

## Introduction

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

**THE LSAT, *U.S. NEWS & WORLD REPORT*,  
AND MINORITY ADMISSIONS**

INTRODUCTION

BY

LEONARD M. BAYNES<sup>†</sup>

On January 7, 2005, at the annual meeting of the Association of American Law Schools (“AALS”), the Section on Minority Groups held a panel entitled: “The LSAT, *U.S. News & World Report*, and Minority Admissions.” Professor Pamela Edwards of City University School of Law served as the moderator. Dayton Law Professor Vernellia Randall, Law School Admission Council President and Executive Director Philip Shelton, and Pennsylvania State Dickinson School of Law Assistant Dean of Admissions Janice Austin served as panelists. Brian Kelly, the Executive Editor of *U.S. News & World Report* was scheduled to be a panelist, but declined to participate merely three weeks before the conference. In a letter dated December 16, 2004, Mr. Kelly expressed his doubts about whether *U.S. News* could substantively add to the discussion and feared being in the “middle of a highly charged admissions policy dispute.”<sup>1</sup> The panel organizers were disappointed by the absence of Mr.

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<sup>1</sup> See Letter from Brian Kelly, Executive Editor, *U.S. News & World Report*, to Professor Leonard M. Baynes, Professor of Law & Dir. of The Ronald H. Brown Ctr. for Civil Rights & Econ. Dev., St. John’s Univ. Sch. of Law (Dec. 16, 2004), available at <http://academic.udayton.edu/TheWhitestLawSchools/2005TWLS/Chapter2/Legaled12.htm>.

Kelly and *U.S. News*, but his absence is emblematic of the difficulty in having a complex and nuanced discussion on race and admissions decisions.

Given the success of the AALS panel, on September 7, 2005, The Ronald H. Brown Center for Civil Rights and Economic Development at St. John's University School of Law ("The Ronald H. Brown Center")<sup>2</sup> held a conference on the same issue.

The September 7, 2005 conference brought together academics, admissions personnel, and other leading gatekeepers to the legal profession. The conference participants examined the impact of the ranking-frenzied atmosphere created by *U.S. News & World Report* on African American and Latino/a enrollments.<sup>3</sup> Each of the panelists from the AALS panel participated and several other panelists added to the discussion including *U.S. News*, which was represented by Robert Morse, Director of Data Research. The AALS panel, The Ronald H. Brown Center conference on the same issue, and this *St. John's Law Review* symposium issue created an environment to pursue these full-bodied discussions.

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<sup>2</sup> Ronald H. Brown was a 1970 graduate of St. John's University School of Law. Brown was the first African American to serve as Chair of the Democratic National Committee. Playing an instrumental role in the election of President Bill Clinton in 1992, Brown was appointed the Secretary of Commerce, the first African American to serve in that capacity. Brown's life was tragically cut short on a trade mission to Croatia on April 3, 1996.

In 2000, St. John's University School of Law created The Ronald H. Brown Center to honor Brown's memory and to memorialize his work in civil rights and economic development. This Center would not be possible without the efforts of retired Professor Philip Roache, who was the first African American faculty member at St. John's University School of Law, and Professor Janice L. Villiers.

The mission of The Ronald H. Brown Center is "to engage in legal studies, research and outreach focusing on issues that affect the lives of underrepresented people while simultaneously educating law students to be leaders on issues of racial, economic and social justice." The under-representation of students of color at law schools is a subject worthy for The Ronald H. Brown Center to examine. See ST. JOHN'S UNIV. SCH. OF LAW, THE RONALD H. BROWN CENTER FOR CIVIL RIGHTS AND ECONOMIC DEVELOPMENT (brochure on file with the author).

<sup>3</sup> The conference had the following panels: (1) Diversity and the Use of the LSAT in the Admissions Process to Bolster *U.S. News & World Report* Rankings; (2) The LSAT: What Does it Measure? Do Academic Support Programs Change the LSAT's Predictive Capability?; and (3) The Regulatory, Legal and Ethical Issues in Achieving a Racially Diverse Student Body. See THE RONALD H. BROWN CTR. FOR CIVIL RIGHTS & ECON. DEV., ST. JOHN'S UNIV. SCH. OF LAW, THE LSAT, *U.S. NEWS & WORLD REPORT*, AND MINORITY ADMISSIONS (conference brochure on file with the author).

*Affirmative Action, Grutter, and U.S. News*

In 2003, the United States Supreme Court decided two important cases that set the legal parameters for the use of race in university admissions. In *Grutter v. Bollinger*,<sup>4</sup> the Supreme Court found Michigan Law School's admission program to be constitutionally sound.<sup>5</sup> Through this program, Michigan Law School considered race as well as a variety of other factors to determine whether to admit law students.<sup>6</sup> In its decision, the Supreme Court found that diversity was a compelling governmental interest, and Michigan's use of race as one of several factors in deciding whether to admit students was constitutional.<sup>7</sup> The key for the *Grutter* Court was that Michigan Law School used an "individualized consideration" in determining who should be admitted.<sup>8</sup> In contrast, on the same day, the Supreme Court found Michigan's undergraduate admissions program unconstitutional.<sup>9</sup> Pursuant to this program, Michigan's undergraduate program would indiscriminately add extra points to applicants simply because they were members of minority groups.<sup>10</sup> The Court found that this process was not narrowly tailored.<sup>11</sup>

In his article entitled *When "Victory" Masks Retreat: The LSAT, Constitutional Dualism, and the End of Diversity*, Miami Professor D. Marvin Jones finds that the *Grutter* decision moves minority admission into "the direction of token representation."<sup>12</sup> Professor Jones predicts that African American law school enrollment will plummet to 3.5% leading to de facto segregation.<sup>13</sup> He suggests that the reliance on the LSAT

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<sup>4</sup> 539 U.S. 306 (2003).

<sup>5</sup> *See id.* at 343–44.

<sup>6</sup> *Id.* at 312–14.

<sup>7</sup> *Id.* at 325, 340.

<sup>8</sup> *Id.* at 337.

<sup>9</sup> *Gratz v. Bollinger*, 539 U.S. 244, 275–76 (2003).

<sup>10</sup> *Id.* at 273.

<sup>11</sup> *Id.* at 275. *But see* Leonard M. Baynes, *Michigan's Minority Point System "Compensated" Minority Students for Inferior Public Education*, JURIST, Sept. 5, 2003, available at <http://jurist.law.pitt.edu/forum/symposium-aa/baynes.php> (arguing that the admissions program rejected in *Gratz* should be considered constitutional as it puts all minority students on the same footing and compensates for the "generally inferior" education that American society has provided them).

<sup>12</sup> D. Marvin Jones, *When "Victory" Masks Retreat: The LSAT, Constitutional Dualism, and the End of Diversity*, 80 ST. JOHN'S L. REV. 15, 21 (2006).

<sup>13</sup> *Id.* at 26.

suggests African American inferiority and perpetuates historic narratives of African American inferiority.<sup>14</sup>

The symposium authors acknowledge that many law schools are failing to use *Grutter's* individualized determination of law school applicants; instead these law schools are evaluating applicants solely on their LSAT scores.<sup>15</sup> These symposium authors argue that this over-reliance on an imperfect test that has a disparate impact on test takers of color constitutes race discrimination.<sup>16</sup>

### U.S. News's *Rankings*

*U.S. News* provides the only commercially available ranking of ABA-accredited law schools. Its rankings are designed to provide prospective students and their parents with a means to differentiate between and among law schools. However, many law schools quickly discover ways to "game" the rankings system. Alex Wellen, the author of *Barman*,<sup>17</sup> reported that some law schools will do almost anything to increase their *U.S. News & World Report* rankings.<sup>18</sup> For example, he reported how Illinois Law School calculated the fair market value of online search engines, Lexis and Westlaw, even though Illinois received these services at a flat fee.<sup>19</sup> This inflated amount allowed Illinois to claim that it spent 80 times more on students boosting Illinois's total student expenditures. Illinois engaged in this questionable practice even though student expenses account for only 1.5% of

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<sup>14</sup> *Id.* at 29.

<sup>15</sup> See Janice L. Austin, *Panel: LSAT, U.S. News and Minority Admissions*, 80 ST. JOHN'S L. REV. 289, 292 (2006); Pamela Edwards, *The Shell Game: Who is Responsible for the Overuse of the LSAT in Law School Admissions?*, 80 ST. JOHN'S L. REV. 153, 157 (2006); Phoebe Haddon & Deborah W. Post, *Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and a Redefinition of Merit*, 80 ST. JOHN'S L. REV. 41, 56 (2006); Jones, *supra* note 12, at 15, 17–18; John Nussbaumer, *Misuse of the Law School Admissions Test, Racial Discrimination, and the De Facto Quota System for Restricting African-American Access to the Legal Profession*, 80 ST. JOHN'S L. REV. 167, 170, 175 (2006); Vernellia R. Randall, *The Misuse of the LSAT: Discrimination Against Blacks and Other Minorities in Law School Admissions*, 80 ST. JOHN'S L. REV. 107, 107 (2006); Jeffrey Evans Stake, *Minority Admissions to Law School: More Trouble Ahead, and Two Solutions*, 80 ST. JOHN'S L. REV. 301, 310 (2006).

<sup>16</sup> See Edwards, *supra* note 15, at 164–65; Haddon & Post, *supra* note 15, at 57; Nussbaumer, *supra* note 15, at 174–75; Randall, *supra* note 15, at 107–08.

<sup>17</sup> ALEX WELLEN, *BARMAN: PING-PONG, PATHOS, AND PASSING THE BAR* (2003).

<sup>18</sup> Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES, July 31, 2005, at A4.

<sup>19</sup> *Id.*

*U.S. News's* rankings methodology.<sup>20</sup>

Mr. Wellen also reported that law schools often hired their own graduates temporarily after graduation to pump up their career statistics reported to *U.S. News*.<sup>21</sup> To report increased LSAT scores, law schools often admit students with lower credentials into part-time programs and admit transfer students after they completed their first year of law school elsewhere since neither admission decisions negatively affect the statistics reported to *U.S. News*.<sup>22</sup> For better and more accurate consumer information, Mr. Wellen suggests that prospective students might learn more about law schools from *The Official Guide to A.B.A.-Approved Law Schools*, published by the American Bar Association and the Law School Admission Council.<sup>23</sup>

### *The LSAT, U.S. News's Rankings on Law School Diversity*

Given this "gamesmanship" on such small components of the *U.S. News's* ranking methodology, it is no surprise law schools would raise minimum LSAT scores despite its imperfect correlation to law school success<sup>24</sup> and despite the consequences to African American and Latino/a enrollment. In their article *SALT Statement on the LSAT*, Professors Phoebe Haddon and Deborah W. Post give a comprehensive overview of the use of the LSAT. They maintain that despite Law School Admission Council admonitions concerning the overuse of the LSAT, "law school admissions decision-makers and others treat the test score as a definitive measure of aptitude and merit well beyond the first year."<sup>25</sup> Professor Stake points out in his article *Minority*

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Mr. Wellen points out two examples where *The Official Guide* is more accurate than *U.S. News*. He noted that UCLA Law School reports a 96.5% employment rate nine months after graduation to *U.S. News*. However, if a prospective student checks out *The Official Guide*, she would find that UCLA's employment rate is closer to 85% nine months after graduation. Similarly, Columbia Law School reports an 11.2-to-1 student-faculty ratio. In reality, the prospective students may not realize that the *U.S. News* study applies only to student-faculty ratios in the fall semester. Columbia's actual student-faculty ratio is closer to 16-to-1 because one-third of its faculty do not teach in the spring semester. *Id.*

<sup>24</sup> See generally LAW SCH. ADMISSION COUNCIL, CAUTIONARY POLICIES (1999), available at <http://academic.udayton.edu/TheWhitestLawSchools/2005TWLS/Chapter2/CAUTIONARYPolicies2003.pdf> (advising law schools not to over rely on the LSAT).

<sup>25</sup> Haddon & Post, *supra* note 15, at 55.

*Admissions to Law School: More Trouble Ahead, and Two Solutions* that law schools increased the weight of the LSAT in admissions—not because it is a better indicator of success, but because the LSAT is one of the few statistics in the *U.S. News* formula that law schools can control.<sup>26</sup>

Thomas Cooley Law Associate Dean John Nussbaumer's study *Misuse of the Law School Admission Test, Racial Discrimination, and the De Facto Quota System for Restricting African American Access to the Legal Profession* shows a strong correlation between rising minimum LSAT scores and decreasing African American admissions.<sup>27</sup> Nussbaumer studies eight geographical areas: California, New York, Florida, Washington, D.C., Illinois, Ohio, Texas, and Massachusetts.<sup>28</sup> He found that 82% of law schools raised their minimum LSAT during this period and at 62% of these schools, African American enrollment fell on average by 19%.<sup>29</sup>

Professor Jones finds that law schools establish minimum cut-off scores.<sup>30</sup> He maintains that an LSAT score of 142 creates an irrefutable presumption that students below that score are unfit to go to law school.<sup>31</sup> He points to a study that shows that 26% of African Americans with undergraduate grade point averages above 3.25 were denied admission by every ABA-accredited law school as compared to 15% of whites.<sup>32</sup>

Professor Vernellia Randall, in her article *The Misuse of the LSAT: Discrimination Against Blacks and Other Minorities in Law School Admissions*, examines how Dayton Law School raised its minimum LSAT scores to the detriment of African American enrollment.<sup>33</sup> Her study also demonstrates that the LSAT was an ineffective predictor of African American and Latino/a student performance at Dayton Law School.<sup>34</sup> Referencing her on-the-ground experience, Assistant Dean of Admissions Janice Austin in her article *Panel: LSAT, U.S. News and Minority Admissions* noted that African Americans, as a

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<sup>26</sup> Stake, *supra* note 15, at 309.

<sup>27</sup> Nussbaumer, *supra* note 15, at 174.

<sup>28</sup> *Id.* at 170–73.

<sup>29</sup> *Id.* at 174.

<sup>30</sup> See Jones, *supra* note 12, at 19.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 20.

<sup>33</sup> Randall, *supra* note 15, at 120.

<sup>34</sup> *Id.* at 125.

group, perform less well on the LSAT, and as a result their “slice” of the admissions pie and overall acceptance rates are lower than other racial and ethnic groups.<sup>35</sup>

At the conference, Phil Shelton, the President of the Law School Admission Council, recognized that “ ‘the LSAT was a good, but not perfect measure of an applicant’s potential for success in law school.’ ”<sup>36</sup> Shelton suggested that “ ‘law schools should still perform holistic reviews of applicants for admission.’ ”<sup>37</sup> Dr. Roy Freedle, the former test designer for the Educational Testing Service, suggests that law school admissions officers use tests that start out with the premise that the different races are intellectually equal.<sup>38</sup> He maintains that given that African Americans and whites are equal, something is wrong with the LSAT in that it produces disparate racial consequences.<sup>39</sup>

Although the LSAT may have some predictive value, Professor Randall expresses concerns over its misuse. More specifically, Randall believes, given the fact that the LSAT is not a perfect predictor of law school success, that over-reliance on the LSAT could put law schools at risk of discrimination suits by rejected black and Latino/a applicants.<sup>40</sup> At the conference, Shelton agreed with Randall, and stated that misuse of the LSAT may put law schools at risk for discrimination suits.<sup>41</sup> He specifically stated that “ ‘the evidence is very clear that the test has a disparate impact based on race, and if the test is used contrary to LSAC guidelines that could provide a valid basis for proving racial discrimination.’ ”<sup>42</sup> Notwithstanding the misuse and overuse of the LSAT, other ranking pressures may have an adverse effect on African American and Latino/a admissions. On

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<sup>35</sup> Austin, *supra* note 15, at 292.

<sup>36</sup> St. John’s Univ. Sch. of Law, The Ronald H. Brown Center Conference, [http://www.stjohns.edu/academics/graduate/law/pr\\_law\\_050913.sju](http://www.stjohns.edu/academics/graduate/law/pr_law_050913.sju) (last visited Mar. 12, 2006) (quoting Phil Shelton).

<sup>37</sup> *Id.* (quoting Phil Shelton).

<sup>38</sup> Dr. Roy Freedle, *How and Why Standardized Tests Systematically Underestimate African-Americans’ True Verbal Ability and What to Do About It: Towards the Promotion of Two New Theories with Practical Applications*, 80 ST. JOHN’S L. REV. 183, 186–87 (2006).

<sup>39</sup> *Id.* at 185, 187 (suggesting that admissions officers use the Fagan-Holland test, which would control the concepts in a test so that everyone gets equal exposure to those concepts, as an alternative to the LSAT).

<sup>40</sup> Randall, *supra* note 15, at 141–42.

<sup>41</sup> St. John’s Univ. Sch. of Law, *supra* note 36.

<sup>42</sup> *Id.* (quoting Phil Shelton).



a cautionary note, Indiana Professor Jeffrey Stake predicted that, in order to increase their *U.S. News* ranks, law schools will next work to increase the median undergraduate grade point averages of their incoming students.<sup>43</sup> He feared that the combination of increased LSAT and undergraduate grade point average medians will have a devastating impact on minority admissions.<sup>44</sup>

At the conference, Robert Morse, Director of Data Research for *U.S. News & World Report*, stated that “‘law school rankings are here to stay’ because they are useful for consumers.”<sup>45</sup> Morse also stated that *U.S. News* “‘is not responsible for the use [or overall importance] of the LSAT in the admissions process.’”<sup>46</sup> He noted that “‘law schools are the ones that determine who is admitted.’”<sup>47</sup> Discounting the importance of the LSAT in law school rankings, Morse stated that “‘[t]his means in most cases, except at some points in the 150-160 LSAT score area, one LSAT point upward will on average not change a school’s overall score by one point and therefore will not change its position in the rankings.’”<sup>48</sup> Mr. Morse fails to recognize that this very range is where many law schools face the most pressure and will do whatever it takes to increase their median LSAT score marginally to get an advantage over competitors.

### *The Response of Law School Deans to U.S. News’s Rankings*

Although law schools engage in this rankings “gamesmanship,” virtually every ABA-accredited law school dean endorsed an open letter to law school applicants entitled “Law School Deans Speak Out About Rankings.”<sup>49</sup> In this missive, the law school deans called the commercial ranking system “inherently flawed” because it did not take into account the “special needs and circumstances” of applicants.<sup>50</sup> The law school deans cited to the following factors that are totally excluded from

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<sup>43</sup> Stake, *supra* note 15, at 301.

<sup>44</sup> *Id.*

<sup>45</sup> St. John’s Univ. Sch. of Law, *supra* note 36 (quoting Robert Morse).

<sup>46</sup> *Id.* (quoting Robert Morse).

<sup>47</sup> *Id.* (quoting Robert Morse).

<sup>48</sup> *Id.* (quoting Robert Morse).

<sup>49</sup> See LAW SCH. ADMISSION COUNCIL, LAW SCHOOL DEANS SPEAK OUT ABOUT RANKINGS (2005), available at <http://lsac.org/pdfs/2005-2006/RANKING2005-newer.pdf>.

<sup>50</sup> *Id.*

the *U.S. News* rankings:

- (1) breadth and support of alumni network;
- (2) loan repayment assistance for low-income lawyers;
- (3) breadth of curriculum;
- (4) location;
- (5) clinical programs;
- (6) part-time enrollment option;
- (7) collaborative research opportunities with faculty;
- (8) public interest programs;
- (9) commitment to innovative technology;
- (10) quality of teaching;
- (11) cost;
- (12) externship options;
- (13) racial and gender diversity within the faculty and student body;
- (14) faculty accessibility;
- (15) religious affiliation;
- (16) intensity of writing instruction;
- (17) size of first-year classes;
- (18) interdisciplinary programs;
- (19) skills instruction;
- (20) international programming;
- (21) specialized areas of faculty expertise;
- (22) law library strengths and services.<sup>51</sup>

The deans argued that given that these factors are important to students and are given so little weight by *U.S. News*, the current rankings systems are “unreliable.”<sup>52</sup> Criticizing the *U.S. News* rankings, the law school deans called *U.S. News*’s methodology “arbitrary.”<sup>53</sup> Pointing out that 40% of the rankings are based on each law school’s reputation, the law school deans noted that these numbers are derived from a small number of law professors, academics, lawyers, and judges that are asked to rank the over 190 ABA law schools.<sup>54</sup> As a consequence, the law school deans noted that some strong regional schools may be unknown to these evaluators.<sup>55</sup> At the same time, national

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> See *id.*; see also Norman Bradburn, *Outranked and Underrated*, LEGAL

schools like Harvard, Yale, and Stanford receive an "echo effect" because everyone votes for them because they are so well-known.

Former Louisville Dean Laura Rothstein, in her article *The LSAT, U.S. News & World Report, and Minority Admissions: Special Challenges and Special Opportunities for Law School Deans*, discusses the challenges that *U.S. News's* rankings have made to minority admissions.<sup>56</sup> She discusses the various constituencies that law school deans have to juggle as to *U.S. News's* rankings.<sup>57</sup> These constituencies include law school faculty, central administrators, donors, supporters and development officers, students, applicants, admissions staff, employers, accreditation and membership organizations, university counsel, and the media.<sup>58</sup> Rothstein suggests that law school deans try to dissuade law school faculties from unduly relying on LSAT scores. She suggests that deans rely on other factors to boost rankings besides the LSAT.<sup>59</sup> These factors include bar passage, law school image, and keeping the lines of communication open to the various law school constituent groups.<sup>60</sup>

#### *The Bottom Line: There are Few Lawyers of Color*

There are still very few attorneys of color. Despite affirmative action programs for the past twenty-five years, the percentage of lawyers of color is very small. As of 2000, only 3.9% of lawyers are African American, 3.3% are Latino/a, 0.2% are American Indian, and 2.3% are Asian Americans.<sup>61</sup> The percentage of lawyers of color in New York State is also small. The Second Circuit Judicial Council Task Force on Gender, Racial, and Ethnic Fairness reports that, of the lawyers practicing in the Second Circuit (which includes New York State,

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AFFAIRS, Nov./Dec. 2005, available at <http://www.legalaffairs.org/printerfriendly.msp?id=925> (describing law school rankings as "inherently misleading").

<sup>56</sup> See Laura Rothstein, *The LSAT, U.S. News & World Report, and Minority Admissions: Special Challenges and Special Opportunities for Law School Deans*, 80 ST. JOHN'S LAW REV. 257, 262 (2006).

<sup>57</sup> See *id.*

<sup>58</sup> *Id.*

<sup>59</sup> See *id.* at 283.

<sup>60</sup> See *id.* at 283-84.

<sup>61</sup> See ABA Comm. on Racial & Ethnic Diversity in the Profession, Statistics About Minorities in the Profession from the Census, available at <http://abanet.org/minorities/links/2000census/html> (last visited March 21, 2006).

Connecticut, and Vermont), approximately 3.4% are African American, 2.5% are Hispanic/Latino/a, 1.4% are Asian American, and 0.2% are American Indian.<sup>62</sup> These percentages are far below these groups' representation in the United States and New York State population.

*More Needs to Be Done to Increase Success for Students of Color*

Professor Vernellia Randall of Dayton Law School attributed the decline in Black and Latino/a admissions to over-reliance on the LSAT in admissions.<sup>63</sup> As the Director of Academic Excellence at Dayton Law School, Professor Randall found that well-designed academic support programs enable law students with low LSAT scores to graduate from law school and pass the bar exam on the first try.<sup>64</sup> Seattle Law Professor Laurel C. Oates agrees that students with low LSAT scores can do better when they learn to read "purposefully."<sup>65</sup> In her article *Leveling the Playing Field: Helping Students Succeed by Helping Them Learn to Read as Expert Lawyers*, Oates uses several case studies of students that demonstrate that students with low LSAT scores can do well in law school when they learn to read this way. Oates found that some students with low law school grades may read the course materials solely for informational purposes.<sup>66</sup> She notes that solely informational reading is insufficient to perform legal analysis and that purposeful reading is a skill that can be taught.<sup>67</sup> Roy Freedle also reminds us that although a some correlation exists between the LSAT and first-year grades, grades earned by African Americans "increase systematically each additional year they are in law school."<sup>68</sup> Grades of white students also increased during their second and third year in law school, but not to the same extent as grades of students of color.<sup>69</sup>

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<sup>62</sup> See N.Y. COUNTY LAWYERS' ASS'N TASK FORCE TO INCREASE DIVERSITY IN THE LEGAL PROFESSION, REPORT OF THE TASK FORCE (2005) [hereinafter N.Y.C.L.A. TASK FORCE REPORT], available at [http://www.nycla.org/siteFiles/sitePages/sitePages266\\_3.pdf](http://www.nycla.org/siteFiles/sitePages/sitePages266_3.pdf).

<sup>63</sup> St. John's Univ. Sch. of Law, *supra* note 36.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Laurel Currie Oates, *Leveling the Playing Field: Helping Students Succeed by Helping Them Learn to Read as Expert Lawyers*, 80 ST. JOHN'S L. REV. 227, 241 (2006).

<sup>67</sup> *Id.* at 251-54.

<sup>68</sup> Freedle, *supra* note 38, at 216.

<sup>69</sup> *Id.*

As a solution to the over-reliance on the LSAT, both Phil Shelton and Janice Austin suggest that law schools do more comprehensive and holistic reviews of their applicants, examining their recommendations, undergraduate GPA, work experiences, community and leadership experiences, as well as LSAT scores.<sup>70</sup> Haddon, Post, and Freedle suggest dumping the LSAT.<sup>71</sup> Haddon and Post suggest various reforms to the way the LSAT score is reported.<sup>72</sup> Austin also suggests that hiring admission staff of color will work to increase minority admissions.<sup>73</sup> Stake suggests that *U.S. News* should use only the 75th percentile score in its rankings, giving law schools more freedom to admit qualified students with lower LSAT scores.<sup>74</sup> Jones suggests possible legal remedies for students of color who are otherwise qualified but not admitted solely because of their LSAT score.<sup>75</sup> Randall advocated that the American Bar Association adopt accreditation rules that would penalize law schools that misuse the LSAT by automatically rejecting law school applicants primarily on the basis of low LSAT scores. Edwards suggests that *U.S. News* should include diversity in its overall rankings of law schools.<sup>76</sup> Given that the ABA, AALS, and LSAC all state that diversity of the legal professions is an important policy goal, *U.S. News* should include it as part of the overall *U.S. News* rankings. It makes sense for *U.S. News* to include the factors in its overall rankings that influential gatekeepers to the profession consider important.

The legal profession might also consider programs designed to expand the pool of qualified applicants of color. For example

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<sup>70</sup> See Austin, *supra* note 15, at 298 (advocating a "whole file review" in some instances); St. John's Univ. Sch. of Law, *supra* note 36 (reporting Shelton's suggestion that law schools should be performing "holistic reviews" for admission).

<sup>71</sup> Freedle, *supra* note 38, at 189, 220, 226; Haddon & Post, *supra* note 15, at 93-94.

<sup>72</sup> Haddon & Post, *supra* note 15, at 86-88.

<sup>73</sup> Austin, *supra* note 15, at 295, 297-98.

<sup>74</sup> Stake, *supra* note 15, at 317-18.

<sup>75</sup> Jones, *supra* note 12, at 40 (suggesting that a statute may need to be passed to create a cause of action against law schools for the "discriminatory impact of admissions test requirements"). *But see* St. John's Univ. Sch. of Law, *supra* note 36 (reporting that in analyzing a law school's misuse of the LSAT, Jones stated "'practices that have a disparate impact shift the burden of proof to the law schools and the LSAC to show a valid educational purpose,'" and in challenging those law schools that misuse the LSAT, he declared, "[l]et's test the test and make it subject to validation in a court of law.'") (quoting Donald Jones).

<sup>76</sup> Edwards, *supra* note 15, at 165-66.

The Ronald H. Brown Center instituted the Summer Prep Program, which provides qualified college sophomores exposure to the study of law and judicial internships, and the juniors receive a free LSAT prep course.<sup>77</sup>

Despite the presence and legality of affirmative action programs and the large increases in the number of students applying to law schools, the number of African Americans attending law school has decreased since 1994. Many schools have African American enrollments that hover only around 6% of the class.<sup>78</sup> In fact, the percentage of African American, Latino/a, and American Indian students that were in contention at Michigan Law School ranged from 13 to 20% of the class.<sup>79</sup> The extreme irony here is that the legal profession, which opened up American society to equal opportunity and diversity, has lower percentages of African Americans than comparable professions, e.g., doctors, accountants, and . . . even university professors.<sup>80</sup> Some might argue, like Justice Sandra Day O'Connor did in *City of Richmond v. J.A. Croson Co.*,<sup>81</sup> that we shouldn't necessarily expect minorities to be proportionally represented "lockstep," in any endeavor, with their share of the population. Maybe people of color just don't want to be lawyers? But wait! Isn't this the profession that gave us Thurgood Marshall? Isn't this the profession in which African American civil rights lawyers litigated to reverse Jim Crow segregation? Justice O'Connor's analysis can't possibly be right here.

Whatever the reasons for this decrease in African American

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<sup>77</sup> See St. John's Univ. Sch. of Law, The Ronald H. Brown Center Summer Prep Program for College Students, <http://www.stjohns.edu/academics/graduate/law/prospective/ronbrown/summerprep.sju> (last visited Mar. 12, 2006) (offering activities, courses, and LSAT preparation to help college students from disadvantaged backgrounds become more successful law school applicants); see also Thomas Adcock, *Minority Students Gain Insight into Law Schools*, N.Y. L.J., June 10, 2005, at 16; Leonard M. Baynes, *Don't Let the Present Dictate the Future: A Program for Disadvantaged Youths Who Might Consider a Career in Law*, BUS. L. TODAY, Nov./Dec. 2005, at 55; Leonard M. Baynes, *Recruit More Minorities to Law Schools*, NEWSDAY (N.Y.), Feb. 26, 2006, at A23.

<sup>78</sup> See John A. Sebert, *From the Consultant*, SYLLABUS, Winter 2006, at 4.

<sup>79</sup> *Grutter v. Bollinger*, 539 U.S. 306, 336 (2003).

<sup>80</sup> See N.Y.C.L.A. TASK FORCE REPORT, *supra* note 62.

<sup>81</sup> 488 U.S. 469, 507 (1989) (invalidating the affirmative action program of the city of Richmond, Justice O'Connor stated that the quota is not narrowly tailored to meet the goal of diversity because it is "completely unrealistic" to assume that "minorities will choose a particular trade in lockstep proportion to their representation in the local population").

and Latino/a admissions, as educators, we have a responsibility to make sure that the legal profession is more representative. As the United States becomes more diverse, we need lawyers who are bilingual and bicultural. It is anticipated that by 2050 African Americans, Latinos/as, Asian Americans, and American Indians will comprise 50% of the population nationwide. Four states now have a majority minority population—Hawaii, California, New Mexico, and Texas. And in several other states, like New York, minorities now comprise 40% of the population. In this more diverse setting, lawyers will need to be savvier in talking to racially diverse juries. They will need to be able to advise clients with limited English ability and culturally different perspectives.

Given this over-reliance on the LSAT, how is someone supposed to pull themselves up by their bootstraps? A young black man who grew up in the projects, goes to the local public schools, and works his way through public universities might not have access to the information that he needs to fill out the application forms or the resources to take a prep course. Even though he has done well in college and might be the first in his family to graduate from a college, these factors are no less valuable to admissions committees. However, these attributes demonstrate this individual's drive and ambition. What do we tell that young man who has played by the rules and done his best?