from 1983/84 was \$337 compared to \$884.60 for 1999-2004.

In 1983/84 most resident tuition rates were in the \$1,000 - \$2,000 range. The median was \$1,640. Houston and Texas Tech at \$120 each and Texas at \$474 were great bargains. The highest tuition, \$4,250, was at the University of Pittsburgh. Michigan and Virginia were substantially above the median at \$3,692 and \$2,448 respectively.

By 1999, North Carolina Central offered the lowest tuition at \$2,072. The University of North Carolina was still a bargain at \$2,881. Texas was up to \$6,300, and the median was \$5,974. The University of Michigan had the highest tuition at \$17,332 with Virginia second at \$15,319.

Five years later the University of Michigan charged \$29,397 and Virginia was again second at \$26,100. North Carolina Central remained the lowest at \$3,891. The median was \$6,695. The lowest tuition in 1984 for public law schools was \$120, but had risen to \$3,891 at North Carolina Central in 2004 – an astounding increase of 3143 %, outstripping by far the underlying rate of inflation. The tuition of \$120 at Houston and Texas Tech was now \$13,313 and \$11,126 respectively, representing 10,994 % and 9,172% increases.

The median tuition rose 578% from \$1,640 to \$11,118. The high went from \$4,250 to \$29,397.

At the two extremes we have North Carolina Central with low tuition, trying to fulfill its obligations of access and affordability as a historical minority university compared to the University of Michigan consistently at or near the top in resident tuition as it fulfills its mission of being one of the nation's most prestigious law schools.

The initial institutional response to declining state support is to sharply increase tuition for out-of-state students. To the extent that public universities are to a greater or lesser extent taxpayer supported, little political outcry arises to increasing tuition to non-voting non-residents.

Certainly the public law schools have responded accordingly.²³ The median tuition for non-resident law students rose by \$17,321 in twenty years versus \$9,478 for state residents. For every 10 non-residents enrolled at the median tuition of \$21,577, a public law school raises \$215,770 in tuition and fees, double that of ten in-state students at \$111,180.

However, non-resident tuition is often insufficient to fill the budgetary gap, at which point law schools face several undesirable alternatives: cut expenses, increase the percent of non-residents in the student body, or increase the size of the student body.

Indeed, non-resident tuition is not always a large financial revenue gain for the institutions. Residency requirements vary by state. Some states have relatively easy requirements to change residency, such that a change in status may take only one or two semesters resulting in little non-resident tuition from upper level students. Other schools impose Draconian standards for changing residency status, such as dropping out of the

²³ The only exception is the University of the District of Columbia which has frozen both resident and non-resident tuition for a decade.

institution for one year and otherwise taking steps to indicate a permanent change in residency.

Unlike businesses which compete in the competitive market, public institutions face strong political opposition in reducing expenditures. Higher education is a service enterprise in which the largest expenditure is personnel. Similarly, the largest expenditure for most law schools will be the faculty and then staff. Tenured faculty are not easily laid off. As they retire or otherwise leave the teaching ranks, senior faculty can be replaced by lower-salaried junior faculty and adjuncts. Both steps save money, but adjuncts adversely affect the critical student-faculty ratio. Another large expenditure is financial aid, both in the form of grants and loans. Financial aid can in theory be easily reduced but the cost will be access, affordability and student quality.

Increasing the size of the student body, especially at a faster rate than faculty additions, raises revenue, but at the cost again of the student-faculty ratio and perhaps both of the objective quality (LSAT's, GPA's) of the entering class, and three years later the bar passage rate. The objective criteria and bar pass rates are critical factors in the U.S. News & World Report rankings.

Another alternative is to retain the student population at roughly the same size, but increase the percentage of non-resident students, charging them market-based tuition. This alternative substantially raises revenue, but at the cost of accessibility and affordability for state residents.

However, even sharply raising non-resident tuition and the number of non-resident students to historic levels does not fill the budget gap, which leads to substantial increases even in resident tuition.

The sharp escalation in public law school tuition poses a competitive disadvantage to the public law schools. As their tuition, even for state residents, rivals that of many private law schools, they will lose one of their greatest competitive advantages: low tuition. A student's individual balancing of factors in choosing a law school will change dramatically when tuitions are equalized between the public and many private law schools, especially in states which possess quality public and private law schools.

THE CHANGING PARADIGM OF LEGAL EDUCATION

The financial cutbacks and tuition increases occurred when legal education was incurring substantially rising costs as the underlying model of legal education changed.

Legal education into the 1960's essentially followed the Socratic system and casebook approach promulgated by Dean Langdell of Harvard nearly a century earlier. The law schools typically had large classrooms with chairs, desks, blackboards, chalk, and, at best, a primitive AV system. Small seminars were an anomaly. Professors were underpaid. Clinical education was in its infancy in the late 1960's, and internships and study abroad programs non-existent. Legal Research and Writing programs were unsophisticated by today's standards and were often taught by adjuncts. Libraries consisted of shelves of bound and loose-leaf volumes. Each school sponsored at most one professional journal. Tuition was also low. Deans were often hired because of their scholarly reputations.

Today's law school, both private and public, is characterized by differentiated programs, seminars, symposia, clinics, institutes, and centers. Schools publish multiple journals, very few of which are financially independent. Legal Research and Writing is

often taught in small sections by full-time faculty. Tutoring and academic success programs have been added to the law school. For decades, until stopped by a consent degree in 1996, the ABA's accreditation process ratcheted up faculty salaries. The classroom changed from Spartan to wired. Instruction partially shifted from a large, impersonal model to one of personalized, intensive skills training. Fundraising is a substantial component of a Dean's job description today.

In addition, all institutions face escalating rises in indirect costs, library and technology expenditures, health care, day care, maternity leaves, and utilities. These costs, of course, mirror those of society in general.

These changes and cost-pressures do not discriminate between public and private law schools, but clearly institutions with rising revenues and deep resources are better able to absorb them. Regular appropriations from the state provided a cushion for the public law schools, but taxpayer support has not risen proportionately; indeed, it has shrunk in recent years.

The first sign of a seismic change in higher education was the launching of U.S. News & World Reports' ranking of colleges in 1983. The Guide to Graduate Schools first appeared in 1987.²⁴ With U.S. News emphasizing objective, quantitative criteria, institutions have changed their practices to affect their ranking.

²⁴ The quality of an education, the ability of students, the teaching proficiency of professors, is not dependent upon the prestige of a law school defined by LSAT scores, median GPA's, alumni contribution rates, placement success or the other statistical parameters used by U.S. News & World Reports. Excellent instruction is often available at less prestigious institutions. Of course, even with objective criteria, the results are highly subjective. The mere determinations of which factors to consider, and the mathematical weight attached to each, involves weighing intangibles. Even minute differences in a category can result in wide differences in rankings. Year to year shifts may not signify much in fact. In any event, a common refrain is that 15 law schools claim to be in the top ten.

THE RANKINGS

Harvard and Yale vied for first, followed by Michigan at third, in the initial 1987 rankings. Columbia and Stanford tied at fourth, followed successively by Chicago, Boalt, Virginia, NYU, Pennsylvania, Texas, Duke, Georgetown, UCLA, Cornell, and Northwestern. Illinois and USC ranked equally at 17. Minnesota and Wisconsin completed the top 20. Eight public law schools ranked in the top 20, including three in the top ten. The 1987 rankings were based solely on reputation. By 1990 “objective” quantifiable criteria; such as LSAT’s, GPA’s, student-faculty ratios, placement rates, and bar passage rates, were added to the mix. The identification of these factors has resulted in many law schools significantly changing their admissions and financial aid practices to “tweak” the numbers, as well as boosting their placement rates.

The rankings changed dramatically by the 2005 ratings. Michigan remained the top ranked public law school, but slipped to seventh. Virginia came in at 8th. Both Michigan and Virginia tied for 8th in the 2006 rankings. Boalt had dropped in one year from 9th in 2004 to 13th in 2005, but rose again to 11th for 2006, illustrating the vagaries of minor differences in criteria from year to year. Only six public law schools remain in the top 20.²⁵

A DECEPTIVE MODEL

The Universities of Michigan and Virginia have been widely considered for decades to be the most prestigious public law schools, followed closely by Boalt. Michigan has quasi-privatized²⁶ for over a decade by charging high tuition, even for state

²⁵ Michigan (8), Virginia (8), Boalt (11), Texas (15), UCLA (15), Minnesota (19).

²⁶ To privatize a university would be to totally split it off from state funding, state regulation, and state ownership. Quasi privatization essentially means a funding reliance on tuition and gifts, but legal authority remaining in the public governing board. Universities and law schools do not want to totally sever their

residents, while state support dropped to nominal levels. 75% of its student body is non-resident. The equally prestigious University of Virginia has followed a similar path, but with a smaller non-resident population and slightly lower tuition. Virginia has formally renounced state funding – a bold step beyond the resources of most public law schools. It receives no assistance from the state. In exchange under its “financial self-sufficiency plan” adopted for the 2001-2002 academic year, it retains all tuition and outside income. Both Michigan and Virginia have stayed in the top ten ratings of law schools by U.S. News & World Reports. Their quasi-privatized success is a tempting example for other public law schools.

According to tables published by U.S. News & World Reports, Michigan’s resident tuition for 2003-04 of \$27,884 would rank 33rd among law schools. The non-resident tuition of \$32,884, applicable to 75% of the student body, places it at number 8 on the tuition list, trailing only Columbia, NYU, Northwestern, USC, Yale, Penn and Cornell.²⁷

A quick conclusion is that Michigan and Virginia have continued among the top ranked law schools because their tuition parallels the top-ranked private law schools and often exceed those of lower ranked private law schools.

However, their continued success is deceptive as the new paradigm for privatizing public law schools. Most significantly, they are acting pursuant to long term strategic planning. Conversely, many of the recent large tuition increases by public law schools are ad hoc, short term tuition gap fillers without consideration of the long term consequences. Michigan and Virginia have resources, especially endowment funds,

ties to the state for a number of reasons, including capital appropriations, and access to tax exempt, low interest state bonds.

²⁷ See Anne McGrath, U.S. News & World Report: Ultimate Guide to Law Schools 89, 92 (2004).

unavailable to most law schools, public or private. Each has endowment resources of over \$200 million,²⁸ and extensive fund-raising expertise.²⁹ Each has a large, geographically diversified, highly successful, and generous alumni.³⁰ For example, private gift-giving to the University of Virginia School of Law totaled \$12,551,854 for the 2003-04 year.³¹ \$8 million came in the annual campaign.³² The current budget for the University of Michigan Law School includes \$3.8 million in gifts and \$8 million in endowment income.³³ By way of contrast, Boalt's endowment is \$80 million, but its dean estimates it needs \$300 million to "achieve world class status."³⁴

While Ann Arbor and Charlottesville are not large cities, the two universities draw from large population areas, the Midwest and mid-Atlantic/South respectively. In

²⁸ The University of Michigan Law School reports an endowment of \$182 million, not including the Cook endowment, administered by an independent trustee. The University of Michigan Law School, *Report of Giving*, July 1, 2003-June 30, 2004 at 63. The Cook Endowment is anecdotally estimated to be about \$50 million. Combined assets held by the Law School Foundation at the University of Virginia and by the University for use by the Law School exceeded \$228 million as of June 2004. Virginia Law: Why Support UVA Law?, <http://www.law.virginia.edu/home2002/html/alumni/giving.htm> (March 30, 2005).

Virginia's first annual fund-raising campaign in 1965 raised \$97,000. The University of Virginia Law School Foundation, 2001-2002 Annual Report 1 (Dean's Message), http://www.law.virginia.edu/homw2002/html/alumni02/annual_home.htm (July 11, 2005).

²⁹ A check of the University of Michigan Law School website on July 5, 2005 shows 11 employees engaged in fundraising, not including two open positions and the office support staff.

<http://www.law.umich.edu/alumnianddevelopment/devinfo/index.htm>.

³⁰ 47% of Virginia's alumni participated in the 2003-04 annual fundraising campaign. The University of Virginia Law School Foundation, 2003-2004 Annual Report 5 (subsequently referred to as UVA 2003-04 Annual Report).

³¹ *Id.* at 4.

³² *Id.* at 5.

³³ Office of Budget and Planning, Law School, Contents of the Budget Planning Workbook at 6. (11-Feb-05)

³⁴ Rick Jurgens, New Dean Seeks Private Money For Berkeley, Calif., Law School, *Contra Costa Times*, Oct. 3, 2004, 2004 WL 78211951. Harvard Law School's endowment is \$840 million, and is raising an additional \$400 million. Martin Finucane, *Associated Press Newswires*, June 14, 2003, 6/14/03 AP Wires 16:41:00. The University of Texas Law School Foundation exceeds \$150 million. The University of Texas Alumni and Friends, *The Law School Foundation* <https://www.utexas.edu/law/depts/alumni/foundation.html> (June 13, 2005). William and Mary reports endowment of \$27.8 million. William & Mary School of Law, 2004-04 Annual Report 69. The University of Minnesota Law School had a \$76.3 million endowment. University of Minnesota Law School, *A Brief Profile of the UNM Law School* 1, <http://www.law.unm.edu/prospective/profile.html>. The University of Illinois Law School only had a \$13.7 million compared to \$43 million for Iowa. <http://www.lawschool.com/usn2005.htm>.

addition, both states have alternative public law schools available to state residents at lower tuition, relieving somewhat the political pressure that would otherwise be directed at Michigan and Virginia.

Virginia has been able to use its extensive resources to ameliorate the access and affordability problems caused by large tuition increases. 40.4% of its 1,087 students enrolled during the 2003-04 year received \$4.4 million in scholarships while 77.8% received loans totaling \$19.9 million.³⁵ Just as significant is its loan forgiveness program for students entering “public interest” law. While many law schools offer these programs, none define “public interest” as broadly as Virginia. It covers, subject to income levels, all graduates staying in Virginia to practice law.

IMPLICATIONS OF THE CHANGE

A critical caveat is that simply substituting tuition dollars for state support does not maintain the status quo, but weakens the institution in the short run. Indeed, it entails tremendous risks and substantial changes to the role of public legal education. Current tuition increases are intended in the short term to replace state support. They may not cover growth or expansion. The reality is that the sharp escalation in tuition by the UC’s and other law schools do not per se increase their budgets, but often simply offset reductions in the general fund allocation to the law school, resulting in flat budgets; in other words, the Board of Regents and administrators are redirecting general funds to academic units less able to substantially raise tuition.

At risk are accessibility, affordability, upper-mobility, public interest and service, student-faculty ratios, prestige and reputation, and revenue sharing with the parent university.

³⁵ UVA 2003-04 Annual Report, *supra* n. 30 at 62.

The challenge to “privatizing” or “quasi-privatizing” public legal education is to retain the ethos of public institutions by raising tuition without losing any of the significant characteristics of a public university: inclusiveness, upper-mobility, accessibility, affordability and public service. The public law school is at great risk of becoming a tuition dependent quasi-private institution. Part of the challenge is to recognize the nature of many private law schools.

THE NATURE OF PRIVATE LAW SCHOOLS

One important distinction exists between public universities and their law schools. Public universities are large, reflecting the obligation to provide mass education to state residents. For example, the 2003-04 undergraduate enrollments of the public Big Ten universities³⁶ is 29,043 compared to 7,141 for the eight private Ivy League universities.³⁷

Conversely, only two of the 20 largest law schools in 2004 are public. They are Texas and Hastings.³⁸ On the other hand, 13 of the 20 ABA approved law schools with the lowest enrollments are public institutions.³⁹ The reality is that many private universities run their law schools as a profit center, drawing a relatively high percentage

³⁶ Northwestern, a member of the Big Ten, is a private university.

³⁷ These enrollment figures are calculated by averaging the enrollment figures for universities in Edward B. Fiske, *Fiske Guide to Colleges 2005* (Twenty First Edition 2004). The figures are Brown (6030), Columbia (7593), Cornell (13,655), Dartmouth (4079), Harvard (6684), Pennsylvania (9133), Princeton (4613), Yale (5339), Illinois (28,947), Indiana (30,752), Iowa (20,487), Michigan (24,412), Michigan State (34,559), Minnesota (28,103), Ohio State (37,605), Penn State (27,604), Purdue (30,908), and Wisconsin (27,553).

³⁸ The largest enrollments, combining both full time and part-time enrollment, are Thomas M. Cooley (2,303), Georgetown (1,862), Suffolk (1,668), Harvard (1,654), Widener (1,637), George Washington (1,555), New York (1,551), Fordham (1,546), Texas (1,532), Brooklyn (1,515), American University (1,389), New York University (1,346), John Marshall (1,329), Loyola of LA (1,313), South Texas (1,289), Seton Hall (1,277), Columbia (1,225), Hastings (1,225), Denver (1,192), and Miami (1,181). Michigan was twenty-first with 1,149 students. Anna McGrath, *U.S. News & World Report, Ultimate Guide to Law Schools* 81 (2004).

³⁹ *Id.* at 84. They are Louisville (390), Southern Illinois (383), Cincinnati (365), Northern Illinois (333), New Mexico (316), Idaho (308), Hawaii (301), Maine (278), South Dakota (255), Wyoming (243), Montana (241), and North Dakota (200). Many of these are located in the nation’s least populated states. Three private law schools, Yale, Chicago, and Stanford, have acquired a reputation for excellence partially upon the relatively small size of their classes compared to their peers. They can thereby devote larger resources per student.

of law school gross revenues as “overhead.”⁴⁰ Schools and colleges can reasonably be expected to cover costs assumed by the parent university on their behalf, such as maintenance and security, and a proportionate share of the costs of running the university. The problem occurs when law schools incur a disproportionate share of a university’s operations, such that revenues from the law school are used to subsidize other academic units. In this common scenario, tuition revenues must thereby serve the financial needs and demands of both the law schools and their parent universities, and hence inflate the cost of tuition above that actually needed to provide a quality education.

The behavior of tuition dependent institutions differ, often radically, from well-funded schools. Pressure always exists to make the numbers on admissions. That might not be a major problem for top-tier law schools, but it gets progressively harder with drops in prestige, and in cyclical downturns. The objective quality of the student body may be sacrificed to meet financial needs. The critical issue is whether public law schools will be allowed to downsize if applications drop to maintain their “quality”, or have to maintain enrollment at the cost of quality.

The reality is that many private law schools are tuition driven and dependent. As such, some operate more like an economically driven business than a knowledge driven cathedral of learning.⁴¹ These schools face continuous constraints on faculty appointments and retention, faculty, administrative and staff salaries, faculty development, academic programs, financial aid, admissions, and facilities. Indeed, salaries may be frozen during downturns in revenues.⁴² Large classes and high student-

⁴⁰ The ABA does not officially publish a permissible maximum overhead rate for law schools.

⁴¹ Faculty members, of course, focus on teaching, scholarship, and service within the confines of a tight budget.

⁴² Other forms of fiscal restraints may include limits on photocopying and itemizing of telephone calls.

faculty ratios are common. As long as the schools stay within the ABA guidelines for student faculty ratios, adjuncts become an attractive financial cost-cutting option. New academic centers and programs have to be financially independent. Public financial support freed the public law schools from operating as tuition dependent institutions.

The public law schools could resist these pressures as long as states provided them substantial subsidies, rather than demanding a share of the school's tuition revenue. This immunity is ceasing. Certainly not all private universities look to their law schools as a profit center, but the temptation exists. Pressure often exists to enroll "just" a few more students and raise tuition "just" a few dollars more while resisting proportionate increases in the size of the faculty and support staff. The financial pressures can be relentless.

The next inexorable step with declining state support for the parent institutions is to demand from the public law school a "fair contribution" to the operations of the public university. Indeed, the University of Virginia Law School now remits to the University 10% of its tuition revenues,⁴³ and separate reimbursements for other expenditures, such as maintenance.⁴⁴

⁴³ Virginia Law: Why Support UVA Law? at 3.

<http://www.law.Virginia.edu/home2002/html/alumni/giving.htm> (March 30, 2005). It is referred to as "Financial Self-Sufficiency".

⁴⁴ *Id.* By way of comparison, the University of Michigan School of Law still receives a small percent of its budget from the central university, but is assessed a percentage of its budget to support the university. This percentage is equal to that charged the other schools and colleges of the university. For the FY05 year, the budget includes Facilities costs of \$1,923,271, General and Research Tax of \$7,424,414 and University Participation of \$682,854. Office of Budget and Planning, Law School: Contents of the Budget Planning Workbook 1 (11-Feb-05).

ACCESSIBILITY, AFFORDABILITY AND STRATIFICATION

The resolution to the funding problem is not as simple as substituting tuition dollars for state support. Tuition increases are not per se a panacea for declining state support.

Paradoxically, a dollar for dollar increase, trading tuition for state support, leaves the institutions financially weaker, and less able to offer accessibility and affordability. One of the greatest consequences of sharply raising tuition is that a proportionately larger increase in financial aid is required to offset the tuition increases. If, for example, the state cuts funding by \$1 million, then tuition revenues will have to rise substantially more than \$1 million if the school is to continue to attract economically disadvantaged students. By way of illustration, a student with a \$3,000 financial aid package on a \$5,000 tuition bill will need \$6,000 in financial aid if tuition rises to \$8,000, an increase of \$3,000. None of the putative \$3,000 tuition increase for this student would go to operations. The need for financial aid grows proportionately faster as tuition and fees rise unless the school wishes to decrease the matriculation rate of economically disadvantaged students.

A critical question is how much of the tuition increases will in fact be discounted as scholarships and other financial aid for merit, need-based, and diversity scholarships, and for loan-forgiveness for graduates entering public service. The risk is that these accounts will be squeezed, especially in cyclical down turns when applications and enrollment drop.

The U.S. News & World Report emphasis on LSAT's and GPAs has resulted in a shift in financial aid funds from need based to merit so as to raise a school's academic

profile. If we assume that financial aid is a fixed sum in a law school's budget, then every dollar awarded to high LSAT applicants reduces the pool available for scholarships based on need. The effect is to reduce access and affordability for state residents.

The tuition figures for two historic minority law schools, North Carolina Central (NCC) and Texas Southern, and the University of the District of Columbia clearly illustrate the problem of affordability.

North Carolina Central has adhered the strongest to its historic roots. Its resident tuition of \$730 in 1984-85 was the sixth lowest of all public law schools. For both 1999-2000 and 2004-05 NCC had the lowest in-state tuition of any public law school at \$2,072 and \$3,891 respectively. By way of contrast, twenty years ago the tuition for the flagship University of North Carolina (UNC) was only a few dollars higher than NCC's, but for 2004-05 UNC's tuition of \$11,118 represented a 1,302% increase for state residents versus the 433% for NCC. From tuition parity (\$793 versus \$730), UNC's tuition was almost three times that of NCC's.

Texas Southern did not exercise similar restraint in tuition. From \$538 in 1984-85, the fourth lowest tuition, it rose to \$5,340 in 1999-2000 and \$9,644 for 2004-05, a 1,693% increase over twenty years. It was, though, still below the median for public law schools of \$11,118 (the University of North Carolina).

The University of District of Columbia School of Law did not exist in 1984-5.⁴⁵ It has chosen a third approach so far. UDC's resident tuition has remained steady for several years at \$7,135.⁴⁶

⁴⁵ It's predecessor was the Antioch School of Law, a private institution.

⁴⁶ The University of the District of Columbia doubled its tuition ten years ago as part of the response to the District of Columbia's severe budget problems. It has frozen tuition since then.

Another impact is on the viable options available to graduates. Large debt loads limit the graduates available to practice public interest law. This problem has been recognized for some time.⁴⁷ Legal education has responded by adopting debt-forgiveness plans.⁴⁸ However, these worthy programs require financial resources. The subsidies must come from endowment funds, current fund-raising, or through tuition.

A major impact of the substantial increases in tuition is to intensify the economic stratification of the student body with the shift to a highly affluent student body. In other words, the cost of upper mobility and inclusiveness into the legal profession has risen substantially in recent years. The applicant pool becomes increasingly self-selective on the basis of finances – a pattern already manifesting itself with undergrad admissions.⁴⁹ In addition, high tuition can serve as a psychological barrier to low-income applicants.

⁴⁷ A recent ABA study showed that most law school graduates have a cumulative debt-load exceeding \$80,000, usually necessitating monthly repayments of \$1,000 over ten years. ABA commission on Loan Repayments and Forgiveness, *Lifting the Burden: Law Student Debt as a Barrier to Public Service* 9 (2003). 87% of students borrow to finance their legal education. *Id.* at 10. Two-thirds of the respondents in the study found the debt load too large to enter public interest law. *Id.* at 9.

⁴⁸ Eighty-one ABA law schools implemented such plans as of November 2004. NATIONAL JURIST MAGAZINE, November 2004 at 13.

⁴⁹ The Wall Street Journal reported that a Department of Education advisory study found that 170,000 qualified students could not even afford to attend a community college, and that 43% of qualified middle-class children cannot afford to attend a four-year institution. June Kronholz, *College Costs Play on Stump*, Wall St. J., Feb 4, 2004, at p. A4, col. 1,2.

The New York Times similarly reported recent studies showing students from upper-income families are increasingly edging out middle-class students at the nation's prestigious universities. For example, the 2003-04 freshman class at the University of Michigan has more students with their parents earning at least \$200,000 a year than those making less than \$53,000- the national median income. David Leonhardt, *As Wealthy Fill Top Colleges, Concerns Grow Over Fairness*, NEW YORK TIMES, April 22, 2004 at p. A1, col. 5. 40% of the entering classes at the 42 most selective public universities come from families earning over \$100,000, up 8% in just four years. *Id.* at p. A22, col. 1. The Educational Testing Service reports that only 3% of the entering classes this year at the top 146 colleges and universities are from families in the lowest quarter of wage earners. For example, 54% of the students at Miami University of Ohio are from families with median incomes exceeding \$100,000. The median income at Harvard is about \$150,000. *Id.* However, about half the students at Michigan are from families earning less than \$100,000. *Id.* at col. 2.

Stratification is a recognized issue in the nation's top universities, both public and private.⁵⁰ In a Business Week interview, President Lawrence Summers of Harvard University recognized: "Inequality between those in the high-income groups and those in the low-income groups is widening. In the last two decades, for the first time probably in the country's history, the gap in life prospects . . . is growing. One of the reasons is that the gap in the college enrollment rate between [those groups] is growing."⁵¹

Theodore Spencer, Director of Undergraduate Admissions at the University of Michigan, explained the problem: "We were founded on the principle of allowing larger numbers of students to go to college in an affordable way. But having said that, the price of college has gone up, and many of the truly needed will not bother to apply."⁵²

Similar conclusions were reached by the Higher Education Research Institute at UCLA, which found that 55% of the entering students at the most selective four year colleges came from the highest earning quarter of households in America, up from 46% in 1985.⁵³ The former model of financial aid was low tuition, large grants. The new model is large tuition, low grants and large loans to the detriment of non-affluent families.⁵⁴

As is well recognized, the middle class is in increasing danger of being squeezed out of the nation's premier institutions – both public and private. Affluent families can

⁵⁰ The issue is not new. See e.g. L. Strickman, *The Tuition-Poor, The Public University, and Equal Protection*, 29 U.Fl. L. Rev. 595 (1977).

⁵¹ Business Week, November 5, 2004 at 73, 74, col. 3.

⁵² David Leonhardt, *As Wealthy Fill Top Colleges, Concerns Grow Over Fairness*, New York Times, April 22, 2004 at p. A22, col. 1.

⁵³ Dave Newbart, *Wealthy Squeeze Out Low-Income Students at Many top Colleges: Economic Diversity Fading at Private, Public Schools Alike*, Chicago Sun-Times, June 13, 2004, 2004 WL 63145610 at 2.

⁵⁴ The long-term trend has been to reduce grants as a proportion of total aid while loans have increased. For example, financial aid rose 13% in 2003-04 from 2002-03 to \$122 billion. Loans rose 19% while grants were only up 8%. Loans constituted 56% of financial aid compared to 38% for grants. In 1990-91 grants were 48.1% of financial aid, almost equal to the 49.3% for loans. AASCU/NASULGC, *Student and Financial Aid Changes, 2004-2005* 8, table 2 and 9 (2005).

afford the tuition increases while the shrinking pool of qualified economically disadvantaged families may receive substantial sufficient financial aid.

The admissions process risks losing its need-blind basis because many institutions carefully watch their acceptance rate to look good in U.S. News & World Reports. Thus, applicants may be denied admission if they appear financially unable to attend⁵⁵ or if they are otherwise likely to matriculate elsewhere.

Non-resident tuition becomes a very attractive source of revenue. As the public institutions increasingly turn to non-resident tuition, the effect will be to raise the academic profile of the entering class at the risk of squeezing out the economically disadvantaged state residents. The result is inevitable because the shrinking number of resident slots will result in greater competition for the remaining seats in the entering class. The law school will need to make special efforts to find appropriate disadvantaged students to admit. The problem already exists in high schools and carries through into colleges.

As long as legislators historically funded a substantial percentage of a law school's budget, they could effectively restrict non-resident admissions by exercising the "power of the purse." This leverage is proportionate to the extent of state support.⁵⁶

FUNDRAISING

Fundraising is not a novel phenomenon. Presidents and deans, both of public and private institutions, have long engaged in it. The difference today is that instead of being one of several criteria for a deanship, it threatens to become the primary role for the dean.

⁵⁵ Financial aid is expensive and many law schools have limited budgets for this purpose.

⁵⁶ Although documentation may be difficult, anecdotal evidence suggests that legislatures often "look the other way" when institutions increase non-resident enrollment in response to state budget cuts. The author remembers an administrator of the University of Michigan Law School stating in the early 1970's that the legislature effectually limited the law school to 30% non-residents. The current figure is 75% non-resident.

Program development is dependent on funding. Fundraising may replace academic program building as the measure of success of a deanship.

Either as an alternative or supplement to tuition increases, the public law schools must turn to substantial fundraising – an experience in which many lack extensive experience. For many law schools, exemplified by Boalt, it has become a matter of urgency – a high priority.

That too represents a substantial change in paradigms for many public law schools: the cultivation and education of an alumni base unaccustomed to going. Alumni of private universities have a different perspective. The public law school must now invest substantial resources in a development office. The techniques of fund raising are well known, but the receptibility of the alumni base may be an issue. Many of their graduates attended law school when tuitions were exceedingly low, being heavily subsidized by state taxpayers. Accessibility and affordability were not as critical an issue then as they are today.

Success will not be immediate, but absent the highly unlikely possibility that states reverse course and again provide adequate funds to the law schools, massive fundraising is the only alternative to systemic tuition increases. The education and cultivation of alumni is a long-term process.

The flagship public law schools, regardless of their national reputation, all have a strong presence in state and local bars, public service, and in public interest law. The loyal, successful alumni must be called upon to play a substantial role in their alma mater's future. No longer will networking and hiring fellow alumni be sufficient.

CONCLUSION

The change in paradigms entails profound changes both for the law school and for society. Many of the prestigious private law schools are characterized by high tuition, large endowments, and low student-faculty ratios.⁵⁷ The public schools are moving to the model of high tuition, low endowment and variable student-faculty ratios. Most private law schools are tuition dependent and driven. Public law schools are trending that way, resulting in tremendous changes in the ethos of public law schools.

The change in paradigm also poses a long-term issue that goes to the essence of a public law school – will the public continue to support it? As higher education becomes increasingly stratified by economics, the perception is rising that the public schools are becoming elitist.

The public institutions were initially founded in part, and then grew, as a populist-reaction to the private institutions of the east. If the public institutions essentially mirror the private, then they risk a further loss of public support.

The strength of an institution, any institution, is not in bricks and mortars, but resides in the quality of its people – the faculty, staff, and student body. The ultimate test is where do professors wish to teach and students to matriculate. At one extreme, the private law school's primary function is often to be run as a business with a more limited mission rather than as a cathedral of learning. At a minimum, private law schools have a

⁵⁷ Harvard though is well known as a high enrollment, high student-faculty ratio institution. However, its student-faculty ratio for 2004-05 is 11.2:1, which is higher than Yale's 7.9:1, but still highly competitive with the other top ten law schools. U.S. News & World Reports, AMERICA'S BEST GRADUATE SCHOOLS, 2006 edition at 60.

greater control over their budgets. Brilliant students matriculate at these schools, but often rising young scholars will heed the siren call of the prestigious institutions.

Many public law schools are looking to Michigan and Virginia as a model for changing paradigms. Most public law schools lack the prestige of these two schools. Few approach their endowments and fund-raising expertise. They can offer scholarships and loans to students at a greater level than most other public law schools. High tuition is but one factor in their continued success. Many law schools can emulate their success, but others will simply be unable to do so for a number of limiting factors. Just as not every public law school strives to be a Michigan or Virginia in academic stature, so too these two schools should not constitute the model for all public law schools responding to budget cutbacks.

Each public law school will have to chart its path out of the financial morass. Large tuition increases are a short-term, stop-gap action, in effect a bandaid with the inherent effect of radically changing public legal education. It does not resolve the long-term financial issues. What it does is convert a public institution into a tuition-dependant quasi-private institution.

Public law schools face many challenges, indeed risks in changing paradigms. Even if totally privately funded, they are still a public institution and must strive to provide service to the community, offer educational opportunity for all state residents, and otherwise pursue the public interest.

The change in paradigms is as momentous as the enactment of the Northwest Ordinance of 1787, the Morrill Act of 1862, and the GI Bill. While those statutes promoted public education as a critical value of society, the new paradigm restricts access

and limits affordability. No longer are states supporting students, but students are now supporting the state.⁵⁸

Long term planning should follow short term gap filling increases. Faculties will have to engage in deep soul searching examinations of their mission, goals, and limitations, including meaningful self studies and long-range planning. In its past these studies could be pro forma exercises by a committee, subject to ratification, usually with little debate, by faculties. The changing paradigm necessitates a critical self-assessment of the law school's mission. Of all issues, including faculty self governance, these are the most critical today. The law school must decide what it aspires to be and how it will accomplish that mission. If not, the financial changes will decide for the school.

Public law schools face major challenges in shifting from a low tuition, heavily state supported model to one of high tuition with variable state support. The challenges can best be viewed as risks, which if not properly handled, will result in long term damage to public legal education. If the public law schools increasingly mirror their private counter-parts, their ethos, their basis for existence, as a public institution will cease.

While these times present a great challenge to the public institutions, they also create a rare opportunity for the states willing to rise to the occasion. States, which substantially increase spending for their state law schools, will be rewarded by increased stature as well as access and affordability for their residents. After all, every \$15 million legislative appropriation is roughly equal to the income from a \$300 million endowment.

⁵⁸ Tuition and fees are in essence “user fees,” a type of taxation. Substantial increases in these user fees substantially increases the revenue of the state, allowing it to spend more money elsewhere.

Appendix A⁵⁹
Public Law School Resident Tuition and Fees
(1983-84 tuition figures have an asterisk)

SCHOOL	1983/1984	1999-2000	2004-2005	20 Yr. % Increase	5 Yr. % Increase
Arizona State University	\$ 950	\$ 5,011	\$12,379	1203.05%	147.04%
Cleveland State University	\$2,400*	\$ 7,826	\$13,052	443.80%	66.78%
College of William and Mary	\$2,403	\$ 9,074	\$14,160	489.26%	56.05%
CUNY - Queens College	\$3,100	\$ 6,452	\$ 8,732	181.67%	35.33%
Florida A&M	NA	NA	\$ 6,441	NA	NA
Florida International	NA	NA	\$ 7,129	NA	NA
Florida State University	\$1,181*	\$ 4,727	\$ 7,505	535.50%	58.77%
George Mason University	\$2,184	\$ 7,784	\$10,906	399.36%	40.11%
Georgia State University	\$1,280	\$ 3,954	\$ 6,112	377.50%	54.58%
Indiana University - Bloomington	\$1,709	\$ 7,210	\$13,045	663.31%	80.93%
Indiana University - Indianapolis	\$1,709	\$ 6,602	\$11,661	582.33%	76.63%
Louisiana State University - Baton Rouge	\$1,380	\$ 6,154	\$10,410	654.35%	69.16%
North Carolina Central University	\$ 730	\$ 2,072	\$ 3,891	433.01%	87.79%
Northern Illinois University	\$1,800	\$ 7,002	\$10,504	483.56%	50.01%
Northern Kentucky University	\$1,532	\$ 6,600	\$ 9,240	503.13%	40.00%
Ohio State University	\$2,316*	\$ 8,424	\$14,405	522.00%	71.00%
Rutgers State University - Camden	\$2,368*	\$11,302	\$16,724	606.30%	47.97%
Rutgers State University - Newark	\$2,368*	\$11,226	\$16,525	597.80%	47.20%
Southern Illinois University - Carbondale	\$1,108	\$ 5,845	\$ 9,004	712.64%	54.05%
Temple	\$3,450	\$ 9,546	\$10,572	206.43%	10.75%

⁵⁹ The appendices do not include the tuition figures for the Michigan State and Penn State/Dickinson Law Schools because of their mixed public/private status. The resident and non-resident tuition figures for Michigan State students are \$14,600 in 1999 and \$25,650 for 2004. Similarly, the resident and non-resident figures for Penn State are \$14,600 in 1999 and \$25,650 in 2004. Whenever possible, tuition figures for 1984-85 are used. In some cases though, we could only obtain the 1983-84 figures.

Texas Southern	\$ 538	\$ 5,390	\$ 9,644	1692.57%	78.92%
Texas Tech University	\$ 120	\$ 6,600	\$11,126	9171.67%	68.58%
University of Akron	\$2,264	\$ 7,322	\$12,896	469.61%	76.13%
University of Alabama	\$ 873	\$ 4,812	\$ 8,130	831.27%	68.95%
University of Arizona	\$ 950	\$ 5,014	\$12,597	1226.00%	151.24%
University of Arkansas - Fayetteville	\$1,130	\$ 5,306	\$ 8,694	669.38%	63.85%
University of Arkansas - Little Rock	\$1,130	\$ 4,735	\$ 8,367	640.44%	76.71%
University of Baltimore	\$2,575	\$ 9,617	\$14,330	456.50%	49.01%
University of Buffalo	\$3,150	\$ 9,400	\$13,422	326.10%	42.79%
University of California - Berkeley	\$1,436	\$10,865	\$21,531	1399.37%	98.17%
University of California - Davis	\$1,313	\$10,895	\$21,224	1517.07%	94.80%
University of California - Hastings	\$1,200	\$11,183	\$20,919	1643.25%	87.06%
University of California - Los Angeles	\$1,381	\$11,104	\$22,123	1501.96%	99.23%
University of Cincinnati	\$2,868*	\$ 7,245	\$14,084	391.10%	94.40%
University of Colorado - Boulder	\$1,545*	\$ 5,917	\$10,795	598.70%	82.44%
University of Connecticut	\$1,756	\$11,030	\$15,388	776.31%	39.51%
University of the District of Columbia	NA	\$ 7,135	\$ 7,135	NA	0.00%
University of Florida	\$1,064*	\$ 4,514	\$ 7,168	573.70%	58.80%
University of Georgia	\$1,684	\$ 4,736	\$ 7,978	373.75%	68.45%
University of Hawaii	\$1,360	\$ 8,628	\$11,529	747.72%	33.62%
University of Houston	\$ 120	\$ 6,346	\$13,313	10994.17%	109.79%
University of Idaho	\$1,290	\$ 4,288	\$ 7,572	486.98%	76.59%
University of Illinois - Urbana-Champaign	\$2,002	\$ 9,300	\$15,888	693.61%	70.84%
University of Iowa	\$1,600	\$ 7,108	\$12,348	671.75%	73.72%
University of Kansas	\$1,228	\$ 4,553	\$ 8,725	610.50%	91.63%

University of Kentucky	\$1,556	\$ 5,900	\$10,268	559.90%	74.03%
University of Louisville	\$1,567	\$ 5,560	\$ 9,200	487.11%	65.47%
University of Maine	\$2,220*	\$10,256	\$14,114	535.80%	37.62%
University of Maryland	\$2,684	\$10,358	\$16,253	505.55%	56.91%
University of Memphis	\$1,262	\$ 4,922	\$ 8,286	556.58%	68.35%
University of Michigan - Ann Arbor	\$3,692*	\$19,115	\$29,358	695.80%	53.59%
University of Minnesota - Twin Cities	\$2,640	\$ 9,947	\$17,948	579.85%	80.44%
University of Mississippi	\$1,700	\$ 4,289	\$ 7,210	324.12%	68.10%
University of Missouri - Columbia	\$2,083	\$ 9,126	\$12,117	481.71%	32.77%
University of Missouri - Kansas City	\$2,568	\$ 9,108	\$13,342	419.55%	46.49%
University of Montana	\$1,533	\$ 6,695	\$ 8,728	469.34%	30.37%
University of Nevada Las Vegas	NA	NA	\$ 7,833	NA	NA
University of Nebraska - Lincoln	\$2,483*	\$ 5,396	\$ 8,998	262.40%	66.75%
University of New Mexico	\$ 776	\$ 4,382	\$ 7,567	875.13%	72.68%
University of North Carolina - Chapel Hill	\$ 793	\$ 3,602	\$11,118	1302.02%	208.66%
University of North Dakota	\$1,268	\$ 4,376	\$ 7,032	454.57%	60.69%
University of Oklahoma	\$ 978	\$ 5,189	\$ 9,386	859.71%	80.88%
University of Oregon	\$2,695	\$10,897	\$16,156	499.48%	48.26%
University of Pittsburgh	\$4,250	\$12,868	\$19,074	348.80%	48.23%
University of South Carolina	\$1,640*	\$ 7,648	\$14,118	760.90%	84.60%
University of South Dakota	\$1,287	\$ 5,257	\$ 7,498	482.60%	42.63%
University of Tennessee - Knoxville	\$2,349	\$ 5,126	\$ 8,396	257.43%	63.79%
University of Texas - Austin*	\$ 474	\$ 7,498	\$13,955	2844.09%	86.12%
University of Toledo	\$2,100	\$ 7,822	\$12,852	512.00%	64.31%
University of Utah	\$1,206	\$ 4,913	\$ 9,746	708.13%	98.37%

University of Virginia	\$2,448*	\$15,319	\$26,100	966.20%	70.38%
University of Washington	\$1,890	\$ 6,009	\$13,634	621.38%	126.89%
University of Wisconsin-Madison	\$1,850	\$ 6,804	\$10,734	480.22%	57.76%
University of Wyoming	\$ 716	\$ 4,424	\$ 5,593	681.15%	26.42%
Wayne State University	\$3,536*	\$ 7,710	\$12,707	259.40%	64.81%
West Virginia University	\$1,220	\$ 5,472	\$ 8,216	573.44%	50.15%

Appendix B
Public Law Schools Non-Resident Tuition and Fees
(1983-84 tuition figures have an asterisk)

SCHOOL	1983/84	1999- 2000	2004-2005	20 Yr. % Increase	5 Yr. % Increase
Arizona State University	\$3,700	\$12,163	\$20,899	464.84%	71.82%
Cleveland State University	\$4,800*	\$15,522	\$17,969	274.40%	15.76%
College of William and Mary	\$5,823	\$18,200	\$24,400	319.03%	34.07%
CUNY - Queens College	\$4,100	\$ 9,682	\$13,481	228.80%	39.24%
Florida A&M	NA	NA	\$23,144	NA	NA
Florida International	NA	NA	\$25,751	NA	NA
Florida State University	\$3,413*	\$15,623	\$27,517	706.20%	76.13%
George Mason University	\$7,098	\$18,228	\$21,532	203.35%	18.13%
Georgia State University	\$3,808	\$14,130	\$20,306	433.25%	43.71%
Indiana University - Bloomington	\$4,686	\$17,928	\$25,875	452.18%	44.33%
Indiana University - Indianapolis	\$4,686	\$15,744	\$24,472	422.24%	55.44%
Louisiana State University - Baton Rouge	\$3,050	\$11,994	\$19,506	539.54%	62.63%
North Carolina Central University	\$3,288	\$11,034	\$15,751	379.05%	42.75%
Northern Illinois University	\$1,800	\$12,889	\$18,850	947.22%	46.25%
Northern Kentucky University	\$4,220	\$15,210	\$20,408	383.60%	34.17%
Ohio State University	\$5,337*	\$18,288	\$27,237	410.30%	48.93%
Rutgers State University - Camden	\$3,348*	\$16,024	\$23,755	609.50%	48.25%
Rutgers State University - Newark	\$3,348*	\$15,948	\$23,556	603.60%	47.71%
Southern Illinois University - Carbondale	\$3,384	\$10,645	\$24,185	614.67%	127.19%
Temple	\$6,544	\$16,310	\$22,800	248.41%	39.79%
Texas Southern	\$1,690	\$ 9,260	\$12,856	660.71%	38.83%
Texas Tech University	\$1,200	\$11,670	\$17,454	1354.50%	49.56%

University of Akron	\$3,907	\$12,376	\$20,332	420.40%	64.29%
University of Alabama	\$2,254	\$ 8,382	\$10,156	350.58%	21.16%
University of Arizona	\$3,700	\$12,166	\$21,577	483.16%	77.35%
University of Arkansas - Fayetteville	\$2,390	\$10,254	\$17,274	622.76%	68.46%
University of Arkansas - Little Rock	\$2,390	\$10,335	\$16,549	592.43%	60.13%
University of Baltimore	\$4,675	\$16,698	\$25,572	446.99%	53.14%
University of Buffalo	\$4,750	\$14,950	\$19,522	310.99%	30.58%
University of California - Berkeley	\$5,000	\$20,669	\$33,776	575.52%	63.41%
University of California - Davis	\$4,877	\$20,699	\$33,469	586.33%	61.69%
University of California - Hastings	\$4,700	\$19,953	\$33,119	604.66%	65.99%
University of California - Los Angeles	\$4,945	\$20,815	\$33,168	570.74%	59.35%
University of Cincinnati	\$5,607*	\$14,076	\$26,190	367.10%	86.06%
University of Colorado - Boulder	\$5,035*	\$17,863	\$26,387	424.10%	47.72%
University of Connecticut	\$4,014	\$22,820	\$31,780	691.73%	39.26%
University of the District of Columbia	NA	\$14,135	\$14,135	NA	0.00%
University of Florida	\$3,080*	\$15,035	\$26,475	759.60%	76.09%
University of Georgia	\$4,504	\$17,084	\$25,084	456.93%	46.83%
University of Hawaii	\$4,960	\$14,940	\$19,689	296.96%	31.79%
University of Houston	\$1,200	\$11,386	\$20,093	1574.42%	76.47%
University of Idaho	\$3,290	\$10,288	\$15,592	373.92%	51.56%
University of Illinois - Urbana-Champaign	\$6,006	\$20,090	\$28,224	369.93%	40.49%
University of Iowa	\$4,270	\$19,670	\$26,556	521.92%	35.01%
University of Kansas	\$3,078	\$11,260	\$16,573	438.43%	47.18%
University of Kentucky	\$4,245	\$15,270	\$19,868	368.03%	30.11%
University of Louisville	\$4,256	\$14,930	\$20,760	387.78%	39.05%

University of Maine	\$5,550*	\$17,846	\$22,514	305.70%	26.16%
University of Maryland	\$4,970	\$18,630	\$27,532	453.96%	47.78%
University of Memphis	\$3,230	\$13,078	\$23,046	613.50%	76.22%
University of Michigan - Ann Arbor	\$7,850*	\$25,085	\$34,358	337.70%	36.97%
University of Minnesota - Twin Cities	\$5,280	\$16,407	\$28,042	431.10%	70.91%
University of Mississippi	\$2,777	\$ 8,403	\$13,380	381.81%	59.23%
University of Missouri - Columbia	\$4,911	\$17,684	\$23,073	369.82%	30.47%
University of Missouri - Kansas City	\$5,396	\$17,645	\$25,456	371.76%	44.27%
University of Montana	\$3,081	\$12,298	\$17,493	467.77%	42.24%
University of Nebraska - Lincoln	\$3,056*	\$11,795	\$20,612	574.50%	74.75%
University of Nevada Las Vegas	NA	NA	\$15,078	NA	NA
University of New Mexico	\$2,570	\$14,672	\$19,901	674.36%	35.64%
University of North Carolina - Chapel Hill	\$3,155	\$15,702	\$23,036	630.14%	46.71%
University of North Dakota	\$2,362	\$ 9,220	\$14,900	530.82%	61.61%
University of Oklahoma	\$3,078	\$13,717	\$18,652	505.98%	35.98%
University of Oregon	\$3,943	\$14,843	\$20,458	418.84%	37.83%
University of Pittsburgh	\$7,940	\$19,842	\$27,970	252.27%	40.96%
University of South Carolina	\$3,270*	\$15,716	\$28,534	772.60%	81.56%
University of South Dakota	\$2,494	\$10,945	\$15,230	510.67%	39.15%
University of Tennessee - Knoxville	\$5,162	\$13,432	\$21,384	314.26%	59.20%
University of Texas - Austin*	\$1,554	\$15,478	\$25,003	1508.94%	61.54%
University of Toledo	\$4,100	\$15,152	\$23,096	463.32%	52.43%
University of Utah	\$3,504	\$10,915	\$20,742	491.95%	90.03%
University of Virginia	\$5,138*	\$21,718	\$31,100	505.30%	43.20%
University of Washington	\$4,692	\$14,802	\$19,934	324.85%	34.67%

University of Wisconsin-Madison	\$5,580	\$18,358	\$26,952	383.01%	46.81%
University of Wyoming	\$2,226	\$ 9,692	\$11,593	420.80%	19.61%
Wayne State University	\$7,600*	\$16,080	\$25,418	234.40%	58.07%
West Virginia University	\$3,340	\$12,982	\$19,342	479.10%	48.99%