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LESS TALK, MORE ACTION: HOW LAW SCHOOLS CAN COUNTERACT RACIAL BIAS OF LSAT SCORES IN THE ADMISSIONS PROCESS

BY LATASHA HILL*

Racial bias exists within the Law School Admissions Test (LSAT) and can be viewed through racial and ethnic score gaps.¹ The racial score gap was initially discovered five decades ago and continues to be true today.² White test-takers consistently and overwhelmingly score higher than minority test-takers.³ This article is a call to action for the law school community to officially acknowledge the racial bias of the LSAT – a standardized test for law school acceptance – against minority applicants.⁴ This article encourages law school admission committees to deemphasize reliance on LSAT scores and develop new methods to justly assess the skills of every law school applicant.⁵ Consequently, by decreasing the weight of LSAT scores in the admissions process, entities such as U.S. News and World Report will need to restructure their methodology for ranking best law schools.⁶ By making procedural adjustments, law schools can bring equity to the admissions process, which would lead to a more diverse legal profession.⁷

I. INTRODUCTION

There are grave concerns regarding the overreliance and emphasis placed on the LSAT as a predictor of law school success given the growing and staggering evidence of test bias.⁸ The staggering LSAT score gap between White and minority test-takers has remained true for decades and consistently appears in a variety of data from different

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¹ See *infra* Part IV.

² David M. White, *The Requirement of Race-Conscious Evaluation of LSAT Scores for Equitable Law School Admissions*, 12 BERKELEY LA RAZA L.J. 399, 404 (2001).

³ *Id.* at 404–06.

⁴ See *infra* Part II.

⁵ See *infra* Part VII.

⁶ See *infra* Part III–D.

⁷ See *infra* Part VII.

⁸ See *infra* Part II.

sources.⁹ Although law schools and testing agencies are aware of the discriminatory impact of LSAT scores on minority applicants, many schools continue to utilize a standard that is racially and ethnically biased.¹⁰

This article will not explore the following reasons why the LSAT has a discriminatory impact on minority students: prior educational disparities, socioeconomic status, biased questions, family structure, and stereotype threat.¹¹ There is decades of research to explain the LSAT performance gap.¹² The purpose of this article is to push the conversation forward and discuss ways law schools should use the evidence as support for creating a more equitable law school admissions process.¹³

Part II defines test bias and explains how it manifests in standardized and aptitude tests.¹⁴ Part III discusses the racial history of standardized tests and provides a composition breakdown of the LSAT and its use.¹⁵ Part IV uses statistical evidence from studies to explain the severity of racial bias in LSAT scores.¹⁶ Part V discusses the inadequacies of using LSAT scores – a standardized test – to predict how successful an applicant will be in law school and as a lawyer since each requires different skill sets.¹⁷ Part VI discusses paradoxical regulations within the American Bar Association (ABA) that are intended to increase diversity while overlooking the discriminatory impact of the LSAT.¹⁸

Part VII offers numerous factors that could be added to the admissions process to counteract racial bias of LSAT scores.¹⁹ These suggestions could bring more fairness into law school applicant evaluations, especially for minority applicants.²⁰ Part VII.A discusses

⁹ White, *supra* note 2, at 404–06.

¹⁰ Kristen Holmquist et al., *Measuring Merit: The Shultz-Zedeck Research on Law School Admissions*, 63 J. LEGAL EDUC. 565, 583, (2014).

¹¹ The research concerning what causes racial test bias in LSAT is extensive and beyond the scope of this paper. Sources that discuss this topic are: Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U.J. GENDER & L. 121 (1993); and Jonathan Feingold, *Racing Towards Color-Blindness: Stereotype Threat and the Myth of Meritocracy*, 3 GEO. J.L. & MOD. CRITICAL RACE PERSP. 231 (2011).

¹² See *infra* Part II.

¹³ See *infra* Part VII.

¹⁴ See *infra* Part II.

¹⁵ See *infra* Part III.

¹⁶ See *infra* Part IV.

¹⁷ See *infra* Part V.

¹⁸ See *infra* Part VI.

¹⁹ See *infra* Part VII.

²⁰ See *infra* Part VII.

how undergraduate grade point averages (UGPAs) can be emphasized more since it directly reflects subject mastery.²¹ Part VII.B proposes the idea of creating a new law school written assessment that is culture free; thus, removing racial and cultural bias of scores.²² Part VII.C discusses fluctuating the weight of LSAT scores in the admissions process by allowing applicants to decide how much weight is given to their LSAT score.²³ Part VII.D discusses incorporating more video interviews into the admissions process as an effort to better evaluate an applicant's character and intangible skills that a standardized test cannot measure.²⁴ Part VII.E considers expanding access to legal education to marginal applicants by offering performance or probationary based programs as an effort to assess how an applicant does in the classroom compared to their LSAT scores.²⁵ VII.F explores early-entry programs which allow undergraduates to apply for law school and simultaneously complete law school prep courses while earning a bachelor's degree.²⁶ Lastly, Part VII.G discusses direct measure applications, which would allow admissions committees to better evaluate character and intangible skills that are molded through life experiences.²⁷

The article concludes by calling for the law school community, including the Law School Admissions Council (LSAC) and ABA, to formally acknowledge the racially charged imperfections of the admissions process surrounding overreliance on LSAT performance.²⁸ Therefore, it is these institutions' responsibility to develop new and equitable means to evaluate a candidate's ability to do well in law school, pass the bar exam, and have a successful legal career.²⁹ Without admission modifications, underrepresented populations will continue to remain at a disadvantage when applying to law school.³⁰ Additionally, modifications would assist the ABA in fulfilling its commitment to diversifying the legal profession.³¹ Law schools cannot afford to

²¹ Harvey Gilmore, *Standardized Testing, Learning, and Meritocracy: A Reply to Professor Dan Subotnik*, 32 *TOURO L. REV.* 387, 394 (2016).

²² *See infra* Part VII-B.

²³ *See infra* Part VII-C.

²⁴ *See infra* Part VII-D.

²⁵ *See infra* Part VII-E.

²⁶ *See infra* Part VII-F.

²⁷ *See infra* Part VII-G.

²⁸ *See infra* Part VIII.

²⁹ *See infra* Part VIII.

³⁰ Harvey Gilmore, *Standardized Testing and Race: A Reply to Professor Subotnik*, 13 *SEATTLE J. FOR SOC. JUST.* 1, 34 (2014).

³¹ *Id.*

continue using a flawed system while also expecting a different or more diversified result.

II. DEFINING TEST BIAS

A test is biased if the average test score of one population of individuals is significantly greater than that of another.³² “Such a definition rests on the a priori assumption that the populations do not differ on the characteristic that the test purports to measure, and hence any differences in average test scores must be due to imperfections or bias in the measuring instrument.”³³ Based on this definition, any aptitude test, including the LSAT, could be biased against certain populations of people.³⁴

In 1975, Robert L. Linn stated, “No claim should be made that the LSAT measures an individual’s inherent ability or mental capacity.”³⁵ While technically this is true, one could argue that the overreliance on standardized test scores has created an intense and almost toxic environment in which some applicants internalize their inherent ability to become a successful professional based on scores – not knowing statistical imperfections reside in the test.³⁶ Nevertheless, law schools continue to use a biased standard to predict the probability of high first year grades, bar passage, and success as a lawyer.³⁷

Undoubtedly, LSAT scores are influenced by an individual’s background and educational experience.³⁸ Therefore, law schools should expect different average LSAT scores for groups of people from different backgrounds and distinct life experiences.³⁹ “In the 2008-2009 school year, White LSAT-takers scored on average ten points higher than Black and six points higher than Latino/as (SD=8.94).”⁴⁰

³² Robert L. Linn, *Test Bias and the Prediction of Grades in Law School*, 27 J. LEGAL EDUC. 293, 296 (1975).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Laura Nicholson, *Stressed out: the psychological effects of tests on primary school children*, THE CONVERSATION (May 9, 2016), <https://theconversation.com/stressed-out-the-psychological-effects-of-tests-on-primary-school-children-58913>.

³⁷ William C. Kidder, *The Rise of the Testocracy: An Essay on the LSAT, Conventional Wisdom, and the Dismantling of Diversity*, 9 TEX. J. WOMEN & L. 167, 197 (2000).

³⁸ Linn, *supra* note 32, at 296.

³⁹ *Id.*

⁴⁰ Feingold, *supra* note 11, at 234.

III. LAW SCHOOL ADMISSIONS TEST (LSAT)

According to the Law School Admissions Council (LSAC) – administrators of the LSAT – the test is a half-day, standardized test administered multiple times each year at designated testing centers throughout the world.⁴¹ The test is an important factor in the law school admission process in the United States, Canada, and other countries.⁴² “It provides a standard measure of acquired reading and verbal reasoning skills” which law schools use to evaluate applicants for admittance.⁴³ While schools can use the LSAT as one of several factors, this article focuses on how much weight LSAT scores are given as a single factor.⁴⁴

1. *Origins of Standardized Tests*

The origins of standardized testing go back to the early 20th century.⁴⁵ It was used as a way to demonstrate the intellectual superiority of northern European whites.⁴⁶ “Its originators subscribed to eugenic theories that considered nonwhites and southern European immigrants sources of contamination to the precious human gene pool.”⁴⁷ During this period of examinations, some test boosters would assign higher marks to citizens of Nordic descent and “low intelligence and moral turpitude” marks to citizens of Slavic, Mediterranean, and African descent.⁴⁸

The College Board began administering standardized tests in 1900 with 35 colleges utilizing its early exams for admission.⁴⁹ “. . . in 1947, the Board created the Educational Testing Service (ETS) to supervise the construction and administration of the Scholastic Aptitude Test (SAT).”⁵⁰ In 1948, after World War II, thousands of ex-soldiers decided to apply to law schools.⁵¹ The ETS responded by creating the

⁴¹ Gilmore, *supra* note 30, at 12; see LSAT Dates, Law Sch. Admissions Council (2019), <https://www.lsac.org/lSAT/lSAT-dates-deadlines-score-release-dates/lSAT-dates>.

⁴² Gilmore, *supra* note 30, at 12.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 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, 595 (2001).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 595–96.

⁴⁹ *Id.* at 596.

⁵⁰ Delgado, *supra* note 45, at 596.

⁵¹ *Id.*

Law School Admissions Test Council (now referred to as Law School Admissions Council), to manage its testing program.⁵² The Law School Admissions Council (LSAC) oversees and administers the LSAT today.⁵³ “The earliest versions of the LSAT were a hodgepodge of questions from other occupational tests, not specific to law.”⁵⁴ “Yet, they predicted law school performance just as well, or badly, as today’s versions do.”⁵⁵ This article will later discuss the current composition and effectiveness of the LSAT.⁵⁶

“ETS later developed programs, including the Law School Data Assembly Service (LSDAS), which provided law school admissions offices with class rankings, profiles, formulas, index numbers, and predicted first year averages, all designed to make law school admissions simple and pseudo-scientific.”⁵⁷ The LSDAS also had the ability to thoroughly analyze admission data.⁵⁸ It was discovered years later that the organization concealed findings of the race gap in LSAT scores.⁵⁹

Based on the racial inequities of the LSAT, it is arguable that the test is written from a specific cultural perspective.⁶⁰ Similar to dismantling other historically racist policies in the U.S., achieving equity in the law school admissions process will require a conscious effort.⁶¹ It is the responsibility of the legal education community to rid the law school admissions process of any racist residue that may be remaining from its creation.⁶²

2. *LSAT Composition*

“The LSAC defines the exam’s mission as testing a person’s cognitive and analytical abilities necessary for success in law school.”⁶³ There are three test areas: (1) reading comprehension, (2) analytical

⁵² *Id.*

⁵³ *About the Law School Admission Council*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/about> (last visited Dec. 19, 2019).

⁵⁴ Delgado, *supra* note 45, at 599.

⁵⁵ *Id.*

⁵⁶ *See infra* Part III–B–D, Part V.

⁵⁷ Delgado, *supra* note 45, at 597.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Gilmore, *supra* note 30, at 27.

⁶¹ *See infra* Part III.

⁶² *See infra* Part III.

⁶³ Gilmore, *supra* note 30, at 12.

reasoning, and (3) logical reasoning.⁶⁴ “These questions measure the ability to read, with understanding and insight, examples of lengthy and complex materials similar to those commonly encountered in law school.”⁶⁵ “These questions measure the ability to understand a structure of relationships and to draw logical conclusions about that structure.”⁶⁶ “These questions assess the ability to analyze, critically evaluate, and complete arguments as they occur in ordinary language.”⁶⁷ “For whatever limitations they may have, the SAT and LSAT have an essay writing component, which is designed to measure clear and persuasive writing.”⁶⁸ “In contrast, the Law School Admission Test is not based on any previous course of study and is not intended to reward students from any particular academic discipline.”⁶⁹

The LSAT “provides a measurement of acquired reading and verbal reasoning skills.”⁷⁰ It is intended to “measure skills that are considered essential for success in law school,” such as: (1) “reading and comprehension of complex texts with accuracy and insight;” (2) “organization and management of information and the ability to draw reasonable inferences from it;” (3) “ability to think critically;” and (4) “analysis of the reasoning and argument of others.”⁷¹

After understanding the composition of the LSAT, the next question is how effective is the LSAT at measuring the skills needed for law school and later career success? Some legal scholars argue the LSAT only measures one type of intelligence and ignores other forms of intelligence that are vital to law school success and the practice of law.⁷² Law Professor Richard Delgado, a supporter of eliminating the LSAT, uses an analogy to showcase the limits of standardized tests.⁷³ He states, “If a job requires two skills [jumping and skipping. . .], and if only jumping can be successfully tested, does equity really require that the measurable skill be left untested?”⁷⁴ While this article does not

⁶⁴ *Id.* at 12.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Dan Subotnik, *Testing, Discrimination, and Opportunity: A Reply to Professor Harvey Gilmore*, 13 SEATTLE J. SOC. JUST. 57, 59 (2014).

⁶⁹ White, *supra* note 2, at 415.

⁷⁰ *Id.* at 415–16.

⁷¹ *Id.* at 416.

⁷² Richard Delgado, *Standardized Testing as Discrimination: A Reply to Dan Subotnik*, 9 U. MASS. L. REV. 98, 103 (2014).

⁷³ *Id.* at 98, 100, 103.

⁷⁴ *Id.* (quoting Dan Subotnik, *Does Testing=Race Discrimination?: Ricci, the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. MASS. L. REV. 332, 343 (2013)).

propose to eliminate the LSAT, it does seek to acknowledge its limitations.⁷⁵

Standardized tests reward different skills such as memorization performance, guessing, gamesmanship, and the ability to perform quickly under timed conditions.⁷⁶ While memorization and the ability to perform quickly under timed conditions are useful for law school exams and the bar exam, the practice of law is not performed under the same conditions.⁷⁷

Scientists and researchers have proven that intelligence includes more than a narrow range of abilities that a paper and pencil test can measure.⁷⁸ This begs the question, how can law schools test or measure the skills that are left untested by the LSAT to accurately assess if an applicant has the skills necessary to complete a legal education and thrive professionally?

3. *LSAT Predictions of First Year Grades and Professional Success*

A wide range of schools argue for the continued use of the LSAT because there is a strong correlation between scores and first year grades, bar exam passage rates, and lawyering ability.⁷⁹ Others rely on the LSAT to effectively protect applicants by screening out those who would be less likely to succeed in the profession and pay off any educational debts,⁸⁰ although the ability to pay educational debt is not listed as an LSAT measurement.⁸¹ Law Professor Dan Subotnik, a defender of LSAT usage, argues that tests are embedded in American culture and are the only objective measures society has to determine if an applicant is qualified.⁸²

“Some might argue that it is defensible to rely heavily on the LSAT in law school admissions because the test is a strong predictor of first-year averages (FYAs), and FYAs, in turn, predict second-and third-year grades, and cumulative law school grades, in turn, are a reasonable

⁷⁵ *Id.* at 100, 103–07.

⁷⁶ Delgado, *supra* note 45, at 607.

⁷⁷ *See id.* at 598.

⁷⁸ *Id.*

⁷⁹ Dan Subotnik, *Does Testing= Race Discrimination? Ricci the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. MASS. L. REV. 332, 379–80 (2013).

⁸⁰ Subotnik, *supra* note 68, at 62–63.

⁸¹ *See White, supra* note 1, at 416 (listing the qualities measured by the LSAT”).

⁸² Dan Subotnik, *Contesting a Contestation of Testing: A Reply to Richard Delgado*, 9 U. MASS. L. REV. 296, 298–99 (2014).

predictor of lawyering potential.”⁸³ This article will later discuss the accuracy of such predictions, but it seems illogical to rely heavily on a test as a predictor of success when that test allows so many vital skills to go unmeasured.⁸⁴

IV. LSAT AND LAW SCHOOL RANKINGS

In addition to student performance, LSAT scores are used to calculate the annual U.S. News and World Report law school rankings.⁸⁵ “Despite these efforts, it is clear that law schools perceive themselves to be under considerable market pressure to engage in actions that will make them more competitive in the eyes of the consumer and legal employers...”⁸⁶ Most schools want to impress students with rankings by having higher average LSAT scores.⁸⁷ However, “[this] pressure to ‘keep up with the Joneses’ and admit students with higher LSAT scores has created an arms race among institutions that can leave [students of color] outside of a law school’s doors.”⁸⁸ There is nothing fundamentally wrong with law schools caring about their reputations.⁸⁹ But it is important for schools to be aware that they could be adversely penalizing minority applicants when policies are created in an attempt to move from one rank to the next.⁹⁰

Professor Delgado raises the question “whether the race for university rankings and invidious comparisons over test scores” have shifted our “attention away from achievement and toward numerically measurable merit.”⁹¹ He uses Howard Law School as an example to illustrate a time when law schools were perceived based on achievements.⁹²

During the 1940s and 1950s, Howard Law School was the “most effective producer of legal talent in the United States, despite its small size and budget.”⁹³ U.S. Supreme Court Justice Thurgood Marshall was a graduate of Howard Law School and a revolutionary legal mind during

⁸³ Kidder, *supra* note 37, at 197.

⁸⁴ See *infra* Part V–A.

⁸⁵ Don Corbett, *Stunted Growth: Assessing the Stagnant Enrollment of African-American Students at the Nation’s Law Schools*, 18 TEMP. POL. & CIV. RTS. L. REV. 177, 200 (2008).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 201.

⁸⁹ *Id.* at 200.

⁹⁰ Corbett, *supra* note 85, at 200.

⁹¹ Delgado, *supra* note 72, at 106.

⁹² *Id.* at 106–07.

⁹³ *Id.*

his lifetime.⁹⁴ But in the current climate, law schools that register few distinct “accomplishments in a typical year other than graduating a senior class with high test scores,” are routinely placed at the top of U.S. News and World Report rankings.⁹⁵

Today, Howard Law School ranks number 108 on Best Law Schools while Ivy League schools have the highest rankings.⁹⁶ According to Howard School of Law, the average LSAT score is 152,⁹⁷ while Yale University (ranked #1) has a median score of 173.⁹⁸ When reviewing the methodology of the 2020 Best Law School Rankings, LSAT scores make up 12.5% of the selectivity score.⁹⁹

The selectivity category also includes median Graduate Record Examinations (GRE) scores, median undergraduate GPA, and acceptance rates; and is weighted 25% of the law school’s overall ranking score.¹⁰⁰ In addition to selectivity, the remainder of the methodology categories used to determine rankings are quality assessment weighted at 40% , placement success at 20%, and faculty resources at 15%.¹⁰¹ While there are several factors and subfactors that influence a law school’s ranking, median LSAT score has an undeniable influence on the gap between Howard’s and Yale’s place in the rankings.

The law school admissions process should give lesser weight to LSAT scores so that schools may once again be perceived based on their skills, passion, and contributions to the legal community rather than the test scores of its graduating class.

V. RACIAL BIAS OF LSAT SCORES

The first display of national data revealing the LSAT score gap was produced by the Law School Admission Council Data using the

⁹⁴ See *Thurgood Marshall*, HISTORY (Nov. 17, 2019), <https://www.history.com/topics/black-history/thurgood-marshall>.

⁹⁵ Delgado, *supra* note 72, at 107.

⁹⁶ *Best Law Schools*, U.S. NEWS & WORLD REP., https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings?_mode=table (last visited Oct. 29, 2019).

⁹⁷ *I Am Interested in Law School... Now What?*, HOWARD U. SCH. OF L., <http://law.howard.edu/content/i-am-interested-law-school%E2%80%A6-now-what> (last visited Oct. 29, 2019).

⁹⁸ *Best Law Schools*, *supra* note 56; *Profiles & Statistics*, YALE L. SCH., <https://law.yale.edu/admissions/profiles-statistics> (last visited Oct. 29, 2019).

⁹⁹ *Methodology: 2020 Best Law Schools Rankings*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> (last visited Oct. 29, 2019).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

1976 national applicant pool.¹⁰² This study showed that “getting high grades or high test scores was a comparable feat for whites.”¹⁰³ The data showed “40% of white applicants had college grades of 3.25 or higher, and 37% had LSAT scores above 600” (score scale 200-800), “[w]hile 13% [of Black applicants] had [college grades of] 3.25 or better” and “only 3% scored above 600.”¹⁰⁴ Numerous studies have been administered since the late 1970s and the results remain the same – there are disturbing score gaps between White and minority applicants.¹⁰⁵

According to a 1981 published study, “the LSAT gap remains even when minority applicants are carefully matched with similarly successful white college graduates.”¹⁰⁶ This study consisted of 19,287 total applicants, out of which 1,636 applicants from 12 law schools identified as minority.¹⁰⁷ “Each minority applicant was compared with [W]hite applicants from the same undergraduate institution, but only if the [W]hite applicants’ GPAs . . . were within [plus or minus] .10 on a 4-point scale.”¹⁰⁸ “When compared with [W]hite students who graduated from the same college with the same GPAs, [B]lack applicants scored an average of 110 points lower on the LSAT, Chicanos and Latinos scored 97 points lower, and Native Americans scored 78 points lower (score scale 200-800).”¹⁰⁹ “The most straightforward definition of test bias is that a test is biased if the average test score of one population of individuals is greater than that of another.”¹¹⁰

A triple digit score gap among different populations on the LSAT in 1981 can be considered a prime example of test bias.¹¹¹

An additional study on the LSAT score gap was completed by William C. Kidder.¹¹² He used a database of applicants from 1996, 1997, and 1998 from 15 colleges and universities who applied to Boalt Hall Law School at the University of California, Berkeley.¹¹³ “In this

¹⁰² White, *supra* note 2, at 404.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 404–05.

¹⁰⁶ White, *supra* note 2, at 405.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Linn, *supra* note 32, at 296.

¹¹¹ See *supra* text accompanying notes 65–68.

¹¹² William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving “Elite” College Students*, 89 Cal. L. Rev. 1055, 1057–58 (2001).

¹¹³ *Id.* at 1058.

study, [Kidder] matched African American, Chicano/Latino, Native American, and Asian Pacific American applicants with White applicants who possessed equivalent undergraduate grade-point averages (“UGPA”) from the same colleges during the same time period.”¹¹⁴ The following subgroups were created for a more comprehensive study and breakdown of bias: “Chinese, Japanese, Filipino, Korean, Southeast Asian, and East Indian or Pakistani” due to the heterogeneous nature of the Asian Pacific category.¹¹⁵ “For each applicant, anonymous data was obtained on race and ethnicity, undergraduate institution attended, graduation date, cumulative UGPA (reported to the nearest hundredth of a point), age (in days), and LSAT score (120-180 scale).”¹¹⁶ The results revealed even among law school applicants with essentially the same college performance the LSAT gaps were “most severe for African American and Chicano/Latino applicants” as compared to their White classmates.¹¹⁷ African Americans scored 9.2 points lower on the LSAT than their equally accomplished White classmates; Chicanos and Latinos scored 6.8 points lower; Native Americans 4.0 points lower; and Asian Pacific Americans 2.5 points lower.¹¹⁸ Kidder concluded that the LSAT is not a neutral method of assessing academic achievement.¹¹⁹

Kidder further refined his test by accounting for college majors which included political science or government, history, economics, English, philosophy, psychology, and sociology[.]¹²⁰ The findings showed that an ethnic gap on the LSAT exists even among students with equivalent performance in college and the same major.¹²¹ Based on Kidder’s research, “the LSAT is culturally biased because it artificially exaggerates educational differences between White” test-takers and minority test-takers.¹²² As Kidder argues, an admissions practice of “heavy reliance on standardized tests” such as the LSAT that are racially biased, does seem to “penalize underrepresented minority applicants.”¹²³

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 1071–72.

¹¹⁶ *Id.* at 1068.

¹¹⁷ Kidder, *supra* note 112, at 1058.

¹¹⁸ *Id.* at 1074.

¹¹⁹ *Id.* at 1059.

¹²⁰ *Id.* at 1079.

¹²¹ *Id.*

¹²² Kidder, *supra* note 112, at 1081.

¹²³ *Id.* at 1100.

With 40 years of data confirming and reaffirming racial bias of LSAT scores, the issue is not fading and needs to be addressed directly and immediately.¹²⁴ For every year this issue is ignored, thousands of minority applicants are questionably denied access to a legal education and, subsequently, a legal career.¹²⁵ In response to the overwhelming proof of racial bias, Harvard Professor of Social Policy Christopher Jencks stated, “[i]n effect, [B]lack and Hispanics have to pay for the fact that social science is better at measuring the skills they lack than the skills they have.”¹²⁶

VI. INADEQUATE LSAT PREDICTIONS

As stated earlier in this article, LSAT scores are used by law schools to predict first year grades, bar passage rates, and success in the legal profession.¹²⁷ This section will explore the accuracy of such predictions.

1. Law School Success

Is it fair to use a racially biased standardized test as an indicator of law school success? The LSAC has a policy encouraging admissions officials to refrain from being too dependent upon LSAT scores in making final decisions.¹²⁸ The policy states:

The LSAT should be used as only one of several criteria for evaluation and should not be given undue weight solely because its use is convenient. Those who set admission policies and criteria should always keep in mind the fact that the LSAT does not measure every discipline-related skill necessary for academic work, nor does it measure other factors important to academic success.¹²⁹

The LSAT is not a reliable indicator of law school success because “the typical LSAT question does not require the level of legal

¹²⁴ See *supra* Part II.

¹²⁵ See *generally Applicants by Race/Ethnicity & Sex*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/data-research/data/applicants-raceethnicity-sex> (last visited Dec. 9, 2019); *Admitted Applicants by Race/Ethnicity & Sex*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/data-research/data/admitted-applicants-raceethnicity-sex> (last visited Dec. 9, 2019).

¹²⁶ Kidder, *supra* note 112, at 1100–01.

¹²⁷ Kidder, *supra* note 37, at 197.

¹²⁸ *Cautionary Policies Concerning LSAT Scores and Related Services*, L. SCH. ADMISSION COUNCIL, https://www.lsac.org/sites/default/files/media/lsat-score-cautionary-policies_0.pdf (last revised July 2014).

¹²⁹ *Id.*

analysis necessary to succeed in law school.”¹³⁰ Additionally, the content and structure of law school exams are significantly different than that of the LSAT.¹³¹

Law Professor, Harvey Gilmore, an African American man, uses his personal law school journey to highlight the inadequacies of overreliance on LSAT scores as a predictor for law school success.¹³² Professor Gilmore scored a 142 on his LSAT but was still accepted into law school.¹³³ Despite his low LSAT score he did well and graduated with a “B” average.¹³⁴ When reflecting on his LSAT score and legal education journey, Professor Gilmore concluded, “I certainly could not have done that well over the course of a three-year full-time program if I had lived down to what my LSAT score ‘predicted.’”¹³⁵ If the LSAT score would have predicted correctly, Gilmore would “have been exposed as an unqualified fraud that was overmatched in law school,” but “[t]hat never happened.”¹³⁶ Professor Gilmore is just one example in which the LSAT score was unable to adequately predict the future success of a minority applicant.¹³⁷

Professor Richard Delgado believes that “[u]sing a two hour paper and pencil test of word comprehension and logic games to judge fitness for law school is like picking basketball players based on a trial of foul shots.”¹³⁸ To extend the analogy, a coach seeking to put together a winning basketball team will look beyond foul shots when choosing players, instead evaluating their talent on offense and defense, as well as intangibles like drive and passion for the game.

Therefore, “an overreliance on the LSAT, which does not clearly relate to success in law school, would wrongly deny applicants who otherwise . . . [could] do well once in law school.”¹³⁹ Research has shown that “African American students’ grades increase in the second

¹³⁰ Harvey Gilmore, *The SAT, LSAT, and Discrimination: Professor Gilmore Again Responds to Professor Subotnik*, 34 *LAW & INEQ.* 153, 160 (2016).

¹³¹ Gilmore, *supra* note 30, at 28.

¹³² *Id.* at 1, 5.

¹³³ Gilmore, *supra* note 130, at 160.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Gilmore, *supra* note 30, at 5.

¹³⁷ See *supra* Part II.A.1.

¹³⁸ Delgado, *supra* note 45, at 593, 598 (citing Douglas Lederman, *Persistent Racial Gap in SAT Scores Fuels Affirmative-Action Debate*, *CHRON. OF HIGHER EDUC.*, Oct. 30, 1998, at A36)).

¹³⁹ Gilmore, *supra* note 30, at 31.

and third year more significantly than Caucasian students.”¹⁴⁰ This increase is due to a variety of reasons but mainly because students familiarize themselves with the institution’s academic expectations and proper methods to study.¹⁴¹ The ability for African American students to greatly increase grades during their law school career can be associated with a variety of factors such as academic adjustment and professional coaching and mentoring.¹⁴² Based on the composition of the LSAT, it does not have the ability to measure all of the skills previously listed in order to make such academic strides.¹⁴³

The ability to utilize words quickly and write answers on a test does have some connection to performing well in high-level collegiate coursework or the legal field; however, it is not the only skill to be examined within applicants.¹⁴⁴ “[S]tandardized test scores do not predict creativity, artistic achievement, or other forms of accomplishment later in life[,]” which could help certain applicants to do academically well in law school.¹⁴⁵ Also, “. . .the LSAT may not be the best predictor of bar exam success” because the LSAT does not measure proficiency of the law; instead, “it measures your ability to take the LSAT.”¹⁴⁶

2. *Legal Career Success*

Surprisingly, the “LSAT has never been (nor was it ever intended to be) validated as a predictor of actual performance as a lawyer;” nevertheless, it remains a prediction tool for future success.¹⁴⁷ There is “little research on the issue of the relationship between the LSAT and long-term success in the legal profession, [but] there is

¹⁴⁰ Paula Lustbader, *Painting Beyond the Numbers: The Art of Providing Inclusive Law School Admission to Ensure Full Representation in the Profession*, 40 CAP. U. L. REV. 71, 100 (2012). (citing 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, 216 (2006)).

¹⁴¹ *Id.*

¹⁴² See Roy Freedle, *How and WHY Standardized Tests Systematically Underestimate African-Americans’ True Verbal Abilities and What to Do About It: Towards the Promotion of Two New Theories with Practical Applications*, 80 ST. JOHN’S L. REV. 183, 216-20 (2006).

¹⁴³ Lustbader, *supra* note 140, at 89-90 (discussing skills that contribute to success in law but that are not measured by the LSAT).

¹⁴⁴ Delgado, *supra* note 72, at 107.

¹⁴⁵ Delgado, *supra* note 45, at 607.

¹⁴⁶ Gilmore, *supra* note 130, at 173 (quoting Elie Mystal, *What’s the Best Predictor of Bar Exam Success? It’s Not the LSAT*, ABOVE L. (Sept. 13, 2013), <https://abovethelaw.com/2013/09/whats-the-best-predictor-of-bar-exam-success-its-not-the-lsat/>)).

¹⁴⁷ Kidder, *supra* note 37, at 197.

evidence to indicate that the correlation between the two is meager at best.”¹⁴⁸ At the University of Michigan Law School, a study found that amongst alumni from the 1970s to the 1990s the “LSAT scores and UGPAs bore no relationship to measures of success in the legal profession—such as . . . in the context of income or career satisfaction.”¹⁴⁹ “The LSAT . . . only requires verbal and reasoning fluency, [but] not the ability to command probability, scientific reasoning, humanistic thought, historical thought, or knowledge of human motivation and psychology – all skills important for lawyers.”¹⁵⁰

Choosing an aspiring lawyer with a high LSAT score over one with a middle score may do no harm, but if all law school admissions committees are selecting aspiring lawyers this way without measuring other skills, “we may end up with a much worse legal profession than what we would have created if we had discarded the paper-and-pencil test scores altogether and relied on ‘soft’ measures, such as essays, grades, letters of recommendation, and personal interviews.”¹⁵¹ Professor Delgado argues, “[e]xcessive reliance on analytical ability may yield a [monolithic] profession that is contentious, petty, unhappy, and heartily disliked by the public. . .”¹⁵² Additionally, “[t]he profession may lack creativity and the ability to generate new legal ideas and theories, finding it easier and more lucrative to crank out predictable hundred-page briefs rehashing the familiar cases.”¹⁵³ Overall, it seems unwise to use the LSAT to even minimally predict professional success since it was not created to do so.¹⁵⁴ Beyond the subjective definition of “success,” an applicant’s law school performance is a stronger indicator of future lawyering ability instead of a racially biased and irrelevant standardized test.¹⁵⁵

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Delgado, *supra* note 45, at 598.

¹⁵¹ Delgado, *supra* note 72, at 104.

¹⁵² *Id.*

¹⁵³ *Id.* at 104–05.

¹⁵⁴ Delgado, *supra* note 45, at 599–600.

¹⁵⁵ Marjorie M. Shultz, Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 623 (2011).

VII. AMERICAN BAR ASSOCIATION: DIVERSITY VS. RACIAL BIAS

The American Bar Association (ABA) is interested in diversifying the legal field.¹⁵⁶ By 2000, “there were 33,865 African-American (or black) lawyers, representing a total of 3.9% of all attorneys in the country.”¹⁵⁷ Based on the 2000 U.S. Census, “a total of 36.4 million people who reported themselves as African-American.”¹⁵⁸ “[W]hile African-Americans are approximately 12.9% of the U.S. population, only 0.1% of the nation’s [B]lack citizens are lawyers.¹⁵⁹ By contrast, “[W]hite Americans comprised approximately 75% of the nation’s population in the 2000 Census, but comprise roughly 90% of the nation’s attorneys.”¹⁶⁰ Minorities are underrepresented making up a little more than 10% of the profession while White Americans continue to be overrepresented.¹⁶¹

The ABA has expressed a commitment to diversity in the legal profession,¹⁶² although it has “denied accreditation to law schools that have admitted students with LSAT scores below 143. . . .”¹⁶³ This severely impacts minority applicants since their LSAT scores are consistently lower than equivalent White applicants.¹⁶⁴ As a reminder, Law Professor Gilmore scored a 142 on his LSAT.¹⁶⁵ Based on this ABA custom, Law Professor Gilmore could have been rejected by law schools because his LSAT score would have threatened their accreditation status.¹⁶⁶

The “ABA Standard 211 stipulates that accredited law schools must demonstrate a commitment to admitting qualified members of groups that have been subject to various forms of discrimination, particularly racial and ethnic minorities.”¹⁶⁷ Paradoxically, ABA

¹⁵⁶ See *Diversity & Inclusion*, AM. BAR ASS’N (2020), https://www.americanbar.org/groups/litigation/diversity_initiatives/.

¹⁵⁷ Corbett, *supra* note 85, at 178.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Delgado, *supra* note 45, at 604.

¹⁶² See *Diversity & Inclusion*, AM. BAR ASS’N (2020), https://www.americanbar.org/groups/litigation/diversity_initiatives/.

¹⁶³ Gilmore, *supra* note 130, at 161.

¹⁶⁴ See *infra* notes 167-69.

¹⁶⁵ Gilmore, *supra* note 130, at 160.

¹⁶⁶ *Id.* at 161.

¹⁶⁷ STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW Schs. 2019-2020 Standard 206(a) (AM. BAR ASS’N 2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admission_s_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter2.pdf.

Standard 501(b) states: “A law school shall not admit an applicant who does not appear capable of satisfactorily completing its program of legal education and being admitted to the bar.”¹⁶⁸ When examining these two ABA regulations from the context of the LSAT score gap, they seem to be contradictory. If the LSAT is another form of discrimination against minorities, how can it also be used to increase minority membership in the legal profession? If anything, it is adding to the discrimination against minorities. Due to racial bias in the LSAT and its inadequacy to predict minority success, the ABA cannot fairly enforce Standard 206(a) based on LSAT scores to assess if a candidate can complete a legal education and pass the bar.

Selecting applications based on numeric qualifications (such as the LSAT) is “particularly harmful for African-American students who desire to attend law school because they traditionally score lower than white students on the LSAT.”¹⁶⁹ From 2005-2006, “white students scored a mean of 152.71 on the LSAT[,]” while “African-Americans scored a mean of 142.31.”¹⁷⁰ With this evidence, “if a law school decides to adopt a “floor” score where it presumptively denies admission to anyone who scores lower than 143, this could conceivably omit large numbers of black students, regardless of how strong other aspects of their file may be.”¹⁷¹

VIII. ADMISSIONS OPTIONS TO COUNTERACT RACIAL BIAS OF LSAT SCORES

“ . . . [S]tudies suggest that 70%-80% of law school admission decisions are based solely on Undergraduate Grade Point Averages (UGPA) and Law School Admission Test (LSAT) scores.”¹⁷² Standardized exams do not always tell the full story of a student’s potential, and schools should be willing to use alternate methods to help minority students reach academic success.¹⁷³ Furthermore, “by over relying on numerical indicators in admission practices, law schools limit opportunities for large segments of the underrepresented.”¹⁷⁴ Law

¹⁶⁸ STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW Schs. 2019-2020 Standard 501(b) (AM. BAR ASS’N 2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admission_s_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter5.pdf.

¹⁶⁹ Corbett, *supra* note 85, at 199.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Lustbader, *supra* note 140, at 86.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

Professor Gilmore, strongly encourages “admissions committees [to] do a better job of looking at a person as a total package instead of putting excessive weight on a one-time . . . assessment.”¹⁷⁵ As mentioned earlier, the LSAT is not built to adequately test and measure all the skills necessary to be successful in law school and as a lawyer; therefore, it should not be 50% of a law school’s qualifying admission process.¹⁷⁶

The continued use of personal statements, undergraduate transcripts, resumes, and references are encouraged in the admission process.¹⁷⁷ Moreover, this section will delve deeper into additional options that could be included in the application process to counteract LSAT racial bias.¹⁷⁸ This article does not propose the elimination of the LSAT since a written assessment is required by the ABA¹⁷⁹ and a bias free test does not currently exist; not to mention some minorities do score very well on it.¹⁸⁰ However, this article does suggest that law schools significantly reduce emphasis placed on LSAT scores due to evidence of racial bias and insert additional admission factors to fairly and justly evaluate all candidates.¹⁸¹

Many colleges have begun to lower the weight of standardized test scores in the admissions process, which has, in some cases, increased the institute’s standing.¹⁸² “These schools report that their student bodies are more engaged than ever and the campus atmosphere more vibrant and diverse.”¹⁸³ Understandably, admission committees have a limited amount of time to review thousands of applications so reviewing test scores and UGPAs serve as a quick way to determine law school potential.¹⁸⁴ However, taking the time to view a candidate’s other assets, such as community activism, work experience, and perseverance through obstacles could make a candidate more appealing than a LSAT score or a GPA.¹⁸⁵ As Professor Delgado noted, “[c]onversely, when graduate and professional school admission officers ignore standardized test scores, they admit a much higher proportion of minority

¹⁷⁵ Gilmore, *supra* note 130, at 173.

¹⁷⁶ See *supra* Part V.

¹⁷⁷ See *infra* Part III.

¹⁷⁸ See *infra* Part VII–A–G.

¹⁷⁹ Delgado, *supra* note 45, at 612.

¹⁸⁰ See *supra* Part II.

¹⁸¹ See *supra* Part IV; see also *infra* Part VII–A–G.

¹⁸² Delgado, *supra* note 72, at 107.

¹⁸³ *Id.*

¹⁸⁴ REPORT OF THE COMMISSION ON THE USE OF STANDARDIZED TESTS IN UNDERGRADUATE ADMISSION, NAT’L ASSOC. FOR COLL. ADMISSION COUNSELING 13, 21 (2008), <https://files.eric.ed.gov/fulltext/ED502721.pdf>.

¹⁸⁵ See Gilmore, *supra* note 130, at 180–81.

applicants.”¹⁸⁶ Therefore, it is possible that, by de-emphasizing LSAT scores during the admissions process, more minority students would have greater access to law schools, and the ABA could fulfill its commitment to diversifying the legal profession.¹⁸⁷

1. *UGPA/Grades*

Undergraduate grade point averages (UGPAs) can continue to be used as a factor for assessing a candidate’s potential for first year academic success and bar passage.¹⁸⁸ Grades matter because they are tangible proof that students did the required work to pass their exams and mastered subject matter.¹⁸⁹ An alternative approach to using UGPAs as one admissions factor could be for law schools to “establish a minimum grade point average” for acceptance.¹⁹⁰ Law Professor Gilmore suggests schools can “set aside a specified number of seats for automatic admission based solely upon satisfying the minimum GPA requirement.”¹⁹¹ “For example, let us assume that a law school sets a minimum GPA of 3.6 for automatic admission.”¹⁹² Under this system, an applicant with a UGPA of 3.7 and LSAT score of 144 would qualify for automatic admissions. Therefore, applicants who may have low LSAT scores but higher UGPAs have a better chance of getting accepted into law school.¹⁹³

2. *Create a New Law School Admissions Test*

“Current accreditation requirements only oblige law schools to include some written test in the admission process;” therefore, the LSAT is not the only test that can be used.¹⁹⁴ As an effort to remove racial and cultural bias from testing, organizations such as the Association of American Law Schools (AALS) or Society of American Law Teachers (SALT) could sponsor or create a new law school admission test that is culture free.¹⁹⁵

¹⁸⁶ Delgado, *supra* note 45, at 604.

¹⁸⁷ *See supra* Part IV, V, VI.

¹⁸⁸ *See* text accompanying note 126.

¹⁸⁹ Gilmore, *supra* note 30, at 36.

¹⁹⁰ Gilmore, *supra* note 130, at 176.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *See supra* Part I.

¹⁹⁴ Delgado, *supra* note 45, at 612.

¹⁹⁵ *Id.*

Similarly, Law Professor Marjorie M. Shultz and Psychology Professor Sheldon Zedeck developed an alternative test to the LSAT to measure an applicant's "potential to succeed in [legal] practice."¹⁹⁶ The test was designed to measure "effectiveness factors" such as "the ability to write, manage stress, listen, research the law, and solve problems."¹⁹⁷ "Instead of focusing on analytic ability, the new test includes questions about how to respond to hypothetical situations."¹⁹⁸ For instance, a question could describe a company policy "requiring immediate firing of any employee who lied on an application, then ask what a test taker would do upon discovering that a top-performing employee had omitted something on an application."¹⁹⁹

Over 1,100 attorneys completed the Shultz-Zedeck test and allowed researchers to view their LSAT scores and grades from both undergraduate and law school.²⁰⁰ The study showed that while LSAT scores were "not 'particularly useful in predicting lawyer effectiveness,'" the new, alternative test was "'no better' in predicting 'law school performance.'"²⁰¹ "Unlike the LSAT, the new test did not produce a gap in scores among different racial or ethnic groups."²⁰²

3. *LSAT Weight*

Another alternative to combat the racial and ethnic bias of the LSAT is to "give applicants the option to determine how much weight is afforded [to] LSAT scores."²⁰³ Applicants at one law school were allowed to select one of two boxes regarding LSAT weight: option one gave the LSAT score the usual weight while option two gave the score less weight.²⁰⁴ Applicants who chose option two were also able to give "other factors, such as community service, overcoming adversity, recommendation letters, and unusual life experiences" more weight.²⁰⁵

¹⁹⁶ Lustbader, *supra* note 140, at 89; Jonathan D. Glater, *Study Offers a New Test of Potential Lawyers*, N.Y. TIMES (Mar. 10, 2009), <https://www.nytimes.com/2009/03/11/education/11lsat.html>.

¹⁹⁷ Glater, *supra* note 196.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Lustbader, *supra* note 140, at 89.

²⁰² Glater, *supra* note 196.

²⁰³ Delgado, *supra* note 45, at 612.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

This law school currently has “forty percent minority enrollment and [has] not lost the near-elite status” it earned prior to the adjustment.²⁰⁶

Alternatively, law schools could lower the overall weight it gives the LSAT score.²⁰⁷ “They could give the LSAT five or ten percent weight instead of the current thirty to fifty percent.”²⁰⁸ Lowering the overall weight placed on LSAT scores still meets the ABA admissions requirements mandating a written test²⁰⁹ and meets the LSAC suggestion of using the LSAT score as one factor in the admissions process.²¹⁰

4. *Increase Video Interviews*

“We might interview applicants or create a character index composed of traits we consider indicative of a good lawyer.”²¹¹ This option could be added to the admissions process. With advanced technology, law schools could incorporate video interviews to help screen candidates.²¹² The days of personal interviews, which could have been considered expensive for out-of-state or non-local candidates, are no longer the only type of interviewing available.²¹³ Video interviews would allow candidates to make up for any weakness on paper that could not be addressed with automatic UGPA admissions and are an inexpensive option for all parties – applicants and admission committees.²¹⁴

While this addition to the admissions process could perhaps be time consuming, it could also help admission committees to better assess candidates for law school while providing greater opportunities for minority students to access law school. If the purpose of the admission committee is to adequately assess candidates for law school, this additional work would be worth the effort.

²⁰⁶ *Id.*

²⁰⁷ See *infra* text accompanying notes 143–45.

²⁰⁸ Delgado, *supra* note 45, at 613.

²⁰⁹ *Id.* at 612.

²¹⁰ Corbett, *supra* note 85, at 199.

²¹¹ Delgado, *supra* note 45, at 613.

²¹² Hillary Hurd Anyaso, *Law School Launches Online Video Interviews for Applicants*, NORTHWESTERN NOW, <https://news.northwestern.edu/stories/2015/10/law-school-video/> (last visited Dec. 1, 2019).

²¹³ *Id.*

²¹⁴ See *infra* notes 209–11.

5. *Performance/Probationary Based Programs*

“Rather than denying applicants the opportunity to even try to study law based on their responses to LSAT questions, [a] students’ performance on actual law school exams should determine whether they can actually do the job and graduate.”²¹⁵ “A performance-based program admissions format would allow the school to further evaluate those students in a two-week or three-week program, during which the candidates can be tested in a limited curriculum of one or two first-year courses.”²¹⁶ A “[college] could offer summer try-out programs for borderline candidates, guaranteeing admission in the fall to those who performed well.”²¹⁷ Students who demonstrate “. . . potential and work ethic [could] then be extended an admission offer by the law school.”²¹⁸

There are numerous benefits of performance-based programs.²¹⁹ “First, by specifically targeting individuals who have not obtained the desired academic indicators. . . it is only natural that the program would draw African-American and Hispanic students because of the existing LSAT score gap.”²²⁰ Second, it provides admission officers an additional chance to evaluate a candidate’s intangible skills that are difficult to quantify.²²¹ This method provides a better assessment to predict if a candidate could complete law school course work.²²² Lastly, these methods allow schools “to lessen any possible risk of admitting ill-equipped students.”²²³ These types of programs expand “the potential for increasing the school’s enrollment of historically excluded students.”²²⁴

Similarly, “law schools could allow a limited number of applicants to be admitted on a probationary basis.”²²⁵ Probationary students would enroll and satisfy the requirements for legal writing and doctrinal courses.²²⁶ Afterwards, probationary students would be admitted.²²⁷

²¹⁵ Gilmore, *supra* note 30, at 31.

²¹⁶ Corbett, *supra* note 85, at 207.

²¹⁷ Delgado, *supra* note 45, at 613.

²¹⁸ Corbett, *supra* note 85, at 207.

²¹⁹ See *infra* text accompanying notes 152–57.

²²⁰ Corbett, *supra* note 85, at 207.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Gilmore, *supra* note 130, at 176.

²²⁶ *Id.*

²²⁷ *Id.*

6. *Early-Entry Programs*

Additionally, “law schools can also diversify recruitment efforts of black students through early-entry programs that permit highly qualified undergraduate students to obtain admission to law school before completing their course work.”²²⁸ Programs such as this would “...allow successful applicants to bypass the stressors that accompany the law school application process because of guaranteed acceptance, while concurrently developing the skill level of these prospective students.”²²⁹ “In theory, students would apply to law school after their sophomore year at the undergraduate level.”²³⁰ “If accepted, students would then use the remaining two academic calendar years to complete the requisite courses necessary to obtain their bachelor’s degree while using the summer months to participate in LSAT preparation courses and other prematriculation and orientation activities at the law school.”²³¹ This could give “students early exposure to activities that build the foundation skills and confidence needed to successfully complete law school.”²³²

7. *Direct Measures Application*

Direct measures can give an idea of how a candidate may encompass the school’s mission.²³³ “A committee comprised of admissions personnel, faculty, administrators, students, and alumni [c]ould develop the criteria for admission and design the application” to include those direct measures.²³⁴ In addition to the standard application materials, the application could include a section to evaluate these measures.²³⁵ The application sets “the tone and communicates the mission of the school.”²³⁶ “[D]irect measures could help: (1) evaluate the reliability and accuracy of the numerical indicators; (2) determine how the applicant will add benefit to the mission and educational experience of the school; and (3) determine how the applicant will contribute to the profession.”²³⁷

²²⁸ Corbett, *supra* note 85, at 207.

²²⁹ *Id.* at 207–08.

²³⁰ *Id.* at 208.

²³¹ *Id.*

²³² Corbett, *supra* note 85, at 208.

²³³ Lustbader, *supra* note 140, at 135.

²³⁴ *Id.*

²³⁵ *Id.* at 135–36.

²³⁶ *Id.* at 136.

²³⁷ *Id.*

Also, “. . . the application could include a section that asks applicants to directly discuss whether they think their UGPA or LSAT score accurately reflects their merits and abilities.”²³⁸ Other direct measure questions include:

“Did you take a LSAT Prep course?”

“Do you have a history of under-performing on standardized test?”

“Is English your second language?”

“Did you work when you were in undergraduate school?”

“Did you have care-taking responsibilities for family members while in undergraduate school?”

“Are you the first in your family to go to college?”

“What were your parents’ occupations?”

“What is your socioeconomic background?”

“Do you have experience with diversity or discrimination?”

“In what ways do you plan to serve the underserved in the legal profession?”²³⁹

The sample questions listed above provide individuals on the admissions committee with a more holistic – academic and personal – view of applicants.²⁴⁰ Such questions allow candidates to explain what obstacles might have affected their numerical indicators but more importantly, direct measures allow candidates to display intangible skills learned through life experiences.²⁴¹ Even Professor Subotnik, a defender of the LSAT, agreed that “‘life experience, passion, desire, and perseverance’ are important predictors for success.”²⁴²

IX. CONCLUSION

In order to promote racial equity in the law school admissions process, the LSAT score must be deemphasized as criteria for entry.²⁴³ Racial bias of LSAT scores exists and will exist until a new test is created that is bias free.²⁴⁴ Until then, there are active ways in which the law school community can help counteract the discriminatory impact

²³⁸ Lustbader, *supra* note 140, at 136.

²³⁹ *Id.* at 136–37.

²⁴⁰ *Id.* at 107.

²⁴¹ *Id.* at 105–06.

²⁴² Subotnik, *supra* note 68, at 58 (quoting Harvey Gilmore, *A Response to Professor Subotnik: Does Testing = Race Discrimination? Even Today, It Still Can*, 13 SEATTLE J. FOR SOC. JUST. 1, 15 (2014)).

²⁴³ Feingold, *supra* note 11, at 234–35.

²⁴⁴ *See supra* Part IV.

LSAT scores have on minority applicants.²⁴⁵ These admission additions are an attempt to measure all the skills the LSAT leaves unmeasured and provide a more holistic view of an applicant.²⁴⁶ Having an admissions process that can examine tangible and intangible skills would create a more equitable evaluation and serve as a more accurate predictor for law school success and professional success.²⁴⁷

²⁴⁵ *See supra* Part VII.

²⁴⁶ *See supra* Part VII.

²⁴⁷ *See supra* Part VII.