

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

**THE LSAT, *U.S. NEWS & WORLD REPORT*,
AND MINORITY ADMISSIONS: SPECIAL
CHALLENGES AND SPECIAL
OPPORTUNITIES FOR LAW SCHOOL
DEANS**

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*Knowledge is essential to understanding and understanding
should precede judging.*
—Justice Louis D. Brandeis

I. BACKGROUND AND CONTEXT

A. *General Overview*

The advent of the *U.S. News & World Report* ranking of law

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This Article is based not only on my own experiences as dean for five years at the University of Louisville, as Associate Dean for Student Affairs at the University of Houston (1988–1993), and my experiences as Chair of the UH Law School Admissions Committee during and after *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), but is also substantially drawn on perspectives shared by other law school deans, information learned during my visits to thirteen law schools as part of the Law School Admission Council (“LSAC”) Educational Outreach project between 1999 and 2003, and discussions with other deans at conferences and in other settings.

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schools¹ has brought a great deal of “judging” to the world of legal education. Prospective students, employers, and many others have come to “judge” law schools based on this ranking number. Unfortunately, this judging is not based on an understanding of what the ranking information may or may not mean, and the ranking number itself is certainly not “knowledge” about a law school’s quality. The *U.S. News* purported measure of quality leaves out the important value of diversity, as well as other important values.²

The underrepresentation of African Americans in legal education and the legal profession has been recognized as a significant concern. Efforts from many sectors are underway to address that underrepresentation. One of the major challenges to increasing diversity, however, is the tension between improving or monitoring national law school rankings as a goal and increasing diversity as a goal. These challenges are especially difficult for law school deans. This is explored below in Part III.

B. U.S. News & World Report—*Weight of LSAT Scores*

When the rankings issue of the *U.S. News* is published, it includes a description of the methodology for determining the rankings.³ While it remains generally consistent from year to

¹ *America's Best Graduate Schools 2006: Schools of Law*, U.S. NEWS & WORLD REP., Apr. 11, 2005, at 72 (ranking “The Top 100 [Law] Schools” pursuant to various criteria, including Law School Admission Test (“LSAT”) scores and bar examination passage rates). The rankings of subject matter areas, such as intellectual property and environmental law, are not discussed in this Article. Those rankings are not based on LSAT scores. See *Law Methodology*, USNEWS.COM, http://www.usnews.com/usnews/edu/grad/rankings/about/06law_meth_brief.php (last visited Jan. 20, 2006) (explaining that specialty rankings were determined from the recommendations of “legal educators”).

² Although *U.S. News* introduced a “diversity index” in 2005, the index is a separate measure from the magazine’s main quality rating, reinforcing the notion that diversity is unrelated to quality. See *Law School Diversity*, USNEWS.COM, http://www.usnews.com/usnews/edu/grad/rankings/about/06lawdiv_intro_brief.php (last visited Jan. 20, 2006). As another example, many law schools make a strong commitment to public service, but that value is not reflected in the rankings. The importance of a commitment to the representation of the disadvantaged and neglected resonates strongly in light of Hurricane Katrina and its aftermath.

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The rankings . . . are based on a weighted average of the 12 measures of quality described here. . . .

Quality Assessment (weighted by .40)

- Peer Assessment Score (.25)

year, it does change occasionally, and law schools do not know what formula will be used from year to year.

It is apparent from reviewing the description of the methodology that there is ample room to criticize the validity and value of these rankings, and this has been done. The purpose of this Article, however, is to focus on the emphasis on the Law School Admission Test (“LSAT”) score and its significant weight in the rankings. As noted, the median LSAT score accounts for

In the fall of 2004, law school deans, deans of academic affairs, the chair of faculty appointments, and the most recently tenured faculty members were asked to rate programs on a scale from “marginal” (1) to “outstanding” (5). . . . About 70 percent of those surveyed responded.

- Assessment Score by Lawyers/Judges (.15)

[L]egal professionals, including the hiring partners of law firms, state attorneys general, and selected federal and state judges, were asked to rate programs About 27 percent of those surveyed responded.

Selectivity (weighted by .25)

- Median LSAT Scores (.125)

. . . of the 2004 entering class of the full-time J.D. program.

- Median Undergrad GPA (.10)

. . . of the 2004 entering class of the full-time J.D. program.

- Acceptance Rate (.025)

. . . for entry into the 2004 entering class.

Placement Success (weighted by .20)

- Employment Rates for Graduates

. . . for 2003 graduating class. . . . at graduation (.06) and nine months after graduation (.12).

- Bar Passage Rate (.02)

. . . of the 2003 graduating class

Faculty Resources (weighted by .15)

- Expenditures Per Student

. . . for the 2003 and 2004 fiscal years. The average instruction, library, and supporting services (.0975) are measured, as are all other items, including financial aid (.015).

- Student/Faculty Ratio (.03)

. . . for the fall 2004 class

- Library Resources (.0075)

The total number of volumes and titles in the school’s law library

Overall Rank: Data were standardized about their means, and standardized scores were weighted, totaled, and rescaled so that the top school received 100; others received their percentage of the top score.

Law Methodology, USNEWS.COM, http://www.usnews.com/usnews/edu/grad/rankings/about/06law_meth_brief.php (last visited Jan. 20, 2006) (emphasis added).

12.5% of a school's overall ranking.⁴ It is also one of the few factors over which a law school has some degree of direct control, the other being grade point average ("GPA"). During 2005, there was substantial debate when, without notice to law schools, *U.S. News* decided to change its method of determining the median.⁵

In spite of a significant level of concern voiced by legal education leaders to *U.S. News*, there has been little substantial change in the general rankings system. Legal educators have raised concerns about the impact on minority admissions and the fact that diversity is not measured in the rankings. *U.S. News* editors have, in the view of many, given inadequate responses and have done little to change their methods.

II. LEGAL FRAMEWORK

Within legal education, there has been a longstanding history of a commitment to ensuring diversity. One means of ensuring diversity was implementation of affirmative action practices and policies at most law schools in the 1970s. These practices took many forms, including outreach in recruiting, minority scholarships, special minority programs, and consideration of race as a factor in the admissions process. The 1978 Supreme Court decision in *University of California Regents v. Bakke*⁶ addressed the issue and recognized the use of race as a factor in admissions decisions. After that, affirmative action practices in higher education went unchallenged by litigation for the most part,⁷ although there were certainly many who criticized the use of race in the admissions process through other avenues.

Beginning in the mid-1990s, however, challenges in the form of litigation, political efforts to change state and/or institutional policy, and discussions in the media increased. The expectation that it was legally permissible to use race as a factor in making admissions decisions was met with a major challenge when the affirmative action practices in admissions decisions at the

⁴ *Id.*

⁵ See Carl Bialik, *Small Changes by U.S. News Leads to New Controversy in Rankings*, WALL ST. J. ONLINE, Apr. 7, 2005, http://online.wsj.com/public/article_print/SB111279937006999640-cuXILLH3O3RczS6h3z78EE5NRo_20050506.html (explaining the change and noting the critical response).

⁶ 438 U.S. 265 (1978).

⁷ See *Grutter v. Bollinger*, 539 U.S. 306, 322 (2003) (noting that the Court "last addressed the use of race in public higher education over 25 years ago").

University of Texas School of Law were struck down as unconstitutional in *Hopwood v. Texas*⁸ in 1996. It was not until 2003 that the Supreme Court updated its *Bakke* decision⁹ and upheld the use of race as a factor so long as it is narrowly tailored. The Court did so in *Grutter v. Bollinger*.¹⁰

Because others have provided detailed discussions and analysis of these decisions, this Article will not do so. It is important to establish, however, that while the Supreme Court upheld the use of race as a factor in admissions decisions, it left unresolved the use of race in making scholarship decisions and in other admissions practices. Justice O'Connor "suggested" that the practice of considering race in admissions decisions may need to be "sunsetting" in twenty-five years.¹¹ The point here is that law schools must exercise caution in their affirmative action practices, and they must be aware that there are advocates who are most willing to challenge any practice that may seem to run outside what was validated in *Grutter*.

⁸ 78 F.3d 932 (5th Cir. 1996). *Hopwood* was the first major federal decision to strike down the use of race in law school admissions. While a number of subsequent actions also affected what had been common affirmative action practices in legal education, the *Hopwood* decision was the first major mandate relating to affirmative action since *Bakke*.

⁹ 438 U.S. 265 (1978).

¹⁰ 539 U.S. 306 (2003). *Grutter* upheld as "narrowly tailored" the consideration of race as a "plus" factor in the University of Michigan Law School's admissions policy. *Id.* at 334. This decision, along with the decision in *Gratz v. Bollinger*, 539 U.S. 244 (2003), confirmed the 1978 Supreme Court decision in *Bakke* regarding the use of race as a factor in admissions decisions. The decisions affirmed the use of race as a factor in both law school and undergraduate admissions programs. The opinions, however, must be carefully read to determine the manner in which race is permissible and the limitations on its usage. In *Gratz*, the undergraduate admissions process at the University of Michigan was held to be unconstitutional because it impermissibly used race to award points automatically based on race. *See id.* at 270. Detailed discussions of the decisions are beyond the scope of this Article but are readily available in other publications. *See, e.g.*, CIVIL RIGHTS PROJECT AT HARVARD UNIV., REAFFIRMING DIVERSITY: A LEGAL ANALYSIS OF THE UNIVERSITY OF MICHIGAN AFFIRMATIVE ACTION CASES: JOINT STATEMENT OF CONSTITUTIONAL LAW SCHOLARS (2003), available at <http://www.civilrightsproject.harvard.edu>.

What remains unsettled after the 2003 opinions is the use of race in scholarships, recruiting, outreach, special pipeline programs, and other admissions-related activities.

¹¹ *See id.* at 343.

III. THE SPECIAL SITUATION OF LAW SCHOOL DEANS

A. *Diverse Constituencies*

The special challenge of being a dean is what makes the job so interesting and also what makes it so difficult. This is why deans so enjoy the American Bar Association ("ABA") Mid-Year Meeting, where they can share and commiserate with others who best understand and sympathize with the day-to-day challenges of being a law school dean.

The special challenge is that law school deans must answer to and work with so many diverse constituencies. This challenge is arguably no different than the challenge deans in other disciplines face or the challenge that university presidents and provosts have. In my view, however, law school deans are in a unique situation, which makes the challenges a bit different. This is particularly true in the context of minority admissions.

Law school deans must respond to the interests of faculty, staff, students, central administrators, alums, donors and supporters, applicants, employers, university counsel, and sometimes state legislators. They also must be prepared to deal with the media. They do so on a variety of issues and sometimes in the context of an event or crisis.

B. *Special Role of Legal Education and the Legal Profession*

In the context of increasing diversity within the student body, law schools are in a special position. This was recognized by Justice Sandra Day O'Connor in her opinion in *Grutter*, when she noted that "universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders."¹² This statement verified what most of us in legal education believe—that law schools play a unique role in our country's social and economic development and future. Thus, the special place of law schools in the importance of higher education and diversity makes the leadership role of a law school dean in this important gatekeeping institution unique.

C. *Law Schools and the Unique Role in Higher Education*

Another factor that makes law schools unique is the status

¹² *Grutter*, 539 U.S. at 332.

and knowledge of their faculty members and the resulting differences in perspective between law school faculty members and faculty members in other academic disciplines. Law school faculty members have special knowledge and understanding about the law that affect the constitutionality and legality of admitting students using various factors. Law faculty members are more aware of the availability of process and how to use it in the context of decision making. This knowledge and awareness is both about legal process—such as constitutional and statutory law and open records laws—and about internal process—such as Roberts Rules of Order and faculty bylaws. By our very nature and training, we, as lawyers, know about process and how to use it.¹³

Unlike many other disciplines, legal education, through its ABA accreditation process and its Association of American Law Schools (“AALS”) membership requirements, carries an expectation of faculty governance that is probably unparalleled in any other discipline.¹⁴

Legal education also has a long history of placing value and importance on diversity. As a result, national standards place special obligations on law schools respecting diversity that might not have parallels in other academic disciplines.¹⁵ Law school

¹³ The trend in legal practice toward using alternative dispute resolution, such as negotiations, can also be used by law faculty in achieving a goal with respect to admissions and diversity policies. For a detailed discussion of the judicial attention to desegregating higher education and the role of law schools in that litigation, see generally RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (2004) (detailing the history of desegregation efforts in schools leading up to and including *Brown v. Board of Education*, 347 U.S. 483 (1954)). The book was revised and expanded from its 1975 version in 2004 to coincide with the fiftieth anniversary of *Brown*.

¹⁴ The Association of American Law Schools (“AALS”) provides that the law school faculty shall have “primary responsibility for determining institutional policy,” which would generally include admissions policy. See ASS'N OF AM. LAW SCH., 2005 HANDBOOK: BYLAWS OF THE ASSOCIATION § 6-5(a), at 35 (2005). This responsibility is constrained to some extent by another Bylaw, which requires that admission to law school only be available to those whose records indicate the capacity to meet academic standards. See *id.* § 6-2(a), at 33.

The American Bar Association (“ABA”) has similar accreditation requirements. See STANDARDS FOR APPROVAL OF LAW SCHOOLS §§ 402(a)(3), 404(a)(3), 501(b) (2005).

¹⁵ The AALS Bylaws section on “Diversity: Nondiscrimination and Affirmative Action” requires equality of opportunity in the admissions process and allows for the additional pursuit of affirmative action objectives. See ASS'N OF AM. LAW SCH., *supra* note 14, § 6-3.

deans have the obligation to ensure that these expectations are met to maintain accreditation status.

IV. WHAT LAW SCHOOL DEANS KNOW (OR SHOULD KNOW) ABOUT THE LIMITATIONS OF LSAT SCORES

Long before *U.S. News* began ranking law schools, the Law School Admission Council ("LSAC") had a practice and policy to provide information to a variety of constituencies about the limitations of LSAT scores. This information is provided through publications and at LSAC annual meetings and other programs.

The advent of the *U.S. News* rankings and the awareness on the part of the leadership at LSAC that these rankings place undue weight on LSAT scores have caused LSAC to place an even greater emphasis on getting out the word about the limitations of these scores. The attacks on affirmative action added to the urgency of this effort. Deans received direct mailings from LSAC, and programs at various conferences were presented by LSAC representatives.¹⁶ Each year, deans are offered the opportunity to sign a joint letter to applicants regarding rankings and the selection of law schools as a result of this confluence of concerns.¹⁷

In 1999, LSAC undertook an outreach program to increase awareness about the appropriate use of the LSAT in recognition of the potential impact that *U.S. News* rankings have on minority admissions. Through this program, representatives of LSAC visited any law school that requested such a visit. The expectation was that the dean would attend the program and that faculty and key staff would be encouraged and expected to attend. The program lasted about an hour or two. It was

¹⁶ See, e.g., Address at AALS Annual Meeting Providing Data from the LSAC Bar Passage Study, (Jan. 1999); Peter J. Pashley, Principal Research Scientist and Dir. of Testing and Research, Law School Admission Council, Address at AALS Annual Meeting: What Is the LSAT? (Jan. 8, 2000); Jim Vaseleck, Executive Assistant to the President and Assoc. Counsel, LSAC, Address at AALS Annual Meeting: Legal Considerations in Law School Admissions (Jan. 6, 2001). LSAC also sponsors a "Dean's Breakfast" at the midyear ABA meeting at which the President of LSAC updates deans on LSAT issues.

¹⁷ See LAW SCH. ADMISSION COUNSEL, MESSAGE TO LAW SCHOOL APPLICANTS: LAW SCHOOL DEANS SPEAK OUT ABOUT RANKINGS (2005), available at <http://lsac.org/pdfs/2005-2006/RANKING2005-newer.pdf> (describing the inherent flaws in commercial rankings). Most law school deans have signed the letter each year since it was first sent out in 1998. The number varies, but generally between 175 and 180 deans sign the letter each year.

presented by volunteers from LSAC, including LSAC staff, law school faculty, and others with extensive experience with this issue. The purpose was not just to “preach to the choir” of admissions professionals and members of the admissions committee but to reach all faculty because the faculty as a whole generally sets admissions policy and practice at each school. The purpose was to educate faculty members who do not regularly sit on admissions committees about the LSAT, its limitations, and other factors considered in law school admissions applications. At these programs, faculty members and others learned what a Law School Data Assembly Service (“LSDAS”) report is and what information it does and does not include.¹⁸ They were informed that in spite of its limitations, LSAT scores do have value.

The response to the offer by LSAC was quite positive. From 1999 to the present, sixty-three law schools invited LSAC representatives. I visited thirteen law schools as part of this program. My experiences ranged from attendance by virtually all faculty and all key staff to attendance by only a small number, generally due to scheduling conflicts. The dean at every law school attended, sending the message that this was a priority. The initial attitudes of faculty members ranged from one law school where a significant number of attendees thought the LSAT should be abolished to another law school where many attendees thought the LSAT should be given substantial weight and that anyone below a certain LSAT score should *never* be admitted.

At most law schools, however, my experience was that attendees came to the session with open minds and were

¹⁸ For example, the cumulative grade point average (“GPA”) in a LSDAS report is for undergraduate programming only, with graduate school grades not being included in the average. See *Transcript Summarization*, LSAC.ORG, <http://lsat.org/LSAC.asp?url=/additional-info/transcript-summarization.asp> (last visited Jan. 20, 2006). Graduate school grades are, however, included in the report. See *LSDAS General Information*, LSAC.ORG, <http://lsac.org/LSAC.asp?url=/lsac/lstdas-general-information.asp> (last visited Jan. 20, 2006) (listing contents of LSDAS report). The cumulative GPA does not reflect the quality of the undergraduate school or the rigor of the particular academic program in which the student enrolled. While there have been efforts to develop formulas to reflect this information, for a variety of reasons, weighting of this information is problematic.

As part of the outreach presentations, faculty members and other attendees were shown a hypothetical LSDAS report, which makes apparent the limitations of relying only on a number, whether it is an LSAT score, a cumulative GPA, or an index number that incorporates both of those numbers.

convinced of the limitations of the LSAT after attending the program. By using hypothetical applicant information, attendees began to recognize that an individual who had excelled in an academically excellent and rigorous undergraduate program but had an average LSAT score and who had engaged in two or three significant leadership positions while working part time and every summer might be a stronger candidate for admission than a wealthy individual with a higher LSAT who had never worked, never engaged in public service or leadership, had the benefits of expensive LSAT prep training, and had earned average undergraduate grades.

We also discussed the correlation studies provided by LSAC and what they do and do not mean. Attendees were apprised of the fact that there is a far-from-perfect correlation between high LSAT scores and high first year grade point averages.

Even if there were a perfect correlation, attendees were asked to consider whether a law school would want that to be the sole basis for making decisions anyway. Most law schools have the goal of enrolling a diverse student body to bring a variety of perspectives into the classroom discussion. I frequently used the example of a coach assembling a basketball team who would not necessarily pick only players who were over a certain height. The coach would want some players who could run, some who could pass, and some who could shoot consistently. Another often-used example was assembling an orchestra. Even if one could hire the top one hundred violinists in the world, the conductor would want some cellists and percussionists in lieu of some of the violinists. One of the major limitations of the *U.S. News* ranking is that it seeks to quantify everything with a number, while the admissions process is inherently a qualitative process.

Often in my presentations, I would remind faculty attendees that virtually all faculty members, even those most enamored with the significance of LSAT scores, had at one time or another sent a memorandum or otherwise communicated to the admissions committee about their next-door neighbor's son who mowed their lawn and was a really good kid who should be admitted because of his great character, even though he did not do well on the LSAT. I would then emphasize that everyone should have the benefit of not having the LSAT score being definitive for admissions purposes.

Although there is substantial turnover in deans each year, in my view, deans know or should know of the limitations of the LSAT scores. Because of the programs discussed above and the frequent communications by LSAC, even those who come new to deanship are aware. In addition to the LSAC efforts, there are numerous articles in a variety of publications focusing on the limitations of the LSAT scores.¹⁹ For that reason, it is incumbent upon deans to share that knowledge with other constituencies. How they can do that is discussed later in this Article.

V. SPECIAL CHALLENGES FOR LAW SCHOOL DEANS

The day that *U.S. News* rankings are made public is almost always stressful for most law school deans. This is because they are almost certain that someone is going to ask questions, and the answers are complex and certain not to make everyone happy. Many of these same constituencies also have questions about diversity within the student body and why it is not being achieved, or in the alternative, whether it is being achieved at the expense of lower *U.S. News* rankings. The response to those who want high rankings, those who want diverse student bodies, and those who want both is challenging.²⁰ The following are the

¹⁹ See generally Richard Delgado, *Official Elitism or Institutional Self Interest? 10 Reasons Why UC-Davis Should Abandon the LSAT (and Why Other Good Law Schools Should Follow Suit)*, 34 U.C. DAVIS L. REV. 593 (2001) (setting forth arguments against standardized testing and providing suggestions to reduce reliance on standardized tests, such as the LSAT); William D. Henderson, *The LSAT, Law School Exams, and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed*, 82 TEX. L. REV. 975 (2004) (explaining that test-taking speed affects performance on the LSAT and on law school exams but that there is little or no correlation between test-taking speed and reasoning ability); Lani Guinier, *Race Shows the Way: From the Lessons of Admitting Students of Color, Law Schools Can Learn How To Fix the Rules for Everyone*, LEGAL TIMES, Sept. 16, 2002, at 58 (criticizing the narrow view of race in the context of testing and admissions). For further information, see also Philip D. Shelton, *The LSAT: Good—But Not That Good*, L. SERVICES REP. (Law Sch Admission Council, Newtown, Pa.), Sept. /Oct. 1997, at 1, 3 (clarifying the limitations of the LSAT score as a predictor of law school performance).

²⁰ In 2001, I wrote about the complexity of law school administration, using the metaphor of the *Ed Sullivan Show*. See Laura Rothstein, *Ed Sullivan and I Love Lucy Images of Deaning—Students as a Key Internal Constituency*, 33 U. TOL. L. REV. 167, 167–68 (2001). I recalled that Ed Sullivan would bring the best comedians, the best animal acts, and the Beatles to our black and white television sets on Sunday evenings. He would also bring a man who would spin plates. “He would take a long pole and start spinning a plate at the end of it, balancing the pole on some sort of stand on the table. Then he would start spinning another one, and another,

main constituencies who may take notice of these rankings, the various reactions they might have, and why the responses are challenging.²¹

A. Faculty Members

As noted previously, law faculty members play a significant role in faculty governance, including policy. At virtually all law schools, faculty are involved in setting general admissions policy, even if it is a matter of approving on a regular basis the continuation of longstanding policies.

Faculty members are individuals with a wide spectrum of political and personal views about merit, the value of diversity, and student quality. Most faculty members care about the reputation of the law school at which they are teaching because it may reflect on their own personal reputations. They also care because the ranking has an impact on who applies and enrolls at the law school, thereby, in the view of some faculty members, affecting the quality of the students whom they teach. For these and other reasons, there are likely to be an array of reactions when the *U.S. News* rankings come out each year. Some faculty members will care a lot and be troubled by even a minor drop. Depending on the level of angst, there may be lengthy discussions about this at faculty meetings and committees and/or administrators may be appointed to assess the reason for a lowered ranking. As will be discussed in Part VI, faculty discussions about rankings can be a constructive opportunity to address broader issues.

The recruitment and retention of faculty members can also be affected by the image of the law school. Unfortunately, *U.S. News* rankings may be a factor for some faculty members in assessing the desirability of becoming a faculty member or staying at a particular law school. Even if the rankings are not

until there were so many spinning plates, you would hold your breath." *Id.* at 167. "Every once in awhile . . . a spinning plate would fall. Of course, the guy would quickly get it going again, and we learned that even the best sometimes drop things." *Id.* The discussion that follows again reminded me of that metaphor—trying to respond to the various constituencies interested in minority admissions and rankings.

²¹ For a media perspective on this issue, see Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES, July 31, 2005, § 4A, at 18 (discussing some of the criteria behind law school rankings and the large influence these rankings have on decisions made by law schools).

directly the basis for such a decision, factors raised in the rankings might be. While there are other sources of information about many of these factors,²² the *U.S. News* magazine is probably the most accessible source of information allowing quick comparisons.

In sum, deans can often expect that after rankings are announced each year, there will be some level of interest by faculty, and the dean needs to be prepared to respond to questions about the rankings.

B. Central Administration—President/Provost/Boards of Trustees

Depending on the institution, the political climate of that institution, and its focus on status and rankings, the top leadership and administrators of a university are often aware of rankings and place a range of emphasis on them.

For some, allocation of resources may be determined in part based on the status of the law school. These leaders may or may not be influenced by *U.S. News* rankings as determinative of the status and quality of the law school and its relative value to the institution as a whole. The leaders must consider the law school's priority in the pecking order for the allocation of increasingly scarce resources, particularly on a campus with a number of other graduate and professional programs that are also ranked by various entities. A low ranking may provide an opportunity for obtaining greater resources in order to improve the ranking, or it may have the opposite effect, whereby resources are allocated to already highly regarded academic programs.

Regardless of the credence given to quality, institutional leaders will want to know what the ranking is, what it means, and the implications of the ranking for the university. They may want to be prepared for the public relations benefit or fallout from a high or low ranking. They may want to be prepared to

²² For example, the ABA and LSAC jointly publish a guide to law schools each year, where basic information, such as student/faculty ratio, is published in a uniform format for all law schools. See LAW SCH. ADMISSION COUNCIL & AM. BAR ASS'N, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS (2005). *U.S. News* itself recommends to readers that they should not only look at a ranking or tier but should also consider factors such as "location, price, course offerings, and faculty expertise . . . as well as how well a school meets your own needs." See *Other Schools to Consider*, U.S. NEWS & WORLD REP., Apr. 12, 2004, at 70.

explain why the law school's ranking dropped. Frequently, they will want to exploit a particularly high ranking or a particularly significant improvement from one year to the next.

Deans generally anticipate the central administration interest and provide a summary and/or analysis of the relevant information to the appropriate administrator (probably the provost) each year. If the news is really good, the dean may share that with the university's director of communications for press releases and other publicity.

C. Alums

Alums want to feel good about their alma mater. When the ranking is high, the law school may decide to highlight that in alumni/ae publications. The downside, of course, is that if the ranking drops, the law school may be in a position where alums expect an explanation of the drop, or the law school may decide to ignore the not-so-good news.

Positive feelings by alums, of course, can have the benefit of increased alumni/ae giving and having alums encourage others to attend as students or become members of the faculty. A drop in rankings has the potential of resulting in criticism from alums or possibly a diminution in giving or participation. On the other hand, alums may view a drop in the rankings as identifying areas that need more funding or support, resulting in their participation in "shoring up" the school's reputation.

D. Donors, Supporters, and Development Officers

People love to support a winner. If things are going well, most people want to be on the bandwagon. For that reason, development officers are usually quite happy if a ranking gives them something to brag about—or at least if the ranking does not result in embarrassment.

As a result, deans can use rankings to the advantage of the school in cultivating new donors and supporters and, perhaps to a lesser extent, in stewardship of past gifts. In the world of development, a dean wants all donors to feel good about the institution they have supported. Even if that donor is not in a position to provide additional funding, his or her opinion of the school may well be the basis for influencing others who might provide support.

Development officers are probably more likely to use the

rankings of specialty areas—such as intellectual property, health law, and environmental law—to identify program-targeted gifts rather than use overall rankings to get a specific major gift. It is probably safe to assume, however, that strong overall rankings are often a positive factor in obtaining annual giving from alums, as well as in receiving major gifts such as for a scholarship endowment.

For these reasons, development officers, donors, and supporters may well be aware of and care about *U.S. News* rankings.

E. Students

Students want to know that they are receiving a high quality education, that they will be able find employment after law school, and that they will be able to pass the bar. In essence, they want to have confidence in the institution they are attending. Students who do not feel good about these things may consider transferring to another law school after their first year. As alums, their willingness to give back to their school will be affected by their feelings about the school while they were attending.

In my experience, enrolled students are cognizant of *U.S. News* rankings each year, but do not focus a great deal of attention on these rankings. This may be because they are already in law school and are not making decisions—except possibly a transfer decision—about their law school experience at this point.²³ On occasion, student leaders, such as the president of the Student Bar Association, may inquire or raise concerns when rankings are published. If the rankings raise concerns from the students that employers may not hire them because of the ranking, this might be the basis for student inquiry as well.

F. Applicants

Applicants are probably the most important constituency when addressing the impact of *U.S. News* rankings. This is probably one of the most significant audiences to which the publication is targeted. Although important consumer

²³ This is probably more of a factor for law schools in the fourth tier, which attract strong students with scholarships, but which lose several students each year who want their degrees to be from a higher ranking school.

information about law schools is available in a variety of other communications, *U.S. News* rankings are unfortunately the most widely known means of comparing law schools. A caveat about the limitations of these rankings is provided through an annual letter to all law school applicants issued by LSAC and signed by the vast majority of law school deans. The impact of this letter is unknown.

Not all law school applicants are twenty-one-year-old individuals who may not have had the life experience to assess the full array of factors that should be considered in making such an important decision.²⁴ Unfortunately, however, we live in an age where the media hypes “winning” and “ranking.” Reality television, where people are voted off the island, out of the group, or not picked to be an apprentice, only adds to this “We’re Number One” mentality. Thus, it is not surprising that someone considering law school would want to go to the “best” law school he or she can get into, regardless of whether rankings are really a valid basis for determining that a more highly ranked law school is really better in the abstract or better for that individual.²⁵

G. Admissions Staff

The director or dean of law school admissions is often in a high stress position. These individuals, as well as the other admissions staff members, are keenly aware that the ranking system directly affects what they do. They know that the ranking will affect how many individuals apply to the law school. The number of applicants will affect the selectivity or acceptance rate,²⁶ which in turn affects the rankings. Admissions professionals are perhaps even more likely to be affected by the weight placed on median LSAT comparisons, which accounts for about 12.5% of the formula.

Each year the dean and faculty set goals for the number of entering students and some guidance on the goals for median

²⁴ Schools with strong local or regional reputations may be less affected by this, at least with respect to applicants from the geographic area.

²⁵ See Colleen Gareau, *Do Rankings Really Matter?*, PRELAW MAG., 2005, at 12–17.

²⁶ For example, in 2004, the acceptance ratio accounted for 2.5% of the weighting in determining ranking. See *Law Methodology*, USNEWS.COM, http://www.usnews.com/usnews/edu/grad/rankings/about/06law_meth_brief.php (last visited Jan. 20, 2006).

LSATs and cumulative grade point averages. How they reach those goals involves both the art and science of law school admissions.²⁷

Experienced admissions professionals, administrators, and faculty are aware that it is challenging to make predictions each year about admissions. The national applicant pool trends seem to be affected by the economy—with a bad economy being good for admissions—but the impact in a particular region or at a particular law school may or may not follow national trends. Factors such as a popular television program (such as *LA Law*, *Law & Order*, *Judging Amy*, or *Boston Legal*) or a political event (such as the Iran Contra hearings, confirmation of a Supreme Court justice, or a judicially decided election outcome) may increase interest in law as a career.

The context of this background makes the work of an admissions professional quite challenging. Whether that individual actually is directly involved in the decision making or whether he or she provides guidance to those who make the decisions, the pressure to meet LSAT goals and to recruit a high number of applicants is generally significant.

At most law schools there is also the stated goal of enrolling a diverse student body. Thus, the admissions professional must balance that goal with the goal of high LSAT scores. This generally involves ongoing discussions with the dean and the admissions committee members, as well as at least some discussion with the faculty as a whole. For these reasons, the head of the admissions office probably has the highest anxiety about rankings, except for the dean.

The size of the class is important as well. A law school enrolling four hundred in an entering class has different flexibility than a law school enrolling two hundred. Whether the school is public or private may also affect how much to focus on one factor or another.

Admissions professionals are generally quite interested in the guidance that the dean gives regarding the role of *U.S. News* and how they should respond to it in implementing admissions policy and practice. Communication with this constituency is thus perhaps the most important of all.

²⁷ While most deans have some familiarity with the challenge of the art and science of admissions, some are less knowledgeable about the complexities of all of these factors.

H. Employers

As a general rule, it is probably safe to assume that the major law firms in the major employment markets, as well as judges who employ law clerks, major corporations, and prestigious government agency employers want to hire the best and the brightest. If the assumption is that the ranking of a school indicates the quality of its graduates, employers are more likely to seek out the top students at the top law schools, with a ripple effect through the rankings. Even the first-ranked graduate from a law school at the bottom of the pecking order will have fewer opportunities than students in the top half of law schools ranked at the top of the pecking order.²⁸

This result, of course, has the effect that employment at graduation, as well as average salary, is weighted as a factor in determining rankings. For this reason, directors of career service offices at law schools are quite aware of rankings and their impact on the employability of graduates from a particular law school.

Major law firm employers are increasingly interested in improving diversity. Thus, it is not uncommon for the hiring partner of a major firm to encourage diversity in law school enrollment so that there is a pool of highly qualified minority graduates. Although the awareness is increasing, most of those with this interest do not realize that the pool of minority law school applicants, particularly African-American applicants, is shrinking. This is due to the challenges faced by law school admissions offices in dealing with the LSAT disparity for certain diverse populations combined with and exacerbated by the heavy weight LSAT scores are given in the rankings.

I. Accreditation and Membership Organizations

Accreditation and membership organizations have interests regarding quality, consumer protection, and diversity, among others. The primary organizations involved with accreditation and membership for law schools are the AALS, the ABA, and the LSAC. There are also regional accreditation bodies for

²⁸ This may be less of a concern for law schools in the geographic area. For example, law graduates from law schools on the East Coast applying to prestigious firms in a major city on the West Coast will in all probability be affected by the ranking of the law schools from which they graduated.

universities, but ABA accreditation is the primary concern.

The AALS has been in existence since 1900 and has 166 current members.²⁹ The purpose of AALS is “the improvement of the legal profession through legal education,” and it considers itself the “law teachers’ learned society.”³⁰ Membership in this organization requires compliance with its Bylaws.³¹ Among the AALS Core Values relevant to this discussion is the expectation that member schools will select students “based upon intellectual ability and personal potential for success in the study and practice of law, through a fair and non-discriminatory process designed to produce a diverse student body and a broadly representative legal profession.”³²

Further requirements provide that member schools only admit applicants who “appear to have the capacity to meet its academic standards”³³ through a policy of ensuring equality of opportunity and “without discrimination or segregation on the ground of race, color, religion, national origin, sex, age, disability, or sexual orientation.”³⁴

The American Bar Association Council of the Section of Legal Education and Admission to the Bar has responsibility for setting standards and determining compliance for law schools and is the United States Department of Education’s nationally recognized accrediting agency for law schools. In 1879, the ABA established the predecessor to the Council, which had developed the approval process.³⁵ The Council has issued current approval of 188 law schools.³⁶ ABA approval is achieved by meeting detailed standards through a site visit process and receiving ultimate approval from the Council.

The ABA Standards regarding student diversity and quality

²⁹ ASS’N OF AM. LAW SCH., 2005 HANDBOOK 1 (2005). The web address for AALS is <http://www.aals.org>.

³⁰ ASS’N OF AM. LAW SCH., *supra* note 29, at 1.

³¹ ASS’N OF AM. LAW SCH., *supra* note 14, § 2-1. Compliance is determined through site visits and approval by the full Association. *See* ASS’N OF AM. LAW SCH., *supra* note 29, at 1. This process is described more fully in the Handbook.

³² ASS’N OF AM. LAW SCH., *supra* note 14, § 6-1(b)(v).

³³ *Id.* § 6-2(a).

³⁴ *Id.* § 6-3(a). Member schools may pursue additional affirmative action goals. *Id.* § 6-3(c).

³⁵ *See* STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 14, at iv. For more information, see the ABA website at www.abanet.org/legaled/home.html.

³⁶ *See* LAW SCH. ADMISSION COUNCIL & AM. BAR ASS’N, *supra* note 22, at i. The website for LSAC is www.LSAC.org, and for the ABA it is www.abanet.org.

include standards relating to equality of opportunity³⁷ and admissions and educational requirements.³⁸ Of particular relevance to this Article are the standards that require law schools to admit only those who appear capable of satisfactorily completing the educational program and admission to the bar.³⁹ To ensure this quality control, the ABA mandates that law schools require applicants to “take a valid and reliable admission test” to be used for assessment of capability.⁴⁰ The interpretation of that requirement implicitly acknowledges that the LSAT sponsored by LSAC is valid and reliable, placing the burden on law schools to demonstrate that any other test is also valid and reliable.⁴¹ The ABA specifically advises that a score on such a test is not to be given any particular weight in the admissions process and notes other relevant factors that may be considered. These factors include “undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome.”⁴²

The Standard relating to equality of opportunity specifically notes that law schools are not to use “admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, sex, or sexual orientation.”⁴³

ABA Standards contemplate some effort by law schools to ensure diversity. The Standard on this is as follows:

[A] law school shall demonstrate . . . by concrete action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups, notably racial and ethnic minorities, which have been victims of discrimination in various forms. This commitment typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and a program that assists in meeting the unusual

³⁷ See STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 14, §§ 210–212. These Standards are in the process of review by the Standards Committee.

³⁸ See *id.* §§ 501–502.

³⁹ See *id.* § 501(b).

⁴⁰ *Id.* § 503.

⁴¹ *Id.* § 503 interpretation 503-1.

⁴² *Id.* § 503 interpretation 503-2.

⁴³ *Id.* § 210(b).

financial needs of many of these students⁴⁴

LSAC was founded in 1947 and grants membership to more than two hundred law schools in the United States and Canada.⁴⁵ All ABA accredited law schools are members of LSAC.⁴⁶ LSAC does not accredit organizations; rather ABA membership ensures membership in LSAC.

The greatest impact that LSAC has on admissions policy is the development and administration of the LSAT. As noted previously, this test is presumed to be valid and reliable by the ABA. LSAC has engaged in substantial and ongoing research on the validity and reliability of the test and numerous changes have occurred over the years as a result.

During the accreditation and membership review cycle for a law school, which generally occurs every seven years, law schools are required to produce a great deal of information relating to diversity in the student body. This information includes enrollment statistics, graduation rates, and attrition information—all categorized by racial and gender classifications. Bar passage information is also provided.

When the data or other information raises questions about meeting standards or membership requirements, the ABA and/or the AALS may request clarification or request the law school to take further action and report back. For example, a law school with academic attrition and/or graduation rates that are disproportionately negative for minority students may be asked to clarify this during the site visit or the report back process. Another example might be a law school with high attrition or low bar passage rates overall. The law school might be asked to clarify whether the general standards for admission are adequate to ensure that students will complete the program and pass the bar. If the responses to questions about these matters are not satisfactory, an ongoing report-back requirement demonstrating action and results may be implemented.⁴⁷ Generally speaking,

⁴⁴ *Id.* § 211 (emphasis added). This standard was most recently reviewed in 1997 and does not incorporate the changes that might be advisable after *Grutter*. Such changes are in the process of being considered.

⁴⁵ *LSAC Research Grants*, LSAC.ORG, <http://www.lsac.org/LSAC.asp?url=lsac/lisac-legal-education-grant-program.asp> (last visited Jan. 20, 2006).

⁴⁶ LAW SCH. ADMISSION COUNCIL & AM. BAR ASS'N, *supra* note 22, at i. Membership for Canadian law schools is based on recognition of a provincial or territorial law society or government agency. *Id.*

⁴⁷ The push by the ABA and AALS from both directions—diversity and student

law schools are not likely to lose ABA accreditation or AALS membership for noncompliance, but the “stick” to ensure compliance with standards is this “report-back” mechanism.⁴⁸

In this way, ABA accreditation and AALS membership requirements are a double-edged sword for diversity in a student body. Law schools are required to implement efforts to ensure diversity and nondiscrimination, but they are also required only to admit students with reasonable chances of success. Some have viewed this second requirement as a mandate not to admit students with low numerical predictors even if these students would add diversity. In this author's view, that is an inappropriate approach to meeting the expectations of these different standards.

J. University Counsel

Law school deans are lawyers themselves, and law school faculties are made up primarily of lawyers. For that reason, there is a temptation to think that consultation with university counsel about policies and practices that might have significant legal implications—including those relating to minority admissions—is unnecessary.

As noted previously, even after the *Grutter* and *Gratz* decisions, much remains unsettled in the area of minority admissions. Law school deans may benefit from discussions with university counsel regarding practices such as minority scholarships and special outreach efforts. Consultation with university counsel on admissions may not have been the practice before the most recent challenges to affirmative action. Given the uncertainties, however, deans may now wish to know what guidance university counsel wishes to give generally or at least to know how supportive university counsel will be if challenged to defend a particular admissions practice.

K. Media

Although it is unpredictable when this will occur, the

quality—is sometimes given without much guidance about how to balance or reconcile competing goals. Site-visit team members may come from law schools that have no greater success at finding solutions, but these individuals nonetheless act in the role of “judging” or “assessing” what other law schools are doing.

⁴⁸ See ASS'N OF AM. LAW SCH., *supra* note 14, art. 7, at 37–38 (setting forth the sanctions available for noncompliance).

media—most often the print media—may become interested in a precipitous drop or rise in ranking or low minority enrollment at a particular law school. Such interest is perhaps most likely when there are several public law schools within a state, and the local or regional media sees this information as an interesting news story comparing law school performance.⁴⁹ Occasionally, the national media becomes interested, such as this past year when *U.S. News* changed its methodology for measuring LSAT scores.⁵⁰ For this reason, deans must be prepared to respond to media inquiries each year about ranking and other admissions issues.

Generally speaking, when reporters call, they want a “sound bite” or short quote in response to an inquiry. Generally, these journalists do not want to tell a complex story. For that reason, it is wise to anticipate such inquiries, and to prepare a succinct response to areas of probable inquiry.

Law school admissions is not an easy topic to make simple for the public,⁵¹ and the complexities of diversity and *U.S. News* rankings as part of this issue make the story even more challenging to explain to the media in an easily understandable way. The media was willing to do a more complex treatment of affirmative action in the post-*Hopwood* era.⁵²

When the ranking news is really good, the public relations

⁴⁹ Similar media interest sometimes occurs when bar passage information becomes available.

⁵⁰ See, e.g., Bialik, *supra* note 5; Wellen, *supra* note 21.

⁵¹ An understanding of this complex issue was not helped by the movie *LEGALLY BLONDE* (Metro-Goldwyn-Mayer 2001), in which the Harvard Law School admissions committee agreed to admit Elle Woods because her fashion design background brought “diversity” to the law school, something that they had been striving for.

⁵² As chair of the University of Houston Law School Admissions Committee during and immediately following the *Hopwood* case, I responded to many of the media inquiries on the case. I was pleasantly surprised at the willingness of reporters to allow me to explain the complexities of this issue.

For press coverage of this issue, see Janet Elliott, *Life After Hopwood*, *TEX. LAW.*, May 19, 1997, at 1; S.C. Gwynne, *Back to the Future; Forced To Scuttle Affirmative Action, Law Schools See Minority Enrollment Plummet to 1963 Levels*, *TIME*, June 2, 1997, at 48; Douglas Lederman, Michael Crissey & Bryan Mealer, *Impact of Affirmative-Action Ruling in Texas Is Less Clear-Cut Than Predicted*, *CHRON. HIGHER EDUC.*, Sept. 26, 1997, at A32; Lydia Lum, *Applications by Minorities Down Sharply/State's Largest Universities See Drop in Wake of Hopwood Case*, *HOUSTON CHRON.*, Apr. 8, 1997, at A1; Lydia Lum, *Minority Enrollment Expected To Hold Steady/Some Texas Universities Show Small Gains*, *HOUSTON CHRON.*, Aug. 26, 1998, at A34; Anna Marie Stolley, *A Return to Segregation*, *NAT'L JURIST*, Sept. 1997, at 34; Kate Thomas, *More 'Hopwood' Fallout*, *NAT'L L.J.*, June 9, 1997, at A6.

people on campus may want to prepare an elaborate press release espousing the high ranking. The downside of that is being prepared to explain the next year when the ranking news is not as good. In sum, a dean is well advised to anticipate media interest, to prepare for it, and to decide in advance how much or how little to make of the rankings when contacted by the press.

VI. POSSIBLE RESPONSES BY LAW SCHOOL DEANS

The previous listing of constituencies should highlight the challenges that deans face in making decisions about how to respond to *U.S. News* rankings, the appropriate use of the LSAT, and a commitment to diversity within the profession. The most important constituency that is not listed above is the dean himself or herself. It is critical for a dean to decide where he or she stands on this issue. This, of course, does not mean that a dean may not remain open to viewpoints about strategies to achieve goals, but it means that a dean should have a personal perspective about the value of diversity in the profession, the importance of rankings, how LSAT scores should be used, and the priority to give these issues in terms of time and effort. The dean can then determine when and how to use the dean's leadership position to balance competing goals and to persuade others to support that balance.

The following suggests a number of options a dean might consider in responding to various constituencies and recommendations on these issues.

A. *Give in to Pressure and Limit Number of Low Scoring Applicants Admitted Versus "Do the Right Thing" and Admit Students Without Considering U.S. News Impact*

In an ideal world, admissions decisions would be made without regard to rankings. Few deans live in an ideal world, so they are likely to consider rankings when setting the tone and expressing thoughts on admissions practices, processes, and policies. The respective roles of the dean, the faculty, and the admissions office in setting policy on admissions vary from school to school. At most law schools, it is probable that faculty members set a general standard or framework for admission decisions. Faculty members may have a decision-making, or at least an advisory, role in determining class size. They may also play a part in setting median LSAT scores or other qualification

standards. The viewpoints and perspectives of the dean and/or admissions professionals should be considered during these discussions. The implementation of how to accomplish those goals, however, generally falls to the admissions committee, admissions staff, and/or dean or other administrator.

For example, the faculty members may decide to increase the size of the entering class from 200 to 225.⁵³ They may recommend that the goal be to maintain a median LSAT score of 162. This goal may be directly related to faculty concerns about rankings or it may be for other reasons. There may well be a general statement about ensuring diversity in the student body.⁵⁴ Admissions decision making is more an art than a science. Those making the decisions about acceptances must keep the goals set by the faculty or others in mind. Given the fluid nature of admissions applications at each law school and the dynamics of national applicant pools from year to year, however, admissions decision makers cannot guarantee meeting set goals. Those who are experienced in the field know that even as late as the day classes begin, students may decide not to attend law school after all. And so, admissions decisions are something of a best guess.

To accomplish goals relating to LSAT medians, class size, and diversity, the dean should be provided with frequent reports on a variety of admissions factors, usually beginning in mid-fall and continuing through the summer. These factors would generally include the number of applicants, residency/non-residency, LSAT and GPA, and gender and ethnic breakdown. The dean will want this information for accepted applicants as well as for those who have paid deposits. This information will generally provide comparisons with previous years.

Consider the following scenario based on the hypothetical goals noted previously—class size of 225 and median LSAT of 162. It is April and a major deposit deadline has passed. Based on projections, more offers of acceptance need to be sent to meet the class size goal. Which applicants from the wait list (or hold

⁵³ Depending on the law school, such a decision might be advisory or mandatory and may require negotiations with the central administration, depending on how tuition is allocated in budgetary decisions.

⁵⁴ Specific numerical goals could be interpreted as quotas, which are clearly impermissible. *See generally* Univ. of Cal. Regents v. Bakke, 438 U.S. 265 (1978) (validating the use of race as a “plus” factor in admissions decisions in order to further the compelling interest in diversity, while invalidating the use of a racial “quota” system in order to achieve diversity).

category) should be accepted? To the extent that a dean has input on this, the various factors of diversity, the LSAT, and other considerations must be balanced. A dean whose primary focus is on rankings will be tempted to encourage high LSAT scores to trump these other factors.

Most law schools have placed a high priority on ethnic diversity. Research demonstrates that, as a group, applicants in certain minority groups, particularly African Americans, have lower LSAT scores.⁵⁵ A dean who encourages the admission of minority students with low LSAT scores instead of white students with similar LSAT scores in order to keep the overall median LSAT high will risk legal liability because *Grutter* does not provide clarity about how race should be considered as a factor. If, in an attempt to avoid liability, the dean encourages the admission of only students with high LSATs, it is likely that the law school will offer fewer acceptances to minority students.

Instead of focusing on rankings, a dean could “do the right thing” by encouraging the faculty and admissions decision makers not to provide undue weight to LSAT scores in comparing applicants. Under this philosophy, an applicant with a strong record of service in the Peace Corps who received good grades from a solid undergraduate institution while working fifteen hours a week and caring for a parent with a serious illness and who scored a 159 on the LSAT might be accepted over a wealthy applicant with good grades but no service or work experience and a 165 LSAT score.⁵⁶

Deans at most law schools try to “do the right thing” in general, but the reality of the considerations raised by the various constituencies makes it extremely likely that at least some thought is given to the impact of admissions decisions—particularly LSAT score medians—on rankings. Deans are likely

⁵⁵ See Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1, 43 (1997). African-American law graduates also have disparately lower bar passage rates for first time test takers, which may affect law school behavior. See *id.* at 38. The focus of this Article, however, is primarily on LSAT scores.

⁵⁶ Obvious to those who have reviewed a lot of admissions applications is the fact that every application is different and that not only do the factors for each applicant vary but that comparing one applicant to all other applicants will have an impact. This hypothetical is provided to illustrate in a very general way the weakness in over-reliance on an LSAT score.

to be concerned about LSAT medians even without rankings, but the level of concern would be substantially diminished if there were no rankings.

B. Work on Factors Other than LSAT in Rankings

There are many other factors besides LSAT medians that affect *U.S. News* rankings. Law schools, through the leadership of their deans, have taken a number of approaches to addressing those factors.⁵⁷ Unfortunately, LSAT scores have a strong impact on a school's ranking, and it is the factor that is perhaps the most easily and directly affected by institutional policy. The following, however, are some of the other responses that law school deans could give to avoid placing too much weight on LSAT scores.

1. Image Factor—Through Publications

Perhaps the major beneficiary of rankings has been the public relations department at the law school or university. Since the advent of rankings, each fall, members of the academy—especially deans—receive a flurry of letters, magazines, brochures, postcards, posters, and other glossy publications touting the wonderful and great things going on at each law school. These publications continue throughout the year, but they tend to come in September and October in greater numbers. That is because deans and selected others in legal education receive ballots from *U.S. News* asking for opinions about all of the ABA law schools. Everyone bemoans how unscientific these surveys are, but everyone knows that this survey is important in the rankings. Thus, deans want as many people in academia as possible to know about their respective law school.

There is nothing wrong with glossy publications and other communications. The information included in these mailings is valuable for alums and friends of the law school and can also be useful for prospective students. It is also interesting for a faculty member with expertise in a particular area to learn what other law schools or colleagues at other law schools are doing in that area. Brochures, websites, and other communications to legal

⁵⁷ See Wellen, *supra* note 21 (suggesting some extreme ways in which law schools might report certain data and information in order best to position the law school for rankings purposes).

educators about innovations, programs, and successes at a particular law school generate both motivation and ideas to try new approaches or to pursue beneficial initiatives.⁵⁸ Whenever deciding whether to prepare and mail a particular publication, it should be asked whether it would have been done if there were no rankings.

There is a value to conveying consumer information and developing good will generally. An assessment might be helpful, however, in considering whether at least some of the resources used for these communications might be better used for scholarships or other purposes.

My goal in this Article is not to debate that issue but to highlight the fact that behavior of law schools is affected by *U.S. News* rankings in ways that are not necessarily positive.

2. Bar Passage

In order to achieve higher bar passage rates, law schools could seek to admit fewer “at risk” students—those whose LSAT scores and other predictors raise concerns about their bar passage probability. Efforts in this area again have a potentially disparate impact on minority admissions. A better alternative would be to put more resources into academic support programs. Many law schools would like to do so but find themselves challenged by budget limitations.

C. Educate Constituencies

There is an alternative to giving undue weight to LSAT scores or to engaging in unnecessarily contrived efforts to affect other factors. That alternative is to educate various constituencies about the admissions process, the value and importance of diversity in the profession, the impact of rankings on a diverse profession, and the importance of not overemphasizing LSAT scores as a result. The goal of such an educational process would be support for reducing the emphasis on LSAT scores in setting admissions policies and practices.

As the introduction to this Article notes, this knowledge may lead to understanding, and this understanding would lead to better judging. Deans have an opportunity to be “educators” of

⁵⁸ Keeping up with the research, teaching, and service activities of colleagues in related fields is also a valuable way of maintaining contact.

various constituencies, including each other. It is incumbent upon deans because of the status of their positions to take advantage of that opportunity to the extent possible, to communicate to the various constituencies, and to set the tone about how *U.S. News* rankings should be treated. The following are some of the vehicles through which deans can carry the message.

1. LSAC Forums, AALS, and ABA Meetings

For several years, the major legal education associations have placed an emphasis on programs about affirmative action, challenges to it, the impact of rankings on diversity, and related topics. At annual meetings, special focused conferences, and other programs, these issues have been a frequent topic. These organizations should continue this programming as a priority.

Deans, even those who have been in the ranks for a long time, should attend these meetings. Such attendance demonstrates that these issues are a priority. Deans who voice opinions in question and answer sessions demonstrate this as well. Deans should also encourage faculty members to attend these programs and conferences.

LSAC has taken a substantial leadership role in explaining the impact of rankings on diversity.⁵⁹ Unfortunately the annual LSAC conference is not always well attended by deans. Attendance is a significant learning opportunity, whereby new research and other useful information about successful practices can be carried back to the home law school. Deans should make an effort to attend the LSAC meeting as frequently as possible.

Law school deans are also in a good position to encourage local and state bar associations to include programming on these issues. Deans might also want to volunteer or to encourage articulate faculty members or administrators to serve as speakers on these topics.

Deans play a critical role in disseminating information about the research relating to the limitations on the use of LSAT scores and the impact on rankings and diversity. Deans must consider

⁵⁹ For a discussion of this issue, see generally Wightman, *supra* note 55 (providing empirical data relating to the role of race as a factor in the law school admissions process). For further information, see also LAW SCH. ADMISSION COUNCIL, *NEW MODELS TO ASSURE DIVERSITY, FAIRNESS, AND APPROPRIATE TEST USE IN LAW SCHOOL ADMISSIONS* (1999).

how to disseminate that information to other constituencies, which is a challenge when many of these constituencies—particularly faculty members—are on information overload.

2. Memos and Communications to Central Administration

Depending on the law school and the university, the need to educate and inform central administrators—presidents, provosts and the board of trustees—varies substantially. Many university presidents and provosts are former law school deans or law school faculty, and these individuals may have a better understanding than others about the limitations of LSAT scores, rankings, and the impact of focusing on rankings on diversity.

Regardless of the level of understanding and knowledge, deans must anticipate the need to inform annually key central administrators about the ranking in that year and what it means and what it does not mean. Ideally, a law school dean may be in a position to lead a discussion of all deans and top administrators at a university about affirmative action, rankings, and diversity. Deans can provide a valuable service to the university through this ongoing educational process.

3. Alumni/ae and Supporters Communications

Any law school dean who has used the overall rankings as a bragging point in a given year understands the downside of a negative movement in the rankings. For that reason, it may be best to avoid making too much of high rankings, especially if the dean is not fairly certain that the ranking will hold steady from year to year. Deans can use alumni/ae boards, visiting committees, and other special gatherings to talk about rankings, the limitations of rankings, LSAT scores, diversity, and so on. These discussions often have a ripple effect, and the word can be spread by loyal alums and supporters to others.

4. Faculty Discussions

Faculty discussions can be an opportunity for addressing the individual factors behind a lower-than-desired ranking. For example, if one of the factors is low bar passage rates, this can be the basis for a discussion about why the bar passage rate is low, what steps might be taken to address those reasons, the resources necessary to take those steps, and the priority that should be placed on this goal given competing concerns. The

educational process of such a discussion can increase the awareness and understanding of the difference between first-time test takers compared to all takers. It can also clarify that the *U.S. News* ranking reflects only one state's bar exam performance.

Deans can take a leadership role with faculty in two ways. First, the dean can ensure that these issues are placed on the agenda of regular and/or special faculty meetings.⁶⁰ Second, the dean can disseminate information about the tensions between LSAT scores, rankings, and diversity, and about the limitations of LSAT scores, as well as contribute to the discussion at the meeting. The dean may determine that the chair of the admissions committee, the admissions dean, or some other individual may be the best person to highlight this information. The point is that the dean has a role in ensuring that someone whose credibility is strong presents critical information about these issues.

5. Media-OpEd Articles

By virtue of their title and position, deans often have an entrée into the media that others may not have. Many newspapers are quite willing to print opinion pieces by deans about law school admissions, rankings, diversity, and related topics. Often local and state bar association publications provide a regular outlet for communications by deans. These columns can be used as an educational vehicle. It may even be an opportunity for several law school deans to write a column jointly about these issues.

VII. CRYSTAL BALL—TWENTY-FIVE YEARS AFTER *GRUTTER*?

Some have said that Justice O'Connor gave us twenty-five years (or until 2028) to take steps so that affirmative action will no longer be allowed. While that is a very simplistic statement, most of us believe that the use of race as a factor in admissions will not be permitted forever.

It is clear that leaders in legal education have not only a challenge but an opportunity to set the tone in questioning

⁶⁰ At the LSAC Outreach Forums, it was critical to the success of these programs that the dean attended and communicated to faculty members the importance of attendance. See discussion *supra* Part IV. At every forum at which I was a presenter, the dean was present.

practices that have a disparately adverse effect on ensuring diversity in the legal profession. *U.S. News* rankings, and their inappropriate reliance on LSAT scores, have just such an adverse effect. It is incumbent upon those in leadership positions, particularly deans, to use their positions to continue to press those who engage in rankings to change their practices and those who are affected by the rankings to resist the pressures to make decisions based on those rankings.

The goal of ensuring a diverse profession must be attained by engaging a number of strategies. These include increasing outreach/pipeline programs, ensuring a positive experience in law school, evaluating how to improve bar passage, improving mentoring within the profession, and taking other steps to ensure success in practice. The leadership role of the dean can include making committee appointments and charges, placing issues on the agenda, providing resources to carry out these goals, and voicing his or her own perspective on these issues by words and action.

As was noted previously, Justice O'Connor, in the *Grutter* decision, recognized the important role of law schools as the training ground for our country's leaders. Law school deans face special challenges in ensuring that these leaders represent the diversity of American society. The dean's leadership role provides an opportunity to recognize the unique role of legal education as gatekeeper to the leadership of America. Those deans who recognize that opportunity and use their positions to meet the challenge will play an important role in our nation's economic and social development.