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The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead

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The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead

JEFFREY EVANS STAKE*

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INTRODUCTION

This Article discusses problems created by the annual rankings of law schools published by *U.S. News & World Report* (“*U.S. News*”). Of course all unidimensional rankings of law schools, no matter who produces them, ignore the fact that law schools have different jobs to do for different students, from preparing those who will serve under-represented communities to preparing those who will advise major corporations and the government. Moreover, the consumer orientation of the rankings fails to recognize that law schools have other roles to perform in society, from devising improved laws to augmenting the stock of knowledge about law. In addition, there are serious, particular problems associated with law school rankings—they mislead law schools and prospective applicants. Law schools are misled in the sense that the rankings lead them down a path of operation that reduces the quality of schooling they offer to students. Applicants are misled in the sense that they choose a school that will improve their lives less than would some other law school. There are a number of reasons that rankings can mislead applicants, but one source of invalidity worth highlighting at the outset is that some of the criteria used, such as reputation survey results, are not reliable measures of quality because they are themselves reflexively influenced by the *U.S. News* rankings.

There are three approaches to improving the rankings. One approach is to use rankings to create beneficial incentives instead of harmful ones. In this vein, Russell Korobkin argues that rankings should be constructed to create incentives for the production of public goods.¹ The issue of which public goods should be extracted from law schools deserves further study. Another approach is to attempt to increase the validity of the rankings. There are experts who have spent their lives studying how to evaluate educational programs and curricula and one of the first steps in creating valid rankings ought to be serious consultation with a number of those experts. A third approach is simply to generate more rankings, ones that emphasize criteria different from those included in the current rankings.

However, the primary point of this Article is not to prescribe how to create better rankings, but rather to set forth some reasons not to be complacent, including the potential harms and omissions of the current rankings, in the hope that competing rankings published in the future will avoid some of these unintended consequences. It

1. Russell Korobkin, Keynote Address, *Harnessing the Positive Power of Rankings: A Response to Posner and Sunstein*, 81 IND. L.J. 35, 44–45 (2006).

could be argued that this cataloging of problems is pointless because the market will eventually correct the harms, if indeed any flow from the publication of rankings.² The penultimate part of this Article discusses the question of why the free market might not solve the problems created by rankings.

Before discussing the harms of rankings, it is critical to distinguish between the data used to make rankings and the rankings made from the data. This Article does not argue that any of the information being incorporated into rankings would be better left unpublished. In the present case, it is plain that much of the data used in law school rankings may be useful to those considering where to go to school. For example, it could be extremely helpful for a student to know the Law School Admission Test (LSAT) scores and grades of other students at the schools being considered. A student might want to go where the other students are better, worse, or similar in their ability to take standardized tests. A student might want to go where other students are better, worse, or similar in their ability to get good grades in undergraduate courses. A student might do well in an environment where the students are similar in these abilities, or where they strongly differ. For many such considerations, there is a wealth of information about law schools easily available on the Web, and *U.S. News* publications offer easy access to a few important criteria.

But law school rankings are not presentations of data or other facts. Law school rankings are opinions. It is the opinion of the editors at *U.S. News* that Yale is the best law school. The editors are forthright—unusually and surprisingly forthright—in their presentation of the mechanical calculations that lead them to their opinion. They have also been willing to improve the formula by which they determine their opinions. But none of that elevates the rankings to anything more than opinions.

One other initial caveat is in order. This Article does not attempt to tally the benefits of rankings. Rankings do provide information, even if it is essentially opinion. However, the benefits of rankings ought not to be conflated with the benefits of presenting data in manageable forms. Some might argue that the *U.S. News* rankings allow a reader to find a range of schools with a given range of LSAT scores. But omnibus rankings are not necessary or even helpful for performing that function. That function is performed by any list of schools ordered by the LSAT scores of the students. For years, the Ranking Game Web site has allowed users to order law schools from top to bottom on many criteria: LSAT score, reputation, tuition, bar-passage rate, etc.³ The *U.S. News* Web site now also offers viewers the same functionality, allowing them to rank schools according to some of the criteria it uses in the rankings. These examples show that law schools can be ranked on individual criteria without those criteria being hammered into a thin, unidimensional, omnibus ranking.

2. Larry Ribstein has argued that the market will discipline law schools. See Ideoblog, Dean's Letters (May 9, 2005), http://busmovie.typepad.com/ideoblog/2005/05/deans_letters.html; Ideoblog, The Market for Academic Control (May 6, 2005), http://busmovie.typepad.com/ideoblog/2005/05/the_market_for_.html; Ideoblog, Symposium on the Next Generation of Law School Rankings (Mar. 30, 2005), http://busmovie.typepad.com/ideoblog/2005/03/symposium_on_th.html.

3. The Ranking Game gets about 30,000 page views per month. Jeffrey E. Stake, The Law School Ranking Game, <http://monoborg.law.indiana.edu/LawRank/index.html> (last visited Sept. 5, 2005).

Notwithstanding that the information embedded in the rankings can be presented in many other ways, there are still some benefits of omnibus rankings of the sort published by *U.S. News*. Decision makers who lack the ability or time to consider the importance of a number of factors may make better choices in a world with rankings than in a world without them. It is likely that some prospective students would, in the absence of rankings, make errors in weighing the various criteria available to them. Some salient criteria would take on too much importance if these decision makers were presented with no more than the underlying data in an easily digested form. These purchasers of legal education, these lawyers to be, these persons of limited ability to balance multiple criteria in making an important decision, are saved from their own mental infirmities when they are presented with a unidimensional, summary calculation based on weights provided by the ranker.

I. RANKINGS CAN MISLEAD SUPPLIERS OF LEGAL EDUCATION

Many of the stakeholders in legal education, including administrators, students, alumni, and faculty members, care about the rank of their school in the various published rankings. If important ranking systems include a given factor, schools will shift resources to improving that factor and away from factors that count for less in the rankings. This raises the issue of whether those changes in resource allocation improve legal education. If there was no systematic bias against an included factor before the rankings shifted incentives, the rankings push spending on that factor beyond the optimum. The rankings cause schools to devote too many resources to some goals and too little to others. According to Dean Kramer of Stanford Law School, "You distort your policies to preserve your ranking, that's the problem."⁴ Here follows a partial list of incentives created by rankings, especially those published by *U.S. News*.

A. Focus More on Grades and Less on Undergraduate Institutions When Admitting Students

Rankings push law schools to give too much weight to some factors in their admissions decisions. Perhaps the best example is the weight given to a student's undergraduate grade point average (UGPA). This factor accounts for 10% of the *U.S. News* rankings. Schools wanting to move up in the rankings will turn down the student with a 3.4 UGPA in engineering from Rose-Hulman in favor of the applicant with a 3.8 UGPA in shuffleboard from Central Ivy State University. The data from the past seven years confirm the effect of this incentive.⁵ Both the 75th and 25th percentiles have increased by at least 0.02 UGPA points per school per year, which is significant at the .001 level (regression 1, see Appendix).

4. Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES, July 31, 2005, § 4A, at 18 (quoting Stanford Law School Dean Larry Kramer).

5. It is possible that UGPAs have risen because of grade inflation, although it does not seem likely that grades have inflated that quickly in recent years. It is also possible, and would seem to be more likely, that UGPAs have increased because the size of the applicant pool has increased. And perhaps their qualifications have improved even more than would be expected solely on the basis of the increase in numbers.

There is no reason to believe that admissions committees systematically gave grades too little weight before *U.S. News's* rankings changed the law schools' strategies. The likely consequence is that the *U.S. News* incentives have led schools away from the proper balancing of the many factors that go into determining which applicants will improve their law schools and will make the best lawyers. Factors such as honesty and empathy lose weight when grades get more attention. The only factor that has probably not lost weight in the admissions process is the LSAT, because *U.S. News* gives it even more weight than grades.

The focus on grades has secondary effects that are equally worrisome. A well-advised student hoping to get into a law school that cares about its ranking will choose an undergraduate school and courses that have inflated grades over ones with tough grading. As the importance of the UGPA increases, law aspirants will try to optimize that credential, to the detriment of their education. Do we want the seats at competitive law schools to go to those who are good at picking an easy curriculum instead of those who signed up for a challenging education?

B. Focus on the LSAT

There are two reasons for using the LSAT in law school admissions: it is the best single predictor of first-year performance, and it can be used to compare English speaking students from any point on the globe.⁶ As with grades, the *U.S. News* rankings cause schools to place too much emphasis on the LSAT. Ironically, the Association of American Law Schools (AALS) may have inadvertently played a role in increasing the weight given to the LSAT. The AALS commissioned a 1998 report which concluded that virtually all of the differences in overall ranks could be explained by academic reputation and student selectivity, the latter marked primarily by the median LSAT score.⁷ It found the other ten factors to be "superfluous."⁸ Law schools learned from this, if they had not figured it out before, that they should place great weight on that single admissions factor. To make matters worse, the ABA stopped collecting median LSAT data from schools. It was a predictable consequence of this decision that *U.S. News* would eventually discontinue use of the median because they no longer had a way to check the accuracy of the medians submitted by the schools.⁹ And in fact that

6. The superior predictive power of the LSAT as compared to the UGPA is well documented. 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, 1030 (2004) (citing several validity studies). However, Prof. Henderson's study suggests that the higher predictive validity of the LSAT may be partially attributable to the prevalence of time-pressured exams in the law school curriculum, particularly during the first year. *Id.* at 1030-34 (discussing mechanics of this relationship).

7. STEPHEN P. KLEIN & LAURA HAMILTON, *THE VALIDITY OF THE U.S. NEWS AND WORLD REPORT RANKING OF ABA LAW SCHOOLS* (1998), <http://www.aals.org/validity.html>.

8. *Id.*

9. I begged the ABA not to stop collecting the median data, but was rebuffed with the dubious claim that *U.S. News's* use of the 25th percentile would have no more impact on admissions than its use of the median.

was the reason given by *U.S. News* when it made that change from the median to a combination of the 25th and 75th percentiles for the 2005 ranking.¹⁰

U.S. News's publication of the 25th percentile and, more important, its use of that figure in its ranking formula means that a school wanting to maximize its rank should maximize its 25th percentile LSAT. Another way of saying this is that competitive schools will maximize the LSAT for 75% of their incoming "one-L" class. Some law schools have already succumbed to this temptation and today place great weight on the LSAT, considerably more weight than before rankings were regularly published. The result of this attention has been a yearly increase of 0.220 in the 75th percentile LSAT ($p < .005$), a number which is relatively difficult for schools to increase,¹¹ and a larger 0.467 yearly increase in the 25th percentile ($p < .001$) during the seven years after the ABA stopped collecting the LSAT medians (regression 1¹²).¹³ In the world of law school admissions, staying in place has meant falling behind.

Because the LSAT and UGPA are far from perfectly correlated, maximizing one does not maximize the other. If a school wishes to maximize its medians on both the LSAT and UGPA, it will have to admit nearly all of its class on the basis of those two numbers. When schools put that much weight on the LSAT and UGPA, something has to give. This increased attention to those two criteria necessarily comes at the expense of other criteria that do not count in the *U.S. News* rankings. Those unranked criteria include honesty, integrity, gumption, creativity, and other aspects of fitness to practice as a lawyer.

Professors Marjorie Shultz and Sheldon Zedeck have made a systematic study of the activities of good lawyers. By interviewing lawyers, faculty, students, judges, and clients, they identified twenty-six factors that are important for effective lawyering. Their list includes 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.¹⁴ Neither the LSAT nor the UGPA tells the extent to which a person has these qualities. For every applicant admitted on the basis of his LSAT or UGPA, the law school must admit one fewer applicant on the basis of such other indicators of merit.

Each law school admissions committee should be free to attach what weight it considers to be appropriate to all of an applicant's indices of promise for future

10. "We wanted to go with verifiable data,' Mr. Morse says, 'and we heard that some schools weren't computing their median correctly.'" Wellen, *supra* note 4, at 18 (quoting *U.S. News* Editor Robert Morse). See also Carl Bialik, *Small Change by U.S. News Leads To New Controversy in Rankings*, WALL ST. J. ONLINE, April 7, 2005, <http://online.wsj.com/> (subscription required) (on file with the Indiana Law Journal).

11. Most law schools would have accepted most applicants with LSAT scores above their 75th percentile even before the *U.S. News* rankings were published. For that reason, there is not much a school can do through admissions decisions alone to increase its 75th percentile on the LSAT.

12. See *infra* Appendix.

13. It is possible that LSATs have increased because of an increase in the pool of qualified applicants to law schools.

14. Marjorie M. Shultz, *Expanding the Definition of Merit*, BOALT HALL TRANSCRIPT, Summer 2005, at 25, available at http://www.law.berkeley.edu/alumni/transcript/summer_05/22-27_feat_23_lsats_final.pdf.

contributions as law students and practitioners, without any special concern for how the admission of that student would influence its school's rank in *U.S. News*. But committees are constrained. The effect of *U.S. News* rankings on the law school market is similar to that of a command and control economy, with the resulting loss in experimentation and other benefits of decentralized decision making. Rather than 180 different schools deciding independently how much weight to give these two numbers in their attempts to attract and cater to different segments of the market, *U.S. News* commands all schools that care about their rank to use LSAT score and UGPA as the key, essentially exclusive, indicia of student quality.

Law school admissions are decisions with large societal implications. If we were to ask the American public, do you want lawyers in the future to have more cleverness or more integrity, which would they choose? If they would choose integrity, schools are sacrificing the traits the public wants in the quest for higher *U.S. News* rankings. What characteristics should a defendant want in his lawyer when his life is on the line in a capital case? What qualities should citizens want in an official making policy for the government? These are not the attributes being selected for when schools reserve most of their seats for those who are tops in bubble ability, the skill at taking multiple-choice standardized exams. The public interest is not well served when lawyers are those who are good at taking such tests rather than those who are good at written and oral expression. The nation is not strengthened when law schools deemphasize quality of undergraduate school, rigor of courses taken, business and military experience, social intelligence, and interpersonal skills. The effect of *U.S. News* rankings is to give the admissions edge to the applicant with a 163 LSAT who partied hard throughout college over the applicant with a 161 who spent a few years as a soldier and then started a successful business before taking the LSAT. As the influence of *U.S. News* reaches deeper into the admissions process, service to the country through the Marines or Peace Corps, ability to communicate orally with actual human beings, empathy, and a sense of justice will all be forsaken in the pursuit of higher numbers.

The costs of misguided admissions processes are not limited to the world of professional lawyers. Many graduates use their legal educations in non-legal occupations. Law school has become a sort of general education, widely recognized as useful in many positions of leadership within both the public and private sectors. If law schools are admitting the wrong students, the effects may be broadly felt.

There are many indicators of quality in the files of applicants, but *U.S. News* creates an incentive to ignore them all in favor of the LSAT and UGPA. However, this is not inevitable. Rankings could continue to employ LSAT and UGPA data without causing schools to focus entirely on those criteria. *U.S. News* could use each school's 75th percentiles on the LSAT and UGPA as its measures of student quality rather than including the medians or 25th percentiles in the ranking formula.¹⁵ This change would reduce the effects of rankings on admissions practices because maximizing a class's 75th percentile on any criterion can be done with one-half as many students as it takes to maximize the median and only one-third as many students as it takes to maximize the 25th percentile. For a school to maximize its 75th percentiles on both the LSAT

15. I have made this request to *U.S. News* both privately and publicly. 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>. The editor, however, does not seem eager to acknowledge that *U.S. News* influences the behavior of law schools.

and UGPA, it would need to admit no more than one-half of the class by the LSAT and UGPA. Thus, the proposed change would cut in half the portion of the class admitted solely on those numbers, leaving much more discretion with the admissions personnel at each school to admit the students they think will make the greatest contributions as law students and lawyers.¹⁶ Each school would have more freedom than is currently allowed to make its own determination of which students it wishes to admit without worrying about how those decisions will affect its rank in *U.S. News*.¹⁷

Were this proposal adopted, there would still be a fight over students, and it would be a fight over a smaller pool of students, but each school would need fewer students to make its goal. Because the fight would be over a smaller pool, many students would get large tuition breaks; indeed, many would be offered a full ride. In some ways, this would make the 75th percentile LSAT an even better indicator of school quality. Tuition differences would be wiped out and students would choose among full-ride offers based on other factors. Students' choices would be better measures of their perceptions of quality than when they are influenced by cost considerations. This could have another benefit: more students would get complete scholarships than under the current system. Prospective students would have to be in a school's top 25% to qualify, but many students would be in the top quarter at some school. Since more students would be able to attend for free, more students from the lower economic strata would have an opportunity to attend law school.

Some might argue that a single statistic, the 75th percentile, does not give an accurate picture of student quality. At one time in the past, that might have been true because schools were not so focused on the UGPA and LSAT. But now they are, and what was once a description is now a prescription for success in the rankings. Many schools have striven to increase both percentiles. What will happen if *U.S. News* switches to using just the 75th percentile on the LSAT and UGPA? The switch will make almost no difference to the ranks of schools. In the short run, there is little difference between who will win the competition by the 75th percentile LSAT or a combination of the 75th and 25th because the two figures tell the same story. Using *U.S. News*'s 2004 data, the correlation between the 75th percentile LSAT and the average of the 75th and 25th for all schools is .991. So, although the switch would not

16. To some extent the example above understates the benefits of changing to the 75th percentiles. Even before *U.S. News* published its rankings, many schools rejected few of the applicants with LSAT scores above the school's 75th percentile. Thus, rankings based on the 75th percentile LSAT would have a negligible effect on who is admitted to a given law school. By contrast, rankings based on the median LSAT (to say nothing of the 25th percentile) 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 75th percentile on the LSAT and UGPA could cut the number of students admitted primarily on the numbers by well more than half.

17. The result might be similar to the results one would get with the tournament system suggested by Christopher Avery, Mark Glickman, Caroline Hoxby, & Andrew Metrick, *A Revealed Preference Ranking of U.S. Colleges and Universities*, (Nat'l Bureau of Econ. Research, Working Paper No. 10803, 2004), available at <http://www.nber.org/papers/W10803>. The idea common to both methods of ranking is that students' matriculation decisions determine a winner of many 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 all schools with lower LSAT and UGPA medians.

affect the ranks of the schools, it would allow schools more freedom to admit students with low numbers. In the long run, some schools would probably make use of this new freedom, and their 25th percentile numbers would decrease. Of course, the 25th percentiles 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 is somehow illegitimate for *U.S. News* 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 student body 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 ranks, the change by *U.S. News* to using only the 75th percentiles on LSAT and UGPA could dramatically reduce the harmful long-term effects of rankings on law school admissions.¹⁸

Another alternative that would decrease the impact of the rankings on admissions would be for *U.S. News* to change the ranking criteria from the LSAT and UGPA medians to the median of an index that combines the two. However, because *U.S. News* needs a verifiable number for its rankings, this can only occur if the Law School Admission Council constructs a single index score for each student. As an administrative matter, this would be a trivial task. Of course, the ABA would also have to require that each school report its median index score.

Currently under consideration is another proposal aimed at preventing *U.S. News* rankings from causing schools to overweight the LSAT in admissions. The idea is to replace the current LSAT scores with scores that are scaled separately for each school. There are at least two problems with such a maneuver. First, placing each school on a different scale would make it much more difficult for students to gauge their chances of admission to any school. Second, unless the same were done for grades, *U.S. News* might simply put all of the weight on the UGPA, exacerbating the undesirable incentives and educational consequences noted above.

C. Tweak Other Aspects of the Admissions Process to Increase Numbers

There are a number of other admissions changes a school can make to increase its rank according to *U.S. News*. Below are some of them. None has been shown to improve law education; more likely, they would degrade it.

18. After this proposal was presented at the Symposium on *The Next Generation of Law School Rankings*, Dean Robel of Indiana University School of Law—Bloomington gathered signatures from sixty law deans on a letter asking the ABA to return to collecting the median data. The ABA has decided to collect the median LSAT and UGPA from each school and, as expected, *U.S. News* has announced that it will revert to its former use of the medians. Given that change, which will take pressure off the 25th percentiles (which will probably decrease as a result), the benefits of the proposed change to the 75th percentiles would be less dramatic, but would still be considerable.

1. Admit Fewer “One-L” Students and Allow More Transfer Students

The importance of LSATs and UGPAs to a school's rank has created an incentive for schools to reduce the size of the first-year class. With a smaller class it is easier to achieve a high median. To maintain revenues, however, a school reducing the size of the one-L class will need to increase the number of transfer students. This possibility is troubling. There is almost no conceivable benefit to the students who have to start at one school and then move from that school to a preferred school. There is clearly no benefit to the schools losing their more successful students. Aside from increasing ranks, there is also negligible benefit to the schools to which the transfer students are moving. Although schools may argue that transfer students have proved themselves worthy, which they have, if there were a substantial net benefit to the importing schools from skimming large numbers of second-year students from other schools, law schools would have had extensive transfer programs in the past.

Not only is there little benefit to the receiving school, there is a pedagogical cost. Although the lists of first-year courses are similar from campus to campus, any law school worth a high rating will be striving for an integrity of program across the years. Students who have not taken a school's first-year curriculum may learn less in subsequent years and may contribute less to the learning of other students in their classes. A responsible teacher cannot assume that transfer students have been exposed to the basic conceptual building blocks taught in the one-L curriculum. The teacher has to either cover that material again, to the detriment of the students who have been through it, or push on in spite of the fact that some of the students are not prepared, to the detriment of the transfer students.

If this incentive takes hold, average class size will change. The first-year class will become smaller, compared to graduation class size or school size, at those schools to which students want to transfer. A lagged, opposite reaction might appear in the schools from which they move to make up for the students lost through the transfer process. The net effect will not be positive for the students in either group of schools.

2. Reject Some Students with High LSAT Scores

Of the students a school accepts, it is hardest to matriculate those with the highest LSAT scores. Admitting a student with a high LSAT score means admitting a student likely to reject the offer of admission. If “yield” or “acceptance ratio” is a factor in the rankings, as it has been in the *U.S. News* rankings, a school might improve its ranking by rejecting these students. This practice would clearly not be in the interest of the rejected student, and most faculty members would think it does not further the educational mission of a school to reject those applicants with high scores simply because of those high scores. Of course, the LSAT is also a factor in the rankings, so schools will not take this practice so far that they accept just the lowest LSAT candidates. A school maximizing its ranking will reject only those students that are unlikely to accept, the ones with the highest LSAT scores. One way for schools to do this is to interview those students with the highest LSAT scores and accept only those who declare they will matriculate. This process will waste time and could result in students being inappropriately denied admission.

3. Reject Students with Limited Prospects for Employment

If one of the ranking criteria is employment rates, as it has been for *U.S. News*, a school can improve its ranking by accepting only those applicants who appear to be employable. One way to do this is to inquire as to whether the applicant has contacts in the business or law world, so that she will be likely to get a job regardless of performance in law school. Of course, favoring applicants with “old-boy” connections operates to the disadvantage of those from underprivileged backgrounds. Such favoritism also operates to the disadvantage of the educational program of the school when those that are displaced would have made more useful additions to the class.

4. Focus Scholarship Money on Applicants with LSAT Scores Just Above the Median

A scholarship dollar given to one student is a dollar not available to others. In the past, most schools have offered substantial aid to some top students. Since, at most schools, a student with an LSAT score of 177 is half as useful in improving the school’s median LSAT as two students with LSAT scores of 168, it would be better to offer two half-sized scholarships to two students with LSAT scores of 168 instead of one full-sized scholarship to a student with a 177 LSAT score. The effect of this could be to draw into the profession fewer of the students with the very highest LSAT scores, by reducing the number of full rides that are available. Notice that the schools that once offered a full ride to the students with an LSAT score of 168 might also switch to offering half a scholarship to two students with LSAT scores of 163. There are countervailing effects here, and the situation is complex, but it is not clear that any of those effects on the supply of talented lawyers are being considered in the struggle to increase ranks.

D. Start a Part-Time Program

Since only full-time students are included in the LSAT or UGPA figures, it behooves a school to start a part-time program and fill it with the matriculants having the lowest admissions numbers. Once again, there is little benefit for the student and not much in it for the school aside from the boost to its rank.

E. Focus the Curriculum on What Is Needed for Bar Passage

Setting aside, for the moment, whether bar passage is a valid measure of school quality, there is no doubt that many schools are paying more attention to it than they did in the past. And bar passage rates may be rising. That is not necessarily a good sign. If there were reason to believe that schools gave too little attention to lessons oriented toward bar passage, improved bar passage could signal an improvement in the curriculum. But there is no reason for such an assumption. Indeed, increasing the relative amount of attention schools pay to bar passage will redound to the detriment of students.

Will teachers teach better if they are told by their seniors and the administration that it is critically important that no one fail the bar on their subject? Teachers that care to please their seniors and the dean will dumb down the essentials so they can be comprehended and retained by the weakest students. They need not worry about the

upper portion of the class (from the upper third to the upper 90%, depending on the school) because those students will pass the bar anyway. Teachers concerned primarily with bar passage will teach to the bottom of the class to assure that no student is left behind. Perhaps this would work an improvement. But if so, why have teachers not adopted this strategy already? Would an informed student prefer to attend the school where the teachers are trying hardest to make sure no one fails the bar exam? It is not clear that leaving no law student behind is the best pedagogical policy. This is not to say that schools should not devote resources to helping all students leap the bar. But it is clear that rankings put pressure on schools to change their curriculum in ways that will not produce a net gain. Moreover, if the dumbing down the lessons is successful, bar examiners might respond by raising the cut score for passage and, if they do, schools will be under pressure to devote even more time to bar passage and less to teaching important knowledge and skills. The result could well be a detrimental change in the curriculum, without any increase in overall bar passage.

Focusing on bar passage creates another problematic incentive. An admissions committee can help the school on this criterion by rejecting students that are less likely to pass the bar. For example, some students hail from states with difficult bars, such as New Hampshire, California, West Virginia, Alabama, Maine, Maryland, Virginia, and New Jersey. If they are likely to return to their home states to practice, all else equal, a school will be better off rejecting them in favor of students from states with an easy bar. More generally, as noted above, there are many characteristics that are important to building a good lawyer. When bar passage is a factor in the rankings, schools have an incentive to ignore those characteristics in favor of ones that increase the chances the student will pass his or her first bar exam. Should a school deny admission to Mother Teresa if it predicts that she might not pass a bar exam until her second try?

F. Spend Money on Glossy, Colorful Advertising

Since the single largest factor in the *U.S. News* rankings is the reputation among legal academics, schools seeking to raise their reputations have started spending substantial sums on glossy promotional publications and mailing them to legal academics and practicing lawyers. According to one law dean, "Tons of money—not just here, but at other law schools around the country—is being spent on public relations now that was never spent before."¹⁹ A few years ago, one school hoping to make a splash sent a large and colorful poster with a marine motif to all law professors at Indiana University–Bloomington, and presumably many other law schools. Setting aside whether such tactics sacrifice long-run interests for gains that will show up during a dean's tenure, it is doubtful that attempts to increase the "visibility" of schools will advance the legal well-being of society.

G. Raise Tuition for All, but Increase Scholarships for Those with Numbers

Since having more resources matters to *U.S. News*, it is in the interest of a school to raise tuition and give much of it back to the students in the form of scholarships. Thus,

19. Michael Sauder & Wendy Nelson Espeland, *Strength in Numbers? The Advantages of Multiple Rankings*, 81 IND. L.J. 205, 211 (2006).

by an accounting change, a school can raise its rank without changing the economics of the relationships between the school and its students. But schools might not stop there. Once tuition has been raised, schools could decide that the scholarships need not be granted equally to all students. They could be used to help those who lack financial resources, but if that were the goal it would have been done already. Instead, the school will recognize that the new revenues could be used to attract those with high LSAT and UGPA numbers. One unwelcome side effect would be a reduction in access to legal education for persons of limited financial means.

H. Pay Your Own Utilities

Other accounting practices can make a similar difference to a school's rank in *U.S. News*. At some schools, the university provides the electricity to the law school and deducts the cost from the tuition paid by the law students.²⁰ The school never sees the money, and it is not part of its resources. Such schools could increase the resources reported to *U.S. News* by collecting the tuition directly from the students and paying the university for the electricity and other services provided by the university.

I. Encourage Everyone and Her Sister to Apply

Since it may be important to have a high rejection ratio, it is important to get every possible applicant to apply for admission. This includes students that have no chance of being accepted. It may be necessary to waive the application fee, but that financial cost could be worth the gains in rank, especially since some of those applicants would not have applied if they had been required to pay a fee. Once applications are up, it becomes even more important to sift them out using the numbers because it is expensive to have committee members study stacks of applications looking for the gems.

J. Hire Your Own

When nine months after graduation rolls around, a school should check to see whether there are any unemployed graduates and hire them so that its employment numbers, which count for a lot in the *U.S. News* rankings, look good.

K. Make It Difficult for Faculty Members to Leave in the Fall

To increase the faculty/student ratio, all possible faculty members must be counted. According to the reporting rules, they are counted in the fall semester. So, schools maximizing their rank could make it difficult for faculty members to leave in the fall. Sabbaticals and other extended leaves will be taken primarily in the spring. This may have the effect of leaving students with too few spring options for learning experiences. If there were no such seasonal incentive created by *U.S. News*, faculty leaves could be divided more or less evenly across the fall and spring semesters, giving students a more useful distribution of courses.

20. Wellen, *supra* note 4, at 18.

It appears that this tactic might not work in the future. Since the ABA has now decided to collect spring faculty counts in addition to the fall counts and *U.S. News* will use both in an annualized approach, there will be no advantage to allowing faculty members to take leaves only in the spring. The fact that some schools had more faculty members teaching in the fall than in the spring suggests that schools were paying close attention to the incentives created by *U.S. News*. If the balance shifts toward the spring in future years, that will be some evidence that schools were heeding the incentive to have an unbalanced faculty.

L. Increase the Number of "Books" in the "Library"

Libraries are expensive. But not all books are. A school wanting to move up in rank could buy a truckload of cheap books and put them in an "off-site" library annex. If the reporting authorities wise up and require them to be "on-site," schools may stick the books in the basement or attic. Will this increase the net social welfare? Storage space may be cheap, but it is not free and this would be a waste of that resource, as well as an attempt to mislead the public about the quality of the school.

M. Decrease Funding for the Library and Other Units with an Abnormally High Proportion of Positive Externalities

U.S. News creates incentives for schools not to spend too much on library resources. For example, given that the Indiana University School of Law-Bloomington's ("IU-B") law library is ranked above the IU-B Law School, IU-B may be spending too much on its library. This conclusion is not based on a fair appraisal of the value of a great library to the students or faculty, or to the people of the state of Indiana for that matter. Instead, this conclusion reflects the fact that the money spent on the library could give IU-B a better bump in rank if spent on other factors, such as tutorials for students who might not pass the bar. This would clearly be the wrong way to decide how much to spend on a law library. But this is what *U.S. News*, in effect, tells IU-B to do to maintain or improve its position. On the other hand, because library volumes are a factor, *U.S. News* also creates an incentive not to spend too little on the library.

II. GENERAL EFFECTS

A. U.S. News Rankings Could Homogenize Legal Education

This point about library resources, that a school needs to get the library budget just right, neither spending too much nor too little, applies to other criteria as well. One effect of the hegemony of the *U.S. News* rankings is to create an incentive for schools to calculate and aim for an optimal mix of expenditures. What this means is that *U.S. News* may unwittingly be homogenizing legal education. With time, schools will learn which spending mix yields the greatest rankings bang and the optimum mix will tend to be the same for most schools. *U.S. News* will make it increasingly hard to experiment with different ways of producing an extraordinary product.

A corollary of this homogenization effect is that schools will find it unrewarding to seek a market niche. The *U.S. News* formula discourages diversity and specialization in curricula. For example, a six-hour quantitative methods course of the type once required of first-year students at George Mason could discourage applicants. This

could narrow the appeal of the school, which would in turn decrease its LSAT index. It is discouraging to imagine that future instructional innovations might not be implemented because of concerns about the effect on a school's rank in *U.S. News*. Creatively tailored programs could certainly improve some law schools' offerings to students and society, yet it will be a rare school in the upper half that will take the risk of radical innovation or narrow specialization. Law schools are in danger of losing the freedom to create first-class products for the needs of varying consumers and stakeholders.

It could be argued that rankings of law schools will not homogenize legal education any more than the ranking of cars by *Consumer Reports* homogenizes automobile production. But the markets are not the same because car buyers are more able to think and evaluate for themselves. First, car buyers can take a meaningful test drive. A day in the classroom does not give prospective students much of an idea of what it will be like to buy an education from a school. Second, automobile consumers can easily see that factors like handling, acceleration, size, or gas mileage might be more important to them than to *Consumer Reports* testers; law prospects are less able to re-evaluate the weights *U.S. News* attaches to its criteria.²¹ Third, consumers in the auto market are repeat players and can learn from previous experiences, while no one buys two J.D.s. Fourth, *Consumer Reports* does not have nearly as much influence on the ultimate value of the product being purchased as *U.S. News* has on the market value of a law degree. Although car buyers might wish to resell the car in the future, those sales are a relatively small factor in selection. Law students buy a product that they will resell at many points in the future, and that resale value is a much larger portion of what they are paying for. Because law students do not expect to drive their degrees into the ground, they cannot afford to ignore the predictions of future market value. For these reasons, rankings of law programs have more power than other rankings to homogenize their products.

If *U.S. News* changed the weights in accordance with the advice of a different panel each year, the rankings would be less likely to homogenize law schools. This would also reduce the sense that the rankings actually reflect a true order of quality, which might encourage consumers to place their own weights on the various factors instead of unquestioningly following *U.S. News*. This might be good for *U.S. News* too, as there would be some reason to buy the new issue instead of relying on the ranking from the previous year.

U.S. News has created a prisoner's dilemma. Each school will rank higher if it defers to *U.S. News*. But all schools will be worse off for that deference. All schools are trying to matriculate the students with high LSAT scores, but the pool of students is not improved. Many schools will end up with smaller first year classes, but more students will have to switch schools part way through their education. All schools will teach to the bar exam, and curricular integrity will diminish. Schools will have an "optimal" library, with fewer expensive books and more donated ones. And for all this, most schools will stay put in the rankings. There can be no net gain for schools as a whole since for every rank step ascended another school must drop a rank. Eventually,

21. It is also possible that readers of *Consumer Reports* agree more with the underlying criteria being used to rank cars than readers, at least faculty readers, of *U.S. News* agree with the criteria being used to rank schools.

law schools may follow the stratagems of football coaches, but no one will be better served—neither students nor the society that awaits their services.

B. U.S. News is Stratifying Law Schools by LSAT

Many schools have tried to increase their 75th and 25th percentiles on the LSAT. At the same time, students have been influenced by *U.S. News* in choosing schools. If schools want the highest LSAT scores they can get, they will deny admission to those with scores below the 25th percentile, or the median if that is the critical number. If students choose the highest-ranked schools among those that accept them, they will tend to apply to and attend the school with the highest LSAT numbers, since that correlates highly with the overall ranks. Given these tendencies, over time, the range of student LSAT scores to be found at any school should narrow and there will be an increasing stratification of schools by LSAT score.²² Indeed, this appears to have occurred. When the difference between LSAT 75th percentile and LSAT 25th percentile was regressed on the year, the year was a significant predictor ($p < .001$). Over the past seven years, the gap has shrunk by one-fourth of an LSAT point per year (regression 1).

Whether this is good or bad is open to debate. It reduces the diversity of LSAT scores in the classroom, making it less likely that students will learn how to negotiate with and make arguments to lawyers who differ in whatever abilities it is that the LSAT measures. If the LSAT does not measure much of importance, this reduction of LSAT ability is not important. But if the LSAT does measure an important difference, classroom uniformity might be detrimental to student learning. This stratification will also exacerbate the LSAT differences between the majority and the students admitted to achieve other sorts of diversity. In the past, the diversity students' LSAT scores blended into the wide range of LSAT scores in the class. As the variation on the LSAT within a school decreases, the LSATs of diversity students will be more noticeably different. On the other hand, some might argue that teaching is more efficient when all students have similar LSAT scores, although there is no formal study supporting this view. Setting aside the issue of whether the stratification is good or bad, it could be argued that by pushing schools to matriculate a narrower band of students, the *U.S. News* rankings have encroached upon one of the "four essential freedoms" of a university—to determine for itself . . . who may be admitted to study."²³

III. RANKINGS MISLEAD BUYERS OF LEGAL EDUCATION

A. The Criteria Used in Rankings Have Not Been Validated

Judging by the sales of *U.S. News's* rankings, many people want to know about the nation's law schools. The readers want advice, and the rankings provide evaluations

22. The same could be true about grades. However, because the Klein & Hamilton study said that LSAT and reputation were the factors that explained most of the variance, *see* Klein & Hamilton, *supra* note 7, schools may not have worked as hard at increasing UGPA numbers. In addition, schools are probably less comfortable emphasizing UGPA than LSAT scores because of the more obvious problems noted above with admitting students primarily by grades.

23. *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring).

done on the cheap. Like many rankings, those published by *U.S. News* are based on a number of factors, most of which make use of readily available data. Many of these criteria are of no inherent interest to the readers of the rankings. A prospective law student wanting to work as a lawyer has no particular interest in the amount of money a school spends, the number of volumes in the library, the grades of the other students in the class, or even the reputation of the school among academics because such reputations are built primarily on faculty publications and not teaching quality.²⁴ Criteria for rankings are surrogates for experienced quality. The substitutions are poorly declared.

These criteria that are not directly useful are pressed together into a ranking on the unstated theory that they are proxies for what applicants should care about. Readers, and perhaps even the editors at *U.S. News*, assume that there is an integrity of the law school whole that allows the reader to conclude that if the school is good on those measurables, it will also be good on the immeasurables about which the reader truly wants to know. But this assumption is unjustified. First, the data from which the rankings extrapolate are not necessarily correlated to the criteria readers would like to know about, such as whether the school can provide a quality education, or more generally, whether a student's professional or personal life will turn out better for having gone to one school over another. No one has done the careful study needed to validate the criteria by determining whether the available numbers are indeed indicators of the many dimensions of true quality.

Second, even if the criteria used by *U.S. News* were once good indicators, there is little reason to believe that they continue to be good indicators now that they have been announced to the contestants in this ranking game. In other words, the data going into the *U.S. News* rankings are subject to manipulation. Setting aside outright fraud, by employing the strategies discussed above schools can improve themselves on the criteria while doing nothing to improve the whole program, indeed while diminishing the value of the law school experience to their students. For these reasons, the rankings are disconnected from what many readers want to know.

Even if the criteria used by the rankings were shown to be good indicators of what readers want to know, or should want to know, the method used by *U.S. News* to combine the factors into a unidimensional ranking has not been shown to be a valid method for doing so. In other words, the ranks, like the underlying criteria, have not been validated as useful measures of what is important to those choosing a law school.

B. Rankings Devalue Important Criteria

In addition to the serious problem that the rankings have not been validated, the rankings may make matters worse for readers by interfering with the processing of information by the readers who have the ability to balance multiple factors. Numerical indices carry a false air of precision which may lead some readers to give them too

24. That is not to say that these criteria are not of direct interest to someone, just not the bulk of those reading the rankings. A prospective student hoping to teach should care about the reputation of a school among teachers, who will be hiring him or her. A law school graduate hoping to teach and publish might well care about the grades of the students he or she might be teaching.

much weight.²⁵ Rankings can cause a prospective student to think a school is better or worse for her than it actually is.

Even when the applicant is not directly rerouted by the rankings, he may be indirectly misguided. By placing all schools on the same scale, rankings give readers the impression that law schools are all trying to win the same competition, that they all have the same goals, that they all serve the same interests and needs. The truth is otherwise. The functions of law schools are many, from providing research and scholarship about the law to preparing students for legal practice. Even within the mission of preparing students, the range is wide, from research and teaching in the academy, to governmental and nongovernmental policy making, to advancing the goals of corporate clients in the national and international markets, to serving the needs of average Americans in matters from the mundane to those of life and death. Unidimensional rankings obscure the multiplicity of roles law schools play in the training of lawyers. The mere inclusion of numerous factors in the rankings does not acknowledge the complexity of purposes in legal education.

Rankings can also indirectly influence students by drawing them away from criteria they think important. Factors left out of the rankings seem less important because of it. Some criteria, like quality of teaching, are hard to define and quantify, and so do not get included directly in the current rankings. Other criteria, like the personal feeling of whether a school would be a comfortable fit, are especially subjective, and cannot be included in published rankings. Still other criteria, like the distance from the school to loved ones and scholarships offered, are quantifiable, but are idiosyncratic to the student, and again cannot be included in rankings published in the mass media. An open letter from many law school deans to prospective students cites many factors that students identify as important, many of which are not considered in the *U.S. News* rankings.²⁶ The point here is that these omissions not only undermine the value of the rankings but also may have the effect of unjustifiably devaluing criteria that are important to the reader. By their reassuring appearance of objectivity, the rankings lead readers away from criteria they care about to criteria less central to their goals. An applicant might choose Pepperdine University School of Law over Indiana University School of Law—Indianapolis based on Pepperdine's move into the top 100 and IU—Indianapolis's small drop within the second 50, when in fact she would have a much worse experience at consciously religious Pepperdine because she is an atheist. Thus, a person who could weigh the factors on her own might be led to place undue weight on the rankings or their underlying criteria, with the result that she makes a poor decision.

25. See THEODORE M. PORTER, *TRUST IN NUMBERS* (1995); Patricia McDonough, Anthony Lising Antonio, MaryBeth Walpole & Leonor Perez, *College Rankings: Democratized College Knowledge for Whom?*, 39 RES. HIGHER EDUC. 513, 531 (1995) (stating that rankings shift attention of prospective students from what suits the student to the prestige of schools); 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, 1099 (1999); but see Mitchell Berger, *Why the U.S. News and World Report Law School Rankings Are Both Useful and Important*, 51 J. LEGAL EDUC. 487, 489 (2001) (doubting whether anyone encourages students to take the rankings as gospel).

26. LAW SCHOOL DEANS SPEAK OUT ABOUT RANKINGS (Law School Admission Council 2005), available at <http://www.lsac.org/pdfs/2005-2006/RANKING2005-newer.pdf> [hereinafter DEANS SPEAK OUT].

C. Presentations of Data as Ranks Are Inherently Misleading

All rankings present data in a misleading way. They appear accurate and validated, but they actually throw away information. Take, for example, the magnitude of differences. Rankings, unlike measurements or even the summary scores built from measurements, make schools appear less different or more different in overall quality than they actually are. The true differences between closely ranked schools are sometimes small, sometimes large, but are always portrayed as having the same magnitude.

Assume for an imaginary moment that the *U.S. News* criteria are the best indicators of legal education quality and that the *U.S. News* weighting is optimal for the applicant; in other words, assume that the final scores given by *U.S. News* are suitable, at least with regard to the criteria included. Judging by the output of the 2005 *U.S. News* formula, any two schools ranked between 39th and 102nd are less different in quality than the schools ranked 1st and 6th. A difference of sixty places near the middle of the rankings represents about the same difference as six places near the top of the rankings. If a person could sensibly see Chicago (#6) as superior to Yale (#1), then a person could also sensibly see Kansas (#100) as superior to Ohio State (#39). According to *U.S. News*, the difference in quality between Stanford (#3) and Michigan (#8) is greater than the difference between school number 49 and school number 95. The difference between school number 77 and school number 99 is the same as the difference between school number 5 and school number 6. The difference in quality between school number 58 and school number 83 is less than the difference between school 1 and school 2. Thus, according to *U.S. News*, an applicant would make a smaller educational "sacrifice" by choosing Seton Hall (#83) over Loyola (CA) (#58) than choosing by Harvard (#2) over Yale (#1). Of course some students read the rankings correctly, recognizing the microscopic size of middle-range differences in overall quality, and recognizing that mere noise in measured factors can cause large changes in rank. But others appear to attach more importance to the differences in ranks than those differences deserve, judging by the conversations that take place on the Web when new rankings come out.

In the lower half of the ranks, *U.S. News* ignores minute differences by grouping schools into two tiers. This also creates problems. While the difference between the top school in Tier Three and the bottom school in Tier Four might be meaningful, there are other pairs of schools more closely straddling the border between tier three and tier four. For those schools, the division into tiers grossly exaggerates the insignificant differences in overall quality between them.

Figure 1 shows the difference between presenting the scores and presenting the ranks of *U.S. News*'s top 102 schools. The curved line shows that after an initial drop, projected quality diminishes very gradually, at least for the schools included. The lower line graphically represents the fact that ranks continue to drop by the same amount whether the quality differences are large or small. The line is stepped at the bottom because *U.S. News* does not present the ranks of the bottom 77 schools but merely breaks them into groups. This lower line shows the problem with presenting schools in clusters. Such groupings will probably exaggerate the difference between schools across borders of the clusters whose scores are not that different. Finally, note the divergence of the two lines. The difference between the two is a graphic representation of one form of distortion inherent in the *U.S. News* rankings.

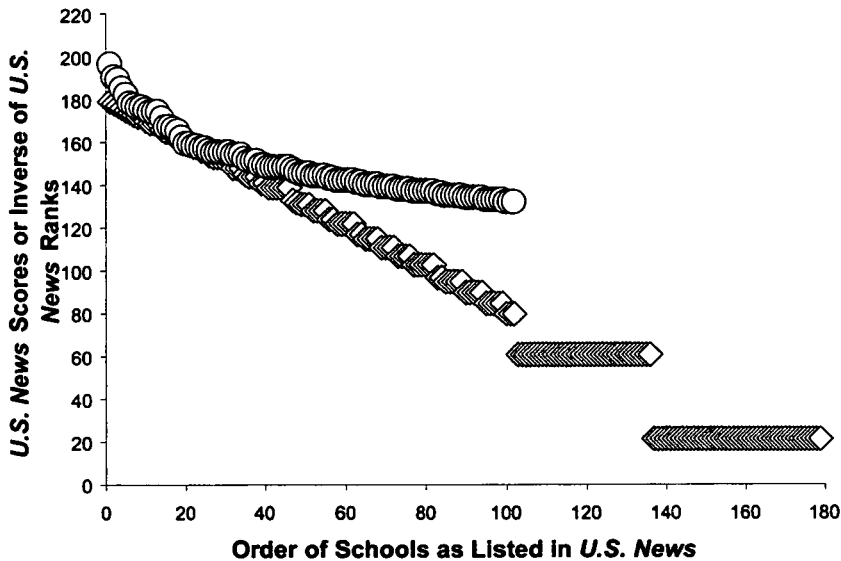


Figure 1. Graphical Presentation of the Difference Between Ranks and Scores, using *U.S. News* Ranks and *U.S. News* Scores for *U.S. News*'s top 102 schools and *U.S. News* ranks for all 179 schools. *Squares* = inverse of *U.S. News* ranks; *circles* = *U.S. News* scores (linearly transformed). The actual *U.S. News* ranks are subtracted from 180. In order to put them on a similar scale, the actual *U.S. News* scores are transformed linearly by adding 97 (making the tangent at school 20). While the shapes of the curves are not arbitrary (one is linear with steps and the other is curved), how they intersect is arbitrary and depends on the choices for the constant used in the transformation of scores. Regardless of which constant is chosen, however, the basic point remains: presenting the differences as ranks distorts those differences in some way. *Data Source: America's Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 11, 2005, at 72–73.

One way of reducing the likelihood that students will exaggerate the differences between schools is to present the differences graphically. One example would be a scatter plot of scores plotted against full-time resident tuition for *U.S. News*'s top 102 schools, as shown in figure 2.

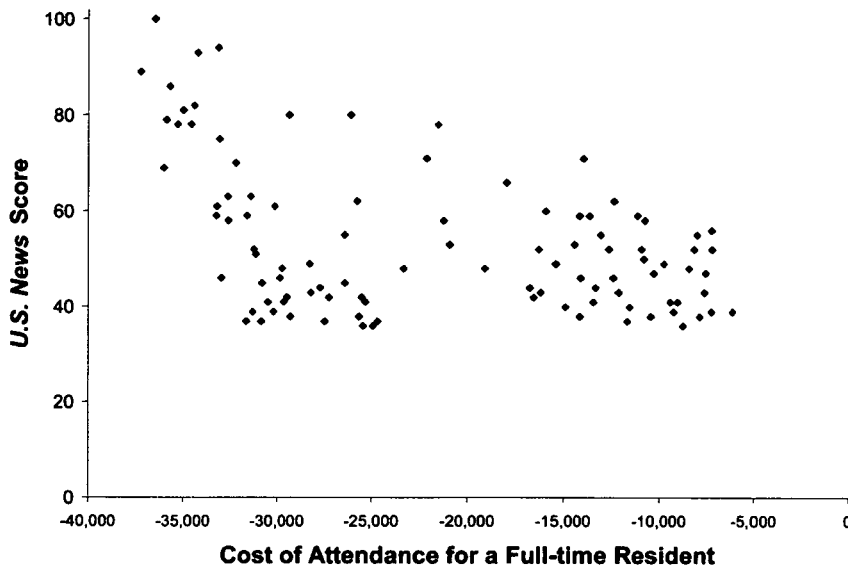


Figure 2. Scatter plot of the *U.S. News* score for the top 102 schools plotted against the cost for a full-time resident to attend. *Data Sources: America's Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 11, 2005, at 72–73.

Another way to present these differences is to graph the scores rather than list them by rank, as in figure 3.

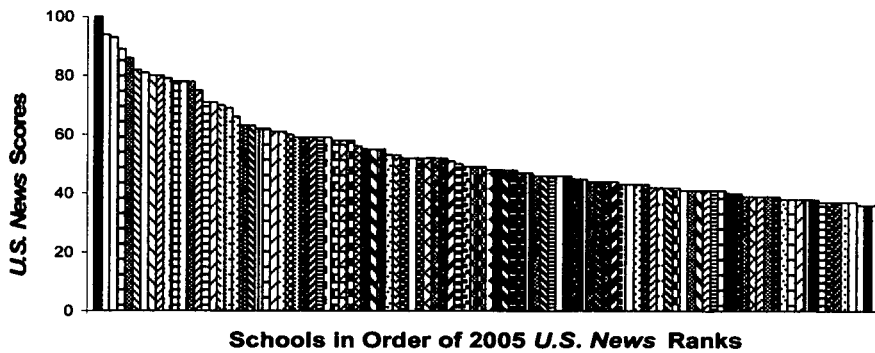


Figure 3. Bar graph showing the top 102 schools by score. *Data Source: America's Best Graduate Schools: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 11, 2005, at 72–73.

Although presentation of differences via rankings is misleading enough, combining rankings to create other rankings is even more dangerous. Suppose that two criteria, *A* and *B*, are to be combined into one summary score. On criterion *A*, three schools score 10, 2, and 0. On criterion *B*, they score 4, 5, and 6. Their ranks are 1st, 2nd, and 3rd,

respectively on criterion *A*, and 3rd, 2nd, and 1st on criterion *B*. Combining these ranks will give the three schools the same final score, all tying for first place. Turning cardinal numbers into ordinal ranks has thrown away information. If each point of achievement on the two criteria is equally important to the evaluator, the underlying scores should be added, yielding 14, 7, and 6, which shows that one school is substantially better than the other two, which are close but not the same. If the two criteria, rather than the points achievable on the two criteria, are of equal importance to the evaluator, then the scores should be standardized, yielding combined z-scores of 0.16, -0.46, and 0.30, showing the third school to be the best, by a small margin over the first and a large margin over the second.²⁷ In either case, using the underlying scores instead of the ranks preserves the information as to relative differences. Using rankings in numerical processes is a bad idea; garbage in, garbage out.

D. The Very Act of Publishing Rankings Distorts U.S. News's Reputation Measures

1. *U.S. News* Itself Has Changed How Law Professors View Law Schools

a. Two Hypotheses

The annual rankings of law schools by *U.S. News* do not go unnoticed by members of law faculties. In addition, law professors have very little information about the quality of programs at many competing schools. Given this concern about the rankings and the lack of information from other sources, it would not be a shock to find that *U.S. News* has influenced how law schools were ranked by the law professors that it surveyed. One would expect *U.S. News* to have pulled the reputation of a school among law teachers toward that school's previous ranking by *U.S. News*. For example, if the faculty reputation score of School *X* in a given year was 10th best and *U.S. News* ranked School *X* at 20th that same year, the faculty reputation score would probably move down toward 20th in the following year.

If this is true, the early *U.S. News* rankings may have become self-fulfilling prophecies of the value of schools' degrees. The schools ranked highly by *U.S. News* moved up in faculty reputation score and tended to stay there, and the schools that got low initial rankings moved down. In other words, the rankings were reflexive; there was an echo effect.²⁸ In the spring, *U.S. News* pronounced Yale to be number one. In the fall *U.S. News* listened carefully for new opinions. But what it really heard coming back was the echo of its own previous publication.

This echo effect would be expected to diminish over time. Suppose the reputation of School *X*, in the hypothetical example above, moves to 15th in year two. Because that reputation is a part of the *U.S. News* rank in year two, but is dragging *X* down less than in year one, *X*'s overall *U.S. News* rank should move up, say to 9th, in year two. In year three, the same thing occurs, with *X*'s reputation moving to perhaps 11th and its overall *U.S. News* rank moving to 8th. In year four, the reputation moves to 8th, the same as

27. The z-scores were calculated as follows: $((\text{score} - \text{mean score})/\text{standard deviation})$. The rounded z-scores are 1.39, -0.46, and -0.93 for criterion *A*, and -1.22, 0, and 1.22 for criterion *B*. The numbers reflected above are the sums of the two z-scores.

28. I have borrowed half of this expression from Brian Leiter, who called this the "echo chamber." See Brian Leiter, Commentary, *How to Rank Law Schools*, 81 Ind. L.J. 47, 51 (2006).

the overall rank. Eventually, the system reaches equilibrium and when it does the *U.S. News* ranks will have no more ability to pull the reputations. Of course, if the other factors change, the system never stabilizes completely, but the amount of room for the *U.S. News* ranks to pull the reputations will not be large. Thus, over time, the echo effect should diminish.

From these thoughts, two hypotheses emerge:

1. The *U.S. News* rankings changed law school reputations among the law professors they surveyed.
2. The yearly influence of *U.S. News* on reputations diminished over time.

b. Numerical Evidence

Richard Schmalbeck found in an earlier examination of specific law schools that overall rankings had little or no effect on reputations.²⁹ So, a more comprehensive examination is in order.

To test the two hypotheses, academic reputation ranks in year $T + 1$ were regressed on academic reputation ranks in year T and *U.S. News* overall scores in year T . The regression was:

$$academicrank_{T+1} = \beta_0 + \beta_1 \cdot academicrank_T + \beta_2 \cdot usnews_T$$

where β_1 and β_2 are statistical weights for the two predictors and β_0 is a constant. Each year's data, except for the first (1990) and last (2004), was used twice, once as year T and then again as year $T + 1$. Of course the previous year's academic rank was a very strong predictor of the new academic rank; one would not expect much variation in academic reputation from year to year. But the *U.S. News* score was also a predictor of the new academic ranks and was significant at the .05 level (regression 2). A second regression added twenty-six interaction terms, thirteen dummies for years times each of the two variables. In this regression, the *U.S. News* rank in year T increased in significance to the .001 level (regression 3).

For another regression, academic reputation scores were converted into ranks. These academic reputation ranks were compared to *U.S. News* ranks. A difference between the academic reputation rank and the *U.S. News* rank should lead to a change in the same direction in the academic reputation rank in the following year. New variables were constructed from the differences. One new variable was academic rank in year T minus *U.S. News* rank in year T . Another new constructed variable was academic rank in year T minus academic rank in year $T + 1$. If the first hypothesis is correct, the latter new variable should be a function of the former new variable. So, the regression equation was:

$$academicrank_T - academicrank_{T+1} = \beta_0 + \beta_1(academicrank_T - usnewsrank_T).$$

29. Richard Schmalbeck, *The Durability of Law School Reputation*, 48 J. LEGAL EDUC. 568, 576-80, 585 n.21, 586 (1998).

Aside from the conversion of scores to ranks,³⁰ this regression equation is mathematically similar to the previous one, but is more restricted in that the coefficients for *academicrank_T* and *usnewsrank_T* are linked together. The result was that the difference between *U.S. News* rank and academic rank was a predictor of the subsequent change in the academic rank, significant at the .001 level (regression 4).³¹ This effect was stronger for the schools that were in *U.S. News*'s top 17 in 1990. For the top 17, the coefficient is .200, and for the schools not in the top 17 the coefficient is .045 (regressions 11–12). This difference is significant ($p < 0.05$) (regression 14). It appears that professors of law are following *U.S. News*, and following more closely for the schools initially ranked in the top 17.

The second hypothesis was that this correlation would diminish with time. To test this, the years were divided into halves, *T* before 1997 and after 1996, and separate regressions were performed on the two subsets. For the earlier years, the difference between *U.S. News* and the academic rank was a significant (at the .001 level) predictor of the coming change in academic rank and had a coefficient of .102. For the later years, the difference was not a significant predictor and had a coefficient of .028 (regression 4). A dummy variable for the early years was interacted with the independent variable. When the resulting interaction term was added to the regression for all years, its coefficient was significant at the .01 level (regression 13), showing that the effect was significantly stronger for the early years.

In the past, prospective students might have been well-advised to pay attention to the academic reputations reported by *U.S. News* even though the reputation surveys could have been done better. Now, however, because *U.S. News* rankings have influenced the reputations the surveys were designed to measure, the reputation scores have lost value as independent indicators of quality.

c. Anecdotal Support

There is anecdotal evidence that those entering law teaching are reading and heeding *U.S. News*. One faculty member from a school that rose in the rankings has stated that moving up in *U.S. News* had the effect of improving the pool of hires from which to choose new faculty. Interestingly, the rise in *U.S. News* improved the school's pool of applicants for faculty positions more quickly than it improved the pool of applicants for student positions. Perhaps, since it is their own status as professional educators that is at stake, it is not surprising that legal education insiders follow *U.S. News* more closely than potential applicants. But whatever the reasons, the evidence confirms that law professors parrot back to *U.S. News* what it publishes, and *U.S. News* reports that parrotage as if it were an independent source.

2. *U.S. News* Is Changing Law School Reputations Among Lawyers

U.S. News has had a similar effect on the reputation of schools as seen by lawyers. To test for this, the third regression was repeated using lawyer reputations instead of

30. It was necessary to use ranks instead of scores because the reputation scores were not published by *U.S. News* until 1998.

31. I ran the regressions with a panel data approach and got essentially the same results.

academic reputations. The difference between *U.S. News* rank and lawyer rank was a significant (.001 level) predictor of the subsequent change in lawyer ranks of the schools (regression 5).

However, there are some differences from the results in the academic reputation regressions. *U.S. News* seems to have had a smaller effect on lawyer reputation scores in early years but a larger effect more recently (regression 5). This difference is significant at the .001 level (regression 15). One way to explain this is to assume that during the first few years lawyers did not care much about the *U.S. News* rankings. As the students that had chosen schools based in part on *U.S. News* became lawyers, however, they changed the mix of lawyers surveyed into a group that was paying attention. In addition, it simply may have taken lawyers more time to pay attention to *U.S. News*.

3. *U.S. News* Has Changed Law School Reputations Among Matriculants

U.S. News has had a similar effect on the reputation of schools among law school matriculants. If the LSAT scores of entering students are an indicator of the reputation of schools among prospective students, the LSAT and UGPA numbers can be examined with the same lens applied above to the academic and lawyer indicators of reputation. The disparity between the LSAT rank and *U.S. News* rank in year T should predict some of the change in LSAT rank from year T to year $T + 1$. And it does. As a predictor, the disparity was significant at the .001 level for the 75th and 50th percentile LSAT and at the .005 level for the 25th percentile LSAT (regressions 6–8). The results for the change in UGPA were similar. The difference between UGPA rank and *U.S. News* rank was a significant predictor of the subsequent change in UGPA rank, significant at the .001 level for the 75th and 25th UGPA percentiles (regressions 9–10). Therefore, *U.S. News* may be affecting the behavior of applicants to law schools in the same way that it has affected the reputations among lawyers and academics.³²

The assumption just made was that the LSAT and UGPA numbers are indicators of the reputations of law schools among prospective students. But are they? At any law school, these numbers are a function of both the attractiveness of the schools to the applicants and the attractiveness of the applicants to the schools. Changes in the median or any other percentile LSAT or UGPA of a school could be due to changes in

32. While the general effect is clear, the response of students is complicated in a number of ways. For example, after the median LSAT at Indiana University School of Law–Bloomington rose from 162 to 163, the admissions office saw a substantial reduction in the number of applications from students with LSAT scores of 162, presumably because students rightly deduced that their odds of admission were substantially lower than they would have been the previous year. Professors Sauder and Lancaster have found that *U.S. News* rankings have significant effects on the decisions of applicants. Michael Sauder & Ryon Lancaster, *Do Rankings Matter? The Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools*, 40 *LAW & SOC'Y REV.* (forthcoming Mar. 2006). One study of applications to undergraduate schools also found that changes in rank affect number of applications. James Monks & Ronald G. Ehrenberg, *The Impact of U.S. News & World Report College Rankings on Admissions Outcomes and Pricing Policies at Selective Private Institutions* (Nat'l Bureau of Econ. Research, Working Paper No. 7227, 1999).

the admissions process at the school or changes in the attitudes of students toward the school.

It seems unlikely that recent changes in the LSAT numbers at most schools are due to changes in the behavior of admissions committees. Since the late 1990s at the latest, law school admissions offices have been aware that the LSAT statistics are an important component of the *U.S. News* rankings. Many, if not most, law schools, in their attempts to increase their ranks, have increased the weight given LSAT scores to the point that they deny very few applications that would increase their LSAT numbers. When all law schools admit all of the students that will help their *U.S. News* numbers, law school admissions behavior drops out as a confounding factor, leaving the choices of students as the key determinant of the LSAT statistics for each school. Thus, the assumption that changes in LSAT and UGPA percentiles reflect changes in the reputations of schools among applicants is justifiable. The ability of a school to increase its LSAT numbers relative to other schools' depends on the choices of applicants. Their behavior in turn depends on whether the school is attractive to applicants, which depends in part on the reputations of the schools among applicants.

The assumption that UGPA numbers of a school are mostly up to the students is not as safe. Schools have not yet caved in on that criterion and still reject some applicants who would help their UGPA statistics. As a result, changes in law school behavior could account for some of the changes in relative ranks. Nonetheless, if many schools have stable admissions policies, it should still be true that schools will increase their UGPA numbers as students find the schools to be more attractive.

Therefore, the findings that changes in the LSAT and UGPA statistics can be expressed as a function of differences between LSAT and UGPA ranks and *U.S. News* rank supports the conclusion that *U.S. News* has influenced the reputations of schools among prospective students. It is not a surprise that *U.S. News* influences the attitudes of applicants; presumably, that is why applicants buy the rankings issue in numbers large enough to keep *U.S. News* publishing it year after year in the face of heaps of criticism for doing so. Nevertheless, *U.S. News* rankings seem to have been self-fulfilling prophecies: the rankings led students with higher LSATs and UGPAs to more highly ranked schools, and the matriculations of those students cemented the higher rankings, whether or not the rankings were deserved (whatever that means) in the first instance. If a school had an aberrantly good year, *U.S. News* helped to cast that result in concrete, reducing the chances the school would return to its previous rank.

4. Unreliable Reputations Make Up a Large Part of the *U.S. News* Rankings

The bottom line is that a number of the current *U.S. News* factors are polluted by the *U.S. News* rankings and thus should not be considered to be based on independent sources of information. Reputations among faculty members, reputations among lawyers, LSATs, and UGPAs are all influenced by *U.S. News*. Those factors make up 62.5% of the *U.S. News* score. Eventually, if the remaining 37.5% factors are stable, the effect of that 62.5% will diminish nearly to zero. If the other 37.5% are not stable, the effect of the reputation factors will be to slow the movement of the rankings, although those reputation factors will continue to trend toward the ranks that would result from the 37.5% factors alone. The reputation factors will be essentially wiped out of the rankings, except as an occasional stabilizer, and the rankings will settle in to what they would be if constructed entirely from the factors that make up the other 37.5%. Thus those remaining factors must bear all of the weight of the *U.S. News*

rankings, making it all the more important that the remaining factors be legitimate indicators of quality. As the next subpart explains, that is a responsibility they cannot bear.

E. A Number of the Remaining Criteria Are Also Problematic

If the goal is to compare the quality of legal education programs offered at the nation's law schools, a number of the criteria included in the rankings are problematic because they do not directly measure anything prospective students care about. It is, of course, possible that these criteria are good indicators even though they are not direct measures of quality of instruction or experience. Careful research might show that they do provide useful insight into the differences between schools. But that sort of research has not been done. It is also possible that there is such a strong logical connection between the factors and what students would want to know that the factors can serve as indicators until it is proved that they do not correlate with quality. The purpose of much of the following discussion is to show that the logical connection between the factors and quality is not so strong that they can stand as indicators without empirical validation.

1. Bar Passage Rate

One of the factors used by *U.S. News* is bar passage. The number used by *U.S. News* for comparing schools is a ratio of the school's bar pass rate in the jurisdiction where the plurality of a school's students take the bar to the overall pass rate in that jurisdiction. This ratio is a poor indicator of school quality because it is statistically easier for a school to exceed the target bar pass rate by a large percentage in states where the overall rate is low—such as in California where the overall pass rate for first time takers is 61%—and harder to have a strong positive result where the overall pass rate is high, such as in Minnesota where it is 92%.

To see why this is so, consider the following hypothetical example. Suppose that there are two states, *X* and *Y*, that have applicants with the same ability taking the same bar exam. State *X* sets the cut score at 125 and has a 60% pass rate and State *Y* sets the cut score at 110 and has a 90% pass rate. Two schools in those states matriculate students with the same aptitude for the bar exam. Without any instruction, 30% of the test takers in either state would score above 110 and 10% would score above 125. But the two schools provide different quality instruction. School *A*, in State *X*, teaches 85% of its students to score above 110, and 70% to score above 125. School *B*, in State *Y*, teaches 100% of its students to score above 110, and 95% to score above 125. *U.S. News* would give School *A* a score of 70/60 or 1.17, and School *B* a score of 95/90 or 1.06. Hypothetical School *B* has done far more to increase the chances a student will score well on the bar exam, yet it receives a lower score on the *U.S. News* bar passage criterion. The ratio used by *U.S. News* is not a valid indicator of quality when the average rates vary as much as they do across states.³³

33. At the 2004 Midwest Law and Economics Conference, a participant suggested that an "odds ratio" might be a better way to represent this factor. While it does account for the differences in state bar pass rates, the odds ratio runs into difficulties when the bar pass rate nears 100%, as it does at some schools, because the denominator approaches zero and the ratios

Other problems are equally troubling. The bar pass rate is a poor indicator of school quality because students vary greatly in their ability to pass the bar before they matriculate. One cannot tell from the passage rate whether the school has improved or reduced its students' chances of passing. Suppose School *C* doubles the chances its students will pass from 45% to 90% and School *D* increases its students' chances of passing the bar somewhat from 80% to 92%. A valid measure of bar-related teaching quality would rate *C* higher than *D*, but *U.S. News* does just the opposite. The pass rate of 92% from a school with top students might reflect poorer teaching than a 90% pass rate in the same state from a school with less-gifted students. The *U.S. News* method fails to account for differences in student aptitude and effort.

Another problem with the approach employed by *U.S. News* is that the students taking the bar in the home states are often not a representative sample of the whole graduating class. Comparing Indiana University School of Law–Bloomington and the University of Illinois, a greater portion of IU–B's best students do not take the local bar exam. As a result, IU–B will be at a disadvantage compared to Illinois even if the schools do an equal job of preparing students for the bar exam.

The discussion above has assumed that bar passage is a relevant consideration. There are reasons, however, to refrain from considering it at all. For starters, the bar passage rate is not a great measure of school quality. As noted above, preparing students to be good lawyers, for cases from the most routine to the most difficult, is not at all the same as preparing them to pass a single test of legal knowledge.

More important, bar passage might correlate negatively with preparing students for life in the law. The time faculty members have to spend with students is limited, as is the time students have to study. Teaching students what they need to know to pass the bar will reduce the time teachers and students can spend on other lessons. Most teachers expend considerable effort figuring out what their students need to know to be successful and to be good citizens of the legal world. Spending more time on bar passage imposes costs in terms of other educational goals. No one has made a convincing case that law school faculty members have undervalued bar passage in their teaching.

2. Starting Salaries

Another factor that is sometimes thought of as a measure of law school quality is the average starting salary of its graduates. One major problem with this as an indicator is that it, like bar passage, does not account for differences in the income potential of the students before they started school. To account for differences in matriculants, one might construct a value-added model by regressing salaries on LSAT and UGPA, and perhaps other pre-law school indicia of income potential. One advantage of incorporating the results of such a model into popular rankings is that it would reduce the incentive to overweight or lie in order to increase the LSAT, because doing so would reduce the value added. Such a regression ought also to include the geographic region of the employers because there are large regional differences in starting

climb dramatically for small changes in number of students that pass. For example, in a jurisdiction with a 90% pass rate, a school with a 99% pass rate gets twice the score of a school with a 98% pass rate, which seems far too great a difference for the one extra student that passes.

salaries.³⁴ Without such a factor, schools that produce lawyers for markets that have lower wages and costs of living would look worse than they actually are. One problem with doing such a regression is that it would require data not now available. Another problem is that the numbers do not include gumption and other factors that may be known to the admissions committees. For that reason, assessing the value added by schools might best be done by comparing the success of students that were accepted by a school but attended a lower ranked school to the success of students that were accepted and did attend, as has been done for undergraduate programs.³⁵ Even constructed to account for those confounding variables, a simple starting-salary factor is problematic because an average or median does not give any indication of the spread of salaries, and a risk-averse student might care as much about that as about the starting level. He might prefer a low starting salary in order to avoid a small risk of an even lower starting salary. Finally, there is reason to believe that some of the jobs with the highest salaries are not the jobs in which lawyers are happiest.³⁶ If the students that receive the best preparation might vie for jobs that pay less, higher salaries are not a mark of better preparation.

3. Employment at Graduation and at Nine Months Out

It would seem that whether students get jobs at all after law school would be a good measure of the quality of their education. After all, employers want employees who will be good lawyers, not just those who can pass two days' worth of exams. Employment is a proxy for employability which may be a proxy for quality of legal training. Even without considering the complex of issues surrounding the questions of what kind of work will increase a student's happiness as a worker and whether improving the employability of graduates makes them better contributors to society, there are at least two reasons to worry when employment is used as an indicator of school quality. The first is that this factor can be manipulated. Law schools can lie about their employment. More likely, law schools can hire their graduates into temporary positions so that they will be employed at the point in time when the measurement is taken. Clearly, if the rate a month later is only 80%, a 100% employment rate is more misleading than revealing.

The second problem with employment rates is that they may get too much weight in light of the small differences that exist. Because *U.S. News* currently standardizes the scores on each of its criteria and then adds the standardized scores, it does not matter whether the actual differences are small or large; they will get 12% of the weight. If the

34. In their very interesting Article in this symposium, Professors Henderson and Morriss suggest that the regional employment market, particularly for high-paying law jobs, affects a student's choice of law school. See William D. Henderson & Andrew P. Morriss, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 IND. L.J. 163, 188–190 (2006).

35. See Stacy Berg Dale & Alan B. Krueger, *Estimating the Payoff to Attending a More Selective College: An Application of Selection on Observables and Unobservables*, Q.J. ECON., Nov. 2002, at 1491.

36. Professor Kenneth G. Dau-Schmidt and I will discuss this point further in a piece forthcoming in this volume of the *Indiana Law Journal* detailing the results of a survey we conducted of Indiana University School of Law–Bloomington alumni.

reputation factors are reflexive and therefore unimportant in the long run, employment at nine months becomes one-third of the critical set of factors. The smaller the actual differences in employment rates, the less likely those differences deserve to make up, effectively, one-third of the rankings. There is some evidence that the spread is decreasing, but more data are needed to confirm or rebut a trend.³⁷

Even if there has not been substantial convergence already, it seems likely that there will be substantial convergence in the future because schools are expending considerable effort to increase their employment figures. While this is good for students, it reduces the value of the employment statistic as a measure of school quality to the point where the statistic cannot support the weight it is given.

The third problem with *U.S. News's* use of employment percentages is that the employment rates reported are not limited to employment in law-related jobs. The *U.S. News* questionnaire references the American Bar Association (ABA) questionnaire, which in turn references the National Association of Law Placement (NALP) questionnaire. NALP has taken the position that for purposes of its questionnaire, "a job is a job." There is no distinction between clerking for a federal judge and flipping burgers. Data that is so weakly related to the purpose of going to law school cannot carry the weight *U.S. News* loads upon it.

4. Scholarship Money

Another ill-considered factor is the extra credit *U.S. News* gives for scholarship money. First, it paints an inaccurate picture when the discount given to residents by state schools is not considered to be financial support. It is hard to see how tuition discounts for in-state students are different from scholarships given for other reasons.

More important, scholarships are of little to no value to the students who do not get them. Assume that the other *U.S. News* criteria are accurate and properly weighted and School *A* ranks higher than School *B*. And assume that when scholarship money is added to the mix, School *B* rises above School *A*. Should a student that gets no money from either school choose School *B*? Of course not. The inclusion of scholarship money has misled her. For those who do get the scholarship money, it should go into the price consideration, not into the quality-of-product part of the analysis. As long as tuition is not a factor, and it should not be, reductions in tuition should not be a factor either.

The inclusion of what is effectively a price factor into the rankings serves as a good example of the problem with forcing a variety of factors onto a unidimensional scale. For wealthy students, a \$100,000 difference in price is of little moment; for others it is critical. This is easy to see when it comes to price. But it is also true for the other factors that go into the rankings. For some students, employment rates matter, for others they do not. For some students, reputations matter, for others they do not. *U.S. News's* weighting of the factors assumes all buyers want the same thing, when it is obvious they do not. An opportunity to place their own weights on the factors would serve them far better than a single arbitrary weighting.

37. The standard deviation of 0.096 in 2000 had shrunk to 0.063 in 2002. However, it had grown to 0.079 in 2004. (The figures for 1994 and 1996 were for employment at six months out of school, rather than nine, and are not comparable.)

5. Faculty/Student Ratio

All else being equal, the more teachers there are per student, the better the educational experience probably is for the students. But all else is not equal. Schools impose different course loads on their teachers. Suppose School *X* has 400 students taught by forty teachers for a faculty-to-student ratio of 1:10, while School *Y* has 400 students taught by fifty teachers for a faculty-to-student ratio of 1:8. School *Y* gets the higher ranking. Assume, however, that the teaching load at School *X* is four courses and the teaching load at School *Y* is three courses per year. If all students take eight courses, that is 3200 student-courses to be taught at each school. If the students are evenly distributed, at School *X* there will be twenty students in each course and at School *Y* there will be more than twenty-one students in each course. One might argue that this is not an important difference, but that is beside the point. School *Y* has been given credit in the rankings when it deserves discredit. If the differences in course loads were random, it might be acceptable to ignore this complication. But the teaching loads are inversely correlated with faculty-to-student ratios. Schools that have higher faculty-to-student ratios tend to be the richer schools, and those schools tend to require less teaching of their faculty. This inverse relationship undermines the validity of the faculty-to-student ratio as an indicator of the quality of schooling a student can expect.

One other problem with using ratios of students and teachers is that it is not clear which is more informative, a student/faculty ratio or a faculty/student ratio. For mathematical reasons, it matters to the ultimate rankings which ratio is used, but *U.S. News* has offered no reason for its apparently arbitrary choice.³⁸

6. Acceptance Ratio

U.S. News uses the acceptance ratio as one indicator of selectivity. The theory is, of course, that a school that accepts a small portion of the students that apply must be highly selective and that is a good marker of quality. But there are a number of problems with using acceptance ratio as a proxy for quality. For one thing, it is quite likely that some schools attract many applications simply by virtue of being in a major population center. Another serious problem is that the number of applications to a school depends on the clarity of signals it sends with regard to admission standards. A top quality school might be attractive to many students, but if it lets it be known that it accepts applicants only if they have an LSAT above 165, it will get few applications and have to accept many of them to fill the class. It is illogical to conclude that schools that are not highly selective are not high quality. On the other hand it is also not true that schools that are highly selective are high in quality. An average school might be able to attract many applications by announcing that it will randomly select ten students for its class each year. More realistically, a school can keep applications up by making the admissions standards vague. The more students there are that might have a chance of acceptance, the more students that might apply. While it is true that some schools have difficulty attracting enough students to fill the class and will have a low

38. To see the difference in operation, play The Ranking Game. See *supra* note 3.

acceptance ratio for that reason, for the majority of schools, the acceptance ratio is more an indicator of the predictability of admission than the quality of the school.

7. Wealth of School—For Example, Faculty Resources

Generally, the more money a school has, the better the experience for its students. For that reason, faculty resources is a valid indicator of educational quality. However, some organizations are more efficient than others and that difference in efficiency weakens the connection between a school's resources and expenditures and the quality of its product.

There are two other problems as well. Some faculties put more effort into teaching and others put more into research. Although research benefits the students by training and informing the faculty, by legitimating an aura of inquiry, and by increasing the reputation of the school, it is quite possible that many faculty members spend less time on teaching than would serve the students well. And the schools that tend to spend more on faculty resources for research than what is optimal for students tend to be the schools that have more money. This further weakens the connection between school resources and the quality of the product the student will purchase. Finally, as with starting pay for graduates, there are substantial regional differences in cost-of-living and lifestyle attractions that allow schools in some regions to attract an accomplished faculty using less money than would be necessary in other regions.

Despite those substantial caveats, it is likely that there is still a positive correlation between resources and merit, so it makes some sense to include resources as a factor in rankings. Indeed, if this is an important factor, it may provide good justification for publishing rankings and not data on the various criteria. Schools would often be unwilling to provide accurate data on resources if that information might be made public. They may, however, be willing to provide the data if it is hidden inside a ranking based on other factors. In this way rankings may serve the purpose of getting into the public domain the useful information on resources that cannot be published outright. Rankings provide a way of publishing secret information without revealing too much of the secret.

To reiterate a point made above, most of the criteria on which the *U.S. News* rankings are based are not direct measures of anything particularly valuable to a prospective student or an employer wanting to hire a student. *U.S. News* criteria might be indicators of quality, but they have not been validated by empirical study, and they have not been established to be logically connected with what readers of the rankings might reasonably hope to learn.

IV. IMPROVING THE VALIDITY OF EVALUATION

If anyone were willing to expend substantial resources to learn more about how law schools compare, he or she might consult experts in educational evaluation. The process of talking to such experts would itself help those interested in law school evaluation to think about criteria for evaluation that they would otherwise not even imagine. Some of those experts would probably recommend close human observation of the schools to learn about the schools directly or to validate numerical indicators of

quality. Medical schools employed educational evaluators to help them assess their teaching in the 1970s.³⁹ But it does not appear that any person or group is interested enough to spend the money required for serious study of law schools.

The question then becomes whether evaluation on the cheap can be improved. Many of those buying the law school rankings issues of *U.S. News* are prospective students, and there are some changes that would make the rankings more useful to those readers. Two improvements suggested above would be to publish the data without constructing summary scores, or if summary scores are calculated, to add a graph that shows the magnitude of differences in those scores. Another improvement would be to find factors that are better indicators of school quality. A list of a few possible factors follows.

A. Student Involvement

One criterion that might improve rankings by indicating the level of learning is the degree of student involvement in learning activities. George Kuh at Indiana University is studying this, but the data are not public, so they cannot be used, at this time, in rankings.⁴⁰ Nevertheless, this sort of research might be available in the future to students trying to choose a school.

B. Quality of Teaching

The most obvious deficiency in most of the current rankings is that they lack information on the quality of teaching. As this is a central concern for students, it ought to receive more attention. One of the reasons that it does not is that there are many different aspects of teaching quality. Some schools will be better at teaching skills of policy analysis, some better at teaching legal doctrine, and some better at teaching the arts of legal research and writing.

Surveys of students are sometimes conducted, but it is not clear that students have enough information about what they need to know to evaluate their learning experience. Faculty members who read student evaluations know that students often praise or criticize in ways that show their notions of the goals of legal education differ from those of the faculty. For example, students would probably think "Professor *X* made us learn all of the course ourselves," is a criticism, while many teachers would consider it a compliment.

C. Providing Educational Opportunities

In addition to clinical programs and interdisciplinary studies from biology to economics to feminist studies, special learning opportunities outside the classroom form an important part of the academic life at some law schools. Speakers on campus, library facilities, internships, and other enriching and enhancing experiences await

39. The use of educational evaluators at medical schools has been personally communicated to me by Robert E. Stake, an educational evaluator at the University of Illinois.

40. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, LSSSE 2004 ANNUAL SURVEY RESULTS: STUDENT ENGAGEMENT IN LAW SCHOOLS: A FIRST LOOK, (2004), http://www.iub.edu/~nsse/lssse/2004_annual_report/html/index.htm.

students in varying degrees and in varying formats at different schools. Capturing and presenting some of that variety should help applicants to find a school well tailored to their interests and aspirations.

D. Obtaining a Desired Job

Instead of surveying alumni about law school reputations, researchers could more usefully survey alumni regarding whether they obtained the jobs they wanted to obtain. Such measures of individual success, if taken at enough schools, would help when added to the rankings. Differences in quality of life as a lawyer, and the lawyers' perceptions of their schools' contributions to those differences, would also be useful to students comparing schools. The University of Michigan has been gathering such data for many years, and Ken Dau-Schmidt and this author have been surveying Indiana University School of Law—Bloomington graduates in recent years. Such data would be more helpful, and useful in rankings, if they were gathered by all schools. And, the gathering of such data could be considered an attribute of good governance. If persons ranking law schools would include a simple factor for whether the school systematically surveyed its graduates, that factor might encourage such surveys and thereby generate information useful to prospective students.

E. Achieving Happiness

Why limit surveys to legal success? It is possible that law school makes a difference to happiness in other dimensions. At least one study indicates that being married improves happiness.⁴¹ A prospective student might sensibly consider whether he or she is likely to find a spouse while in law school. Such data would probably not be too costly for schools to collect. It might also be useful to know whether attendance at any schools led to higher rates of divorce or imprisonment. Gathering such data is too much to expect of *U.S. News*. It would cost a lot and probably not sell many more magazines. But it is not too much to expect of academic research. This kind of information would be useful to the world and parallels existing institutional research.

F. More Rankings Would Help

U.S. News is in the business of supplying a product for a consumer demand, and its success indicates that the *U.S. News* is providing what people want to read. Rankings are popular for a number of reasons. For one, they appeal to our interest in contests. That consumers like contests is shown by the popularity of sports and reality TV shows. That consumers like serious matters to be treated as contests is evident in the media coverage of political campaigns, where the strategies and maneuvers of the candidates get more attention than the issues. Rankings turn the suppliers of legal education into competitors in an entertaining game where the goal is higher rank. In addition to being entertaining, rankings are decisive. When people of modest means face the prospect of spending \$100,000 on a product they know nearly nothing about,

41. Richard A. Easterlin, *Explaining Happiness*, 100 PROC. NAT'L ACAD. SCI. 11176, 11178 (2002).

rankings offer security by resolving doubts. It is much more comforting to be presented with a clear basis for decision, a unilateral ranking, than to be presented with a mass of information from which many choices could be justified. Many consumers of educational rankings do not want arguments, they want answers.⁴²

Perhaps the best hope for change, then, is that more sources will cater to this consumer demand for simple answers to complex questions. As is indicated by Michael Sauder and Wendy Nelson Espeland⁴³ in this issue, the students, the public, and the law schools would be better served if there were more rankings. And these rankings should not be limited to those made from a supposedly neutral and general perspective. Special interests should publish their rankings. Environmentalists should identify top schools in the production of environmental lawyers or policy. Corporate and political interests should likewise publish their own partisan rankings. If more legal academics would follow Brian Leiter's lead⁴⁴ and collectively and individually create their own rankings, and especially if they were to invest additional time and money in generating valid information on new criteria, the diversity and utility of the rankings would increase.

It should not be assumed, however, that the mere addition of new rankings will solve the incentive problems that afflict the legal academy. Despite the fact that there are a number of popular rankings of business schools, some business educators have argued that rankings are having detrimental effects on business education.⁴⁵ Indeed, because business schools are more responsive to incentives and their rankings rely far too much on satisfaction of graduates, business programs may have suffered even more destructive effects than those felt so far in law schools.

42. Perhaps The Law School Ranking Game Web site, *see supra* note 3, could increase its viewership beyond the current thousand hits per day if it were marketed more as a source of personalized answers and less as a critique of rankings. It is somewhat ironic that those headed to law school want answers instead of arguments.

43. Sauder & Espeland, *supra* note 19; *see also* Leiter, *supra* note 28, at 52.

44. Leiter's Law School Rankings, <http://www.leiterrankings.com> (ranking law schools on faculty and student quality) (last visited Nov. 24, 2005).

45. Consider the following abstract from SSRN:

U.S. business schools are locked in a dysfunctional competition for media rankings that diverts resources from long-term knowledge creation, which earned them global pre-eminence, into short-term strategies aimed at improving their rankings. MBA curricula are distorted by quick fix, look good packaging changes designed to influence rankings criteria, at the expense of giving students a rigorous, conceptual framework that will serve them well over their entire careers. Research, undergraduate education, and Ph.D. programs suffer as faculty time is diverted to almost continuous MBA curriculum changes, strategic planning exercises, and public relations efforts. Unless they wake up to the dangers of dysfunctional rankings competition, U.S. business schools are destined to lose their dominant global position and become a classic case study of how myopic decision-making begets institutional mediocrity.

Harry DeAngelo, Linda DeAngelo, & Jerold L. Zimmerman, 'What's Really Wrong With U.S. Business Schools?' (unpublished paper, 2005), <http://ssrn.com/abstract=766404>.

V. WILL THE MARKET OFFER BETTER RANKINGS IN THE FUTURE?⁴⁶

Regarding some of the defects in the *U.S. News* rankings, there is some hope that *U.S. News* will improve its product, and perhaps more hope that another supplier will displace *U.S. News* by providing a better product. Measuring the quality of educational experience offered by schools is not easy, but it could be done better, and better rankings should attract readers, perhaps even readers willing to pay for the information. If Brian Leiter's rankings more accurately depict the relative quality of schooling a student can expect, the market might gradually shift to his product. If this occurs, *U.S. News* will have less influence. Other law teachers—and various lawyer organizations—could join in the competition, offering alternative ranking systems, ones that give students better information on which to base their choices. It is likely that there is sufficient demand to support additional suppliers.

It must be remembered, however, that there are two types of problems with the criteria used in current rankings. One problem is that the criteria do not directly assess something of value to the student: they have not been validated as good indicators of the quality of educational experience a student can expect, and they are not closely enough connected by logic to what the student would want to know to justify an assumption that they are valid measures of quality. There is reason for hope that future suppliers of rankings will base their rankings on criteria of greater validity than those used now.

The second problem, discussed in the first section above, is that the criteria used in the current rankings create harmful incentives for law schools, and to some extent for undergraduate students hoping to attend law school. An increase in the number of rankings taken seriously by employers and prospective students would reduce the influence of *U.S. News* on law school behavior, which could free schools to provide better educational experiences for their students. But little autonomy will be reclaimed if the alternative rankings employ the same criteria currently being used by *U.S. News*. For example, Brian Leiter has included the 25th percentile LSAT figures in his omnibus ranking, so his ranking does little to de-emphasize that criterion in the eyes of law school admissions committees. Is there any reason to believe that new rankings will exclude criteria when they learn those criteria create undesirable incentives? From where would such pressure come?

A. Schools as Facilitators of Rankings: Just Say "No"?

Law schools aid and abet *U.S. News* by providing data for use in the rankings. Faculty members, perhaps proud to have been asked, return *U.S. News*'s surveys, sometimes answering in ways that will serve their own interests rather than the interests of the *U.S. News* readers. Faculty members are unlikely to refuse answering surveys by *U.S. News* in order to support a competing ranking that creates better incentives. Even though the rankings do some injury to their schools, it is not in the interest of faculty members to boycott the questionnaires because those faculty members would lose their voice and power in the *U.S. News* process. By participating, faculty members can improve the relative standing of schools they want to help.

46. I thank Larry Ribstein for suggesting this question to me.

Schools participate, by submitting data requested by *U.S. News*, because they will suffer if they do not provide the data. If a school were to boycott *U.S. News*, it would diminish the authority of the *U.S. News* rankings by a small margin, and that small decrease in the power of *U.S. News* would create a corresponding increase in autonomy for law schools. However, that freedom would be spread across many schools, while the costs of rebuffing *U.S. News*, including the possibility of being excluded from the rankings, would be focused mostly on the boycotting school. Fear of exclusion, not confidence in the legitimacy of *U.S. News* as an evaluator, keeps schools sending data.

Moreover, the costs of *U.S. News* do not fall primarily on the schools or teachers. It is the students, more than the academic organizations, that suffer when the curriculum is aimed at lifting all students over the bar exam instead of presenting lessons tailored to the particular needs of the students or when scarce financial resources are spent on advertising to improve reputations among academics. It is clients and citizens who suffer when teachers teach to the test because that distortion of the educational process produces lawyers less capable than they would have been if the school had focused on students' educational needs rather than the bar exam. For these reasons, law schools and faculty members cannot be counted on to withhold data or in any other way boycott ranking providers in order to keep them from employing harmful criteria.

B. Students as Purchasers of Rankings

The very act of paying attention to *U.S. News's* rankings increases *U.S. News's* influence on law school behavior. If so, why do prospective law students do it? One possibility, of course, is that students understand the harms but see the benefits of the information as worth its costs. But that is not the only explanation. It is possible that they simply do not appreciate the ways in which their attention to *U.S. News* causes schools to change their curriculum for the worse. It is also possible that the harms from student attention are delayed, and hence fall on later students, while the benefits of the ranking information are immediate. For example, by the time the applicant chooses her school, *U.S. News's* inclusion of the 25th percentile or median in the calculations has already influenced the makeup of that student's entering class, and ignoring the rankings cannot undo that harm. A third possibility is that the harms fall on other persons outside law school. To see this, suppose there were two rankings, one that included the 25th percentile or median LSAT and UGPA and another new one that did not. Many applicants would choose the slightly more informative older ranking rather than switching to the newer ranking that benefits future clients by allowing schools to deliver a higher quality of legal education. For these reasons, even if prospective students recognize that the net harm caused by some *U.S. News* criterion exceeds its net benefit, it might not be in the interest of any individual to shift his magazine-purchasing dollar to the supplier of the greater social good. *U.S. News* or other suppliers will produce what readers are willing to buy. Prospective students, as direct purchasers, could demand rankings that create better incentives. But there is no guarantee they will do so when the benefits of those incentives accrue to others.

C. Will Employers Demand Better Rankings?

In some ways there is more hope that employers will demand better rankings since they are more closely connected to the clients' interests in good lawyering. However, as with the students and schools, the clients' interests are not the same as society's

interest. First, of course, in many situations, there are social interests not represented by any client. Second, if, at the same cost of education, all lawyers are better educated and therefore better able to serve their clients, it is not clear that the lawyers can capture all of that improvement in the form of higher fees. To the extent lawyers cannot do so, employers have an incomplete interest in improving the quality of legal education.

VI. OTHER ALTERNATIVES

A. Ignore U.S. News

Many harms traceable to *U.S. News*'s rankings result from schools' attempts to raise their ranks. Some legal academics, including deans, have stated that schools should simply ignore *U.S. News* and do what they think is right, whether that be in admissions, placement, or curriculum development. They are right, of course, that this would improve legal education. They are wrong, however, to suggest that there is any chance it will happen on a scale large enough to make a difference. All schools might prefer that there be no *U.S. News* rankings, or that certain criteria be excluded, or that all schools ignore the incentives created by *U.S. News*, but no school can opt out of the game. Refusing to play—refusing to allow the LSAT to drive admissions, refusing to allow bar passage to drive pedagogical choices, refusing to spend extra money on career services offices and advertising—means other schools that do play the game will pull ahead in the rankings. If that happens, some prospective students will not apply,⁴⁷ a few students will transfer out, a few faculty “prospects” will refuse interview invitations, a faculty member or two might leave, and perhaps alumni and state governments will provide less support. Any of these could lead to a further drop in rank and another cycle of negative consequences for the school. Because of this possibility, refusing to play the game is not a viable option.

Officials have tried in the past to reduce the impact of *U.S. News*. The American Bar Association stopped collecting the median LSAT.⁴⁸ The Association of American Law Schools hired statisticians to analyze the *U.S. News* results and investigate their method. The deans of law schools collectively tried to discourage students from relying on the *U.S. News* rankings.⁴⁹ But these efforts had little effect, and law schools might be worried that more serious efforts at coordination would violate the antitrust laws.

Individual faculty members are caught in the same dilemma. Their professional lives might improve somewhat without *U.S. News*, but as long as it publishes law rankings, they will pay heed in one way or another. If a law graduate is choosing a school at which to teach, she will likely care about whether her articles will place well. Because some student law review editors consider the author's institution's rank in *U.S. News*, it is in a prospective employee's best interest to pay some attention to the rankings when choosing employers.

U.S. News has set up a game. The players are the schools being ranked and the faculty members at those schools. Most faculty members and administrators seek to

47. I intend to study whether applications increase after rankings increase.

48. Ironically, this effort might have resulted in schools placing more emphasis on the LSAT by shifting *U.S. News* from the median LSAT to the 25th percentile. See *supra* Part I.B.

49. DEANS SPEAK OUT, *supra* note 26.

increase their school's rank by various strategic moves. These moves are costly, in terms of money and other resources, but do little or nothing to improve legal education for students. Indeed, it is worse than that. Many of the strategies run contrary to the interests of students and society. Unfortunately, the players cannot exit the game for fear of losing support. This ranking game allows no exit and has no time clock.

B. Ranking the Rankings

It is possible for better rankings to be constructed, and it is possible for legal professionals to help them gain credibility. One way, perhaps, to loosen the grip of *U.S. News* on the law school ranking market is to provide information about the harms of the various rankings. Another is to help students and others evaluate which of the rankings provides the best information. There is just as much need for information about whether *U.S. News* is providing useful information as there is need for the information it attempts to provide. Nonetheless, there may always remain a tension between the predictive validity of a ranking system and the negative incentives it creates. UGPA 25th percentiles serve as an example. A good case can be made that including them in the rankings provides a more accurate picture of the schools. On the other hand, including 25th percentiles in the rankings creates incentives that can only lead admissions committees away from offering admission to the best-qualified applicants. Thus, if rankings are rated on their immediate utility to law students choosing a school, students will ignore many of the problematic incentives created by those rankings. If, because of bad incentives created by the criteria, a meta-ranking gives a low rank to a ranking that is good at informing applicants, the meta-ranking will lose credibility. The same problem that exists at the level of students choosing schools occurs at the level of rankers ranking rankings.

CONCLUSION

Students looking for law schools and employers seeking employees need useful information about the various products offered by legal educators. Publication of relevant information is a service to them. But rankings are not mere information, they add opinions based on that information. *U.S. News's* addition of opinion is hard to justify since *U.S. News* is no expert in weighting the criteria and since the addition of that opinion in the form of rankings has a number of negative consequences. Given the various costs of rankings, those who publish rankings ought to try to anticipate those consequences and ought also to do what they can to mitigate them. Rankings will not stop, given a market willing to pay so much for them. But perhaps newcomers will publish rankings based on criteria that more accurately reflect the quality of training offered, or create fewer harmful incentives, or both.

Better rankings might improve the lives of those providing legal education. However, the greater concern is about how the rankings affect the lives of others. *U.S. News's* rankings have changed and will continue to change legal education. Those changes will be felt directly by the students and indirectly by society. Lawyers and law professors have a strong impact on the economy, the political system, and ethics. Whether that impact will be for the better or worse depends on who is admitted to law school and what training they receive while they are there. It also depends on whether law school faculties are engaged in the sorts of research and service activities that can lead to a more just and efficient legal system, activities that are far outside the

incentives created by *U.S. News*. There are deep national interests in what happens in law schools. The nation should therefore be concerned about the changes being wrought in the quest for higher ranks. It is time to move beyond trying to devise a single scale for deciding whether one law school is better than another. It is time to imagine improvements in the law, lawyers, and the system that produces new law and lawyers, and with that in mind to ask how rankings of law schools might be used to achieve those improvements.

Appendix. Regressions

Regression	Dependant variable	Independent variable	β	P-value	Adjusted r^2	Number of observations
1	Grades, 75th percentile	Year T	0.022	.001*	.044	1026
	Grades, 25th percentile		0.029	.001*	.037	1026
	LSAT, 75th percentile		0.220	.004	.006	1200
	LSAT, 25th percentile		0.467	.001*	.025	1200
	LSAT P75 – LSAT P25		-0.247	.001*	.084	1200
2	Academic rank in year $T+1$	Academic rank in year T	0.979	.001*	.983	656
		<i>U.S. News</i> score in year T	-0.027	.029		
3	Academic rank in year $T+1$	Academic rank in year T	0.972	.001*	.984	656
		<i>U.S. News</i> score in year T	-0.075	.001		
		26 Interactive variables 13 years \times both of above			only 2 significant at .05	
4	Academic rank in year T minus academic rank in year $T+1$	Academic rank in year T minus <i>U.S. News</i> rank in year T	0.052	.001*	.022	656
	Same as above $T+1 < 1998$		0.102	.001*	.100	247
	Same as above $T+1 > 1997$		0.028	.114	.004	409
5	Lawyer rank in year T minus lawyer rank in year $T+1$	Lawyer rank in year T minus <i>U.S. News</i> rank in year T	0.267	.001*	.146	656
	Same as above $T+1 < 1998$		0.090	.002	.036	247
	Same as above $T+1 > 1997$		0.335	.001*	.189	409
6	LSAT75 rank in year T minus LSAT75 rank in year $T+1$	LSAT75 rank in year T minus <i>U.S. News</i> rank in year T	0.260	.001*	.122	359
7	LSAT50 rank in year T minus LSAT50 rank in year $T+1$	LSAT50 rank in year T minus <i>U.S. News</i> rank in year T	0.281	.001*	.166	247

Regression	Dependant variable	Independent variable	β	<i>P</i> -value	Adjusted r^2	Number of observations
8	LSAT25 rank in year <i>T</i> minus LSAT25 rank in year <i>T</i> +1	LSAT25 rank in year <i>T</i> minus <i>U.S. News</i> rank in year <i>T</i>	0.106	.005	.019	359
9	UGPA75 rank in year <i>T</i> minus UGPA75 rank in year <i>T</i> +1	UGPA75 rank in year <i>T</i> minus <i>U.S. News</i> rank in year <i>T</i>	0.245	.001*	.100	308
10	UGPA25 rank in year <i>T</i> minus UGPA25 rank in year <i>T</i> +1	UGPA25 rank in year <i>T</i> minus <i>U.S. News</i> rank in year <i>T</i>	0.113	.001	.030	308
11	Academic rank in year <i>T</i> minus academic rank in year <i>T</i> +1 (top 17 schools only)	Academic rank in year <i>T</i> minus <i>U.S. News</i> rank in year <i>T</i> (top 17 schools only)	0.200	.001*	.103	238
12	Academic rank in year <i>T</i> minus academic rank in year <i>T</i> +1 (schools below Top 17)	Academic rank in year <i>T</i> minus <i>U.S. News</i> rank in year <i>T</i> (schools below Top 17)	0.045	.004	.017	418
13	Academic rank in year <i>T</i> minus academic rank in year <i>T</i> +1	Academic rank in year <i>T</i> minus <i>U.S. News</i> rank in year <i>T</i>	0.026	.105	.031	656
		Variable above interacted with dummy variable for early years	0.075	.007		
14	Academic rank in year <i>T</i> minus academic rank in year <i>T</i> +1	Academic rank in year <i>T</i> minus <i>U.S. News</i> rank in year <i>T</i>	0.045	.001	.028	656
		Variable above interacted with top 17 in 1990 <i>U.S. News</i>	0.145	.021		
15	Lawyer rank in year <i>T</i> minus lawyer rank in year <i>T</i> +1	Lawyer rank in year <i>T</i> minus <i>U.S. News</i> rank in year <i>T</i>	0.334	.001*	.169	656
		Variable above interacted with dummy variable for early years	-0.241	.001*		

NOTE:* denotes *P*-value rounded up to .001 from a lower value.