St. John's Law Review

February 2012

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MINORITY ADMISSIONS TO LAW SCHOOL: MORE TROUBLE AHEAD, AND TWO SOLUTIONS

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INTRODUCTION

For decades, the Law School Admission Test ("LSAT") has played a key role in the admissions process at many law schools. Pressures from the rankings published by *U.S. News and World Report* ("USNAWR") have increased its importance in recent years, to the point that many schools admit most applicants that have LSAT scores above the school median. The emphasis on LSAT in admissions has narrowed the range of LSATs at many schools. This stratification could have negative effects on the law school experience for students and may have already decreased the number of minority students admitted.

The future looks worse. Now that schools have nearly maximized their LSATs for a good portion of the class, they will turn their attentions to the undergraduate grade point average ("UGPA"). If schools maximize both the UGPA and the LSAT, there will be fewer minorities, and especially fewer blacks, at the law schools ranked in the top half of the USNAWR rankings.

This Article predicts that minority representation in law schools will diminish unless something is done to reverse the forces currently in play. A partial solution to this admissions problem would be for USNAWR to shift its formula from relying on the UGPA and LSAT medians to the 75th percentiles. A better solution would be for the Law School Admission Council ("LSAC") to construct, the American Bar Association ("ABA") to collect, and USNAWR to incorporate an index made from the UGPA and LSAT rather than using the two criteria separately.

I. WHY DO LAW SCHOOLS USE THE LSAT?

The ABA standards for accrediting law schools state that "[a] law school shall require each applicant to take a valid and reliable admission test to assist the school in assessing the applicant's capability of satisfactorily completing the school's educational program."[1] Because there is no other test that has been taken by all law applicants and because no law school wants to reduce its pool of applicants by requiring them to take an additional test, schools have used, and will continue to use, the LSAT as this common denominator.

However, there is more to be said for the LSAT than that. The LSAT has been designed to give law schools a relatively inexpensive means of sorting students according to their ability to perform in law school. This goal of predicting law school performance is something of a moving target because a student's performance in law school depends in part on what courses she takes. Some courses are graded by easy graders, some by teachers with old-fashioned standards, some with narrow ranges, and some on a broader scale.[2] Students who would perform the same if they took the same classes may perform differently in the actual courses they take. This makes it hard to validate the LSAT by reference to law school grades. However, and very conveniently for the designers of the test, most law schools require all first year students to take the same core courses and allow students few, if any, options during that initial year.

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[1] American Bar Association, Standards for Accreditation of Law Schools, Standard 503, Admission Test, *available at* http://www.abanet.org/legaled/standards/chapter5.html.

[2] *See generally* Jeffrey Evans Stake, *Making the Grade: Some Principles of Comparative Grading*, 52 J. LEGAL EDUC. 583 (2002) (discussing the unfairness and inefficiency that arise when teachers grade with different scales).

Because the first year curriculum is also very similar across law schools, first year performance should not vary as much across law schools as it would if second or third year performance were used. For these reasons, the LSAT is often validated against first year grades.

The LSAT does a decent job of predicting first year grades. In her study published in 2000, Linda Wightman found that the validity coefficient ranged from about .20 to .65 across schools,[3] and the median was .40 for all schools.[4] This correlation will likely decline as the range of LSATs at each school becomes increasingly restricted. Nevertheless, it is a useful predictor of something a school might rationally care about at the time of admission: how a student will perform in her first year as measured by her grades.

Of course, most of the first year performance is assessed with written examinations, so the usual validation does not indicate whether the LSAT predicts other performance such as oral argumentation, which does not receive much, if any, weight in the first year grades of law students. Indeed, many of the skills that are important to effective lawyering are not measured by written exams and are therefore not reflected in first year grades. Lawyers, faculty, students, judges, and clients have identified twenty-six factors that are important for effective lawyering.[5] The list includes many qualities that are connected to what one would want in a lawyer in one's firm or as one's counsel: practical judgment, creativity and innovation, passion and engagement, ability to see the world through the eyes of others, networking and business development, diligence, integrity, and honesty.[6] Few first year courses are graded with systems that include measures of these skills and abilities.

Because first year assessments do not attempt to measure the full panoply of qualities needed for lawyering and because the LSAT is even more narrow in what it measures, the LSAT should not be taken as a predictor of lawyering ability or

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[3] LINDA F. WIGHTMAN, LAW SCHOOL ADMISSION COUNCIL, BEYOND FYA: ANALYSIS OF THE UTILITY OF LSAT SCORES AND UGPA FOR PREDICTING ACADEMIC SUCCESS IN LAW SCHOOL 16–17 (2000).

[4] *Id.* at 16.

[5] Marjorie M. Shultz, *Expanding the Definition of Merit,* BOALT HALL TRANSCRIPT, Summer 2005, at 26.

[6] Linley Erin Hall, *What Makes for Good Lawyering?,* BOALT HALL TRANSCRIPT, Summer 2005, at 24.

performance.   It is true that many of the skills that are important on the LSAT are also important in lawyering, from the ability to concentrate for a few hours without a break, to the ability to read English, to the ability to engage in some forms of logical deduction and induction.   But there are so many other skills that are important to lawyering that one cannot predict with any confidence either that a person who scored poorly on the LSAT will become an unsuccessful lawyer or that a person who scored well on the LSAT will become a successful lawyer.

The correlation between the LSAT and first year grades is higher than the correlation between undergraduate grade point average and first year grades (.25).[7] When the two are combined in a formula optimized for each school, the LSAT and UGPA together make a better predictor than either alone, with a correlation of .48 to first year grades.[8] The combination is a good predictor for both white and minority students, although it slightly under-predicts grades of white students and slightly over-predicts the grades of minority students. [9]

The LSAT score correlates, though less well, with other numbers a school might care about.   Possibly due in part to the similarity of the examination formats, the LSAT correlates to bar passage.   It also correlates to earnings in practice after entrance to the bar, at least for graduates from one prestigious law school. Using data from the University of Michigan Law School survey of its graduates,[10] a regression of income on a number of factors suggests that each point on the LSAT is worth about $500 per year in income five years after law school, when other factors are held equal.[11]   That effect is not sustained over the long term, however.   By fifteen years after graduation, it has disappeared. The same data set also suggests that graduates with higher

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[7] *See* WIGHTMAN, *supra* note 3, at 16.

[8] *See id.*

[9] LISA C. ANTHONY AND MEI LIU, LAW SCHOOL ADMISSION COUNCIL, ANALYSIS OF DIFFERENTIAL PREDICTION OF LAW SCHOOL PERFORMANCE BY RACIAL/ETHNIC SUBGROUPS BASED ON THE 1996-1998 ENTERING LAW SCHOOL CLASSES 14 (2003).

[10] The regressions were run by Kaushik Mukhopadhaya on the Michigan Law Alumni data set, survey years 1995-2000, provided by Kenneth Dau-Schmidt.

[11] The independent variables for that regression included: years of work, yearly hours of work, yearly hours of work squared, undergraduate GPA, LSAT, city size (small, medium, large), region (east, southeast, west, west coast, midwest), and type of practice (private (small, medium, large, super-large), corporate counsel, government, legal services, other practice, public officer, teaching, judging, non-practice (business, government, other)).

LSATs seem to be slightly less satisfied with their jobs both 5 years and 15 years after graduation. This effect was significant, but not large.

Although the LSAT is limited in what it predicts, and its limitations ought to be borne in mind when it is used to sort students,[12] it is reasonable for a law school to conclude that an LSAT score does contain information that could be useful to those charged by the law school with offering admission to applicants.

II. WHY DOES USNAWR USE THE LSAT?

In order to make its rankings, USNAWR appears to have decided that it needs numbers, and the student LSAT scores are numbers that are available for nearly all law schools. USNAWR does not use all of the LSAT scores of all of the students in a school, which would be costly because they are not publicly available. Instead, for purposes of comparing schools, USNAWR uses the median LSAT from each school as one of its indicators of the quality of the school, with higher medians indicating better schools.[13]

One reason for USNAWR to use the LSAT as a criterion is that better students might make a school a better place of learning for other students. Notice, however, that the connection between the LSAT and what USNAWR wants to measure is less direct than the connection between the LSAT and what a law school wants to measure. A law school wants to find students who will do well in law school. USNAWR is trying to provide consumer information to potential students.[14] Toward that end,

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[12] Professor William Henderson has found that the LSAT predicts performance on time-pressured exams better than it predicts performance on other forms of assessment. *See* William D. Henderson, *The LSAT, Law School Exams, and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed*, 82 TEX. L. REV. 975, 1031–34 (2004).

[13] For the ranking that it published in April 2006, USNAWR used what it called the calculated LSAT median, which was the average of the 75th percentile and the 25th percentile for each school. *America's Best Graduate Schools 2006: Law Methodology*, U.S. NEWS & WORLD REP., http://www.usnews.com/usnews/edu/grad/rankings/about/06law_meth_brief.php (last visited Jan. 21, 2006). If the distribution of students at a school were normal, the median and calculated median would be the same. With a non-normal distribution, however, it is possible for a school to have a lower calculated median than its actual median. A school could also have a higher calculated median, but that would be unusual.

[14] There are others who read the law school rankings, but it is doubtful that

it wants to know how schools vary in the quality of educational experience they offer to students. Surely the students in a school make up a part of the experience of their classmates. But it is not necessarily the case that a school that has students with higher LSATs is a better product for a given buyer than a school that has students with lower LSATs. Indeed, classmates with high LSATs might make the law school experience less fruitful for a student. LSATs predict first year grades. But first year grades are given on a similar scale, essentially from C to A, at many schools. Therefore, it may well be the case that a student who can achieve only a B average at a school that has students with high LSATs could achieve an A- average at a school with substantially lower LSATs. The fact that many schools offer automatic law journal membership and other opportunities to those in the top of the class is a corollary reason a student might prefer that his competitors be predicted to have slightly lower test performance than he will have. Moreover, employers pay attention to class standing, so when it comes time to interview for jobs it certainly would be better to stand higher in one's class, which is easier to do when the grades of one's peers are not so high.

I do not mean to suggest that there is nothing to be gained from going to a school in which the other students have high LSATs. Part of what the school offers is exposure to other bright students, and it is possible, although not proved, that the brighter they are, the better the learning experience.[15] The point is only that there are costs and there are benefits, and it is not at all clear that USNAWR is correct in its implicit assumption that, all else equal, any rational applicant would consider a school with a higher median LSAT to be better for him than a school with a lower median LSAT.

There is another theory on which USNAWR might include the LSAT (and UGPA) medians in its formula. If schools want students with higher LSATs, which they generally do, then applicants with high LSATs will have more options than students with lower LSATs. If those students with more options

there are enough of them to financially justify publishing the magazine. As can be seen from the text of the articles in the rankings issues, USNAWR considers the primary audience to be prospective law students.

[15] Clearly there must be a limit. No parent of a normal four-year-old child would put her child in a college classics course to learn how to read.

tend to pick a school, they must view that school as being better in some way than the schools not chosen. The higher the reputation of a school among applicants, the more picky it can be in admissions. Thus, competition on the criterion of LSAT medians is a form of popularity contest in which the judges vote with both their feet and their dollars. Although there are many factors that should and do go into individual selections of law schools, many of those factors will wash out over large numbers of matriculants, and the LSAT medians could rationally be viewed as a measure of the reputations of the schools among applicants. Put another way, students' matriculation decisions determine a winner among many shadow (and actual) head-to-head contests. Because students know that law school admissions are driven heavily by LSAT and UGPA numbers, a decision to attend a school is effectively a decision not to attend nearly all schools with lower medians on both the LSAT and UGPA. We can consider all of these contests to be part of a tournament, and use them to determine the order of placement in the tournament.[16]

There is a problem with this theory. The system is biased, and the bias stems from USNAWR itself. Those voting in this poll are not particularly well informed. They are not experts in legal education, nor are they experts in evaluating educational curricula. Any admissions officer can tell you that prospective students pay far too much attention to factors such as the names of courses and programs offered, perhaps because they have so little information on the actual quality of the programs. Many of these purchasers recognize that they are poorly informed and search for information.[17] That search makes them susceptible to influence by those with apparent authority.

By its publication, USNAWR influences these voters. At law

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[16] For advocacy of a tournament system for ranking schools, see Christopher Avery, Mark Glickman, Caroline Hoxby & Andrew Metrick, *A Revealed Preference Ranking of U.S. Colleges and Universities* 1–3 (Nat'l Bureau of Econ. Research, Working Paper No. 10803, 2004), *available at* http://www.nber.org/papers/W10803; Cass R. Sunstein, *Ranking Law Schools: A Market Test?*, 81 Ind. L. J. 25 (2006). Their proposal is different in that they would consider only those contests in which a student has been accepted to both schools, but the outcome might be similar to a tournament based on shadow contests.

[17] One could say that for USNAWR to use the final opinions of last year's ill-informed matriculants to inform this year's ill-informed applicants seems not to have offered them much. But that would ignore the information that those matriculants gathered in the course of making their decisions.

school admissions fairs, for example, many applicants glance at their copy of USNAWR before walking over to any school's table. That this is so is no surprise; they bought the magazine on the presumption that it would offer information that might influence their choices. Over time, the influence of USNAWR builds up within the LSAT medians, so that the medians are less a measure of the students' independent views and more a reflection back to USNAWR of its own rankings. The student opinions echo the USNAWR opinions.[18]

The contention here is that the LSAT scores reported by USNAWR have been influenced by the rankings published by USNAWR. Put more precisely, the change in a school's LSAT rank from one year to the next has been a function of the difference between the LSAT rank and the school's USNAWR rank in the earlier year. For example, if a school was 30th according to student opinion as reflected in by LSAT statistics and 20th in USNAWR's omnibus ranking, we would expect the students in the following year to modify their opinions upward, improving the LSAT rank of the school in the following year. In other words, we would expect to see the LSAT rank increase somewhat in the following year.

To see whether this historical guess is true, I regressed the change in LSAT rank from one year to the next on the difference between the LSAT rank and the USNAWR rank in the earlier year.[19] The regression equation is as follows:

$$LSATrank_T - LSATrank_{T+1} = \beta_0 + \beta_1(LSATrank_T - USNAWRrank_T)$$

Since USNAWR publishes both 25th and 75th percentile ("P25" and "P75") for each school, separate regression equations were estimated for each. In both cases there were 359 observations, and the results were consistent with the hypothesis. For P75, the coefficient was .260, and for P25 the

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[18] The rankings in USNAWR are based upon a lot of facts, but that does not make the rankings facts. The rankings depend on the criteria chosen for inclusion in the formula and the weights given to those criteria. It is these choices that make the rankings opinions. Given the problems with the USNAWR criteria, see Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 244–60 (2006), and USNAWR's failure to provide any justification for its weights, whether the USNAWR opinions are expert opinions is open to debate.

[19] For the median LSAT and adjusted r-squared values, *see id.* at appendix.

coefficient was .106, both of which are significant at better than the .001 level. There is an echo effect; in the spring USNAWR publishes its ranking and in the fall the students echo those opinions when they choose their schools.[20]   Then those new opinions feed back into the next USNAWR ranking.

Because of the echo effect, this circular feedback from USNAWR to LSAT statistics and back to USNAWR and so forth, the LSAT statistics cannot be taken as reliable, independent evidence of the quality of the law schools. Therefore, the use of the LSAT by USNAWR in its rankings lacks a solid justification. Nevertheless, it seems unlikely that USNAWR will discontinue the use of that factor, or even give it less weight than the 12.5 percent it now accords the LSAT.

III. WHAT ARE THE CONSEQUENCES OF USNAWR'S USE OF THE LSAT?

As explained above, law schools use the LSAT in admissions decisions for defensible reasons. However, many law schools place more emphasis on the LSAT than the admissions professionals and law school faculties consider appropriate. Law schools have increased the weight given the LSAT not because the LSAT is a better indicator than it used to be, but rather because the LSAT statistic is one of the few numbers in the USNAWR formula over which they have any control. It is hard for a dean to increase the reputation of the school among academics or lawyers, although the increase in glossy brochures shows deans are attempting to do so. It is expensive for schools to increase the faculty/student ratio, although schools have been known to prevent faculty from taking leave in the fall when the faculty were counted. And, for many schools, there is nothing more they can do to raise money and thereby increase their faculty resources factor. Because other criteria are beyond control, schools focus on the numbers they can improve, and three of those in the past were the LSAT 25th, 50th, and 75th percentiles.

Any schools that had failed to focus on the LSAT by 1998 were prompted to give it more weight by a report commissioned by the Association of American Law Schools ("AALS"). The report, by Stephen P. Klein and Laura Hamilton, found that the

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[20] *See id.* at 250–55 (discussing the echo effect).

LSAT explained most of the variance in the rankings.[21] It stated:

> [A]bout 90% of the overall differences in ranks among schools can be explained solely by the median LSAT score of their entering classes and essentially all of the differences can be explained by the combination of LSAT and Academic reputation ratings. Consequently, all of the other 10 factors US News measures (such as placement of graduates) have virtually no effect on the overall ranks and because of measurement problems, what little influence they do have may lead to reducing rather than increasing the validity of the results.[22]

By raising their LSAT numbers, the schools hope to increase their ranks or at least reduce the chances of slipping in the rankings due to lower funding from alumni and lower prestige in the eyes of faculty, lawyers, and applicants to law schools.[23] In short, for reasons of self preservation, law schools have responded to USNAWR's questionable use of the LSAT by increasing the weight they give the LSAT beyond that which they would view as appropriate purely from the point of view of admitting the best classes of students.

As law schools have increased the importance they attach to the LSAT, their LSAT statistics have risen, as could easily have been predicted. After the publication of the Klein and Hamilton report, the P75s rose approximately .22 LSAT points per year per school over the course of six years.[24] This is somewhat surprising because one might have thought that even before the report was published, few schools would have denied admission to very many students with LSAT scores above the P75 for their school.[25]

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[21] *See* STEPHEN P. KLEIN & LAURA HAMILTON, ASS'N OF AM. LAW SCH., THE VALIDITY OF THE U.S. NEWS AND WORLD REPORT RANKING OF ABA LAW SCHOOLS (1998).

[22] *Id.*

[23] *See* Stake, *supra* note 18 (discussing the echo effect seen in school reputations among faculty, lawyers, and applicants).

[24] *See Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 12, 2004, at 69; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 14, 2003, at 70; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 15, 2002, at 64; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 9, 2001, at 78; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 10, 2000, at 73; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Mar. 29, 1999, at 94.

[25] Perhaps the students' decisions also played a role in this increase in the P75s. For example, schools ranked higher by USNAWR might see an increase in their applications from students with high LSATs. Even without changing the pool of students admitted to law school, it is possible to change the sorting of the students

In addition to the change in law school admissions criteria, one other factor has played a role in this increase. For much of the past decade, most law schools have experienced a large increase in the number of applications, and the actual number of underlying applicants has also risen. As the pool swelled, schools could become pickier and still fill their classrooms. Beyond sheer numbers, it is also possible that law has attracted higher quality applicants to law schools, or at least students who have on average more bubble ability and ability to get high grades than those who applied in the past.

One might have expected to see no increase in the P25s since the P25 played no part in the USNAWR rankings before 2005. However, since USNAWR did publish the P25s, some schools might have thought that it was an important number. Moreover, the median LSAT was important, and attempts to increase the median could have the effect of also increasing the P25. And, once again, the increase in the pool allowed schools to be choosier. Whatever the reasons, P25s increased in the six years after the publication of the Klein and Hamilton report, rising on average .467 LSAT points per school, which is significant at the .001 level and is, therefore, not likely due to chance.[26]

The P25, median (P50), and P75 divide the class into four equal portions. We might call the two middle portions, lying between P25 and P75, the midrange of the class. Half of the students fall in this midrange. Not only are the P25s and P75s rising, but there is another, slightly more subtle and perhaps more troubling, effect as well. Since the P25s have moved up faster than the P75s, the gap has narrowed and the difference between the two has decreased. Thus, the midrange of the class has narrowed.

A few schools serve as examples of this trend that has occurred between the publications of the USNAWR rankings in 1998 and 2005. At the start of this period, the University of

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among schools in a way that changes the average P75.

   [26] *See Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 11, 2005, at 72; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 12, 2004, at 69; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 14, 2003, at 70; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 15, 2002, at 64; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 9, 2001, at 78; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 10, 2000, at 73; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Mar. 29, 1999, at 94.

Southern California Law School's P75 was 166 and its P25 was 159.[27] The difference between the two, the width of the midrange of the USC class, was seven LSAT points. At the end of the period in 2005 USC's P75 was 167 and its P25 was 163.[28] The difference between the two at the end of the period was four. Thus, the midrange had narrowed by three points out of seven over those years. In 1998, the University of Memphis School of Law had a P75 of 160 and a P25 of 147, for a midrange that was thirteen LSAT points wide.[29] By 2005, the P75 was 158 and the P25 was 154, making a midrange of only four.[30] The midrange had narrowed by nine points. In 1998, Vanderbilt University Law School had a midrange stretching from 165 to 158, for a width of seven.[31] By 2005, that midrange had shrunk to a width of two LSAT points, from 166 to 164.[32]

The shrinking midrange can also be seen with a regression. When the difference between the P75 and P25 at each school is regressed on time, the coefficient on the year is -.247, which is significant at better than the .001 level.[33] Thus, it appears that the midrange is shrinking by nearly one-quarter of an LSAT point per year per school across all schools for which data are reported by USNAWR. It does not appear that the trend is waning. The shrinkage was essentially the same [.270, $p<.08$] for the recent change from year 2003 to year 2004.[34] There is still room for further shrinkage, although it must stop at some point since it is impossible for the P25 to exceed the P75. The average

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[27] *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Mar. 2, 1998, at 77.

[28] *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 11, 2005, at 72.

[29] *Best Graduate Schools: Schools of Law, supra* note 27.

[30] *Best Graduate Schools: Schools of Law, supra* note 28.

[31] *Best Graduate Schools: Schools of Law, supra* note 27.

[32] *Best Graduate Schools: Schools of Law, supra* note 28.

[33] *See Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 11, 2005, at 72; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 12, 2004, at 69; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 14, 2003, at 70; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 15, 2002, at 64; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 9, 2001, at 78; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 10, 2000, at 73; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Mar. 29, 1999, at 94; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Mar. 2, 1998, at 77.

[34] *See Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 12, 2004, at 69; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 14, 2003, at 70.

width of the midrange in 2004 was 5.4, down from 6.8 in 1998.[35]

This trend could be troubling for those concerned with the interests of minority students. The LSAT scores of black and Hispanic students are lower than the LSAT scores of white students. Unless it is possible to attract a greater number of minority students with high LSATs, the minority students' scores are going to be more noticeably lower than their class averages than they are now. For example, if the P25 at a school is 152, the LSAT scores of the minority students might fit in with a substantial number of majority students in the class. If the P25 rises substantially and minority students' LSATs do not rise commensurately, the minority students will become statistical outliers and will have scores that appear to be importantly different from the rest of the class.

This narrowing of the midrange and concomitant creation of minority outliers will continue unless schools decide to ignore the consequences of admission decisions and deemphasize the LSAT, putting it back in its proper place. Unfortunately, few schools are going to be willing to sacrifice their rank to do the right thing in admissions, so the trend is unlikely to stop.

This raises questions for which answers do not come easily. First, what will be the political fallout? Students, faculty members, and others who do not like affirmative action for any racial minorities or diversity for diversity's sake may have an easier time making political hay if the minority LSAT scores become more separated from the group.

Second, what will be the cultural fallout within law schools? It is possible that the cultural dynamics of a law school will change if the minority students have substantially lower LSAT scores than almost all of the non-minority students. It is further possible that white students, upon learning of these statistical differences, will develop harmful prejudices and characterize minority students with negative stereotypes. It is also possible that a growing gap separating minority students' scores from the midrange will change the way minority students perceive themselves, making them more self-conscious and reducing their willingness to express themselves in front of the rest of the class.

Third, and closely related, what will be the educational

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[35] *See Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 12, 2004, at 69; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Mar. 2, 1998, at 77.

fallout? It might not help students to think that they are at the
bottom of the class. As the midrange narrows, those students
that are substantially below the midrange might think that the
expectations of them are lower because their numerical
predictors are lower, and when students perceive, correctly or
not, lower expectations for themselves, they may live down to
those perceived expectations. In addition, classroom dynamics
could change if teachers change their teaching to fit a higher and
narrower midrange on the LSAT. If a teacher generally teaches
to some subset of the seventy-five percent of the class above P25,
and that subset becomes substantially different from the
students below P25, the classroom behavior and learning of
minority students may be affected. And, of lesser importance but
still a concern, a change in teaching might reduce the chances
that minority students will pass the bar exam.

Fourth, what will be the litigation fallout? Even if the
culture in law schools and the education they offer is not affected,
the law might be. The Supreme Court sent a warning in *Grutter
v. Bollinger* that diversity preferences might not be allowed in
the future.[36] Expanding the LSAT gap between white applicants
and black or Hispanic applicants will make affirmative action
more stark and thereby increase the chances the Court will find
affirmative action impermissible. As the overlap between the
two groups decreases, the admissions process takes on the
appearance, as a matter of statistics, of a two-track system, even
if it is not a two-track system in fact. This may not bode well for
affirmative action.

IV. ARE THERE OTHER FORCES AT WORK?

By now, there is not a lot more the typical law school can do
with its admissions decisions to improve the LSAT numbers used
in the USNAWR formula. However, that is not the only measure
of selectivity considered by USNAWR. The UGPA plays a role
nearly as important in the calculations. It gets ten percent,
which is far more than some of the other factors, such as
acceptance ratio.[37]

Like the median LSAT of a decade ago, the median UGPA is

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[36] 539 U.S. 306 (2003).

[37] *See America's Best Graduate Schools 2006: Law Methodology*, *supra* note 13
(explaining that selectivity is a combination of median LSAT scores weighted at
12.5%, median UGPAs weighted at 10%, and acceptance ratios weighted at 2.5%).

a number that schools can do something to increase. So far, most schools have not tried to maximize their UGPA. But when they do, minorities could suffer large losses in access to legal education and non-minority students could suffer large losses in the diversity of their peers. Indeed, the combination of pressure on the LSAT with equal pressure on the UGPA will be far more harmful to diversity admissions than the pressure from the LSAT alone. A school of 199 students per class can maximize its median LSAT without paying any attention to the LSAT of ninety-nine students because the LSATs of the top 100 students define the median. That leaves plenty of room for decisions to be made on factors other than the LSAT. But when UGPA becomes a major factor, that flexibility disappears. The reason for this is that at most schools, the applicants with high LSATs are not the same as the applicants with high UGPAs. For a few students, both numbers are high enough to exceed both medians, but not for many. Because few students can do double duty, improving the school's median LSAT and median UGPA, and because a school needs half of the class to have high LSATs and half of the class to have high UGPAs, most of the class has to be picked by reference to one number or the other. That leaves little room for selecting students by any other criteria.

Take, for example, admissions at Indiana University School of Law-Bloomington for the fall of 2005. Caution is in order here because projecting what admissions would have been if different criteria had been used is always hazardous; one never knows what decisions the accepted applicants would have made. Based on typical acceptance rates, however, an educated guess can be made as to what would have happened to the class entering Indiana Law in 2005 if the admissions committee had attempted to maximize both the LSAT median and the UGPA median.

Had the committee tried to do so, it could have achieved a median LSAT of 163 and a median UGPA of between 3.60 and 3.65. This compares to the current actual class of 229 students which has an LSAT median of 163 and a UGPA median of 3.46. The current class has eleven Asian, fourteen black, and eleven Hispanic students. Had Indiana increased the UGPA median from 3.46 to 3.64, there would probably have been about ten Asians, seven blacks, and eight Hispanics. That would be a loss of 10% of the Asians, 27% of the Hispanics, and 42% to 50% of the blacks. Clearly those numbers are cause for alarm.

Although law schools are not yet maximizing their UGPA medians, it is hard to see them resisting the pressures put upon them by the method USNAWR uses to rank schools. Resistance is futile and, as resistance crumbles, the makeup of the entering classes will change; there will be fewer minority voices.

Some might think that the result will be tolerable on the theory that when higher ranked schools take fewer minority applicants, schools further down the USNAWR pecking order may be able to pick up some of those students. Might the bad effects be limited to the top few schools? The data do not provide a basis for optimism. From statistical information available to admissions deans, I have made the following calculations: nationally, in 2005, of all 90,000 applicants, 10% are black, 8% Asian, 5% Hispanic, 2% Puerto Rican, 1.5% Mexican Chicano, and 1% are American Indian. In the group of students with an LSAT above 159 and UGPA above 3.75, there are 27,945 applicants, enough to fill the classes at USNAWR's top 112 schools. If those 112 schools deny admission to students with LSATs below 160 and UGPAs below 3.75, those 112 schools will have, shared among them all, populations of minorities as follows: Asian 10%; black 3%; Hispanic Latino 3%; Chicano Mexican .7%; Puerto Rican .7%; and American Indian .4%.

These numbers show that as schools increase emphasis on grades and slide away from whole person review, the number of blacks in the top schools will move toward 3%. Put another way, the coming emphasis on grades is going to work a dramatic reduction in the number of black students admitted to what USNAWR considers to be the top half of the law schools.

V. IS THERE ANY HOPE OF AVOIDING THE HARMS TO DIVERSITY ADMISSIONS?

Concerned by the increasing and undesirable weight schools are placing on the LSAT, some people have suggested that students' LSATs be reported in a way that would make it difficult for USNAWR to use the numbers in its ranking. For example, the LSAC could keep all LSAT scores confidential and report them out to the schools on a different scale for each school. A student with a 160 might be reported to school *A* as a twelve and to school *B* as a forty-three. Of course, the LSAC would have to give schools some indication of what these scores mean, but that could be done in a way that would not allow USNAWR to make

comparisons. The LSAC could tell school *A* that an eleven is
about the same as the school's median in the previous year and
could tell school *B* that the median in the previous year was
about forty on the new scale. At the end of admissions season, as
school starts, each school would know whether it did better or
worse than the previous year's median, but the amount of the
improvement could not be compared across schools. Moreover, as
time passes, the connection to the comparable medians from the
year 2006—or whatever is the last year under the current
system—would become so attenuated that the data would not
bear the weight of comparisons.

     There are at least two problems with this proposal. First,
students would be unable to tell where they should apply. If the
students were given the information that allowed them to make
comparisons, that information would surely reach USNAWR,
which could use it to make the same sort of comparison. The
prospects for admission at various schools would have to be kept
secret from the students. This would vastly increase the search
burdens on the applicants. They would have to apply to all
schools they were interested in attending without knowing their
chances of admission and then make their choices after finding
out where they were accepted.

     The second problem is that USNAWR might respond by
deleting the LSAT median from the formula and placing all of its
weight on the UGPA. This would have the effect of making the
USNAWR rankings even less meaningful and more dangerous
than they currently are.   The LSAT numbers are at least
comparable.   Undergraduate grades are not awarded on any
single scale. A law school taking numerous students from an
undergraduate institution with tough grading would look worse
than a school that accepted equivalent caliber students but who
had attended an undergraduate institution with substantial
grade inflation. Thus, USNAWR, by its own methods, is creating
incentives for the LSAC to adopt measures that will make
USNAWR's rankings less valuable. Not only would the results of
the rankings be less useful, but the incentives created by the
rankings would be much worse than they are now. With time, it
would become even more important for a high school student
aspiring to be a lawyer to choose a college and his college
curriculum with an eye to maximizing his UGPA.

     There is a better solution, if only USNAWR could be

convinced to adopt it. USNAWR could continue to employ the LSAT and UGPA without causing admissions committees to focus entirely on those criteria if it were to use each school's P75 instead of the median.[38] This change would reduce the effects of rankings on admissions practices because maximizing a class's P75 on any criterion can be done with one-half as many students as it takes to maximize the median. A school would need to admit only one-half of the class, at most, by the LSAT and UGPA numbers in order to maximize those numbers in the USNAWR formula. That would leave one-half of the class to be admitted by whatever criteria and with whatever weights the law school decided would be best for the educational mission of the school. Many students would be admitted according to whether they would make the greatest contributions as law students and lawyers.[39]

This change would do little harm to the utility of the USNAWR rankings. Usually, a single statistic, such as the P75, does not give as accurate a picture of student quality as would two or more statistics. But with law schools being now so focused on the UGPA and LSAT, what was once a description of quality is now a prescription for success. If USNAWR switches to using just the P75 on the LSAT and UGPA, it will make almost no difference to the ranks of schools. In the short run, there would be little difference between a ranking based on the P75 LSAT and a ranking based on a median calculated from the P75 and P25. Using USNAWR's 2004 data, the correlation between the P75 LSAT and the average of the P75 and P25 for all reported schools is 0.991.

The switch from the median to the P75 would not affect the ranks of the schools, but it would allow schools more freedom to admit students with low numbers. In the long run, some schools

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[38] *See* Jeffrey E. Stake, *Reducing the Impact of Rankings on Law School Admissions: A Proposal*, JURIST, Feb. 4, 2003, http://jurist.law.pitt.edu/forum/forumnew93.php.

[39] To some extent, the example above understates the benefits of changing to the P75s. Even before USNAWR published its rankings, many schools rejected few of the applicants with LSAT scores above the school's P75. Thus, rankings based on the P75 LSAT would have a negligible affect on who is admitted to a given law school. By contrast, rankings based on the median LSAT create an incentive for schools to admit dozens of students in the middle of the class who would otherwise be rejected in favor of applicants with slightly inferior numbers but with more promise as lawyers. Thus, a shift to the P75 on the LSAT and UGPA could cut the number of students admitted primarily on the numbers by well more than half.

would probably make use of this new freedom, and their P25 numbers would decrease. Of course, the P25 for the schools would continue to be published, so the question is not whether the public would lose information. Rather, the question is whether it would be somehow illegitimate for USNAWR to ignore that decrease and leave the schools where they are in the rankings. Since the schools are taking students that they think will improve the school or make better lawyers than the applicants with higher numbers that they rejected, it is legitimate to consider the school to be just as strong as it would have been if the committee had competed with other schools solely on the basis of the numbers.

The point of this proposal is not to eliminate the LSAT from the admissions process, nor even to dethrone it from its seat as the primary factor for many files. The point is to let schools use the LSAT as they see fit. With only a minuscule effect on its rankings, the change by USNAWR to using only the P75 on LSAT and UGPA could dramatically reduce the harmful long-term effects of rankings on the admission of students that add diversity to American law schools.

Another alternative that would decrease the impact of the rankings on admissions would be for USNAWR to change the ranking criteria from the LSAT and UGPA medians to the median of an index that combines the two. However, because USNAWR needs a verifiable number for its rankings, this can only occur if the LSAC constructs a single index score for each student and reports that with the student's other numbers. As an administrative matter, this would be a trivial task. The LSAC already reports an index that differs somewhat across schools. The new index would have to be standardized, rather than being tailored to each school. But the new index need not replace the old index and the admissions committees could continue to use the old index in their decisions if they wished to do so. Of course, the ABA would also have to require that each school report its median index score so that USNAWR would have enough confidence in that number to incorporate it into the rankings. If both the LSAC and ABA were to endorse this approach, each law school could maximize its USNAWR rank by paying attention to this number for half of the students, while allowing other indicators of quality to play a more important role in the admission of the rest of the class.

The results, if this proposal were adopted, would be even better for law schools than the results under the P75 proposal above. Under both proposals, schools would need to admit at most only half of the class by the UGPA and LSAT numbers. In that way, the proposals are the same. But considering only the half of the class that is admitted by the numbers, the index approach would result in a group of students more likely to be successful in the first year. To the extent the LSAT and UGPA numbers are useful, they are more useful together than apart, so maximizing the index will lead each school to admit a better group of students than maximizing the LSAT for half of the group and maximizing the UGPA for the other half of the group. This index approach would be better for USNAWR for the same reason. Because the indicators make a better predictor of student performance when combined, they will make a better indicator of law school quality when combined, to the extent that predictors of student performance have any utility in comparing law schools.

CONCLUSION

USNAWR has created incentives that have already changed the face of law school admissions, and the faces in law schools. These powerful incentives have not yet worked their full effect. Admissions have not reached an equilibrium and the incentives will continue to drive admissions decisions in ways that will further stratify law schools and further diminish the representation of minorities. There is cause for alarm, but there is also cause for hope. There is one change that USNAWR could make on its own to reduce its influence in admissions decisions. A simple switch to the P75s on UGPA and LSAT could cut by more than fifty percent the number of students that each school would feel compelled to admit by those numbers. The other change would be even more beneficial, but would require action by additional organizational players. If the LSAC were to create a single index made up of the LSAT and UGPA for each student and report that number to the law schools, and the ABA were to collect index medians from the schools, and USNAWR were to employ those medians instead of the separate medians on LSAT and UGPA, the students admitted primarily on the numbers would be a better group and half of the class could be admitted on other indicators of quality in the file. Either proposal would

be vastly more accommodating to minority admissions than the current method used by USNAWR. Either reform would free schools to admit many students of greater promise than those who are admitted today.