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Pamela Edwards

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THE RONALD H. BROWN CENTER FOR CIVIL RIGHTS AND
ECONOMIC DEVELOPMENT
SYMPOSIUM

**THE SHELL GAME: WHO IS RESPONSIBLE
FOR THE OVERUSE OF THE LSAT IN LAW
SCHOOL ADMISSIONS?**

PAMELA EDWARDS[†]

INTRODUCTION

I had the honor of being the moderator of a panel titled “The LSAT, *U.S. News* and Minority Admissions,” on January 7, 2005, during the American Association of Law Schools (“AALS”) Annual Meeting in San Francisco. I thank the Executive Committee of the AALS Section on Minority Groups for the opportunity to participate and the panelists, Janice Austin, Director of Admission, Penn State-Dickinson, Professor Vernellia Randall, University of Dayton School of Law, and Philip Shelton, Executive Director of the Law School Admission Council, for the opportunity to share the podium with them.

Three weeks prior to the discussion date, Brian Kelly, Executive Editor of *U.S. News & World Report*, withdrew from the panel.¹ One of my reasons for wanting to participate in the

[†] Professor of Law, CUNY School of Law; B.S., M.B.A., New York University; J.D., Fordham University. Professor Edwards thanks the following individuals for their assistance in the creation of this Article: her research assistants, Cynthia Conti-Cook, Paula Griffiths Edgar, and Erin Lloyd, CUNY Class of 2006, and Randy Sinkler, CUNY Class of 2007, for their invaluable research; the members of the CUNY School of Law Professional Development Committee for providing financial assistance; Jenny Rivera and Angela Burton for their comments on an early draft of the Article. I also thank my CUNY colleagues who attended a faculty workshop at which I presented a draft of this Article.

¹ E-mail from Brian Kelly, Executive Director of *U.S. News & World Report*, to Professor Leonard Baynes, Chair of the AALS Section on Minority Groups (Dec. 16, 2004) (on file with author).

panel was to take advantage of the opportunity for legal scholars of color and others in the legal academy to analyze the *U.S. News & World Report's* role in determining who enters and succeeds in American law schools. Mr. Kelly's withdrawal, marked by the placement of an empty chair on the dais during the panel discussion, will hopefully serve as a catalyst for the legal academy to confront the challenge of candidly reassessing the weight given to *U.S. News & World Report*, including the causal connection between the emphasis placed on the publication and the role of the LSAT in law school admissions decisions.

Part I of this Article analyzes the role in which the legal academy has cast *U.S. News & World Report*. Part II considers whether the legal academy exaggerates the importance of the LSAT, and concludes that it does. Part III explores why an overemphasis on the test can be detrimental to the legal community. Part IV reviews the history of the LSAT in law school admissions and considers the development of the present-day emphasis on the test. Finally, the Article concludes with a recommendation to law schools as to how they can regain the role of setting values and priorities for the legal community.

I. U.S. NEWS & WORLD REPORT'S ROLE IN LAW SCHOOL ADMISSIONS DECISIONS

Many legal commentators have attributed law schools' reliance on the LSAT to the *U.S. News & World Report's* annual ranking of what it considers to be the best law schools in the United States.² There is no doubt that some law school faculty and deans send a mixed message when it comes to the *U.S. News & World Report* rankings, as evidenced by the practice of "touting."³ When touting, law schools will point to flaws in the calculation of the rankings to diminish their importance, while simultaneously highlighting portions of the rankings that

² Every spring, the magazine publishes a list of the nation's best graduate schools with a section devoted to ranking law schools. See, e.g., *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REPORT, Apr. 12, 2004, at 69; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REPORT, Apr. 14, 2003, at 70; *Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REPORT, Apr. 15, 2002, at 64.

³ Steven R. Smith, *Deaning's Seven Deadly Sins and Seven Deany Virtues*, 36 U. TOL. L. REV. 173, 173-75 (2004) (describing puffing, touting, and other deceptive practices law schools engage in to address the pressures created by the *U.S. News & World Report's* rankings).

complement some aspect of the school's curriculum or program.⁴ Commentators have made a valid point by highlighting the hypocrisy in schools decrying the magazine's rankings, given the prevalence of the same law schools ranking their own students.⁵

Although it is undisputed that the *U.S. News & World Report's* annual ranking of law schools looms large in the legal academy, the pervasiveness of its influence has frequently gone unnoted. The prevalence of the LSAT, however, is evidenced in articles and in law school policies. For example, the author of an essay honoring a well-respected and well-liked law school dean commented on the increase in admitted students' LSAT scores, and on the school's rise in the *U.S. News & World Report* ranking, during the outgoing dean's tenure, utilizing those measures as indicia of the dean's success in improving the law school.⁶ Or consider a recently published law review article that used the magazine's rankings to explain the trend of some law schools to move away from the "traditional, doctrinal" focus to an "interdisciplinary" focus in the school's curriculum.⁷ Some sources have created their own ranking systems to compete with the *U.S. News & World Report's* system,⁸ whereas others have created derivative rankings based on the magazine's data.⁹

⁴ See *id.* at 174.

⁵ See Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn't Want to Be Compared to Time and Newsweek—or The New Yorker*, 60 OHIO ST. L.J. 1097, 1100 (1999) (criticizing a statement by the magazine rationalizing its methodology based on the prevalent policy of law schools ranking their own students).

⁶ P. Kevin Castel, *Tributes to Dean Joseph W. Bellacosa: Servant and Teacher: Joseph, the Great*, 78 ST. JOHN'S L. REV. 497, 501 (2004).

⁷ Jonathan R. Macey, *Legal Scholarship: A Corporate Scholar's Perspective*, 41 SAN DIEGO L. REV. 1759, 1767 (2004) (observing that law schools following the "traditional, doctrinal" approach focus on legal scholars and doctrines, while the "interdisciplinary" approach studies legal doctrines in addition to non-traditional legal areas).

⁸ See Rapoport, *supra* note 5, at 1098 n.3 (listing additional law school ranking guides).

⁹ For example, the Internet Legal Research Group uses variables such as cost of living, employment rate, and median salary. See Internet Legal Research Group, *Cost-Benefit Analysis of American Law Schools*, <http://www.ilrg.com/schools/analysis> (last visited March 12, 2006); Internet Legal Research Group, *Law School Rankings by Employment Rate*, <http://www.ilrg.com/schools/employ> (last visited March 12, 2006); Internet Legal Research Group, *Law School Rankings by Median Salary*, <http://www.ilrg.com/schools/salary> (last visited March 12, 2006); Internet Legal Research Group, *Law School Rankings by Tuition*, <http://www.ilrg.com/schools/tuition> (last visited March 12, 2006).

Furthermore, the magazine's annual report has affected some law school's programmatic decisions, as the rankings "often distort law schools' priorities; the temptation is to underinvest in features that *U.S. News & World Report* editors find unimportant, like diversity or public service, and to divert scarce resources to promotional campaigns showcasing reputational measures."¹⁰

A significant problem with any ranking system is determining what factors should be considered in compiling the rankings.¹¹ Another difficulty lies in assessing how much weight should be given to each of the factors used in calculating the rankings. *U.S. News & World Report* places a heavy emphasis on LSAT scores in determining its law school rankings.¹² The editors assign 25% of a law school's ranking to "selectivity;" and the median LSAT score of a law school's entering class accounts for 50% of this measure.¹³ Thus, the LSAT represents 12.5% of a law school's grade on the *U.S. News & World Report* annual rank of law schools.¹⁴

The magazine has justified its emphasis on LSAT scores by stating that it is a reflection of the heavy reliance law school faculty and administration themselves place on the test.¹⁵ As one commentator noted, "[t]he LSAT is the most important factor in law school admissions."¹⁶ But there is a circular causation chain created by the emphasis on LSAT scores, as law schools rely heavily on factors that will most influence their rankings, and the rankings are based on factors that the schools rely most heavily on. This begs the question as to who is really deciding the importance and weight of the individual criteria considered in admissions decisions.

In addition to the statistical problems with the *U.S. News &*

¹⁰ Deborah L. Rhode, *Legal Education: Professional Interests and Public Values*, 34 IND. L. REV. 23, 25-26 (2000).

¹¹ See, e.g., Rapoport, *supra* note 5, at 1101.

¹² See USNews.com, Law Methodology, http://www.usnews.com/usnews/edu/grad/rankings/about/06law_meth_brief.php (last visited Aug. 12, 2005).

¹³ *Id.*

¹⁴ See *id.*

¹⁵ E-mail from Brian Kelly, Executive Director of *U.S. News & World Report*, to Professor Leonard Baynes, Chair of the AALS Section on Minority Groups (Dec. 16, 2004) (copy on file with author).

¹⁶ Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 CLINICAL L. REV. 247, 247 (2001).

World Report's calculations,¹⁷ logistical problems also exist. The selectivity component in the magazine's law school rankings provides an illustration of such problems.¹⁸ The magazine considers the school's reputation amongst judges and attorneys in calculating the selectivity score.¹⁹ Unfortunately, because practitioners often lack the data required to have an informed opinion, they may judge a law school on the reputation of the university with which the law school is associated.²⁰ For example, practitioners often give Princeton School of Law high marks for its reputation even though Princeton does not have a law school.²¹

II. USE OF THE LSAT IN THE LEGAL ACADEMY

A. How Law Schools Use the LSAT in Admissions Decisions

Most law schools rely heavily on LSAT scores when evaluating candidates for admission. One explanation for the emphasis placed on the test is the correlation between LSAT scores and first year law school grades.²² Admissions committees often combine LSAT scores with undergraduate grade point averages to create a single number or index to which applicants can be compared.²³ This technique is less labor intensive and therefore less expensive than using a "whole-person approach," which requires admissions committees to consider a myriad of nonnumeric factors in the decision-making process.²⁴

¹⁷ See, e.g., Rhode, *supra* note 10, at 25 ("[T]he factors that most influence a school's position in such rankings are highly incomplete and often unreliable."); David A. Thomas, *The Law School Rankings Are Harmful Deceptions: A Response to Those Who Praise the Rankings and Suggestions for a Better Approach to Evaluating Law Schools*, 40 HOUS. L. REV. 419, 426-29 (2003) (pointing out several flaws in the ranking system).

¹⁸ See *supra* note 13 and accompanying text.

¹⁹ See Rhode, *supra* note 10, at 25.

²⁰ See *id.*

²¹ See *id.*

²² 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, 986 (2004) (explaining that the LSAT is the "best predictor available" of law school performance).

²³ See Michael A. Olivas, *Constitutional Criteria: The Social Science and Common Law of Admissions Decisions in Higher Education*, 68 U. COLO. L. REV. 1065, 1070 (1997) (explaining how graduate and professional schools use undergraduate GPA and standardized tests to make admissions decisions).

²⁴ See Deirdre Shesgreen, *Legal Educators Weigh Effects of Hopwood*,

B. What the LSAT Measures

According to the Law School Admissions Council ("LSAC"), the "LSAT is designed to measure skills considered essential for success in law school."²⁵ These skills include the ability to read and comprehend complex texts with accuracy and insight, to organize and manage information, to think critically, and to analyze and evaluate the reasoning and arguments of others.²⁶ However, the LSAT does not consider other attributes that a successful law student should have, "such as motivation, perseverance, listening or speaking skills, or writing ability."²⁷

C. LSAC's Position on the Use of the LSAT in Law School Admissions Decisions

On December 19, 2000, LSAC issued a press release announcing a five year, \$10 million diversity initiative called the "Initiative to Advance Education on the LSAT."²⁸ The initiative was designed to achieve greater diversity amongst admitted students by providing law schools with admission models that place less of an emphasis on LSAT scores alone.²⁹ These alternative admissions models support LSAC's policy that the LSAT score should be one of many criteria used to evaluate candidates.³⁰

LSAC has also cautioned against the use of minimum cut-off scores in law school admissions,³¹ but if a cut-off score is established, the organization urges schools to consider the

Abandoning LSAT, TEX. LAW., Jan. 20, 1997, at 5 (indicating that many professors are receptive to considering factors other than LSAT scores and undergraduate grade point average, such as "life experience, parental income and other factors," but schools are unlikely to utilize such an approach because it would be too labor-intensive and time-consuming).

²⁵ LAW SCH. ADMISSION COUNCIL, *LSAT & LSDAS INFORMATION BOOK 1* (2005).

²⁶ *See id.*

²⁷ Edward G. Haggerty, *LSAT: Uses and Misuse*, N.Y. ST. B.J. May/June 1998, at 45.

²⁸ Press Release, Edward G. Haggerty, Law Sch. Admission Council, \$10 Million Diversity Initiative (Dec. 19, 2000), <http://www.lsacnet.org/ljac.asp?url=/lsac/library/news-release-archives/release-10-million-initiative-121900.htm>.

²⁹ *See id.*

³⁰ *See* LAW SCH. ADMISSION COUNCIL, *CAUTIONARY POLICIES CONCERNING LSAT SCORES AND RELATED SERVICES* (1999), <http://www.lsacnet.org/ljac/publications/CautionaryPolicies2003.pdf> ("The LSAT should be used as only one of several criteria for evaluation and should not be given undue weight solely because its use is convenient.").

³¹ *See id.*

LSAT's imperfections.³² LSAC reports candidates' scores, but advocates the use of a score band, a range of scores that have a "certain probability of containing the test taker's actual proficiency level" instead of an individual test score.³³ Based on current LSAT reporting, there is a 68% chance that the candidate's actual proficiency level falls within a score band that is approximately seven points wide, where the candidate's score on the individual test represents the midpoint of the score band.³⁴ Similarly, there is a 95% chance that a score band fourteen points wide contains a candidate's true proficiency level.³⁵ To achieve a 99% confidence level, the score band would be approximately twenty-one points wide.³⁶

III. WHY OVERUSE OF THE LSAT IS A PROBLEM

A. Questioning the LSAT's Predictive Value

Law schools continue to rely heavily on the LSAT in making admissions decisions despite the prevalence of studies and law review articles that indicate the value of the LSAT as a predictor is overrated.³⁷ Thus, law schools continue to award and deny admission, which is the first step towards entering the legal profession, for entire groups of potential students based on a measure that has limited utility in determining whether the applicant would be a successful attorney.

A study at Brigham Young University's J. Reuben Clark Law School suggests that although the LSAT may adequately predict first year law school grades, undergraduate grade point average

³² See *id.*

³³ See LAW SCH. ADMISSION COUNCIL, WHAT IS A SCORE BAND? (1997), <http://www.lsanet.org/lvac/publications/Scorebands.pdf> (noting that the LSAT, like other standardized tests, is slightly flawed and therefore, to get a more accurate measurement of a candidate's true proficiency, the standard error of measurement for the test should be taken into account).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See, e.g., Jeffrey S. Kinsler, *The LSAT Myth*, 20 ST. LOUIS U. PUB. L. REV. 393, 393 (2001) (analyzing data from Marquette University Law School's graduating classes of 1998 and 1999); David A. Thomas, *Predicting Law School Academic Performance from LSAT Scores and Undergraduate Grade Point Averages: A Comprehensive Study*, 35 ARIZ. ST. L.J. 1007, 1011 (2003) (analyzing the LSAT scores, undergraduate GPA, and law school GPA of students at Brigham Young University's J. Reuben Clark Law School during the years 1973–2002).

is a slightly better predictor of three year law school performance.³⁸ These findings support the theory that speed is an important variable tested by both the LSAT and in-class timed exams.³⁹ As the use of a greater variety of evaluative devices becomes more prevalent in upper class courses, such as seminars and clinics, the predictive value of the LSAT decreases, whereas the predictive value of undergraduate grade point average increases.⁴⁰ However, while the study of BYU law students posited that a combination of both LSAT scores and a student's undergraduate grade point average ("UGPA") was a better predictor of first year grades and three year law school performance than either variable alone, its authors acknowledge that "[t]he predictive power of any of these measures is not strong."⁴¹

The results of a study of recent graduates of Marquette University Law School indicate that law schools that place too great of an emphasis on LSAT scores "are not admitting the best available students because there is little correlation between LSAT scores and law school performance," and that these law schools would attract better students if factors such as an applicant's UGPA were given greater reliance.⁴²

Although the LSAT is designed to test reasoning ability, there is a strong relationship between test-taking speed and both LSAT scores and law school grades.⁴³ One of the reasons for this correlation is that test-taking speed affects performance on both the LSAT and in-class timed exams, as opposed to take-home exams or other methods of evaluation.⁴⁴ However, "[w]ithin the field of psychometrics, it is widely acknowledged that test-taking speed and reasoning ability are separate abilities with little or no correlation to each other."⁴⁵ Furthermore, in-class timed exams may be used for a variety of purposes, including law professors'

³⁸ See Thomas, *supra* note 37, at 1011.

³⁹ See Henderson, *supra* note 22, at 1039-40 (explaining that the LSAT's predictive power decreases as students are subjected to less time-pressured testing and hypothesizing that this correlation exists because test-taking speed affects performance on the LSAT and in-class exams, but affects performance less in upper-level classes).

⁴⁰ See *id.* at 1043-44.

⁴¹ Thomas, *supra* note 37, at 1011.

⁴² See Kinsler, *supra* note 37, at 394.

⁴³ See Henderson, *supra* note 22, at 986.

⁴⁴ See *id.* at 981.

⁴⁵ *Id.* at 975.

desire to create a grading curve, to limit the number of words that they must read, and to simply adhere to tradition.⁴⁶

It is asserted here that use of the LSAT without any other criteria is only slightly accurate in predicting a student's performance in the first year of law school. The district court in *Grutter v. Bollinger*⁴⁷ acknowledged that trial evidence indicated that "the LSAT predicts law school grades rather poorly (with a correlation of only 10–20%) and that it does not predict success in the legal profession at all."⁴⁸ Moreover, the predictive value of the test appears to be affected by the candidates' age, gender, and ethnicity.⁴⁹ Evidence suggests that the LSAT magnifies racial differences, as the gap between LSAT test scores of white law school candidates and law school candidates of color is greater than the difference between any other typical measures of academic achievement, including undergraduate grade point average, law school grades, and success in the legal profession after graduation.⁵⁰

The LSAT does not purport to determine whether a law school applicant will be a successful lawyer. A recent study of University of Michigan Law School graduates indicated that students of color who entered the law school with lower LSAT scores than their white colleagues attained the same level of success.⁵¹ In a related vein, the overuse of LSAT in law school admissions has a carryover effect into the area of placement.

⁴⁶ *Id.* at 980.

⁴⁷ 137 F. Supp. 2d 821 (E.D. Mich. 2001), *rev'd*, 288 F.3d 732 (6th Cir. 2002), *aff'd*, 539 U.S. 306 (2003).

⁴⁸ *Id.* at 870 (suggesting eliminating the use of the LSAT in law school admissions altogether, or at least a reduction on its reliance).

⁴⁹ See Olivas, *supra* note 23, at 1072–73 (discussing studies correlating LSAT scores and first year law school grade point averages for Latinos, women, and older students); Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 CLINICAL L. REV. 247, 248 n.4 (2001) (discussing studies that indicate that the LSAT is not equally predictive across demographic factors and providing evidence of gender and race bias).

⁵⁰ See William C. Kidder, Comment, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 CAL. L. REV. 1055, 1057 (2001). The article discusses a study that compared the LSAT scores of African American, Chicano/Latino, Native American, and Asian Pacific American law school applicants with white applicants who shared equivalent undergraduate grade point averages. *Id.* at 1057–58. The study revealed that "students of color encounter a substantial performance difference on the LSAT compared to their [w]hite classmates." *Id.* at 1058.

⁵¹ Richard O. Lempert et al., *Michigan's Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY 395, 395 (2000).

Many employers attempt to categorize law students who apply for positions by using the LSAT, especially when hiring students for summer associate positions.⁵² Employers who use the LSAT in their hiring process assume the risk of being held liable for employment discrimination, as

[u]se of the LSAT in hiring can be legally problematic as well [as foolhardy]. Despite LSAC's ongoing and extensive efforts to make certain that the LSAT is free of bias against any specific group of people, persistent differences in performance between white applicants and applicants of color and, to a much lesser extent, between men and women, exist A long and well-developed line of cases . . . holds that employment tests that have a disparate impact on protected groups of people are illegal unless validated for the specific employment use.⁵³

B. What Does It Take to Succeed in Law School?

Although exceptions exist, most law school classes are evaluated using one essay examination at the end of the semester. Therefore, the ability to do well on these exams is the key to being a successful law student. However, this raises questions concerning the effect of such testing practices in preparing students for actual law practice, provided that is the goal of legal education.

1. Goals of Law School

Since the early days of legal education, a dispute has existed over the goal of law schools; should legal education prepare students for the practice of law, or should it provide a liberal education that they can use to learn the practice of law after graduation?⁵⁴ The controversy surrounding the MacCrate Report,⁵⁵ an ABA-sponsored report on the gap between legal education and the needs of the profession, illustrates the

⁵² See Haggerty, *supra* note 27 (explaining that "the LSAT is not designed, and has never been validated, for use in employment decision making").

⁵³ *Id.* (citation omitted).

⁵⁴ See Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 1478-91 (1997) (discussing the various forms of legal education and how "elite" law schools prevailed in pushing forward the latter view of legal education).

⁵⁵ For more on the MacCrate Report, see Am. Bar Ass'n, Selected Excerpts from the MacCrate Report (July 1992), <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> [hereinafter MacCrate Report Excerpts].

continuation of this dichotomy. Shortly after the MacCrate Report was issued in 1992, the AALS took a survey of law school deans.⁵⁶ Only sixty-seven of the deans of the then 175 AALS member schools responded to the survey.⁵⁷ Most respondents rejected the proposition of “using the ‘MacCrate Report’ . . . as either a measure of performance in the [law school] ABA accrediting process or as a tool for promoting uniformity in the skills curriculum,” with 73.1% of the respondents stating that the report should be used “as a stimulus for institutional self-study.”⁵⁸

2. MacCrate Report Factors

Legal education still tends to focus almost exclusively on the use of the case method to learn legal rules.⁵⁹ The MacCrate Report suggests that law schools should devote more attention and resources to training law students to develop the skills they will need as practitioners.⁶⁰ The report lists ten groups of skills that legal education should include and four values to which the legal profession should adhere.⁶¹ These skills include, inter alia, legal writing, negotiating, client counseling, ethical lawyering, and fact investigating.⁶² The LSAT does not predict or determine a law school candidate’s skills in these areas or the candidate’s potential to develop these skills.

3. Effect of the Reliance on In-Class Timed Exams in Law School

As previously discussed, the LSAT is a good predictor of first year law school grades because the test’s heavy emphasis on time constraints is indicative of the nature of first year in-class exams. The negative consequence “[w]hen speed is used as a variable on law school exams [is that this] type of testing method, *independent of knowledge and preparation*, can change the

⁵⁶ Gary Blane Crouse, *AALS Conducts ‘Survey of the Deans’ in Response to MacCrate Report*, LAW. HIRING & TRAINING REP., August 1993, at 8.

⁵⁷ *Id.* (noting that a majority of law school deans preferred the report be used for self-study by individual schools).

⁵⁸ *Id.*

⁵⁹ See Phillip C. Kissam, *The Ideology of the Case Method/Final Examination Law School*, 70 U. CIN. L. REV. 137, 137–39, 181–88 (2001) (discussing the 100 year tradition of basing law school grades on case method/final examinations and suggesting alternative methods of learning).

⁶⁰ MacCrate Report Excerpts, *supra* note 55.

⁶¹ *Id.*

⁶² *Id.*

ordering (i.e., relative grade) of individual test-takers.”⁶³ Thus, a higher score on such exams is not an indication of superior knowledge or better preparation. Given this outcome, the academy may wish to consider whether rewarding “speediness” on law school exams is desirable for training students to practice law.

IV. HISTORY OF THE USE OF THE LSAT IN LAW SCHOOL ADMISSIONS

While a full history of the law school admissions process is beyond the scope of this Article, a brief review of the process can provide insight into the current state of law school admissions. At the end of World War II, law schools began to see an increase in the number of applications from individuals other than upper-class white men.⁶⁴ Prior to this point, most U.S. law schools admitted the majority of their applicants,⁶⁵ who were primarily white, as students of color were often barred from attending law school.⁶⁶ “Many law schools, particularly those in the South, formally denied Blacks admission, and most others informally excluded them,” and although a few schools did formally reject Latinos, “pre-existing social and economic constraints alone were sufficient to keep them out.”⁶⁷

In the post-war era, a desire to find the “best” candidates led to the creation of the LSAT, which was first administered in 1948.⁶⁸ The original LSAT was heavily based on aptitude tests

⁶³ See Henderson, *supra* note 22, at 1045 (emphasis added).

⁶⁴ See Rennard Strickland, *Creating Opportunity: Admissions in U.S. Legal Education*, <http://www.aals.org/2000international/english/admissions.htm> (last visited March 12, 2006) (“Law schools began to see increasing numbers of applicants from backgrounds and colleges with which they were not familiar.”); see also Roithmayr, *supra* note 54, at 1478–79.

⁶⁵ Strickland, *supra* note 64 (discussing law school admissions practices).

⁶⁶ Roithmayr, *supra* note 54, at 1484–86.

⁶⁷ *Id.* at 1485. Roithmayr explains that:

As late as 1939, thirty-four of the eighty-eight accredited law schools had formal policies excluding Blacks. In 1925, Texas passed a law restricting attendance at the University of Texas to white students, and the law remained in effect until much later in the century. As late as 1938, the University of Missouri Law School continued to formally exclude Black applicants . . . [T]he University of Texas Law School formally excluded Latinos by restricting their admission to white students only
Id.

⁶⁸ See William P. LaPiana, *Keynote Address at the 1998 LSAC Annual Meeting: A History of the Law School Admission Council and the LSAT* (May 28, 1998),

that “had their own foundation in racist and anti-immigrant sentiment.”⁶⁹

There have been calls to lessen or eliminate the use of the LSAT in light of the history of the LSAT, the test’s negative effects on women and applicants of color, and studies showing that LSAT scores do not correlate to success in the legal profession.⁷⁰

CONCLUSION

If members of the legal academy truly believe that *U.S. News & World Report* unduly influences law school admissions decisions, they should take action within their own law schools to lead the way toward reform. A strong first step would be to encourage *U.S. News & World Report* to reflect the values of the academy when determining the factors it uses to calculate law school rankings. For example, both the American Bar Association and the Association of American Law Schools have stated that diversity benefits the legal profession.⁷¹

Although *U.S. News & World Report* began publishing a

<http://www.lisacnet.org/lisac/publications/history-lisac-lsat.pdf>.

⁶⁹ See Roithmayr, *supra* note 54, at 1487.

⁷⁰ One such proposal is to abolish the use of the LSAT, as undergraduate institutions have abolished using the SAT. See Richard Delgado, *Official Elitism or Institutional Self Interest? 10 Reasons Why UC-Davis Should Abandon the LSAT (and Why Other Good Law Schools Should Follow Suit)*, 34 U.C. DAVIS L. REV. 593, 611–12 (2001) (describing a university president’s proposal to abolish the use of the LSAT). Another approach would allow applicants to determine how much weight the law school should accord their LSAT scores, thus placing greater emphasis on other factors. *Id.* at 612.

⁷¹ See AM. BAR ASS’N, AMERICAN BAR ASSOCIATION RESOURCE GUIDE: PROGRAMS TO ADVANCE RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION 6–7 (2000), <http://www.abanet.org/leadership/divres1.pdf> (setting forth several goals towards achieving racial and ethnic diversity in the legal profession); Carl C. Monk, *Foreword to ASS’N OF AM. LAW SCH., PERSPECTIVES ON DIVERSITY: AALS SPECIAL COMMISSION ON MEETING THE CHALLENGES OF DIVERSITY IN AN ACADEMIC DEMOCRACY* (1997), <http://www.aals.org/monk.html>.

AALS Bylaw 6-4(a) requires member schools to provide equality of opportunity in legal education for all persons without discrimination on the ground of race, color, religion, national origin, sex, age, handicap or disability, or sexual orientation. In addition, Bylaw 6-4(b) requires member schools to pursue a policy of providing its students and graduates with equal opportunity to obtain employment, without discrimination on any of the above enumerated grounds. Finally, Bylaw 6-4(c) requires a member school to seek to have a faculty, staff and student body which are diverse with respect to race, color and sex.

Id.

separate diversity index in response to these concerns, law schools are still not placing enough of an emphasis on diversity because it is not one of the factors the magazine utilizes in calculating law school rankings.

It falls on the law schools themselves to ensure that the magazine includes diversity, and other factors, when ranking law schools. Assuming that the magazine's editors will stand by their position that they base the rankings on factors which law schools tell them are most important, law schools should stress the importance of factors such as diversity when completing the annual information survey for the magazine. It is only when law faculties and administrators stop blaming *U.S. News & World Report*, and start setting their own priorities, that they will be able to regain the ability to shape the values of the legal academy.