Less Talk, More Action: How Law Schools Can Counteract Racial Bias of LSAT Scores in the Admissions Process

LaTasha Hill

Follow this and additional works at: https://digitalcommons.law.umaryland.edu/rrgc

Part of the Law and Gender Commons, Law and Race Commons, Law and Society Commons, Legal Education Commons, and the Legal Profession Commons

Recommended Citation

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in University of Maryland Law Journal of Race, Religion, Gender and Class by an authorized editor of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.
LESS TALK, MORE ACTION: HOW LAW SCHOOLS CAN COUNTERACT RACIAL BIAS OF LSAT SCORES IN THE ADMISSIONS PROCESS

BY LA'TASHA HILL*

Racial bias exists within the Law School Admissions Test (LSAT) and can be viewed through racial and ethnic score gaps. The racial score gap was initially discovered five decades ago and continues to be true today. White test-takers consistently and overwhelmingly score higher than minority test-takers. 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. 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. 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. By making procedural adjustments, law schools can bring equity to the admissions process, which would lead to a more diverse legal profession.

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. 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

© 2019 LaTasha Hill
* Voting rights advocate in Washington, DC; J.D., University of San Francisco School of Law; B.A., University of North Carolina at Chapel Hill. I thank the following individuals for their constructive feedback at various stages of this project: Luke Boso, Marshal Arnwine Jr., Dr. Patricia Hill-Miller, Gina Parisi, and Keani Christian.
1 See infra Part IV.
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. 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.

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. There is decades of research to explain the LSAT performance gap. 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.

Part II defines test bias and explains how it manifests in standardized and aptitude tests. Part III discusses the racial history of standardized tests and provides a composition breakdown of the LSAT and its use. Part IV uses statistical evidence from studies to explain the severity of racial bias in LSAT scores. 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. 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.

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

---

9 White, supra note 2, at 404–06.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{29} Without admission modifications, underrepresented populations will continue to remain at a disadvantage when applying to law school.\textsuperscript{30} Additionally, modifications would assist the ABA in fulfilling its commitment to diversifying the legal profession.\textsuperscript{31} Law schools cannot afford to

\textsuperscript{22} \textit{See infra} Part VII–B.
\textsuperscript{23} \textit{See infra} Part VII–C.
\textsuperscript{24} \textit{See infra} Part VII–D.
\textsuperscript{25} \textit{See infra} Part VII–E.
\textsuperscript{26} \textit{See infra} Part VII–F.
\textsuperscript{27} \textit{See infra} Part VII–G.
\textsuperscript{28} \textit{See infra} Part VIII.
\textsuperscript{29} \textit{See infra} Part VIII.
\textsuperscript{31} \textit{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

---

33 Id.
34 Id.
35 Id.
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. The test is an important factor in the law school admission process in the United States, Canada, and other countries. “It provides a standard measure of acquired reading and verbal reasoning skills” which law schools use to evaluate applicants for admittance. 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.

1. Origins of Standardized Tests

The origins of standardized testing go back to the early 20th century. It was used as a way to demonstrate the intellectual superiority of northern European whites. “Its originators subscribed to eugenic theories that considered nonwhites and southern European immigrants sources of contamination to the precious human gene pool.” 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.

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

---

42 Gilmore, supra note 30, at 12.
43 Id.
44 Id.
45 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. The Law School Admissions Council (LSAC) oversees and administers the LSAT today. “The earliest versions of the LSAT were a hodgepodge of questions from other occupational tests, not specific to law.” Yet, they predicted law school performance just as well, or badly, as today’s versions do. This article will later discuss the current composition and effectiveness of the LSAT.

“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 pseudoscientific.” The LSDAS also had the ability to thoroughly analyze admission data. It was discovered years later that the organization concealed findings of the race gap in LSAT scores.

Based on the racial inequities of the LSAT, it is arguable that the test is written from a specific cultural perspective. Similar to dismantling other historically racist policies in the U.S., achieving equity in the law school admissions process will require a conscious effort. 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.

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.” There are three test areas: (1) reading comprehension, (2) analytical
reasoning, and (3) logical reasoning.\textsuperscript{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.”\textsuperscript{65} “These questions measure the ability to understand a structure of relationships and to draw logical conclusions about that structure.”\textsuperscript{66} “These questions assess the ability to analyze, critically evaluate, and complete arguments as they occur in ordinary language.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{69}

The LSAT “provides a measurement of acquired reading and verbal reasoning skills.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{72} Law Professor Richard Delgado, a supporter of eliminating the LSAT, uses an analogy to showcase the limits of standardized tests.\textsuperscript{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?”\textsuperscript{74} While this article does not

\textsuperscript{64} Id. at 12.
\textsuperscript{65} Id.
\textsuperscript{66} Id.
\textsuperscript{67} Id.
\textsuperscript{68} Id.
\textsuperscript{70} Id. at 415–16.
\textsuperscript{71} Id. at 416.
\textsuperscript{73} Id. at 98, 100, 103.
\textsuperscript{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.\textsuperscript{75}

Standardized tests reward different skills such as memorization performance, guessing, gamesmanship, and the ability to perform quickly under timed conditions.\textsuperscript{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.\textsuperscript{77}

Scientists and researchers have proven that intelligence includes more than a narrow range of abilities that a paper and pencil test can measure.\textsuperscript{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.\textsuperscript{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,\textsuperscript{80} although the ability to pay educational debt is not listed as an LSAT measurement.\textsuperscript{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.\textsuperscript{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

\textsuperscript{75} Id. at 100, 103–07.

\textsuperscript{76} Delgado, supra note 45, at 607.

\textsuperscript{77} See id. at 598.

\textsuperscript{78} Id.


\textsuperscript{80} Subotnik, supra note 68, at 62–63.

\textsuperscript{81} See White, supra note 1, at 416 (listing the qualities measured by the LSAT").

predictor of lawyering potential.”

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.

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. “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…” Most schools want to impress students with rankings by having higher average LSAT scores. 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.” There is nothing fundamentally wrong with law schools caring about their reputations. 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.

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.” He uses Howard Law School as an example to illustrate a time when law schools were perceived based on achievements.

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.” 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.
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. 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.

Today, Howard Law School ranks number 108 on Best Law Schools while Ivy League schools have the highest rankings. According to Howard School of Law, the average LSAT score is 152, while Yale University (ranked #1) has a median score of 173. When reviewing the methodology of the 2020 Best Law School Rankings, LSAT scores make up 12.5% of the selectivity score.

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. 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%. 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

---

95 Delgado, supra note 72, at 107.
100 Id.
101 Id.
1976 national applicant pool.\textsuperscript{102} This study showed that “getting high grades or high test scores was a comparable feat for whites.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{105}

According to a 1981 published study, “the LSAT gap remains even when minority applicants are carefully matched with similarly successful white college graduates.”\textsuperscript{106} This study consisted of 19,287 total applicants, out of which 1,636 applicants from 12 law schools identified as minority.\textsuperscript{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.”\textsuperscript{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).”\textsuperscript{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.”\textsuperscript{110}

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

An additional study on the LSAT score gap was completed by William C. Kidder.\textsuperscript{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.\textsuperscript{113} “In this

\textsuperscript{102} White, supra note 2, at 404.
\textsuperscript{103} Id.
\textsuperscript{104} Id.
\textsuperscript{105} Id. at 404–05.
\textsuperscript{106} White, supra note 2, at 405.
\textsuperscript{107} Id.
\textsuperscript{108} Id.
\textsuperscript{109} Id.
\textsuperscript{110} Linn, supra note 32, at 296.
\textsuperscript{111} See supra text accompanying notes 65–68.
\textsuperscript{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.\textsuperscript{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.\textsuperscript{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).”\textsuperscript{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.\textsuperscript{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.\textsuperscript{118} Kidder concluded that the LSAT is not a neutral method of assessing academic achievement.\textsuperscript{119}

Kidder further refined his test by accounting for college majors which included political science or government, history, economics, English, philosophy, psychology, and sociology\.\textsuperscript{120} The findings showed that an ethnic gap on the LSAT exists even among students with equivalent performance in college and the same major.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{123}

\textsuperscript{114} Id.
\textsuperscript{115} Id. at 1071–72.
\textsuperscript{116} Id. at 1068.
\textsuperscript{117} Kidder, supra note 112, at 1058.
\textsuperscript{118} Id. at 1074.
\textsuperscript{119} Id. at 1059.
\textsuperscript{120} Id. at 1079.
\textsuperscript{121} Id.
\textsuperscript{122} Kidder, supra note 112, at 1081.
\textsuperscript{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. For every year this issue is ignored, thousands of minority applicants are questionably denied access to a legal education and, subsequently, a legal career. In response to the overwhelming proof of racial bias, Harvard Professor of Social Policy Christopher Jencks stated, “[i]n effect, [B]lacks and Hispanics have to pay for the fact that social science is better at measuring the skills they lack than the skills they have.”

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. 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. 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.

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.
126 Kidder, supra note 112, at 1100–01.
127 Kidder, supra note 37, at 197.
129 Id.
analysis necessary to succeed in law school.”\textsuperscript{130} Additionally, the content and structure of law school exams are significantly different than that of the LSAT.\textsuperscript{131}

Law Professor, Harvey Gilmore, an African American man, uses his personal law school journey to highlight the inadequacies of over-reliance on LSAT scores as a predictor for law school success.\textsuperscript{132} Professor Gilmore scored a 142 on his LSAT but was still accepted into law school.\textsuperscript{133} Despite his low LSAT score he did well and graduated with a “B” average.\textsuperscript{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.’”\textsuperscript{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.”\textsuperscript{136} Professor Gilmore is just one example in which the LSAT score was unable to adequately predict the future success of a minority applicant.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{139} Research has shown that “African American students’ grades increase in the second

\textsuperscript{130} Harvey Gilmore, \textit{The SAT, LSAT, and Discrimination: Professor Gilmore Again Responds to Professor Subotnik}, 34 LAW & INEQ. 153, 160 (2016).
\textsuperscript{131} Gilmore, \textit{supra} note 30, at 28.
\textsuperscript{132} \textit{Id.} at 1, 5.
\textsuperscript{133} Gilmore, \textit{supra} note 130, at 160.
\textsuperscript{134} \textit{Id.}
\textsuperscript{135} \textit{Id.}
\textsuperscript{136} Gilmore, \textit{supra} note 30, at 5.
\textsuperscript{137} See \textit{supra} Part II.A.1.
\textsuperscript{139} Gilmore, \textit{supra} note 30, at 31.
and third year more significantly than Caucasian students.”  

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. 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. 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.

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. “[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. 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.”

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.

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).
141 (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)).
142 Id.
144 Lustbader, supra note 140, at 89-90 (discussing skills that contribute to success in law but that are not measured by the LSAT).
145 Delgado, supra note 72, at 107.
146 Delgado, supra note 45, at 607.
148 Kidder, supra note 37, at 197.
evidence to indicate that the correlation between the two is meager at best.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{153} Overall, it seems unwise to use the LSAT to even minimally predict professional success since it was not created to do so.\textsuperscript{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.\textsuperscript{155}

\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Delgado, supra note 45, at 598.
\textsuperscript{151} Delgado, supra note 72, at 104.
\textsuperscript{152} Id.
\textsuperscript{153} Id. at 104–05.
\textsuperscript{154} Delgado, supra note 45, at 599-600.
\textsuperscript{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

157 Corbett, supra note 85, at 178.
158 Id.
159 Id.
160 Id.
161 Delgado, supra note 45, at 604.
163 Gilmore, supra note 130, at 161.
164 See infra notes 167-69.
165 Gilmore, supra note 130, at 160.
166 Id. at 161.
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, “[i]f 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

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.”\textsuperscript{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.\textsuperscript{176}

The continued use of personal statements, undergraduate transcripts, resumes, and references are encouraged in the admission process.\textsuperscript{177} Moreover, this section will delve deeper into additional options that could be included in the application process to counteract LSAT racial bias.\textsuperscript{178} This article does not propose the elimination of the LSAT since a written assessment is required by the ABA\textsuperscript{179} and a bias free test does not currently exist; not to mention some minorities do score very well on it.\textsuperscript{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.\textsuperscript{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.\textsuperscript{182} “These schools report that their student bodies are more engaged than ever and the campus atmosphere more vibrant and diverse.”\textsuperscript{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.\textsuperscript{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 UGPA.\textsuperscript{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

\textsuperscript{175} Gilmore, supra note 130, at 173.
\textsuperscript{176} See supra Part V.
\textsuperscript{177} See infra Part III.
\textsuperscript{178} See infra Part VII–A–G.
\textsuperscript{179} Delgado, supra note 45, at 612.
\textsuperscript{180} See supra Part II.
\textsuperscript{181} See supra Part IV; see also infra Part VII–A–G.
\textsuperscript{182} Delgado, supra note 72, at 107.
\textsuperscript{183} Id.
\textsuperscript{185} See Gilmore, supra note 130, at 180–81.
applicants.” 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.

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. Grades matter because they are tangible proof that students did the required work to pass their exams and mastered subject matter. An alternative approach to using UGPAs as one admissions factor could be for law schools to “establish a minimum grade point average” for acceptance. Law Professor Gilmore suggests schools can “set aside a specified number of seats for automatic admission based solely upon satisfying the minimum GPA requirement.” “For example, let us assume that a law school sets a minimum GPA of 3.6 for automatic admission.” 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.

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. 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.

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.”

The test was designed to measure “effectiveness factors” such as “the ability to write, manage stress, listen, research the law, and solve problems.”

“Instead of focusing on analytic ability, the new test includes questions about how to respond to hypothetical situations.”

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.”

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. 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.”

Unlike the LSAT, the new test did not produce a gap in scores among different racial or ethnic groups.

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.” 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. 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.

---

197 Id.
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.\textsuperscript{206} Alternatively, law schools could lower the overall weight it gives the LSAT score.\textsuperscript{207} “They could give the LSAT five or ten percent weight instead of the current thirty to fifty percent.”\textsuperscript{208} Lowering the overall weight placed on LSAT scores still meets the ABA admissions requirements mandating a written test\textsuperscript{209} and meets the LSAC suggestion of using the LSAT score as one factor in the admissions process.\textsuperscript{210}

4. Increase Video Interviews

“We might interview applicants or create a character index composed of traits we consider indicative of a good lawyer.”\textsuperscript{211} This option could be added to the admissions process. With advanced technology, law schools could incorporate video interviews to help screen candidates.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.

\textsuperscript{206} Id.
\textsuperscript{207} See infra text accompanying notes 143–45.
\textsuperscript{208} Delgado, supra note 45, at 613.
\textsuperscript{209} Id. at 612.
\textsuperscript{210} Corbett, supra note 85, at 199.
\textsuperscript{211} Delgado, supra note 45, at 613.
\textsuperscript{213} Id.
\textsuperscript{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.”

“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.”

A “[college] could offer summer try-out programs for borderline candidates, guaranteeing admission in the fall to those who performed well.”

Students who demonstrate potential and work ethic [could] then be extended an admission offer by the law school.

There are numerous benefits of performance-based programs.

“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.”

Second, it provides admission officers an additional chance to evaluate a candidate’s intangible skills that are difficult to quantify.

This method provides a better assessment to predict if a candidate could complete law school course work. Lastly, these methods allow schools “to lessen any possible risk of admitting ill-equipped students.”

These types of programs expand “the potential for increasing the school’s enrollment of historically excluded students.”

Similarly, “law schools could allow a limited number of applicants to be admitted on a probationary basis.”

Probationary students would enroll and satisfy the requirements for legal writing and doctrinal courses. Afterwards, probationary students would be admitted.

---

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 Id.
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.”\textsuperscript{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.”\textsuperscript{229} “In theory, students would apply to law school after their sophomore year at the undergraduate level.”\textsuperscript{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.”\textsuperscript{231} This could give “students early exposure to activities that build the foundation skills and confidence needed to successfully complete law school.”\textsuperscript{232}

7. Direct Measures Application

Direct measures can give an idea of how a candidate may encompass the school’s mission.\textsuperscript{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.\textsuperscript{234} In addition to the standard application materials, the application could include a section to evaluate these measures.\textsuperscript{235} The application sets “the tone and communicates the mission of the school.”\textsuperscript{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.”\textsuperscript{237}

\begin{itemize}
\item \textsuperscript{228} Corbett, supra note 85, at 207.
\item \textsuperscript{229} Id. at 207–08.
\item \textsuperscript{230} Id. at 208.
\item \textsuperscript{231} Id.
\item \textsuperscript{232} Id.
\item \textsuperscript{233} Lustbader, supra note 140, at 135.
\item \textsuperscript{234} Id.
\item \textsuperscript{235} Id. at 135–36.
\item \textsuperscript{236} Id. at 136.
\item \textsuperscript{237} Id.
\end{itemize}
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.” 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?”

The sample questions listed above provide individuals on the admissions committee with a more holistic – academic and personal – view of applicants. 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. Even Professor Subotnik, a defender of the LSAT, agreed that “‘life experience, passion, desire, and perseverance’ are important predictors for success.”

IX. CONCLUSION

In order to promote racial equity in the law school admissions process, the LSAT score must be deemphasized as criteria for entry. Racial bias of LSAT scores exists and will exist until a new test is created that is bias free. 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.
243 Feingold, supra note 11, at 234–35.
244 See supra Part IV.
LSAT scores have on minority applicants. These admission additions are an attempt to measure all the skills the LSAT leaves unmeasured and provide a more holistic view of an applicant. 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.

245 See supra Part VII.
246 See supra Part VII.
247 See supra Part VII.