

Article

“More than the Numbers”: Empirical Evidence of an Innovative Approach to Admissions

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INTRODUCTION

After many years of education, life experience, and trials and tribulations, an individual aspires to be “a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”¹ Beyond the duty to the client and the legal system, this individual is committed to “seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.”²

F.G., a third-year student at Southwestern Law School, said as much:

As a Mexican-American woman, I know that injustices in the criminal justice system happen often, but I know law is a powerful tool to combat the inequalities faced by disadvantaged communities, so I applied to law school to be a voice for the underdog. Plus, my mom, who had me

1. MODEL CODE OF PRO. CONDUCT pmb. (AM. BAR ASS’N 1983), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope [<https://perma.cc/LV9U-5AWS>].

2. *Id.*; see also *Bylaws*, THE ASS’N OF AM. L. SCHS. art. 1, § 1–2 (Jan. 2022), <https://www.aals.org/about/handbook/bylaws> [<https://perma.cc/4VFB-FH5Y>] (“The purpose of the corporation is the improvement of the legal profession through legal education . . .”).

at 15, always told me you're not just a statistic and pushed me to explore uncharted waters. I've always been committed to challenging the status quo. Latinx folks deserve to be in these spaces of legal education and the legal profession.³

But without Southwestern's empirically designed approach to admissions, F.G., and other students like her, may not have had the opportunity to pursue this dream—in particular due to not having a high enough score on the Law School Admission Test (LSAT).

Even though the Law School Admission Council (LSAC), the creator of the LSAT, expressly warns schools against overreliance on the LSAT,⁴ this caution is generally unheeded. When making admissions decisions, law schools are not assessing all that matters. Instead, they hyper-focus on numerical factors, specifically LSAT scores. This overreliance is particularly problematic because, as described more thoroughly below, LSAT scores are only modestly predictive of law school success and have served as a historical barrier to legal education, and thus the legal profession, particularly for students of color.

The incisive comment of a recent Southwestern graduate, A.B., made in their last year of law school, crystalizes the problem with the overreliance on numbers:

Vulnerability was a big part of the application process and it's scary for someone who's wanted to be an attorney since seventh grade to feel that the door to realizing your dream might be closed to you because of

3. The student quotes included in this Article are from Southwestern Law School students who matriculated following an assessment of their submitted application materials as well as participation in a waitlist interview, which is the subject of this Article. Names have been changed. The students' comments were gathered through conversations and emails, and are on file with the Authors. Each student provided written permission for use of the quotes.

4. *Cautionary Policies Concerning LSAT Scores and Related Services*, LAW SCH. ADMISSION COUNCIL (July 2014), <https://www.lsac.org/about/lscac-policies/cautionary-policies-concerning-lsat-scores-and-related-services> [https://perma.cc/Q9T4-DYYD] ("Because LSATs are administered under controlled conditions and each test form requires the same or equivalent tasks of everyone, LSAT scores provide a standard measure of an applicant's proficiency in the well-defined set of skills included in the test. Comparison of a law school's applicants both with other applicants to the same school and with all applicants who have LSAT scores thus becomes feasible. However, while LSAT scores serve a useful purpose in the admission process, they do not measure, nor are they intended to measure, all the elements important to success at individual institutions. LSAT scores must be examined in relation to the total range of information available about a prospective law student. It is in this context that the following restraints on LSAT score use are urged.").

the LSAT score and the socio-economic issues that impact LSAT performance. I put a lot of trust in the schools' review of my application. . . . I didn't have the numbers but now I'm in my last year of law school, top 30%, in [the] honors program and have done really well.⁵

Admissions professionals are the gatekeepers that decide whether F.G. and A.B., and many other dedicated and civic-minded individuals like them, should be given the chance to pursue and realize the laudable aspirations of entering the legal profession. The power in the hands of those making admission decisions is enormous—both in determining whether an individual will have a shot at pursuing a profession they're committed to and will make them happy, as well as determining whether the public's interest will be served by benefiting from dedicated and “civic-minded lawyers who reflect all segments of society”⁶ As such, the law school admissions professionals and those charged with law school governance are appropriately subject to heightened responsibilities.⁷ It is questionable, though, whether the typical and historical approach to law school admissions, which is primarily based on limited indicators of law school potential, comports with the heightened responsibilities that those involved in law school admissions bear and applicants deserve.

Many critics have called for change, mostly focused on the impact of the current system on diversity. As discussed below, increasing diversity is desirable for many reasons. The Authors of this Article join the chorus of thoughtful examination of admission practices, adding to the literature but also offering a novel evidence-based and scalable toolkit that is connected to preparation for practice, may improve diversity outcomes, and is a low-cost supplement to other admissions tools. The Authors mobilized to develop a more holistic admissions approach to address the historical overreliance on LSAT scores that creates an unjustified barrier faced by many. This effort was motivated by

5. See *supra* note 3 and accompanying text.

6. George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, 46 U. TOL. L. REV. 311, 333 (2015).

7. “The primary purpose of the law school admission process is to serve applicants, law schools, and the legal profession by making informed judgments about those who seek legal education. This responsibility demands the highest standards of professional conduct and ethical behavior.” *LSAC Member Law Schools' Statement of Good Admission and Financial Aid Practices*, LAW SCH. ADMISSION COUNCIL (Sept. 2019), <https://www.lsac.org/about/lisac-policies/statement-good-admission-and-financial-aid-practices> [<https://perma.cc/WK6E-V753>].

the Authors' commitment to redefining merit and thus increasing access and diversity in legal education and the profession (which is also the driving force behind Southwestern's over 110-year history as an urban law school), as well as because of their own first-generation and minoritized experiences in school and their professional lives.

Implemented four years ago, Southwestern's approach employs an empirically designed waitlist interview tool to assess law school potential for applicants whose applications show promise but may raise concerns about law school readiness (e.g., perceived weaknesses that could include low LSAT score(s)). The interviewers, members of the full-time faculty, receive specific training, including on implicit bias. The assessment through the waitlist interview tool is based on a set of competencies that new attorneys need—given that the ultimate goal is entry into the profession and not just law school admission. These are competencies identified through a groundbreaking national empirical study, the Foundations for Practice Study (Foundations Study), conducted by the Institute for the Advancement of the American Legal System (IAALS). Several hundred waitlist interviews have been completed, and statistical analysis of the waitlist process has been ongoing.

The aim of the project has been to identify a valid and reliable tool using factors that supplement traditional numerical indicators, to more fully and meaningfully assess applicants' law school readiness and thereby better satisfy law schools' responsibility to provide opportunities to those who "appear capable of satisfactorily completing [their] program of legal education and being admitted to the bar,"⁸ and hence have the necessary competencies for employment.⁹ Deployment of this approach is a significant contribution to enhancing holistic admission efforts and

8. *ABA Standards and Rules of Procedure for Approval of Law Schools 2020–2021*, A.B.A. 31 (2020) [hereinafter *ABA Standards*], https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-for-approval-of-law-schools.pdf [<https://perma.cc/73BB-8K3X>].

9. Although not part of ABA Standards for admissions, reporting on employment outcomes is one of the ABA Standards' Required Disclosures, under Standard 509(b)(7), and is imperative for law schools. *Id.* at 35–36; see also Kristen Holmquist, Marjorie Shultz, Sheldon Zedeck & David Oppenheimer, *Measuring Merit: The Shultz-Zedeck Research on Law School Admissions*, 63 J. LEGAL EDUC. 565, 565 (2014) ("[L]aw school is not simply an academic exercise: it

ultimately impacting the legal profession—a moral imperative that every law school should consider. Based on three years of data, this project has produced initial reliability and validity metrics for the measure developed, making available an admissions tool that can be used with confidence in the admissions process.

This Article provides an overview of Southwestern’s development, implementation, and preliminary analysis related to the waitlist interviews approach. To provide a foundation for the urgency of Southwestern’s project, Part I lays the necessary context regarding the mostly stagnant and narrow approach that has driven admissions practices for many decades. Next, Part II provides an overview of the commentary and innovative sparks about the possibility of taking different approaches to admissions. The Article then details Southwestern’s move from a DIY to an evidence-based empirical admissions approach in Part III, followed by presentation of the methodology of the empirical approach in Part IV, including possibilities for use of the project’s annual and longitudinal data for future research.

I. THE PROBLEM WITH THE CURRENT ADMISSIONS SYSTEM

Law school admissions haven’t changed much since 1948, the date of the first LSAT administration.¹⁰ Since then, in determining whether to make an applicant an offer, law schools have relied on numeric measures to assess an applicant’s likelihood of success in law school and beyond.¹¹ These numeric measures are now also deeply established by law school accreditation standards and in the public’s perception of a given law school’s value.¹² The danger with relying so heavily on these numeric factors is that their predictive value can only account for a modest portion of what it takes to be successful in law school, in taking the bar

is the gateway to becoming a lawyer. In deciding who passes through that portal, law schools . . . should care not just about academic proficiency but also about potential professional competence.”).

10. Lynda M. Reese & Ruth Anne Cotter, *A Compendium of LSAT and LSAC-Sponsored Item Types, 1948–1994*, at 5 (Apr. 1994), <https://files.eric.ed.gov/fulltext/ED469242.pdf> [<https://perma.cc/YKK9-5ET8>].

11. Eremipagamo M. Amabebe, Note, *Beyond “Valid and Reliable”: The LSAT, ABA Standard 503, and the Future of Law School Admissions*, 95 N.Y.U. L. REV. 1860, 1868–69 (2020) (describing law schools’ formulae for assessing candidates).

12. *Id.* at 1890–92 (describing how LSAT scores factor into law school rankings).

exam, and in practice.¹³ Further, the overreliance on these numeric measures has had a negative impact on the diversity of the profession.¹⁴

A. NUMBERS DOMINATE

The American Bar Association Standards for Accreditation of Law Schools (ABA Standards) govern admissions, requiring that a “law school shall only admit applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.”¹⁵ Though the ABA Standards note that “[s]ound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome,”¹⁶ admissions are primarily driven by the LSAT and undergraduate grade point average (UGPA).¹⁷ This is true even in light of LSAC’s caution against over-reliance on the LSAT,¹⁸ and the low predictive value of LSAT scores and/or UGPA.¹⁹ As explained in

13. *Id.* at 1869 (“Even today, the LSAT’s validity under Standard 503 is justified by its ability to predict first-year grades—even though this predictive validity is lower than it was at the time the test was created and significantly lower than its creators intended.”).

14. *Id.* at 1862 (“In the past three decades, the LSAT’s critics have proffered empirical evidence indicating that the test is a poor predictor of professional success, an exercise that distinguishes based on speed rather than skill, a discriminatory barrier to entry for women and minorities, and a sorting mechanism that entrenches existing wealth and power within the legal system.”).

15. *ABA Standards*, *supra* note 8.

16. *Id.* at 32.

17. “[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.” LaTasha Hill, *Less Talk, More Action: How Law Schools Can Counteract Racial Bias of LSAT Scores in the Admissions Process*, 19 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 313, 330 (2019) (quoting 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)).

18. LAW SCH. ADMISSION COUNCIL, *supra* note 4.

19. Andrea A. Curcio, Hong Jiang, Mary Lu Bilek, Jessica Gabel Cino & Allie Robbins, *Measuring Law Student Success from Admissions Through Bar Passage: More Data the Bench, Bar and Academy Need to Know 2* (Ass’n for Inst. Rsch. & Dissertation Fellows Program, Grant RG19960, 2019), <https://www.airweb.org/docs/default-source/documents-for-pages/accesslex/curcioscholarlypaper-1.pdf> [<https://perma.cc/4ND4-B5PN>] (“LSAT scores as a

the next Part, the undue focus on the LSAT is primarily driven by *U.S. News & World Report (USNWR)*, despite the strong feelings about its lack of legitimacy.²⁰

single predictor have a relatively small predictive value when it comes to first year grades as well as overall law school academic success. In fact, at one of the schools studied, LSAT as a single factor only accounts for 2% of variance in first year law school GPA and 4% of the variance in overall GPA. When used in conjunction with UGPA, as the LSAC suggests, the first-year academic predictive value increases at both schools, but at one school, the combined LSAT and UGPA data points still account for only 10% of variance in the first year academic performance. This study confirms findings from previous studies that the predictive value of LSAT scores (alone and in conjunction with UGPA) varies from school to school and the scores probably predict academic performance less well than would justify the significance placed on them by admissions practices, *US News*, and customary understanding.”); accord Deseriee A. Kennedy, *Access Law Schools & Diversifying the Profession*, 92 TEMP. L. REV. 799, 803 (2020) (“The LSAT can be problematic because, despite being heavily relied upon in making admissions decisions, it is considered by many to be a modest predictive measure of law school success.”). *But see* Lily Knezevich & Wayne Camara, *The LSAT Is Still the Most Accurate Predictor of Law School Success*, LAW SCH. ADMISSION COUNCIL, <https://www.lsat.org/data-research/research/lsat-still-most-accurate-predictor-law-school-success> [<https://perma.cc/LPB6-7BYM>] (“The predictive validity of LSAT score for 1L GPA is strong . . . undoubtedly due to the fact that the LSAT measures skills that are specifically required for success in law school.”).

20. Beginning with Yale Law School’s announcement in November 2022 that it would no longer participate in the “profoundly flawed” *USNWR* rankings, several other law schools quickly followed suit. Paul Caron, *Yale Law School Will No Longer Participate in ‘Profoundly Flawed’ U.S. News Rankings*, TAXPROF BLOG (Nov. 16, 2022), https://taxprof.typepad.com/taxprof_blog/2022/11/yale-law-school-will-no-longer-participate-in-profoundly-flawed-us-news-rankings.html [<https://perma.cc/ZSM9-G5DW>]. In response, *USNWR* wrote to law school deans stating it would not use the following factors in its rankings calculations: employment rates at graduation (previously worth 4%); average debt incurred obtaining a J.D. at graduation (3%); percent of law school graduates incurring J.D. law school debt (2%); average spending on instruction, library, and supporting services (9%); average spending on all other items, including financial aid (1%); and library resources and operations (1%). Paul Caron, *U.S. News Provides Additional Information on Forthcoming Law School Rankings*, TAXPROF BLOG (Jan. 13, 2023), https://taxprof.typepad.com/taxprof_blog/2023/01/us-news-provides-additional-information-on-forthcoming-law-school-rankings.html [<https://perma.cc/J6F5-VNLR>]. It is unlikely this will result in significant change. The number of law schools pulling out of the rankings has been growing, to “about 20% of the programs that U.S. News ranks[.]” Melissa Korn, *The Unraveling of the U.S. News College Rankings*, WALL ST. J. (Mar. 21, 2023), <https://www.wsj.com/articles/u-s-news-college-rankings-yale-law-fe24f0b2> [<https://perma.cc/KB4R-P9VH>].

In a recent BARBRI survey of admissions deans, the respondents said as much.²¹ Almost half responded that, in reviewing applications, they typically review the LSAT Report first,²² and 44.26% responded that they typically review the Undergraduate GPA Report second.²³ By beginning with these factors, the process signals that these are either the two most important factors or, at minimum, that they are so important they serve as the lens by which all other factors will be measured. The respondents represented the full range of law schools based on *USNWR* Rankings.²⁴ Even though 70% of them responded they feel "somewhat" or "very unhappy" the *USNWR* Rankings exist, with 26.67% responding they feel "neutral" about the rankings,²⁵ a majority acknowledged that *USNWR* is a major force in admissions decisions.²⁶ Specifically, despite the strong negative feelings about *USNWR*, about two-thirds of the respondents said that somewhere between 20% and 100% of the time "[w]hen deciding whether to extend an offer of admission," they "consider the impact that the applicant will have on [their] school's future U.S. News Law Ranking."²⁷

The admissions process typically involves categorization of applications—driven by LSAT and/or UGPA—into presumptive admits, presumptive denials, and applications that fall in-between.²⁸ The other admission factors under the ABA Standards—"extracurricular activities, work experience, performance

21. *2019 Admissions Deans Survey*, BARBRI 9, <http://lawpreview.barbri.com/wp-content/uploads/2019/04/BARBRI-Law-Preview-2019-Admissions-Deans-Survey.pdf> [<https://perma.cc/VTC8-ED2D>] ("What best describes your feeling about the U.S. News Law Rankings[?]").

22. *Id.* at 13 ("Which of the following standard application components do you typically review FIRST?").

23. *Id.* at 14 ("Which of the following standard application components do you typically review SECOND?").

24. *Id.* at 8 ("Please identify the U.S. News Law Ranking of the law school for which you CURRENTLY serve as an admissions officer[.]").

25. *Id.* at 9 ("What best describes your feeling about the U.S. News Law Rankings" on a scale from very happy to very unhappy?).

26. *Id.* at 11 ("When deciding whether to extend an offer of admission, what percent of the time do you consider the impact that the applicant will have on your law school's future U.S. News Law Ranking?").

27. *Id.*

28. *Hopwood v. Texas*, 236 F.3d 256, 265 (5th Cir. 2000) (defining three categories included in admission procedures); see also Aaron N. Taylor, *Reimagining Merit as Achievement*, 44 N.M. L. REV. 1, 36 (2014) ("Common applicant classifications include presumptive-admit (high index value), committee review (middling index value), and presumptive deny (low index value).").

in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome”²⁹—are typically secondary considerations.³⁰ Importantly, based on the recent BARBRI study, the amount of time dedicated to reviewing an applicant’s file is quite short and does not seem to lend itself to a meaningful review of the non-numerical components. According to the BARBRI study, almost 23% of the respondents said that they estimate spending five minutes or less to review an applicant’s file; almost 37% responded that they spend five to ten minutes; 34% responded that they spend ten to twenty minutes; and only 6.33% estimated that they spend more than twenty minutes.³¹ In addition, and importantly, the non-numerical factors are reviewed without the use of any formal methodology.³² The assessment of these other factors is “impressionistic.”³³ This lack of formal methodology for assessing non-numerical factors can create a process that includes potential bias.³⁴

Despite the growing criticism over the last twenty-plus years of relying too heavily on the LSAT and its impact on diversity,³⁵ the law school admissions process continues to be beholden to this approach for measuring an applicant’s ability to

29. *ABA Standards*, *supra* note 8, at 32.

30. Kellye Y. Testy, *LSAT or Other Tests? Some Law Schools Say Giving Applicants an Option Improves Diversity*, LAW SCH. ADMISSION COUNCIL (Jan. 24, 2020), <https://www.lsac.org/blog/lSAT-or-other-tests-some-law-schools-say-giving-applicants-option-improves-diversity> [<https://perma.cc/5272-5J9N>] (listing “other factors” considered for admission, “including undergraduate GPA, work experience, and life experience”).

31. BARBRI, *supra* note 21, at 10.

32. Alexia Brunet Marks & Scott A. Moss, *What Predicts Law Student Success? A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes*, 13 J. EMPIRICAL LEGAL STUD. 205, 207 (2016) (“Law school admission decisions . . . are less data driven than impressionistic, often based on anecdotes (e.g., admitting those resembling recent stars; not admitting those resembling recent underachievers), on idiosyncratic preferences (e.g., for certain majors or jobs), or on heavily numerical criteria (e.g., a high LSAT nearly guaranteeing admission).”).

33. *Id.*

34. *Id.*

35. See generally Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CALIF. L. REV. 1449, 1452 (1997) (“To the extent that law school admissions standards were developed in the context of racial exclusion, and perhaps for the explicit purpose of racial exclusion, it should come as no surprise that these standards continue to exclude disproportionately on the basis of race and ethnicity.”).

succeed.³⁶ Why? Sure, there is a convenience factor. Though law schools have some autonomy over which scores they find acceptable for admission decisions,³⁷ the exam is created, administered, and graded by a third-party provider, LSAC.³⁸ There is also no financial cost to law schools to accept an applicant’s LSAT score. But mostly, the decision to rely so heavily on LSAT scores is largely driven by factors other than convenience. Naturally, the question then turns to what those factors are. No two factors have greater influence on a law school’s reliance of LSAT scores than ABA Standards and the *USNWR* annual Law School Rankings.

1. The Accreditation Standards

The United States Department of Education recognizes the ABA’s Council of the Section of Legal Education and Admissions to the Bar as the accrediting agency for programs that lead to a juris doctor degree (J.D.).³⁹ To be ABA-approved, a law school must comply with the Standards and Rules of Procedure for Approval of Law Schools (Standards) promulgated by the Council.⁴⁰ Chapter 5 of the Standards sets forth the admissions criteria for law schools.⁴¹ Standard 501(b) states, “[a] law school shall only admit applicants who appear capable of satisfactorily completing its program of legal education and being admitted to

36. See Curcio et al., *supra* note 19 (“If schools rely on LSAT scores—particularly single numerals—as a proxy for merit, that decision impacts the profession’s diversity and impacts the opportunities provided to, and debt that is carried by, those from under-represented communities and lower socio-economic backgrounds.”); see also Diane Curtis, *The LSAT and the Reproduction of Hierarchy*, W. NEW ENG. L. REV. 307, 325–31 (2019) (describing the mechanisms of reliance on the LSAT and offering proposals for change).

37. See generally LAW SCH. ADMISSION COUNCIL, *supra* note 4 (describing other factors to weigh in addition to the LSAT). But see George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA’s Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 105 (2003) (noting that the ABA has not accredited a law school who admits applicants below an LSAT score of 143, while “[t]he average LSAT score for [Black people] is 142”).

38. *About the Law School Admission Council (LSAC)*, LAW SCH. ADMISSION COUNCIL, <https://www.lsac.org/about> [<https://perma.cc/E3VH-A7HD>] (“The LSAT is the only standardized test accepted by all ABA-accredited law schools in the United States.”).

39. *Schools Seeking ABA Approval*, A.B.A., https://www.americanbar.org/groups/legal_education/accreditation/schools-seeking-aba-approval [<https://perma.cc/3VC5-JZ83>].

40. *Id.*

41. See *ABA Standards*, *supra* note 8.

the bar.”⁴² Per Interpretation 501-2, “[s]ound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome.”⁴³

In determining whether a law school’s admissions policies and practices meet Standard 501, the only pre-matriculation factors listed under Interpretation 501-1 are “academic and admission test credentials of the law school’s entering students.”⁴⁴ Specifically, Standard 503 directs law schools to “require each applicant for admission as a first-year J.D. degree student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant’s capability of satisfactorily completing the school’s program of legal education.”⁴⁵ In other words, in its quest to identify which applicants are likely to succeed, a law school must use some form of standardized admission test. It is worth noting the Standards are silent on any requirement of a methodical assessment or measure for the other factors listed under Interpretation 501-2.

Until November 2021, the only presumptively “valid and reliable admission test” the ABA recognized was the LSAT.⁴⁶ If

42. *Id.*

43. *Id.* at 32.

44. *Id.* at 31.

45. *Id.* In February 2023, the ABA House of Delegates rejected a resolution that would have removed the requirement for a standardized admission test. The ABA Council can present the same resolution to the House again, up to two times, and even if rejected both times, the Council would have the final decision per ABA rules. Stephanie Francis Ward, *Admissions Test Requirement for ABA-Accredited Law Schools Will Remain in Place for Now*, A.B.A. J. (Feb. 6, 2023), <https://www.abajournal.com/web/article/admissions-test-requirement-for-aba-accredited-law-schools-remains-in-place-for-now> [https://perma.cc/H8ED-F2ZV]. Supporters of the resolution argue that by eliminating the requirement, law schools will have flexibility in their admissions practices and “implement and assess other means of admitting the most diverse, qualified classes as best suited to their own unique contexts.” Letter from Christopher P. Chapman, President & Chief Exec. Officer, AccessLex Inst., to Council of the Am. Bar Ass’n Section on Legal Educ. & Admissions to the Bar (Aug. 31, 2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov22/22-nov-501-503-public-comments.pdf [https://perma.cc/AD79-6WAJ]. Even if the resolution subsequently passes, it is unlikely that much would change with schools’ reliance on the LSAT (or the GRE).

46. *Summary of Actions*, COUNCIL OF THE A.B.A. SECTION OF LEGAL EDUC.

a law school determines that the LSAT is not the best admission test for predicting success at its institution, Interpretation 503-1 shifts the burden to the law school to demonstrate that such other test "is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's program of legal education."⁴⁷ Combining Standards 501 and 503, the importance of the LSAT is elevated over all other admission factors.

The ABA's historical presumption in favor of law schools using LSAT scores, as created between Standard 503 and Interpretation 503-1, has disincentivized law schools from exploring other valid measures for assessing an applicant's ability to succeed in law school and beyond. Failing to meet a Standard can cost a law school its accreditation.⁴⁸ Maintaining ABA accreditation is important to law schools because most jurisdictions have an education requirement as part of its bar admission process and will generally accept a degree from an ABA-accredited law school as sufficient to meet this requirement.⁴⁹ ABA accreditation, as opposed to state accreditation, is considered the gold standard in legal education.

But even if a law school is willing to be innovative enough to explore alternatives, the required financial investment would likely be cost prohibitive for most law schools. Perhaps some law schools are associated with larger institutions that may have the means to create, administer, score, and analyze the effectiveness of an alternative method, but that is not true for most. Prior to adding Interpretation 503-3 in 2014, the ABA had granted only sixteen law schools variances to use an admission test other than

& ADMISSIONS TO THE BAR (Nov. 19, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov21/21-nov-legal-ed-summary-of-council-meeting.pdf [<https://perma.cc/B3GL-TN8V>]; *ABA Standards*, *supra* note 8, at 33.

47. *ABA Standards*, *supra* note 8, at 33.

48. *See generally* A.B.A., *supra* note 39.

49. *See 2020 Comprehensive Guide to Bar Admission Requirements*, NAT'L CONF. OF BAR EXAM'RS, at vii (2020), https://www.ncbex.org/assets/BarAdmissionGuide/CompGuide2020_021820_Online_Final.pdf [<https://perma.cc/88A3-GJK9>] ("Each applicant should be required to have completed all requirements for graduation with a JD or LLB degree from a law school approved by the American Bar Association before being eligible to take a bar examination, and to have graduated therefrom before being eligible for admission to practice.").

the LSAT.⁵⁰ At that time, there were approximately 195 ABA-accredited law schools, so less than 9% of all ABA law schools used a test other than the LSAT.⁵¹ Most recently, “in 2020, 1.47% of the entering first-year class, or 549 applicants out of 38,233, were admitted with a GRE score.”⁵² Thus, even with the growing criticism around the over-reliance on the LSAT, law schools continue to be beholden to using LSAT scores as part of their admissions process.

While the ABA Standards require the use of an admissions test and it unequivocally continues to endorse the LSAT as its admissions test of choice, the ABA does not require law schools to give the LSAT a specific weight in its overall admissions process.⁵³ In fact, Standard 503 directs law schools to use LSAT scores (and any other admissions test scores) “in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test.”⁵⁴ LSAC, the creator of the LSAT, warns law schools that the “[t]he 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.”⁵⁵ Further, LSAC goes on to explicitly discourage law schools from using LSAT cut-off scores as part of its admission process, noting “cut-off scores may have a greater adverse impact upon applicants from minority groups than upon the general applicant population.”⁵⁶ Yet law schools continue to place a significant weight on LSAT scores, at the cost of more

50. *Managing Director’s Guidance Memo: Standard 503 and Interpretation 503-3*, A.B.A. 2 (Jan. 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_s503_guidance_final.pdf [https://perma.cc/5L7D-NLSJ] (“Under prior Standard 503, the Council had granted variances from Standard 503 to 16 schools.”).

51. *By Year Approved: ABA Approved Law Schools by Year*, A.B.A., https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/by_year_approved [https://perma.cc/N2P8-DGVV].

52. *ABA Legal Education Section Releases Consultant’s Report on ETS’ Study of GRE*, A.B.A. (Sept. 29, 2021), <https://www.americanbar.org/news/abanews/aba-news-archives/2021/09/aba-legal-education-section-releases-consultant-s-report-on-ets-> [https://perma.cc/7UH3-DWKM].

53. *ABA Standards*, *supra* note 8, at 33 (“This Standard does not prescribe the particular weight that a law school should give to an applicant’s admission test score . . .”).

54. *Id.*

55. LAW SCH. ADMISSION COUNCIL, *supra* note 4.

56. *Id.*

meaningful admissions measures, at least for a segment of applicants who wouldn't otherwise have a strong chance of admission based on their LSAT score.

Despite ABA Standard Interpretation 503-2, which grants law schools the ability to determine the weight of an LSAT score, the ABA does create in practice an incentive for law schools to give significant weight to LSAT scores.⁵⁷ First, under Standard 509(b), the ABA requires law schools to publish an annual report, known as Consumer Information or ABA Required Disclosures, that includes information about its first-year class, including the 75th, 50th, and 25th LSAT percentile scores.⁵⁸ This report includes only one other data point about a law school's entering students' profile—75th, 50th, and 25th percentiles for UGPA.⁵⁹ Publications such as *USNWR* use this report as part of their annual ranking methodology.⁶⁰ By isolating LSAT and UGPA and neglecting other factors, the ABA signals to both law schools and the public that these numeric factors are the only factors that matter, and all others, including an applicant's prior work or life experience, are either nonconsequential or, at best, cannot be measured and therefore cannot be reported.

Second, the ABA disincentivizes law schools from accepting LSAT scores below a certain threshold despite other factors that may indicate law school potential. One author has noted that in his investigation into which law schools are granted ABA accreditation, the ABA did not grant accreditation to any law school that admitted students with average scores below 140.⁶¹ In addition, law schools that admit students with scores below 140, no matter how many, tend to have their accreditation

57. *ABA Standards*, *supra* note 8, at 33.

58. *Id.* at 35–36.

59. The ABA publishes the Annual Questionnaire instructions defining what law schools must report on their Required Disclosures. *ABA Questionnaires & Applications*, A.B.A., https://www.americanbar.org/groups/legal_education/resources/questionnaire [<https://perma.cc/JWD7-PJKJ>] (designating the information that a “law school shall publicly disclose on its website”).

60. Robert Morse, Kenneth Hines, Eric Brooks & Daniel Lara-Agudelo, *Methodology: 2023 Best Law Schools Rankings*, U.S. NEWS & WORLD REPORT (Mar. 28, 2022), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [<https://perma.cc/L3M9-L8NF>] (describing how “[m]edian Law School Admission Test and Graduate Record Examination scores” are weighted for calculating law school rankings).

61. *See* Shepherd, *supra* note 37, at 114 (“[I]t [the ABA] tends to deny accreditation to a school that admits any students, regardless how few, with scores below 140.”).

application denied.⁶² On its face, a minimum LSAT score floor may not seem problematic; however, combined with historical data that shows the average LSAT for certain racial groups of test takers hovers just two points above a 140, a minimum floor creates for these groups a barrier into legal education and the profession.⁶³ As a result, the ABA's practices disqualify up to half of the applicants from these groups.⁶⁴ This point is explored further below in Part I.B.2.

2. The Rankings Race

The weight that law schools give LSAT scores is driven by the ABA Standards, but even more so by the *USNWR* annual Law School Rankings.⁶⁵ Law school applicants rely on these ranking systems to assist them in choosing the "best" school.⁶⁶ For law schools, higher rankings means more applications, allowing law schools to be more selective, which in turn results in a lower acceptance rate and higher yield, which also positively impacts a school's ranking. Beyond the direct impact of these factors on a law school's ranking, greater selectivity also brings with it the potential for applicants with better numerical metrics and the hope for better bar passage rates.

Criticism abounds, however, that the methodologies employed by organizations such as *USNWR* do not reflect the values of the educational institutions they purport to evaluate.⁶⁷

62. *Id.* at 115 ("Regardless of the exact language, the ABA's basic underlying standard denies accreditation to schools with average LSAT scores below about 143.").

63. *See* Lustbader, *supra* note 17, at 123 ("[T]he average LSAT score for African-Americans in the 2008–2009 year was 142.25."); Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 *FIU L. REV.* 489, 490 (2019) ("The average score for Black test-takers is 142 . . .").

64. *See* Lustbader, *supra* note 17, at 123 ("This means that the ABA de-facto standard automatically disqualifies half of the African-Americans who take the LSAT.").

65. *See supra* note 20 and accompanying text.

66. *See* Christopher J. Ryan, Jr. & Brian L. Frye, *A Revealed-Preferences Ranking of Law Schools*, 69 *ALA. L. REV.* 495, 498 (2017) ("Existing law school rankings seek to provide information that will help prospective law students decide where to matriculate . . .").

67. *See, e.g.*, John Tierney, *Your Annual Reminder to Ignore the U.S. News & World Report College Rankings*, *ATLANTIC* (Sept. 10, 2013), <https://www.theatlantic.com/education/archive/2013/09/your-annual-reminder-to-ignore-the-em-us-news-world-report-em-college-rankings/279103> [<https://perma.cc/5MSJ-4ACF>]; Karen Sloan, *US News Makes Last-Minute Changes to Law*

Critics of the law school rankings include the Association of American Law Schools (AALS),⁶⁸ which is a professional organization of law schools, as well as the ABA.⁶⁹ Most recently, several law schools openly criticized the rankings as “profoundly flawed” and “not advanc[ing] the best ideals of legal education or the profession we serve.”⁷⁰ More than twenty law schools withdrew their participation in the 2023 rankings.⁷¹ Despite these growing criticisms, moving up in the *USNWR* rankings is at the forefront for many law schools.⁷² Sadly, this race to the top can become so all-consuming that some institutions misrepresent information,

School Rankings, Fueling Criticism and Concern, LAW (Mar. 25, 2021), <https://www.law.com/2021/03/25/us-news-makes-last-minute-changes-to-law-school-rankings-fueling-criticism-and-concern> [<https://perma.cc/WQ2S-ZJST>]; Karen Sloan, *The US News Law School Rankings Are Here, But Has Their Credibility Taken a Hit?*, LAW.COM (Mar. 30, 2021), <https://www.law.com/2021/03/30/the-us-news-law-school-rankings-are-here-but-has-their-credibility-taken-a-hit> [<https://perma.cc/GR8D-L2FT>]; Derek T. Muller, *The USNWR Law School Rankings Are Deeply Wounded—Will Law Schools Have the Coordination to Finish Them Off?*, EXCESS OF DEMOCRACY (Mar. 29, 2021), <https://excessofdemocracy.com/blog/2021/3/the-usnwr-law-school-rankings-are-deeply-wounded-will-law-schools-have-the-coordination-to-finish-them-off> [<https://perma.cc/ADE3-4S8Y>]; see also Ryan & Frye, *supra* note 66, at 501–02 (proposing an alternative ranking methodology based on students’ revealed preferences).

68. “Rather than looking solely upon rank,” AALS recommends that applicants should consider other factors, and endorses the use of the LSAC guide “about the law school features to consider.” *F.A.Q.*, THE ASS’N OF AM. L. SCHS., <https://www.aals.org/prospective-law-students/faqs> [<https://perma.cc/HY7K-QANY>] (discussing “[w]hat distinguishes law schools from each other”).

69. *Statement on Law School Rankings*, A.B.A., https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/statement-on-law-school-rankings.pdf [<https://perma.cc/3PSU-VJCL>] (“No ranking or rating system of law schools is attempted or advocated by the ABA.”).

70. Ruth Graham, *After Boycott from Law Schools, U.S. News & World Report Changes Ranking System*, N.Y. TIMES (Jan. 2, 2023), <https://www.nytimes.com/2023/01/02/us/after-boycott-from-law-schools-us-news-world-report-changes-ranking-system.html> [<https://perma.cc/X9C6-6J9U>].

71. Karen Sloan, *U.S. News & World Report, Facing Backlash, Revamps Its Law School Rankings*, REUTERS (Jan. 2, 2023), <https://www.reuters.com/legal/legalindustry/us-news-world-report-facing-backlash-revamps-its-law-school-rankings-2023-01-02> [<https://perma.cc/N5WE-LJR9>].

72. See Ryan & Frye, *supra* note 66, at 499 (“Law schools use law school rankings as an external gauge of institutional success.”).

such as scores⁷³ and employment statistics,⁷⁴ in their quest to move the school's position up a spot or two in the rankings. Though misrepresentation of information is not widespread, the obsession with rankings and the blind focus on the value of the LSAT is paramount.

For the 2022 rankings, *USNWR* used four ranking indicators, listed here in order of weight: quality assessment (40%); placement success (25.25%); selectivity (21%); and faculty, law school, and library resources (13.75%).⁷⁵ Each category is made up of subcategories (fourteen total) with subcategories assigned their own weight.⁷⁶ The LSAT score is a subcategory within the selectivity indicators and ranked fourth in the subcategories, accounting for 11.25% of a law school's overall ranking.⁷⁷ But the weight that the LSAT carries in *USNWR* rankings likely understates the impact of the LSAT on rankings and hence schools'

73. See, e.g., Scott Jaschik, *Temple Fined \$700,000 in Rankings Scandal*, INSIDE HIGHER ED (Dec. 7, 2020), <https://www.insidehighered.com/admissions/article/2020/12/07/education-department-fines-temple-700000-rankings-scandal> [<https://perma.cc/4N7H-DRW7>] ("The university lied about scores on the Graduate Management Admission Test, the grade point averages of admitted students and other key factors."); Elie Mystal, *Villanova Law 'Knowingly Reported' Inaccurate Information to the ABA*, ABOVE THE L. (Feb. 4, 2011), <https://abovethelaw.com/2011/02/villanova-law-school-knowingly-reported-inaccurate-information-to-the-aba> [<https://perma.cc/YQ55-8Q2T>] ("Dean John Y. Gotanda admits that Villanova Law knowingly reported inaccurate admissions information to the American Bar Association, for years prior to 2010."); *LSAC to Verify LSAT Medians*, NAT'L JURIST (July 16, 2016), <http://www.nationaljurist.com/prelaw/lvac-verify-lsat-medians> [<https://perma.cc/E5QW-4AK5>] ("Villanova University School of Law and the University of Illinois College of Law revealed in the last two years that they misrepresented student entry credentials to the ABA and to *U.S. News & World Report*.").

74. Yanan Wang, *Is a Law School Lying About Employment Data? A Struggling Grad Sues, and an Unprecedented Trial Begins.*, WASH. POST (Mar. 8, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/03/08/are-law-schools-lying-about-employment-data-a-struggling-grad-sues-and-an-unprecedented-trial-begins> [<https://perma.cc/CN3P-PXEP>] ("15 lawsuits have accused law schools of exaggerating alumni employment figures, allegedly misleading students about their job prospects when they were just as likely to end up as waitresses as they were attorneys.").

75. Morse et al., *supra* note 60. For the 2023 rankings, *USNWR* slightly changed the weight of the four indicators: quality assessment (40%), placement success (26%), selectivity (21%) and faculty, law school, and library resources (13%). *Id.*

76. *Id.*

77. *Id.*

extensive focus on LSAT scores in admissions decisions.⁷⁸ This undue and unfounded reliance is amply supported by the BARBRI survey of admissions professionals explained above.⁷⁹

Indeed, with three other subcategories above it, why do law schools place such an emphasis on LSAT scores? Partly, the three other subcategories—peer assessment score (25%), assessment score by lawyers and judges (15%), and graduates' employment rate at ten months after graduation (14%)—are much harder to move.⁸⁰ The first two rely on the opinions of others in the academy and profession. This includes providing surveys to certain law professors and legal professionals who apply a subjective measure for evaluating the value of a law school, which may not comport with the same factors that are important to the students who use the rankings.⁸¹ Further, given its high weight in the overall rank calculation, the impact of a favorable peer assessment can continue to benefit a school even if those factors that initially garnered the school favor are no longer true.⁸² The reverse would be equally true for schools with lower rankings, making it difficult to move up based on peer assessment. Similarly, the third subcategory, employment rates for graduates, can be equally difficult to move since it depends on the available job market and a school's graduates' own pursuit of opportunities. While a school's ability to accept higher LSAT scores also

78. William D. Henderson & Andrew P. Morriss, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 IND. L.J. 163, 203 (2006) ("Law school prestige has always mattered to students, faculties, and employers. But the advent of *U.S. News* rankings has heightened the competition among schools by giving prospective students and employers a means of comparing law schools. Therefore, it should not be long before law schools begin to refine their admissions practices (and their strategic plans generally) through the aid of statistical techniques such as multivariate regression of a variety of performance measures. And we predict that those who scoff at this suggestion will eventually pay a price in the *U.S. News* rankings.") (footnote omitted).

79. See BARBRI, *supra* note 21 (quantitatively surveying law school admissions deans' demographics and how deans review law school applications).

80. Morse et al., *supra* note 60.

81. See Ryan & Frye, *supra* note 66, at 501 (stating the *USNWR* quality assessment rating is "determined subjectively by academics and lawyers who, in determining their rating, may not give as much consideration to the factors that are salient to students") (footnote omitted).

82. See *id.* ("[C]ritics agree that the *U.S. News* methodology's heavy reliance on quality assessment causes stagnation, because quality assessment is remarkably 'sticky,' causing rankings to 'echo' in the following year.") (footnote omitted).

depends on the applicant pool, a law school does have more control over which applicants to admit, making the LSAT the coveted means to move the rankings needle.⁸³

B. THE TROUBLING NARROWS OF THE STATUS QUO

While law schools are bound by the requirements of ABA Standards,⁸⁴ within the Standards, law schools have some flexibility they can exercise and use to further their own mission beyond law school rankings. The current model, which relies heavily on LSAT scores, may not be the best model. As this section explores, studies show that LSAT scores are only modestly predictive of law school success, and they are but one factor among other predictive factors.⁸⁵ More importantly, this problematic model is having a negative impact on diversity both in law schools and for the larger legal profession.⁸⁶ LSAT scores may serve a purpose but should not be the end all be all.

1. The LSAT Is Only Modestly Predictive

For law schools, no two outcomes have received more attention in recent years than employment and bar pass rates.⁸⁷ With a tougher job market that is still recovering from the “Great Recession,”⁸⁸ and the recent decline in bar pass

83. See *id.* at 502 (“[L]aw school admissions decisions are based almost exclusively on an applicant’s undergraduate GPA and LSAT score . . .”).

84. See *supra* Part I.A.

85. See *infra* Part I.B.1 (discussing predictive value of LSAT scores on law school success and bar passage rates).

86. See *infra* Part I.B.2 (discussing the racial biases of standardized testing and how LSAT scores may hamper rather than help law school diversity).

87. *What Schools Have the Best First-Time Bar Passage Rate?*, U.S. NEWS & WORLD REPORT (2022), <https://www.usnews.com/best-graduate-schools/top-law-schools/bar-pass-rate-rankings> [<https://perma.cc/3R7U-A475>] (displaying graduates’ state bar passage rates by law school); *Most People Attend Law School to Obtain Jobs as Lawyers*, ABOVE THE L., <https://abovethelaw.com/law-school-rankings/top-law-schools-2020> [<https://perma.cc/X9UH-LEH4>] (ranking law schools largely based on employment data post-graduation).

88. See James W. Jones, Milton C. Regan, Jr., Mike Abbott, Joe Blackwood, Isaac Brooks, Lisa Hart Shepherd, Bill Josten, Lucy Leach & Steve Seemer, *2021 Report on the State of the Legal Market*, THOMSON REUTERS INST. & GEORGETOWN CTR. ON ETHICS & THE LEGAL PRO. (2021), https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/reports/2021_sotlm_web_v2.pdf [<https://perma.cc/HYT9-WBMJ>] (“Since the Great Recession (2008-2009), the legal industry has gradually adjusted to a number of significant market changes.”).

rates,⁸⁹ both pressure from the public and at the ABA have forced law schools to pay greater attention to these issues. For example, in 2012, the ABA adopted recommendations to require law schools to disclose granular information about their graduates' employment outcomes, including the number of graduates employed in positions that require admission to a bar or offer a J.D. advantage.⁹⁰ In 2019, the ABA modified Standard 316 and now requires law schools to have 75% of their graduates pass the bar within two years of graduation (previously, it was within five years of graduation).⁹¹ Hence, when evaluating applicants and their likelihood of success, law schools must consider a number of factors per ABA Standards—academic, bar, and employment success. But law schools should also consider their own moral imperative and mission.

The admission process is the first step in identifying the factors that impact this success. While law schools rely heavily on LSAT scores and UGPAs in the admissions process, it has been found that these factors have no more than a modest association with overall law school (i.e., law school GPA) or bar success.⁹² In

89. *Ten-Year Summary of Bar Passage Rates, Overall and First-Time, 2010–2019*, BAR EXAM'R, <https://thebarexaminer.ncbex.org/wp-content/uploads/Ten-Year-Summary-of-Bar-Passage-Rates-Overall-and-First-Time-2010-2019.pdf> [<https://perma.cc/9ELR-DLYH>] (showing bar passage rates are down overall from 68% in 2010 to 58% in 2019, and down from 79% in 2010 to 73% in first-time takers).

90. See Press Release, Am. Bar Ass'n, New ABA Standard 509 (2012), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2013_explanation_of_new_standard_509_revised_2012.pdf [<https://perma.cc/J55C-MH2W>] (outlining four categories of disclosure required by the new ABA Standards, including particular employment outcomes data under new Standard 509(d)).

91. Memorandum from the Am. Bar Ass'n on Selection of Legal Educ. & Admissions to the Bar to Interested Persons & Entities 1 (Sept. 4, 2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/19-sept-notice-to-constituencies-on-standard-316.pdf [<https://perma.cc/99DR-VSZW>] ("The period of time within which a law school must show that it has achieved a 75 percent passage rate is reduced from five calendar years to two years from the date of graduation.").

92. See Taylor, *supra* note 63, at 490–91 ("Texas Tech found that the LSAT explained a noteworthy, but limited, 13 percent of the variance in bar exam scores of its law graduates. The University of Cincinnati found that, among its law graduates, the 'LSAT score does not correlate with Ohio bar exam performance.' Two professors from the University of California Berkeley found that

addition, LSAT scores are also only modestly predictive of 1L GPAs.⁹³ LSAC concedes the LSAT's narrow use is to assess "the skills necessary for success in the first year of law school."⁹⁴ LSAC further cautions that LSAT scores should be "just one part of a holistic admission process that considers the skills and lived experience of each candidate."⁹⁵ Yet, as discussed above, law schools, for various reasons, weigh LSAT scores heavily, including their perceived predictability factor.⁹⁶

LSAT scores are only indicative of past narrowly defined achievements and not highly predictive of the array of competencies necessary for a new attorney. "The LSAT, a cognitive measure, provides some but limited value in that it predicts grades, one focal dimension of law school performance, but not other forms of achievement in either academic or professional contexts."⁹⁷ Further, overreliance on this single factor ignores that there is more to academic success, even more to success in practice, than first-year grades, and that grades can improve over time.⁹⁸ Emphasis on LSAT scores as a predictor of first-year

the LSAT had very weak (or no) value in predicting lawyering skills among its law graduates. In a letter seeking to correct inflated claims about the LSAT's power, the Law School Admissions Council stated that test scores were not appropriate tools for assessing things like bar exam risks." (footnotes omitted); see also Aaron N. Taylor, Jason M. Scott & Josh Jackson, *It's Not Where You Start, It's How You Finish: Predicting Law School and Bar Success 4* (AccessLex Inst. Rsch. Paper, Paper No. 21-03, 2021), https://www.accesslex.org/sites/default/files/2021-03/LSSSE%20National_Report.pdf [<https://perma.cc/2SRN-6XPQ>] ("[S]tudies find a positive correlation between LSAT score and bar passage.").

93. See Curcio et al., *supra* note 19, at 7–8 ("However, as the LSAC itself recognizes, the LSAT's predictive value for, and correlations with, first year academic performance vary greatly . . .") (footnote omitted).

94. *The LSAT*, LAW SCH. ADMISSION COUNCIL, <https://www.lsac.org/lSAT> [<https://perma.cc/22ZM-E5WX>].

95. *Id.*; see also Chad Christensen, *Preparing Law Students to be Successful Lawyers*, 69 J. LEGAL EDUC. 502, 503 (2019) (analyzing data from Law School Survey of Student Engagement regarding "professional competencies that are vital to excel as a lawyer").

96. See *supra* note 93 and accompanying text.

97. Marjorie M. Shultz & Sheldon Zedeck, *Admission to Law School: New Measures*, 47 EDUC. PSYCH. 51, 51 (2012).

98. See Taylor et al., *supra* note 92, at 3 n.1 ("First year academic performance is only one aspect of legal education and admissions decisions ideally would primarily consider factors that predict overall success as an attorney. . .").

grades, which in turn are used as a proxy for predicting bar success, ignores the impact that effective academic support and other intervention programs can make.⁹⁹

Law schools' overreliance on the LSAT is also likely exacerbated by claims of connection between LSAT and bar performance. According to the National Conference of Bar Examiner's (NCBE), for law schools to predict which applicants will be at risk for failing the bar, they should pay particular attention to LSAT scores.¹⁰⁰ The NCBE's position on the correlation between LSAT and bar performance reached controversial levels when, following the decline of bar pass rates in 2014, then-NCBE President, Erica Moeser, stated the only indicator they could identify to explain the drop in Multistate Bar Examination (MBE) scores and, thus, a decline in bar exam rates, was "that the group that

99. Helen Albertson, *Understanding the Impact of Academic Support Programs on First-Time Bar Passage for Students at the University of Idaho College of Law 4* (2013) (Ph.D. dissertation, University of Pennsylvania) (ProQuest) (describing common features of various law school academic support programs as well as how they define success in law school). In fact, for some students, namely people of color, their ability to succeed in their first year has less to do with their LSAT score and more to do with their ability to adjust to law school. See Marks & Moss, *supra* note 32, at 254–55 (assessing how certain demographics, such as those with military experience or people of color, negatively perform early-on in law school not because of lesser talent, but because they need to adjust to the demands and culture of law school). Thus, in addition to improving admissions decisions, law schools should invest in programs that help entering students adjust to law school, thereby expanding the pool of students they admit beyond just those with high LSAT scores. *Id.* (explaining the importance of "improved interventions" which would "increase the fairness and accuracy of law school grades" by acclimating students who project less positively, but could perform better, to the demands of law school).

100. See Scott Johns, *Testing the Testers: The National Conference of Bar Examiner's LSAT Claim and a Roller Coaster Bar Exam Ride*, 35 MISS. COLL. L. REV. 436, 441–42 (2017) ("Next, the NCBE asserts that LSAT scores correlate with MBE scores. According to the NCBE as indicated in Table 2, increases in LSAT scores correlate with increases in MBE scores. The LSAT-MBE correlation ($r = .57$) is stronger than the UGPA-MBE correlation ($r = .36$). Consequently, the NCBE recommends that law schools pay particular attention to LSAT scores in order to predict students at risk of bar exam failure. However, because of the low correlation between UGPA-MBE scores and the mild correlation between LSAT-MBE scores, it is difficult for law schools to accurately predict bar exam results based on matriculation data that solely relies on UGPA and LSAT scores. Based on the NCBE's data showing a correlation between LSAT-MBE scores of just $r = .57$ ($r\text{-squared} = .3249$), LSAT scores only explain about 32 percent (or about one-third) of the variance in MBE scores, leaving 68 percent (or about two-thirds) of the variance in MBE scores unexplained by LSAT scores.") (footnotes omitted).

sat in July 2014 was less able [i.e., lower LSAT scores] than the group that sat in July 2013.”¹⁰¹

In response to the decline in bar pass rates, including claims that lower bar pass rates were driven by a decline in LSAT scores, in 2017, the California Supreme Court charged the California State Bar with exploring via a series of studies what was causing the decline in bar results.¹⁰² The first study consisted of a historical analysis of the bar pass rates using three years—2008, 2012, and 2016—and was designed to identify changes over the years and any factors that may have contributed to the changes.¹⁰³ The study revealed a bigger decline in bar pass rates among applicants with lower LSAT scores and this suggested, “the overall lower mean scores (and subsequent lower passage rates) may rather be a function of a large group of applicants sitting for the examination who are much less prepared, relative to applicants who took the [bar exam] 9 years prior.”¹⁰⁴ In other words, according to this study, the lower California bar pass rates were likely indeed due to more applicants with lower LSAT scores (i.e., an increase in “less able” applicants).

This led to a follow-up study, which was completed in 2018, that was designed, in part, to test the theory that lower LSAT scores accounted for the lower bar pass rates.¹⁰⁵ The study in-

101. *Id.* at 440 n.19.

102. *See California Bar Examination Studies*, ST. BAR OF CAL., <http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/California-Bar-Examination-Studies> [<https://perma.cc/T3N9-MFC7>] (showing the California Supreme Court prompted the state bar to “identify and explore all issues affecting California Bar Exam pass rates,” including “broad participation of subject matter experts, stakeholders, law schools, and technical experts”).

103. Roger Bolus, *Recent Performance Changes on the California Bar Examination (CBE): Insights from CBE Electronic Databases*, RSCH. SOLS. GRP. 3 (Feb. 19, 2017), https://www.calbarjournal.com/Portals/0/documents/communications/2017_PR-01-17_R.pdf [<https://perma.cc/M37T-7GKX>] (“We reasoned that if patterns did exist, they would come to light by focusing on the most recent years with the most extreme differences.”).

104. *Id.* at 23.

105. Roger Bolus, *Performance Changes on the California Bar Examination: Part 2: New Insights from a Collaborative Study with California Law Schools*, RSCH. SOLS. GRP. 6 (Dec. 20, 2018), <http://www.calbar.ca.gov/Portals/0/documents/admissions/Examinations/Bar-Exam-Report-Final.pdf> [<https://perma.cc/AF3E-XE8H>] (posing research questions, including “[t]o what degree were students’ characteristics, credentials, law school experiences, and performance related to their outcomes on the [California Bar Exam]?”).

cluded bar results for over 7,000 applicants who took the California bar exam in July 2013, 2016, and 2017 from eleven California ABA-accredited law schools.¹⁰⁶ Similar to the prior study, this study confirmed there was a decrease in LSAT scores from 2013 to 2017—for the July 2013 bar exam, the average LSAT score was 159.4 compared to 157.1 for the July 2017 bar exam.¹⁰⁷ The study concluded that the drop in LSAT scores at best accounted for 20–50% of the decline in the bar pass rates.¹⁰⁸ This means that something other than LSAT scores accounted for 50–80% of the decline in bar pass rates. The study also confirmed what has been found by many other studies: overall, law school GPA has the strongest predictive power for bar performance.¹⁰⁹ In other words, regardless of the variable measured, once law school GPA is accounted for, any predictive power another variable may have had is overshadowed by the predictive value of law school GPA.¹¹⁰ This includes variables such as LSAT scores.

A number of researchers have also methodically considered the LSAT's predictability power by evaluating how students perform in law school and the bar exam based on LSAT scores. Three recent studies across multiple law schools all support the same finding: LSAT scores only account for a portion of the differences in law school success.¹¹¹ These studies found that a one-point increase in LSAT scores account for less than a one-twentieth (0.05) point increase in law school grade point average

106. *Id.* at 9 (“The total sample included 6,143 (80.3%) first-time takers and 1,511 (19.7%) repeaters.”).

107. *Id.* at 25.

108. *Id.* at ii.

109. *Id.* at 41 (“What is readily apparent from the results was the overwhelming importance of the aggregate performance in law school as measured by the students’ cumulative GPA upon graduation.”).

110. *Id.* (“For each [California Bar Exam] outcome, [law school GPA] dwarfs the effects of all remaining potential predictors.”).

111. See Marks & Moss, *supra* note 32, at 256 (“LSAT is overweighted compared to other, less univariate academic metrics such as a broad view of not only [undergraduate GPA] but college quality and college major”); Curcio et al., *supra* note 19, at 24 (“[T]he combination of first-year and selected upper level doctrinal courses explain more variance in first-time bar passage than LSAT score alone does”); Taylor et al., *supra* note 92, at 15 (“[W]hile LSAT and [undergraduate GPA] may have tangible value as explanatory variables of law school academic performance, that value is modest.”).

(LGPA) (.016,¹¹² 0.02,¹¹³ and 0.04¹¹⁴). In addition, one of the studies found that LSAT scores only account for 4% of the differences (variance explained) in LGPAs.¹¹⁵ All studies found that LGPA was a better predictor of bar exam passage than LSAT score or UGPA.¹¹⁶

112. Marks & Moss, *supra* note 32, at 230.

113. For example, one recent study analyzed data from 2,440 students from Georgia State University College of Law (GSU) and City University of New York Law School (CUNY). Curcio et al., *supra* note 19, at 10. One research question examined the predictive value of LSAT scores to performance in law school courses (doctrinal versus experiential learning), first year GPA, and overall GPA. *Id.* at 5. At both schools, LSAT as a single predictor of law school success was significant; however, LSAT scores accounted for only a “small variance in first year and overall academic performance, particularly at GSU,” accounting for 2% of the variance in first-year GPA and 4% in overall GPA. *Id.* at 18. Even when combining LSAT with UGPA, as LSAC recommends, the combination can only account for 10% of variance of first-year academic performance at GSU. *Id.* at 26. At CUNY, LSAT accounted for more of the variance—15% for first-year GPA and 17% for overall GPA. *Id.* at 18.

114. Taylor et al., *supra* note 92, at 15.

115. Curcio et al., *supra* note 19, at 18. Similarly, a study conducted of over 1,400 students from 2008–2011 from the University of Colorado Law School and Case Western University Law School concluded that although LSAT scores are statistically significant for law school GPA, their predictive power is modest at best. Marks & Moss, *supra* note 32, at 218, 230 (“Though LSAT is a statistically significant predictor, . . . its validity as an admissions criterion may be more modest than is implied by how heavily schools weight it in admission and scholarship decisions.”). The study found that a six-point LSAT difference “predicts only a modest 0.1 difference” in LGPA, though that same LSAT gap makes “a dispositive difference in where one attends law school and whether one receives a six-figure scholarship.” *Id.* at 230. The weight being given to such a modest predictive factor is even more difficult to reconcile when the study goes on to identify many other valid predictors, each of which is the “equivalent of a two to seven-point LSAT difference,” and that these other predictors take a more holistic approach to evaluating an applicant. *Id.* Besides UGPA, the study identifies other factors such as quality of college, college major, work experience, and type of work experience as positive predictors of success. *Id.* at 232–40 (finding that the aforementioned factors were positively correlated with LSAT scores and, therefore, LGPA). For example, for type of work experience, “[t]eaching experience is akin to five extra LSAT points,” which likely reflects personal qualities such as the ability to be responsible, capable of wielding authority and urging others to take work seriously, and being comfortable in learning environments. *Id.* at 240.

116. See Marks & Moss, *supra* note 32, at 209 (“[L]aw grades are useful as predictors—of the bar passage that is necessary to most lawyer jobs, of gaining employment in the first several years after law school, and of at least some aspects of legal acumen.”); Taylor et al., *supra* note 92, at 17 (“The strongest predictors of bar exam performance are law school grades.”).

Another recent multi-institutional study showed similar results. The AccessLex/Law School Survey of Student Engagement (LSSSE) Bar Exam Success Initiative analyzed data for almost 5,000 students across twenty law schools.¹¹⁷ Among other questions, the study considered “[t]he extent to which LSAT score and UGPA predict law school academic and first-time bar exam performance.”¹¹⁸ The results from the study show “a 0.08 standard deviation increase approximates to a 0.04 increase” in first-year GPA.¹¹⁹ This means that while LSAT scores may have some predictability value, the value is modest at best.¹²⁰ For bar performance, as with law school performance, the study finds a small statistically significant relation to LSAT scores and UGPA.¹²¹ However, once law school grades are accounted for, especially cumulative law school GPA, the strength of the relationship diminishes.¹²² This finding confirms what many others before it have—the best indicator for bar success is law school GPA.¹²³

In addition to confirming the results of similar studies, the AccessLex/LSSSE study adds to existing literature because it identified other indicators that predict bar success. For example, the study found that an increase in law school GPA from semester grades, especially for those with below average grades in their first semester, could increase a student’s chances of passing the bar from 25% (those with no GPA change), to 43% (average change to GPA), and even 71% (above average change to GPA).¹²⁴ In addition, the study found a positive relationship between bar passage and a number of factors, especially among

117. Taylor et al., *supra* note 92, at 1 (outlining parameters of the study).

118. *Id.* at 3.

119. *Id.* at 15.

120. *Id.* (“These coefficients suggest that while LSAT and UGPA may have tangible value as explanatory variables of law school academic performance, that value is modest.”).

121. *Id.* at 16 (“[A] one-point increase in LSAT score is associated with an 11 percent increase in the odds of passing the bar exam; a one-tenth increase in UGPA . . . is associated with a 9.9 percent increase in bar passage odds.”).

122. *Id.* at 16–17 (“The strength of the relationships . . . diminish when any of the LGPA variables are added to the model. For example, when 1L LGPA was added, the odds ratio fell to 1.05 for LSAT score and 1.02 for UGPA.”).

123. *Id.* at 17 (“The strongest predictors of bar exam performance are law school grades. . . . Each LGPA variable has an effect size that is at least twice as large as that of LSAT or UGPA.”).

124. *Id.* at 19 (“The most compelling observation from the figure is the extent to which increases in LGPA impact the bar passage chances of individuals with

students with below average LSAT scores.¹²⁵ Among these are students who worked in a law-related job or completed pro bono work, students who reported their institution contributed “very much” to the development of relevant and tangible skills, and students who reported participating “very often” in class.¹²⁶ These findings highlight the array of factors that contribute to bar success that LSAT scores cannot possibly account for.

Empirical research has shown over and over again that LSAT scores at best can modestly predict first-year grades and that law school grades are better at predicting bar passage than LSAT scores. Even then, the “role of standardized testing for bar admission is currently in flux, and changes with the NextGen bar exam and the growing movement toward developing alternative paths to licensure mean that the link between standardized testing and bar admission is becoming ever weaker.”¹²⁷

While LSAT scores are modestly predictive of law school success and bar passage as a single factor, when combined with other admission and law school experience factors, the predictability of law school success and bar passage success increases. Thus, “[m]odels that account for academic performance during law school tend to have much greater explanatory power” for predicting bar exam success.¹²⁸

below average first-semester grades. Graduates with below average first-semester grades who experienced negative LGPA growth (-0.09) had only an 18 percent chance of passing the bar exam, and those with no LGPA growth had a 25 percent chance of passing the bar exam, compared to 43 percent among their peers who experienced average growth. Above average growth was associated with a 71 percent chance of passing.”).

125. *See id.* at 23–24 (identifying the four law school factors having the most positive and meaningful relationships with bar passage).

126. *Id.*

127. Letter from Clinical Legal Educ. Ass’n, to Leo P. Martinez, Council Chair, & Joseph K. West, Council Chair-Elect, Am. Bar Ass’n Section of Legal Educ. & Admissions to the Bar (Sept. 1, 2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov22/22-nov-501-503-public-comments.pdf [<https://perma.cc/AD79-6WAJ>].

128. *Id.* at 4; *see also* Katherine A. Austin, Catherine Martin Christopher & Darby Dickerson, *Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance*, 45 HOFSTRA L. REV. 753, 755 (2017) (analyzing the impact of applied skills opportunities, such as “journal, clinic, and moot court participation,” on bar exam success rates); Amy N. Farley, Christopher M. Swoboda, Joel Chanvisanuruk, Keanen M. McKinley, Alicia Boards & Courtney Gilday, *A Deeper Look at Bar Success: The Relationship Be-*

2. LSAT's Negative Impact on Diversity

The LSAC requires that:

Law school admission offices should give equal opportunity in admission considerations to applicants who are members of underrepresented groups in the legal profession. These may include applicants from LGBTQ, ethnic, and racial backgrounds; applicants with disabilities; applicants who may not have enjoyed adequate opportunities to develop or demonstrate their potential for academic achievement; and those who would not otherwise be meaningfully represented in the entering class or legal profession.¹²⁹

However, this requirement of—and commitment to—diversity is profoundly frustrated by the overreliance on traditional admission factors, namely LSAT scores, which account for only a modest predictability rate for first-year success.¹³⁰

Largely driven by LSAT and UGPA, law school admissions are highly selective. The selectivity rate among the ABA-accredited law schools in the past three years has averaged 44.13% in 2020 (197 ABA-accredited schools), 44.45% in 2019 (203 ABA-accredited schools), and 45.61% in 2018 (203 ABA-accredited schools).¹³¹ Notably, this selectivity is drastically uneven across various demographics.

tween Law Student Success, Academic Performance, and Student Characteristics, 16 J. EMPIRICAL LEGAL STUD. 605, 622 (2019) (“[N]either LSAT nor UGPA nor any demographic variable was a significant predictor of bar passage once student performance in law school was included in the model, suggesting that the relative explanatory power of those predictors diminished when controlling for in-school experiences.”); Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 107 (2007) (“[I]t is apparent that class rank is the strongest predictor of performance on the bar exam.”).

129. LAW SCH. ADMISSION COUNCIL, *supra* note 7.

130. See Taylor et al., *supra* note 92, at 3 (“Overreliance on LSAT scores and UGPAs in the law school admission process is a principal driver of the persistent dearth of diversity in the legal profession.”).

131. *Legal Education and Admissions to the Bar*, A.B.A. REQUIRED DISCLOSURES, <https://www.abarequireddisclosures.org/Disclosure509.aspx> [<https://perma.cc/7L4J-LMXC>] (under “Compilation - All Schools Data” select the relevant year from the “select year” dropdown; then under the “Select Section” dropdown select “First Year Class”; then press “Generate Report” and open the downloaded excel file); see also Taylor, *supra* note 28, at 35 (“The law school admissions process is one of the most selective in higher education. There are 201 law schools accredited by the American Bar Association, and, in 2011, 154 of them had admission rates under 50 percent. Most law schools consider a range of factors, numerical (e.g., LSAT) and non-numerical (e.g., personal statements). Admissions processes take many forms. Some law schools use an index-

In 2015, only 54 percent of black applicants received one or more offers of admission to law school. The Latino/a rate was 68 percent. The rates for Asian and white applicants were 75 percent and 83 percent respectively. In more tangible terms, it took 1,852 black applicants to yield offers of admission to 1,000 members of that group, compared to 1,471 Latino/a applicants, 1,333 Asian applicants, and 1,205 white applicants.¹³²

Underrepresented groups historically score lower on the LSAT.¹³³ For example, Black students on average score “11 points lower on the LSAT than their White and Asian counterparts, which leads to their exclusion from law schools based on a metric that does not predict lawyer success or even bar success well.”¹³⁴ There are many possible contributors, such as the financial burden for many applicants from underrepresented groups to properly access test preparation materials and courses.¹³⁵ Anecdotal, we also know there can be time issues when an applicant has to work to help financially support their family, which leaves less time to study and practice.¹³⁶ There is also growing evidence of bias within the LSAT test.¹³⁷ “A test is biased if the

based process where they apply an applicant’s LSAT score and UGPA to a numerical formula, and use the resulting value to classify the applicant based on his relative strength. The formulas are usually designed to correlate with, or predict, certain outcomes. For example, a higher index value might be (imperfectly) associated with higher first-year grades.” (footnotes omitted).

132. *Roadmap to Enrolling Diverse Law School Classes: Five Tactics for Increasing Racial, Ethnic, and Socioeconomic Diversity*, ACCESSLEX INST. 6 (Sept. 2018) (citations omitted), https://www.accesslex.org/sites/default/files/2020-08/AccessLex_Diversity%20Roadmap%20Vol%201.pdf [https://perma.cc/YXZ4-ZE33].

133. *See, e.g., id.* (“The average score for black LSAT-takers is 142—eleven points lower than the average for white and Asian test-takers of 153.”).

134. Taylor et al., *supra* note 92, at 3 n.1.

135. *See* Caroline Kitchener, *How the LSAT Destroys Socioeconomic Diversity*, ATLANTIC (Oct. 18, 2016), <https://www.theatlantic.com/education/archive/2016/10/the-lsat-is-rigged-against-the-poor/504530> [https://perma.cc/BJ9P-D6BA] (“Law-school applicants from affluent backgrounds also have an easier time with [the LSAT] because they’re more likely to have time to study.”).

136. *Id.*

137. *See, e.g.,* Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U. J. GENDER & L. 121, 128 (1993) (“The narrative bias of [LSAT] questions is the atmospheric, sometimes subtle, sometimes blatant, often pervasive bias of stories, manners, sensitivities, and paradigms. It is the same bias confronted in law school examinations”) (footnotes omitted); Hill, *supra* note 17 (“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.”); William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving “Elite” College Students*,

average test score of one population of individuals is significantly greater than that of another."¹³⁸

Increasing diversity is desirable for many reasons. In *Grutter v. Bollinger*, the Supreme Court affirmed the University of Michigan Law School's admission policy that aimed to "achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts"¹³⁹ with one such factor being racial and ethnic diversity.¹⁴⁰ In defending its use of race as part of the admissions process, the law school pointed to "the educational benefits that flow from a diverse student body."¹⁴¹ Among these benefits:

89 CALIF. L. REV. 1055, 1084 (2001) ("[M]inority law school applicants faced a LSAT bias *in addition to* disadvantages in prior educational opportunities."); TERI A. MCMURTRY-CHUBB, STRATEGIES AND TECHNIQUES FOR INTEGRATING DIVERSITY, EQUITY, AND INCLUSION INTO THE CORE LAW CURRICULUM 4–5 (Howard Katz ed., 2022) ("Students may choose to prepare by purchasing a book and working through it at their own pace. This is certainly the cheaper option. Preparation books and study supplements range in price from about \$30 to \$150. Preparation courses, plans of study led in person or online by skilled test taking and advising professionals, range in price from approximately \$300 to \$1,150. These preparation courses are positively correlated with higher LSAT scores, which facilitate admission into the top 14 (T-14) schools (as ranked by U.S. News & World Report) and Ivy League schools that provide access to highly paid employment opportunities and elite spaces. LSAT preparation courses are accessible primarily to prospective law students who have monetary resources, family support, and understanding about the importance of the LSAT in law school admissions and career choices The best opportunities for admission to law school, high salaries, and access to elite spaces are available to students who are White, male, and outside of the poor and working class. Prospective law students who are not included in these categories are at a competitive disadvantage. The admissions process, even getting to the gate to begin the process, amplifies their restriction from it based on identity.") (footnotes omitted).

138. Hill, *supra* note 17, at 316. Similarly, there is mounting criticism the bar exam is biased. A study by LSAC "found a gap of nearly 20 percentage points between White and Hispanic test takers and 30 points between White and Black test takers." Taylor et al., *supra* note 92, at 2. Recent studies from New York and California found these gaps in bar pass rates persist today. *Id.* ("More recent data from New York and California show virtually no narrowing of these disparities."). Regardless of what may be causing lower LSAT scores and bar pass rates for some underrepresented groups, the impact is alarming.

139. 539 U.S. 306, 315 (2003).

140. *Id.* at 316 ("The policy does, however, reaffirm the Law School's longstanding commitment to 'one particular type of diversity,' that is, 'racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against'").

141. *Id.* at 317.

“[C]ross-racial understanding,” [which] helps to break down racial stereotypes, and “enables [students] to better understand persons of different races.” These benefits are “important and laudable,” because “classroom discussion is livelier, more spirited, and simply more enlightening and interesting” when the students have “the greatest possible variety of backgrounds.” . . . [Cross-racial understanding] “better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.” These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.¹⁴²

For these reasons, a pursuit for student body diversity is not only desirable, it also does not violate the Equal Protection Clause because it furthers a compelling governmental interest.¹⁴³

Empirical evidence shows that diversity discussions both improve student learning and provide professional benefits “that will reach into future legal practice.”¹⁴⁴ Besides the benefits lost for all law students where there is lack of diversity, a lack of diversity at the law school level inevitably leads to lack of diversity in the profession. According to the 2000 U.S. Census, African Americans represent only 3.9% of all attorneys in the country, yet make up 12.9% of the U.S. population.¹⁴⁵ This means only 0.1% of the country’s African American citizens are lawyers.¹⁴⁶ For perspective, 90% of all lawyers are white Americans and white Americans make up 75% of the country’s population.¹⁴⁷ A lack of diversity in the legal profession harms all society.

Lawyers from underrepresented backgrounds are more likely to represent underserved people and interests. Diversifying the legal profession could also help foster higher levels of belief in the legitimacy of our legal system among traditionally marginalized groups. The need for such civic embrace has taken on greater urgency in light of renewed calls for racial justice and the caustic political environment that has highlighted the glaring precariousness of our democracy.¹⁴⁸

A lot has been written about the significantly negative impact of current admission practices on the makeup of the legal

142. *Id.* (citations omitted).

143. *Id.* at 308 (“[S]tudent body diversity is a compelling state interest that can justify using race in university applications.”).

144. Meera E. Deo, *Faculty Insights on Educational Diversity*, 83 *FORDHAM L. REV.* 3115, 3138 (2015).

145. Hill, *supra* note 17, at 329.

146. *Id.*

147. *Id.*

148. Taylor et al., *supra* note 92, at 3 (citations omitted).

profession and failure to reflect societal demographics.¹⁴⁹ No question that many, if not almost all, in legal education would agree that “[i]n an increasingly diverse society, maintenance of the rule of law requires a legal profession that reflects the people.”¹⁵⁰ However, lawyer demographics remain largely unchanged.

In fact, some have asserted that law is the “whitest” profession. U.S. Census data reveal a higher rate of cultural diversity in other occupational fields, including medicine, accounting, architecture and engineering, computer systems analysis, and medical science research, than found in the legal field. Despite articulated efforts, diversifying the profession by including more Black and Latinx lawyers is stagnating.¹⁵¹

The American Bar Association National Lawyer Population Survey starkly reveals the literal stagnation. The percentage of African American attorneys has remained at a constant 5% year-after-year from 2012 to 2022.¹⁵² Those designated Hispanic have inched up from 3% to 6% from 2012 to 2022.¹⁵³

Given the large attorney population of California—almost 168,000 in 2021¹⁵⁴—and the state’s extensive diversity,¹⁵⁵ it’s

149. Retention is, of course, also a factor, as is bar passage, but we do not even get to the retention or bar passage part unless an aspiring applicant has a shot at entering law school. See Farley et al., *supra* note 128, at 616–23 (discussing, in part, the utilization of student attrition and retention rates to illustrate the time period most likely to exit students from a law program).

150. Aaron N. Taylor, *Suspicious Diversity at Law Schools*, NAT’L JURIST (Apr. 8, 2015), <http://www.nationaljurist.com/national-jurist-magazine/suspicious-diversity-law-schools> [<https://perma.cc/4ZQK-GPBU>].

151. Kennedy, *supra* note 19, at 800 (footnotes omitted) (discussing the importance of diversifying the law school admission process and making the process less dependent on standardized test scores).

152. *ABA National Lawyer Population Survey*, A.B.A. (2022), https://www.americanbar.org/content/dam/aba/administrative/market_research/2022-national-lawyer-population-survey.pdf [<https://perma.cc/FW6F-NFDA>] (“Individual state bar associations or licensing agencies are asked to provide demographics data for resident and active attorneys as of December 31st of the prior year, e.g. 2022 data is as of 12/31/2021.”).

153. *Id.*

154. *Id.* California’s 167,709 active attorney count is only second to New York’s 185,076, and far surpasses other states’ numbers. *Id.*

155. In the country’s most populous state, “[n]o race or ethnic group constitutes a majority of California’s population: 39% of Californians are Latino, 35% are white, 15% are Asian American or Pacific Islander, 5% are Black, 4% are multiracial, and fewer than 1% are Native American or Alaska Natives, according to the 2020 Census.” Hans Johnson, Eric McGhee & Marisol Cuellar Mejia, *California’s Population*, PUB. POL’Y INST. OF CAL., <https://www.ppic.org/wp>

also illuminating to look at California's bar demographics. The State Bar of California's first Report Card on the Diversity of California's Legal Profession reports that the "state's attorney population does not reflect its diversity," explaining:

Between 5,000 and 6,000 attorneys are admitted to the State Bar of California annually. The number of active licensed attorneys has nearly doubled since 1980, reaching over 190,000 as of December 2019. White attorneys account for nearly 70 percent of California's active licensed attorney population, while people of color constitute 60 percent of the state's population. Latinos, in particular, are underrepresented among California attorneys in comparison to their representation statewide: this group comprises 36 percent of the state's population yet accounts for a mere 7 percent of all of California's licensed active attorneys.¹⁵⁶

California has made some strides but "the rate of change has varied by racial/ethnic group."¹⁵⁷ Specifically,

The proportion of Latino attorneys has doubled from 5 to 10 percent over the last three decades. Likewise, the proportion of new licensees who are Asian or multiracial more than tripled. The rapid growth in the number of Asian [American] attorneys, which began in the 1990s, has since leveled off. Over the same period the proportion of newly licensed Black attorneys has remained stagnant.¹⁵⁸

Of course, as we explain below, it doesn't have to be this way. If law schools employ a more expansive approach—using meaningful measures, beyond the usual numbers, to assess potential for law school and ultimately practice success—legal education and the profession will likely benefit from more diversity. Rigorous and thoughtful exploration, beyond conventional admissions practices, should not be further delayed. The need is particularly pronounced now, given the anticipated U.S. Supreme Court decision to bar or severely curb the consideration of race as an admissions factor.¹⁵⁹ Law schools, the profession, and society will

-content/uploads/JTF_PopulationJTF.pdf [https://perma.cc/Z6T5-JLAQ]; see also *QuickFacts: California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/CA/PST045219> [https://perma.cc/5UV3-UGZ4] (containing additional diversity estimates).

156. Carolina Almarante, Lisa Chavez, Christine Holmes, Elizabeth Hom & Hellen Hong, *Report Card on the Diversity of California's Legal Profession*, ST. BAR OF CAL. 4 (2019), <http://www.calbar.ca.gov/Portals/0/documents/reports/State-Bar-Annual-Diversity-Report.pdf> [https://perma.cc/FR3A-4XV3].

157. *Id.* at 7.

158. *Id.* (alteration in original).

159. Two cases, *Students for Fair Admissions Inc. v. President & Fellows of Harvard* and *Students for Fair Admissions v. University of North Carolina*, argued for elimination of race as an admissions factor. The arguments were con-

not be well served if schools lose sight of applicants' lived experiences. Novel admissions practices to value, capture, and methodically assess those experiences are incumbent on law schools.

II. SPARKS OF INNOVATION

The criticism that merit for law school admissions purposes is defined in a very limited way, driven by LSAT and UGPA,¹⁶⁰ has instigated sharp commentary about taking a more in-depth approach to application review and possible ways of doing that. As keenly noted by David Yellen, former CEO of the Institute of the Advancement of the American Legal System, "[i]t's lazy to only base admissions on test scores and grades."¹⁶¹

The salient concern expressed in the literature is lack of focus on the critical character attributes that should play a role in the admissions' gatekeeping role to law school as well as the profession.¹⁶² This is grounded on the notion that "character, discipline, personal skills, and motivation" should be regarded as important as the numerical indicators when "assessing who has 'earned' a right to participate and who brings value to the school, the profession, and the community."¹⁶³ Accordingly, it's been proposed that schools take a deep dive into the personal statement to assess motivation and perseverance, noting these are "two essential characteristics, not only in law school, but also in the practice of law."¹⁶⁴ Another author has proposed interviewing applicants.¹⁶⁵

solidated for oral argument in the Supreme Court. *See generally* James Romoser, *The Court Is Poised to Set Jurisprudence on Race for Generations—And Not Just in Affirmative Action*, SCOTUSBLOG (Oct. 30, 2022), <https://www.scotusblog.com/2022/10/the-court-is-poised-to-set-jurisprudence-on-race-for-generations-and-not-just-in-affirmative-action> [<https://perma.cc/4XHM-385D>] (describing the case in front of the Supreme Court).

160. *See, e.g.*, Kidder, *supra* note 137, at 1057–58.

161. Christine Charnosky, *The ABA's Approval of the GRE 'Caught Everybody Off Guard'—But Will It be a Game Changer?*, LAW.COM (Dec. 13, 2021), <https://www.law.com/2021/12/13/the-abas-approval-of-the-gre-caught-everybody-off-guard-but-will-it-be-a-game-changer> [<https://perma.cc/6XHT-RU8C>].

162. Lustbader, *supra* note 17, at 86 (citing Phoebe A. Haddon & Deborah W. Post, *Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and a Redefinition of Merit*, 80 ST. JOHN'S L. REV. 41, 67 (2006)).

163. *Id.* at 88 (citing Haddon & Post, *supra* note 162, at 57, 60–61, 97).

164. *Id.* at 138.

165. Hill, *supra* note 17, at 334 ("This [interview] option could be added to

Focused on diversity considerations, recently Aaron Taylor has proposed the Achievement Framework, based on Overachievement Index and Disadvantage Index as a race-neutral approach.¹⁶⁶ Similarly, AccessLex has aptly noted that the “law

the admissions process. With advanced technology, law schools could incorporate video interviews to help screen candidates. 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. 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.”); see Critchlow, *supra* note 6, at 333–34 (“Law schools that strive for excellence will want to formulate admissions policies and procedures that account for both the cognitive and non-cognitive dimensions of those attributes known to contribute to both these areas of interest. They may want to use alternative tests of the type devised by Marjorie M. Shultz and Sheldon Zedeck, whose studies have identified the personal characteristics that enable individuals to be effective lawyers. Law schools may want to conduct interviews (in-person, by telephone, or by Skype) and affirmatively reach out to applicant groups who are not well represented at the law school.”). The struggle to find the appropriate admission tool is not unique to law school admissions. In the medical school context, many possible solutions have been proposed for enhancing the admissions process. Zimmermann, von Davier, and Heinemann proposed an adaptive admissions framework to standardize the way admissions committees collect data, assess applications holistically, and determine admissions recommendations. Judith Zimmermann, Alina von Davier & Hans Rudolf Heinemann, *Adaptive Admissions Process for Effective and Fair Graduate Admission*, 31 INT’L J. EDUC. MGMT. 540, 540 (2017). The intent of this proposed framework is to ensure a consistently fair and balanced assessment of applications, retaining the same standards from year to year and compensating for individual committee members’ biases. *Id.* Reiter, Eva, Rosenfeld, and Norman assessed the utility of using Multiple mini Interviews (MMIs) in medical school admissions, finding that MMIs were predictive of success in clerkships and clinics, and was equally predictive of overall test performance as UGPA. Harold I. Reiter, Kevin W. Eva, Jack Rosenfeld & Geoffrey R. Norman, *Multiple Mini-Interviews Predict Clerkship and Licensing Examination Performance*, 41 MED. EDUC. 378, 381–82 (2007).

166. Taylor, *supra* note 28, at 61 (“The Achievement Framework offers promise as a means of encouraging racial and ethnic diversity by accounting for race-neutral background disparities that nonetheless bear racial characteristics. Standardized test scores and UGPAs are reflections of past academic preparation, which is a reflection of past academic opportunity. As discussed earlier, opportunities for black and Hispanic children tend to be restricted throughout their educational careers. The Overachievement Index and Disadvantage Index capture these lingering realities. The consideration of LSAT scores and UGPAs in light of an applicant’s peers accounts for not only background inequality, but also better reflects achievement. In addition, the preferential consideration of disadvantage in the admissions process reflects the meritorious aspects of overcoming adversity.”).

school application form is a potent tool for actualizing and signaling a commitment to diversity."¹⁶⁷

But very little has been done to expand admission assessment factors and measures and nothing in the form of a scalable tool kit.

The most developed effort has been that of Shultz and Zedeck over a couple of decades ago who noted that "legal education needs a richer set of tools that not only can reliably predict academic performance but also can identify and assess competencies predictive of professional effectiveness. That such predictors could produce greater diversity through race neutral, merit-based assessment is a plus."¹⁶⁸ Shultz and Zedeck were prompted by the end of affirmative action in California to explore what merit should mean in the context of law school admissions.¹⁶⁹ Their study first looked into what factors define effective lawyering and "assessed the validity and utility of cognitive and noncognitive tests for predicting those competencies."¹⁷⁰ Notably—and similar to the approach Southwestern has taken—the project was not meant to replace LSAT and UGPA as admission measures but to relegate them "perhaps as a first hurdle in the admissions process" while developing other measures to "predict more directly which applicants promised to be effective lawyers."¹⁷¹ Their approach was grounded in the critical recognition that "law school is not simply an academic exercise: it is the gateway to becoming a lawyer."¹⁷²

The Shultz and Zedeck study identified twenty-six factors for lawyering effectiveness through a study of alumni of one law school.¹⁷³ After identifying what factors define effective lawyering, the study employed a range of tests, with a group of graduates from two Bay Area law schools and collected performance evaluations from peers, supervisors, and the lawyers themselves.¹⁷⁴

167. ACCESSLEX INST., *supra* note 132, at 10.

168. Shultz & Zedeck, *supra* note 97, at 54.

169. Holmquist et al., *supra* note 9, at 565–66.

170. Shultz & Zedeck, *supra* note 97, at 61.

171. Holmquist et al., *supra* note 9, at 575–76.

172. *Id.* at 565.

173. Shultz & Zedeck, *supra* note 97, at 54 (recognizing that the factors might be biased given that they were developed based on alumni of one law school).

174. *Id.* at 55–56.

The study focused on using factors important to lawyer effectiveness as part of admissions criteria,¹⁷⁵ specifically noting: “use of such predictors could broaden the admissions criteria for and better justify the current bases for making highly selective law school admission decisions.”¹⁷⁶ Shultz and Zedek reported that “[c]orrelation of results confirmed our hypothesis about the relation between predictors and effective performance in this sample”¹⁷⁷ and offered a critical contribution to law school admissions:

Overall, the LSAT, UGPA, and INDEX were *predictive of relatively few of the effectiveness factors, mainly those that overlapped with the LSAT’s measurement targets*. Although the LSAT, UGPA, and Index Score were not developed or intended to predict the relatively less cognitive lawyering effectiveness factors, *the important finding for this research was that, for the most part, they did not*.¹⁷⁸

Driven by this significant empirical finding, Shultz and Zedek invited identification and use of different admissions assessment tools.¹⁷⁹

The Shultz and Zedek study provided a compelling basis for enhancing law school admissions decisions with factors beyond cognitive abilities and measures beyond the LSAT and UGPA. However, no such change followed. As very recently noted:

[O]ver a decade has passed without any updates on the progress of the Shultz-Zedek research. It’s not clear what the reasons behind this are, but given the challenges involved in getting the ABA’s blessing for even a well-established test like the GRE, it should not be surprising that a novel test without a decades-old pedigree would stall on the runway. . . . The combination of [ABA Standards, market competition, and rankings] places a substantial hurdle on the path of any law school that wishes to innovate its admissions procedures.¹⁸⁰

A recent effort to explore a different approach to admissions is the JD-Next project, sponsored by Educational Testing Service (ETS), which administers the Graduate Record Examinations

175. *Id.* at 61 (explaining the hypothesis that “well-developed predictors that cover a broad range of different types of requisite job-related characteristics, skills, and abilities would show significant relationships with factors important to actual lawyer effectiveness”).

176. *Id.*

177. *Id.* at 62.

178. *Id.* at 56 (emphasis added).

179. *Id.* (“These results provide an impetus to identify different types of predictors, such as noncognitive measures, as potential screening devices for admission to law school and for predicting who will be successful at lawyering.”).

180. Amabebe, *supra* note 11, at 1899 (alteration in original).

(GRE).¹⁸¹ JD-Next offers a law school preparatory course but also aims to become an admissions assessment tool.¹⁸² It involves an eight-week online course, requiring about eight hours of commitment each week.¹⁸³ Focusing on Contracts, the course aims to help those interested in law school develop critical thinking and law school study skills to succeed in doctrinal classes and culminates in a multiple choice and essay exam.¹⁸⁴ Given that the course is part of a research study, currently the course is offered free of charge.¹⁸⁵ The exam at the end of the eight-week course is being tested for its potential as a valid and reliable law school admissions tool.¹⁸⁶

Legal education should be engaging in this type of thoughtful experimentation. Nonetheless, the JD-Next approach still focuses on limited cognitive abilities and not on additional characteristics and competencies that students, especially diverse students, already possess and can use to succeed in law school.¹⁸⁷

Southwestern's waitlist interviews research project uses methodology similar to that of the JD-Next research to develop a measure of "readiness for law school," yet focuses on the characteristics and competencies that other admission tools have overlooked and aims to identify attributes developed over the applicant's lifetime versus through a course. Additionally, and im-

181. Press Release, Educ. Testing Serv., ETS and the University of Arizona Launch 2021 JD-Next Program in Latest Commitment to Diversity in Law School (July 8, 2021), <https://www.ets.org/news/press-releases/ets-and-the-university-of-arizona-launch-2021-jd-next-program-in-latest-commitment-to-diversity-in-law-school.html> [<https://perma.cc/4P29-583H>].

182. Jessica Findley, Adriana Cimetta, Heidi Legg Burross, Katherine C. Cheng, Matt Charles, Cayley Balser, Ran Li & Christopher Robertson, *JD-Next: A Valid and Reliable Tool to Predict Diverse Students' Success in Law School*, 20 J. EMPIRICAL LEGAL STUD. 134, 140 (2023) (testing "whether JD-Next is a valid and reliable predictor of law school performance").

183. *Syllabus*, JD-NEXT 2 (2021), <https://jd-next.org/wp-content/uploads/2023/02/JD-Next-2023-Syllabus.pdf> [<https://perma.cc/M2JV-GQHY>].

184. *Id.* at 1.

185. *FAQs*, JD-NEXT, <https://jd-next.org/enroll> [<https://perma.cc/EP3R-K78G>].

186. Findley et al., *supra* note 182.

187. *Id.* ("The notion of dynamic, proximal testing is no panacea. How to operationalize it for law schools is a key practical question."). In addition to some of the limitations noted by the JD-Next authors, there are other points to consider. The JD-Next course and exam require a significant investment of time and effort, so unless the JD-Next course and exam will replace the LSAT or GRE, making it part of the application process seems unrealistic.

portantly, Southwestern's approach considers professional competencies, given that applicants' ultimate goal is readiness for the first year of legal practice.

III. MEASURES THAT MATTER

Given its over 110-year history of commitment to access and diversity and founded with the mission to create an opportunity for non-traditional applicants, Southwestern Law School has typically taken a holistic approach to assessing potential merit or readiness for law school. Southwestern was started in 1911 by a visionary who wanted to create a law school, including an evening program, for qualified candidates who may not otherwise be able to attend law school.¹⁸⁸ This inclusive and flexible approach to legal education has continued through the decades, with the introduction in 1975 of the first, and now longest running, two-year J.D. program in the country, and in 1981 a part-time day program for students with child or elder-care responsibilities.¹⁸⁹ The multiple J.D. programs underlie the school's belief that successful law students and, importantly, effective legal professionals come from a variety of life experiences and with various attributes.

Accordingly, the school's approach to admissions assessment takes a serious look beyond the numerical indicators of potential merit or readiness for law school. Specifically for Southwestern, the holistic approach to assess law school potential has also had a parallel component of thinking about attributes that are important for practice readiness. As Holmquist, Shultz, and Zedeck have noted: "law school is not simply an academic exercise: it is the gateway to becoming a lawyer. In deciding who passes through that portal, law schools . . . should care not just about academic proficiency but also about potential professional competence."¹⁹⁰

A constant in Southwestern's approach has been the unrelenting commitment to increasing diversity in the profession and recognizing the pivotal role of the admissions process. This is both in terms of the all-powerful and consequential gatekeeping

188. *History of Southwestern*, SW. L. SCH., <https://www.swlaw.edu/about-southwestern/history-southwestern> [<https://perma.cc/GF3E-KSTP>].

189. *Two-Year Accelerated J.D. - SCALE*, SW. L. SCH., <https://www.swlaw.edu/jd-llm-programs/scale-two-year-jd> [<https://perma.cc/M3YY-QRL3>].

190. Holmquist et al., *supra* note 9.

that law school admissions engage in, but also in terms of the impact on the applicants and matriculants.¹⁹¹

Accordingly, factors in addition to what the LSAT and UGPA tell us about an applicant deserve serious consideration. Even if just focusing on law school performance and not practice readiness, this broad-based approach is supported by Marks and Moss's extensive analysis of four years of students from two law schools with different LSAT and UGPA profiles, noting a "key overall lesson" of their findings as "the need to review applications holistically because no one variable, alone, is powerful enough to justify admitting or denying an applicant. Thus, LSAT or UGPA 'cutoffs' are ill-advised . . ." ¹⁹² Their study drives home this point by explaining that "the seemingly large 13-point difference between 10th and 90th percentile LSAT (153 to 166) [of their data set] predicts only a -.21 difference in the LGPA."¹⁹³ They conclude that "[w]ith almost no variable capable of predicting much more than one- or two-tenths of a point of difference in LGPA, treating any one applicant credential as dispositive is clearly a mistake."¹⁹⁴

Presumably many seasoned admissions officers and faculty involved in admissions will concur that after many years of ap-

191. Interestingly, based on comments shared by the waitlist interview matriculants, *supra* note 3, the waitlist interview experience provided a notable boost to their confidence in attending law school. This was not an outcome that Southwestern had hypothesized about or planned for, but was a palpable part of the comments shared by the waitlist matriculants. One waitlist matriculant noted: "I was very nervous when I came to the school for the waitlist interview. But afterward I felt heard and this motivated me. It gave me confidence, and I felt I couldn't let the school down and I now had the opportunity to follow my purpose." Another waitlist matriculant noted: "With the waitlist interview, Southwestern made the admissions process more personal and it showed me that the administration really values the lived experience of potential students and wants to hear what I have to say. This gave me confidence about law school and what I can contribute/accomplish." And another waitlist matriculant noted:

My waitlist interviewer dug deep and tried to understand me. She heard me, which was incredible. I knew law schools aren't comfortable taking a chance but I was hoping some schools would want to hear my story and that's what the waitlist interview did for me. This gave me the chance and confidence to pursue the dream that started with watching Fresh Prince of Bel-Air when I was a kid and thinking it's so incredible to see Black attorneys and I want to be an attorney.

192. Marks & Moss, *supra* note 32, at 253.

193. *Id.* (alteration in original).

194. *Id.*

plication review and tracking matriculants' performance, one develops a sense of identifying non-numerical aspects of the application that seem to be indicative of law school potential. At Southwestern, the attributes identified in this holistic review initially focused on: intellectual curiosity and resilience to engage with a topic that applicants may or may not have previously been exposed to; listening skills; consideration of multiple perspectives in thinking about and responding to a prompt; initiative and resourcefulness; and communication skills.

As these conversations were happening at Southwestern, the groundbreaking Foundations Study was completed by IAALS,¹⁹⁵ presenting to legal education an invaluable analysis of what attributes new attorneys need in their first year of practice.¹⁹⁶ Notably, what rose to the top were some of the character attributes that Southwestern had identified as important in its holistic admissions approach.¹⁹⁷

What the Foundations Study provided was confirmation through a rigorous and expansive empirical study that in fact., attributes such as initiative, resourcefulness, listening skills, and resilience are critical to a new attorney's success, hence confirming Southwestern's hypothesis that these attributes were also important as part of the admissions process. No doubt these are attributes that can be learned and improved. To the extent that they are necessary to successful practice within a short

195. Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL. SYS. (July 26, 2016) [hereinafter *IAALS Character Report*], https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf [https://perma.cc/SG4C-UKJ6].

196. Foundations is the most recent and extensive study about what entry level attorneys need to begin a successful legal career. The study aimed to clarify what legal skills, professional competencies, and characteristics make lawyers successful—specifically, what entry-level attorneys need to embark on a successful legal career. With over 24,000 respondents from across the country representing over 70 practice areas, and identifying a total of 147 foundations built on prior, more limited studies, including the Shultz & Zedek study *supra* note 97, Foundations' 2016 report provides crucial information about what law school graduates need to launch their legal careers. The study identified 77 foundations that new attorneys need. Gerkman & Cornett, *supra* note 195, at 1–6, 29–34.

197. See, e.g., Gerkman & Cornett, *supra* note 195, at 30 (emphasizing the importance of listening skills); *id.* at 31 (emphasizing the importance of initiative and work ethic); *id.* at 33 (emphasizing the importance of resourcefulness).

three or four years after review of an applicant's application, it's helpful for the applicant to already have a foundation.

The LSAT purports to measure certain content and predict first-year law school performance.¹⁹⁸ But this leaves a big piece missing—what's necessary to succeed through completion of law school and critically as a first-year attorney. The Foundations Study tells us the content that matters for first-year attorney success. Born out of identifying the gaps in the traditional admissions process is what started Southwestern's exploration of looking more closely beyond the numbers. We set out to assess attributes identified by the Foundations Study—moving from a do-it-yourself approach to a methodical assessment with the guidance of an experienced empirical educational researcher.

A. DIY AND EARLY EXPLORATION OF ADDITIONAL ADMISSIONS FACTORS

The non-numerical components of the law school application—including the personal statement, other essays such as a diversity statement, the resume, and letters of recommendation—provide critical information about the applicant's background, attributes, and readiness for law school. A methodical assessment through use of rubrics would be ideal when reviewing these materials. This would entail identifying the desired attributes and assessing them in a meaningful way. In essence, if law schools are asking for the personal statement, letters of recommendations, and other similar components, they should more intentionally identify how the school will use these components and to employ measuring tools that are valid and reliable.¹⁹⁹

No doubt identifying the desired attributes and assessing them in a methodical way is a significant undertaking, just given the number of applications and the time and resources that would be needed to methodically evaluate the non-numerical components for hundreds, if not thousands, of applications. Of course, to undertake such an assessment scheme, the law school must first determine whether particular prompts should replace or supplement the general call for a personal statement or a letter of recommendation, adopt measurement tools that have been tested for effectiveness, and train the reviewers. Accordingly, before such a significant commitment could be made, small steps

198. Shultz & Zedeck, *supra* note 97.

199. Having reliable and valid measures/assessments ensures that the tool can be used year over year to measure the selected factors consistently (reliability) and dependably (validity). See Findley et al., *supra* note 182, at 146–55.

and pilot projects are called for, which is how Southwestern's "waitlist interview" approach began and what it aimed to do. Additionally, the interview approach was chosen to test out the effectiveness of gathering and assessing information about desired factors through targeted questions.²⁰⁰

Starting in 2014, Southwestern's admissions process included identifying applicants whose application showed promise but also raised some questions; admissions staff would then designate these applicants as waitlisted and invite them to participate in a half-hour interview with a faculty member. The perceived weaknesses could include low undergraduate grades or LSAT score(s); wide swings in LSAT scores or undergraduate grades; or the LSAT writing sample, personal statement, resume, or other essays raising a question about the applicant's current readiness for law school. The promising factors could include extensive or in-depth work experience; educational or professional achievements despite limited opportunities or challenges; assumption of financial and other responsibilities for oneself or family at a young age; commitment to and activism for social justice and service to community.

Between 2014 and 2017, the waitlist interviews were conducted using an internally developed questionnaire that was loosely structured. The interviewers asked several questions and recorded their impressions, recommending admit, deny, or hold. The questions were not uniform across interviewers and not tied to a specific rubric to assess specific attributes. The conversation during the interview afforded an opportunity to better understand an applicant's current readiness for law school, including by probing into the perceived weaknesses in the application and giving the applicant a chance to address the concerns and elaborate on the written application materials.

To inject more uniformity, Southwestern began a pilot project as part of its waitlist interviews for the incoming class of 2018. This pilot project was designed and implemented fully in-house. The pilot involved two interviewers using the same

200. The use of interviews allowed Southwestern to test out the effectiveness of gathering and assessing information on the selected Foundations. The use of interviews and targeted questions are regularly used in psychometrics (the research-based measurement/assessment development process). ROBERT F. DEVELLIS, *SCALE DEVELOPMENT: THEORY AND APPLICATIONS* 61–62 (4th ed. 2017). For this project, Southwestern used the foundations of an interview protocol to develop targeted questions. Each targeted question was written for the sole purpose of drawing out information, proxies, and examples of each of the associated Foundations.

prompt: "Some college/graduate school professors ban the use of laptops in their classrooms (i.e., students must handwrite notes). What are your thoughts about such a policy?" It was meant to assess the applicant's intellectual curiosity to engage with a topic that they may or may not have previously been exposed to; listening skills; consideration of multiple perspectives in thinking about and responding to the prompt; resourcefulness and initiative; and communication skills.

The use of the "laptop prompt" yielded promising results for investing the resources into a methodical research-based waitlist interview process. As detailed below, including through Tables 1 and 2, the use of the "laptop prompt" indicated that it's possible to methodically use a non-numerical indicator to do a better job of making admission decisions for applicants who may not have strong numerical indicators. Specifically, those waitlist matriculants who received the laptop prompt (LaptopQ) and were recommended for admission and matriculated had a stronger first-year term and cumulative GPAs than the waitlist matriculants who did not receive the laptop prompt (No LaptopQ) and were recommended for admission and matriculated. Furthermore, the laptop prompt group's mean first-year GPA was much closer to the non-waitlist interview matriculants' first-year GPA. While there was not conclusive statistical evidence of a difference between those waitlist interview matriculants who were given the laptop question and those who were not, the mean differences were enough to provide confidence in moving forward with the development of a methodical research-based waitlist interview design.

Table 1 displays the results of conducted t-tests to compare waitlist applicants that received the laptop prompt (LaptopQ) and those waitlist applicants that did not receive the laptop prompt (No LaptopQ). For Fall 1L GPA, Spring 1L GPA, and Cumulative 1L GPA the waitlist applicants who received the laptop question (LaptopQ) had higher mean GPA values than the waitlist applicants that did not answer the laptop question (No LaptopQ).

Table 1: Laptop Prompt T-test Results

Dependent Variable	Group Means (group n)	T-Value (df)	One-Tail P-value	Two-Tail P-value
Fall 2018 GPA	LaptopQ mean = 2.74 (44)	1.77 (85)	.040*	.080
	No LaptopQ mean = 2.50 (43)			
Spring 2019 GPA	LaptopQ mean = 2.56 (44)	1.30 (85)	.099	.199
	No LaptopQ mean = 2.35 (43)			
Cumulative GPA	LaptopQ mean = 2.71 (44)	1.73 (85)	.043*	.087
	No LaptopQ mean = 2.49 (43)			

*Statistical significance at a 0.05 alpha level

**Statistical significance at a 0.01 alpha level

***Statistical significance at a 0.001 alpha level

Also, analyses of variance (ANOVA)²⁰¹ were conducted to compare the two waitlist groups (LaptopQ and No LaptopQ) to other matriculants. Table 2 displays the results of the ANOVA analyses. There are statistically significant mean differences between the two waitlist student groups and the non-waitlist student group on Fall GPA, Spring GPA, and Cumulative GPA. Yet due to the unbalanced group sample sizes the power for these analyses is below the expected .6 and therefore the confidence in these statistical results is too low to rely on. These results were primarily used as evidence that the waitlist matriculants who received the laptop interview question were closer to the non-waitlist matriculants than the waitlist matriculants who did not get the laptop question. These results further supported the decision to move forward with the development of a full waitlist interview measure.

201. Martin G. Larson, *Statistical Primer for Cardiovascular Research: Analysis of Variance*, 117 AM. HEART ASS'N 1, 115 (Jan. 1, 2008), <https://www.ahajournals.org/doi/epub/10.1161/CIRCULATIONAHA.107.654335> [<https://perma.cc/VD53-GYUT>].

Table 2: Laptop Prompt ANOVA Results²⁰²

Dependent Variable	F-value	p-value	Group Mean: No LaptopQ (group n)	Group Mean: LaptopQ (group n)	Group Mean: Non Waitlist (group n)
Fall 2018 GPA	5.92	.003*	2.69 (34)	2.74 (36)	2.98 (146)
Spring 2019 GPA	9.03	<.001***	2.69 (34)	2.65 (36)	2.99 (146)
Cumulative GPA	9.23	<.001***	2.67 (34)	2.69 (36)	2.99 (146)

*Statistical significance at a 0.05 alpha level

**Statistical significance at a 0.01 alpha level

***Statistical significance at a 0.001 alpha level

Armed with the perceived promise of using the laptop prompt and the proven capacity and commitment to take on a more nuanced approach to admissions, Southwestern next took the critical step to commit extensive resources, working with an outside consultant with expertise in empirical educational research, to develop and implement a more methodical approach. Southwestern discussed the desirability of using the approach to review of all applications. However, Southwestern decided to proceed in stages—both to track the effectiveness of the approach before broad implementation as well as out of consideration for the extensive resources that broad implementation would require. Accordingly, Southwestern committed to implementing the more methodical approach with waitlist interviews, keeping in mind that it could be a model for assessment of all applications.

B. ADVANCING TO A METHODOLOGICAL EMPIRICAL APPROACH

Using the laptop prompt set the stage for engaging in a methodical approach to the waitlist interviews, guided by the help of an empirical educational researcher and using the Foundations Study competencies. A group of Southwestern admissions

202. Due to the increased statistical complexity and number of required assumptions of an Analysis of Variance (ANOVA), versus a T-test, the sample size numbers are different between Tables 1 and 2. SPSS statistical software was used to run these analyses and all assumptions were checked and met for both sets of analyses.

officers and faculty closely involved with the admissions process and the waitlist interviews²⁰³ conferred with Dr. Elizabeth Anderson²⁰⁴ to identify the specific Foundations Study competencies that were already discussed and used (albeit without a formal structure) in application review and waitlist interviews. This exercise was also informed by the Academic Success faculty's focus in cultivating certain attributes and skills in first-year students to adjust to law school demands, beyond cognitive or intellectual capacity and encompassing critical attributes and skills such as resilience, time, and task management, and resourcefulness.²⁰⁵

Importantly, the approach Southwestern decided to take using the Foundations Study was to assess character attributes and general professional competencies instead of examination of proxies such as work experience being a proxy for maturity. As aptly noted by Marks and Moss about the findings of their ex-

203. This group included Dean of Admissions Lisa M. Gear, Associate Director of Admissions Nancy Rojas-Hill, an Academic Success/Bar Prep faculty member Jacqueline Rogers, then Vice Dean Dov Waisman, and the two Southwestern Authors, Anahid Gharakhanian and Natalie Rodriguez.

204. Dr. Anderson's background as an educational consultant with extensive research experience, including research method development, data collection and management techniques, and inferential data analysis, as well as being a consultant with IAALS and intimately familiar with the Foundations Study, made her an ideal expert to guide our project. In addition, she and Anahid Gharakhanian had previously collaborated on another empirical study based on the Foundations Study to measure whether and to what extent externships lead to first-year practice-readiness and which attributes of the law school, the externship placement, or the students themselves are the most important contributors to that success. Anahid Gharakhanian, Carolyn Young Larmore & Chelsea Parlett-Pelleriti, *Achieving Externship Success: An Empirical Study of the All-Important Law School Externship Experience*, 45 S. ILL. U. L.J. 165 (2021).

205. Southwestern recognizes the importance of training students for practice success, beyond legal knowledge and skills. First-year students take Foundations of Law and Practice, a course that covers essential law school skills as well as training in many of the critical professional skills, characteristics, and competencies required for success in their legal practice identified in the Foundations Study; *see also* Marks & Moss, *supra* note 32, at 208, 254 (findings of a longitudinal study spanning 2005 to 2011, with 1400 students at two law schools, to predict law school GPA as a function of number of application variables "support[s] reform beyond simply making better admission decisions—such as reforms aimed at improving incoming students' adjustments to law school . . . [M]any of the positive and negative predictors reflect not pure talent level, but also (or instead) how well and how quickly various student types adjust to law school.").

tensive empirical study, "the various positive or negative predictors should not be overinterpreted because many are proxies for personal qualities, like maturity, that a particular candidate may or may not actually have."²⁰⁶

For the incoming class of 2019, Southwestern worked with Dr. Anderson to identify the foundations to be assessed and to develop waitlist interview questions and assessment rubrics. Thereafter, for each subsequent admission cycle, revisions were made based on reliability and validity analyses, as well as the interviewer evaluations of the interview questions and rubrics. The study design methodology is detailed in Part IV and Appendix A. The initial interviewer feedback survey is included in Appendix B.

In terms of the factors from the Foundations Study that initially were identified for assessment, Southwestern started with the following fifteen (from the list of 77 foundations necessary in the first year of practice)²⁰⁷: set goals and make a plan to meet them; prioritize and manage multiple tasks; energy; grit; diligence; strong work ethic and put forth best effort; internalized commitment to developing toward excellence; honor commitments; promptly respond to inquiries and commitments; resilience after a setback; take individual responsibility for actions; listen attentively and respectfully; resourcefulness; show initiative; and common sense. They were revisited the following year and revised to the following set: set goals and make a plan to meet them; prioritize and manage multiple tasks; resilience/grit and diligence (the three separate foundations were combined into one); strong work ethic; resourcefulness; take individual responsibility for actions and/or work; energy, show initiative, and listen attentively and display attention to detail. Finally, they were further revised for the 2021 admission cycle to the following: set goals and make a plan to meet them; prioritize and manage multiple tasks; resilience/grit and diligence; strong work ethic; resourcefulness; take individual responsibility for actions and/or work; and listen attentively and display attention to detail. The initial list was based on factors already used (albeit without a formal structure) in application review and waitlist interviews. The revisions were a result of fine-tuning following

206. Marks & Moss, *supra* note 32, at 254.

207. Gerkman & Cornett, *supra* note 195, at 29–34. Southwestern's wording of the foundations for purposes of the waitlist interviews varied slightly from the Foundations Study; this was the result of adopting and defining the foundations for admissions purposes.

analysis of the waitlist interview results, interviewers' feedback, and extensive discussions among the core group overseeing the waitlist interview process.

Since the 2019 cycle, a group of eight to ten faculty have participated in the process as interviewers. As detailed in IV.B, interviewers go through a training process, and they devote considerable time to completing the interviews.²⁰⁸ Some but not all interviewers are members of the faculty Admissions Committee; the work is considered part of the faculty's service to the school. Each interview process takes about one hour, with thirty minutes devoted to the interview and about thirty minutes total devoted to reviewing the application prior to the interview and completing the survey instrument following the interview.

This is a time-consuming endeavor, involving a significant time commitment to the methodical consideration of many applications compared to the 84% of respondents in the BARBRI survey that said they spend twenty minutes or less reviewing a file (with 50% responding that they spend ten minutes or less).²⁰⁹ The effort is well worth the opportunities afforded to applicants and matriculants who otherwise may not be able to pursue the laudable goal of obtaining a legal education. And, of course, it's time well spent by Southwestern to identify applicants with multi-faceted strong potential and benefit from their matriculation and contributions to Southwestern and the legal community.

Notably, the Foundations Study has been effectively deployed in the law firm hiring context.²¹⁰ Implementing it now at

208. See *infra* Part IV.B.

209. BARBRI, *supra* note 21, at 10.

210. See Zachariah DeMeola, Logan Cornett, Elizabeth Anderson & Kristen Uhl Hulse, *Foundations Hiring Guide*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. 1 (Apr. 12, 2021), <https://iaals.du.edu/publications/foundations-hiring-guide> [<https://perma.cc/YV4N-JXP8>] (providing a hiring guide for employers based on Foundations Study “who want to improve their hiring practices—to improve quality, retention, and diversity”); Kathryn A. Reilly & Andrew Unthank, *The IAALS Effect on Hiring at Wheeler Trigg O'Donnell*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (July 15, 2021), <https://iaals.du.edu/blog/iaals-effect-hiring-wheeler-trigg-o-donnell> [<https://perma.cc/FMP5-G6WR>] (documenting one firm's overhaul of their hiring practices using the Foundations Study to methodically identify and hire for desired traits while also increasing diversity hires of women and people of color “despite the preponderance of white male applicants”; this was done “[b]y digging deep to learn about a candidate's characteristics or competencies, rather than scanning for traditional indicators such as law school attended, class rank, GPA, and clerkships” and “mitigat[ing] against implicit bias”).

the front end with admissions is an opportunity Southwestern believes will bring a much-needed enhancement to the law school admission process and ultimately the profession.

IV. METHODOLOGY OF SOUTHWESTERN'S EMPIRICAL APPROACH AND THE PROMISING RESULTS

Southwestern's empirical approach to identify helpful admissions factors beyond the traditional approach is well underway. Southwestern's approach has included three steps. First, Southwestern identified what needs to be measured—i.e., certain foundations necessary for first-year practice as established by the Foundations Study and hence assumed to be necessary to law school success. Second, the school identified why these factors need to be measured—i.e., to provide access to legal education with measures that matter. Third, the school designed the empirical research to support the development of a reliable and valid measure of this construct. Southwestern secondly developed a measure of "non-traditional readiness for law school" using empirical methods to ensure the reliability and validity of the tool. Southwestern has found that the developed tool/measure is measuring what it set out to measure. This tool/measure will produce a score that will then be used in predictive validity analyses, as well as predictive modeling of law school success outcomes.

The below sections provide an overview of the project design, data gathering, and analysis, showing initial reliability and validity, as well as setting the stage for future empirical research.

A. STUDY DESIGN OVERVIEW

The purpose of the Southwestern waitlist interview research project was to produce a measurement tool that was reliable and valid in its measurement of the "readiness for law school" construct, meeting the ABA Standards for admissions, while fulfilling the need of an admissions measurement tool that used a more holistic approach to applicant evaluation. The following steps were taken to develop this measure, which could be duplicated by any law school. Detailed descriptions of each step can be found in Appendix A.

1. Used mission statement and admission goals to outline desired outcomes and select construct to be measured—e.g., "readiness for law school."
2. Defined construct in terms of goals and desired outcomes.
3. Researched literature and previous empirical work on the

construct and selected sub-constructs, specifically looking for other measures already developed that could be used. In Southwestern's case, the Foundations Study was identified as providing the basis for the research project.

4. Identified parts (sub-constructs) of the construct to be measured. For this work, Southwestern used a select number of the Foundations Study characteristics and competencies identified as needed right out of law school.
5. Generally defined all sub-constructs, making sure the definitions were aligned with the definition of the construct.
6. Contextually defined all sub-constructs, making sure the definitions were aligned with the definition of the construct.
7. Engaged in extensive deliberations to craft and fine-tune interview questions with sub-constructs' definitions and relevant background research.
8. Selected rubric scales (typically either five-point or three-point rubric scales are used).
9. Engaged in extensive deliberations to develop descriptions of rubric categories.
10. Piloted and refined interview questions and rubrics.
11. Refined definitions based on changes made from interviewers' feedback and pilot results.
12. Designed and delivered interviewer training annually, including on implicit bias, with modifications each year responsive to interviewers' feedback and prior year's results.

B. TRAINING THE INTERVIEWERS, INCLUDING ON IMPLICIT BIAS

Starting with the Spring 2019 semester preceding the start of waitlist interviews, Southwestern's waitlist interviewers attended a training specific to the newly developed waitlist interview questions and rubrics. The foundation of the Southwestern waitlist interviewer training sessions was to familiarize interviewers with the interview questions, rubrics, rubric categories, and evidence requirements. The first year (Spring 2019) focused on the introduction of the new foundation of Southwestern waitlist interviews. Each of the following years the Southwestern waitlist interviewer training was expanded.

In the second year (Spring 2020), the waitlist interviewer training was converted to an online/virtual format for interviewers to asynchronously review and learn the foundational pieces

of the waitlist interview rubrics and process. Also, in year two applicant vignettes were added to the waitlist interviewer training to introduce discussions on implicit bias, begin to collect data for inter-rater reliability analyses, and give waitlist interviewers additional practice on the completion and expectations of the interview question rubrics and associated evidence.

Implicit bias has been identified as an area of focus for the law profession, including by the ABA.²¹¹ Yet this focus is for practicing attorneys and not at the time of admission to law school. Negative impacts of implicit bias need to be addressed at the time of admission to law school, not just after law school when practicing law. Accordingly, Southwestern's project included a focus on controlling for implicit bias. This was done through the interviewers' training as well as the interview rubric's enthusiasm and completeness constructs. The use of these constructs helps to bring potential implicit bias to the surface in an attempt to minimize the impact on waitlist admissions decisions. This is aligned with the critical goal of increased diversity.

The waitlist interviewer training of Spring 2021 focused on the review of waitlist interview fundamentals, added to the implicit bias discussion, and reduced the number of vignettes evaluated in order to add in discussions of the functionality of the interview questions, rubrics, and evidence collection requirements.

Southwestern waitlist interviewers completed an annual evaluation of the waitlist interviewer training, the use of the interview questions and their associated rubrics, and the process of data entry of all waitlist interview data. This evaluation data has been used year after year to make improvements to the waitlist interview process and data collection tools. After year one evaluations, the optional interview questions were removed for waitlist interviewers to use their own clarifying questions and year three evaluations/discussions indicated that there may need to be a wording change to the second required interview

211. See Jeena Cho, *New Implicit-Bias Tool Offers Insight and Answers*, A.B.A. J. (June 1, 2020), <https://www.abajournal.com/magazine/article/new-tool-offers-insight-answers> [<https://perma.cc/3C49-6PHD>]; *Anti-Bias, Professionalism Standards Teed Up for Law Schools*, A.B.A. (May 24, 2021), <https://www.americanbar.org/news/abanews/aba-news-archives/2021/05/law-school-standards> [<https://perma.cc/LCH2-8ZUE>]; see also Karen Sloan, *Law Students Face Mandatory Bias Training Under Proposed ABA Rule*, REUTERS (Feb. 3, 2022), <https://www.reuters.com/legal/government/law-students-face-mandatory-bias-training-under-proposed-aba-rule-2022-02-03> [<https://perma.cc/3SPA-S5ZL>].

question. Suggested changes to the waitlist interview questions, rubrics, or category descriptions were taken but then further discussed by the Southwestern admissions team prior to making changes to ensure reliability and validity of the measure were maintained.

C. THIS IS HOW WE KNOW IT WORKS: ESTABLISHING RELIABILITY AND VALIDITY

A project like this needs to be designed and conducted with reliability and validity in mind. Reliability is the consistency of the developed measure and validity is the evidence that establishes that the measure/assessment being developed is in fact measuring what it claims to measure.²¹² The measure developed was found to have strong reliability (consistency; Cronbach's alpha >.9) and a strong foundational base of validity evidence.

Validity of any measure or assessment begins with reliability. Reliability is the consistency of the measure or assessment and is evaluated using the statistical analysis of item analysis or principal components analysis, giving a Cronbach's alpha value.²¹³ Cronbach's alpha ranges in value from 0 to 1, where the closer to 1 the value, the higher the reliability or consistency of the measure/assessment. In the field of education all measures and assessments are expected to have a Cronbach's alpha value of at least .6, .7 at least when making critical decisions using the measure/assessment results.²¹⁴ Table 3 below displays the initial reliability results of the 2019 and 2020 waitlist interview rubric data. The initial reliability results show that for both the 2019 and 2020 waitlist cohorts each had sufficient sample sizes (2019 $n = 123$; 2020 $n = 185$) and the internal reliability (Cronbach's alpha) of the measure was well above the .7 expectation,²¹⁵ with both years showing Cronbach's alpha levels above .9 (2019 $\alpha = .950$; 2020 $\alpha = .933$).

212. See TREVOR G. BOND & CHRISTINE M. FOX, APPLYING THE RASCH MODEL: FUNDAMENTAL MEASUREMENTS IN THE HUMAN SCIENCES 41, 270–74 (2d ed. 2007).

213. See *id.* at 59.

214. See *id.* at 45, 239–41.

215. DEVELLIS, *supra* note 200.

Table 3: Initial Reliability for 2019 and 2020

Foundation (Question #)	Item Loading	Sample Size (n)	Cronbach's alpha	Factor eigenvalue
2019 School Start				
Ability to set goals and make plans to meet them (Q1)	.917	123	.950	5.343
Ability to prioritize and manage multiple tasks (Q1)	.891			
Resilience/grit and diligence (Q1)	.898			
Strong work ethic (Q1)	.860			
Resourcefulness (Q1)	.910			
Strong work ethic (Q2)	.829			
Resourcefulness (Q2)	.805			
2020 School Start				
Ability to set goals and make plans to meet them (Q1)	.841	185	.933	5.015
Ability to prioritize and manage multiple tasks (Q1)	.875			
Resilience/grit and diligence (Q1)	.890			
Strong work ethic (Q1)	.890			
Resourcefulness (Q1)	.853			
Strong work ethic (Q2)	.808			
Resourcefulness	.758			

Foundation (Question #)	Item Loading	Sample Size (n)	Cronbach's alpha	Factor eigenvalue
(Q2)				

Once reliability is established, validity can be evaluated in several different ways. For this project three types of validity were used: content validity, construct validity, and predictive validity.

The content validity and construct validity of the measure were built into the research design, using expert review and a rigorous review process of the interview questions, selected Foundations and rubric category descriptions (as detailed above). Content validity is defined as “the extent to which” a measure represents all facets of a given construct, meaning that the measure/assessment developed takes into account all the parts and pieces of the larger construct being measured, in this case, “readiness for law school.”²¹⁶ Content validity was established using expert reviews and discussions of the construct, “readiness for law school.” The content validity review and discussion process ensured that all the parts and pieces of the “readiness for law school” construct were examined and taken into consideration as the measure was built. The expert reviews, discussions and edits during the measurement development process helped establish the construct validity of the measure. Future analyses will include further establishing construct validity by showing relationships with law school success factors and other previously established measures of “readiness for law school.”

Lastly, predictive validity evidence will also be established with future analyses and statistical predictive models. Predictive validity established the validity of a measure/assessment by proving the information provided by the measure/assessment (scores) have expected relationships with other student data. For example, if the measure/assessment does in fact measure “readiness for law school” then the measure/assessment scores should have a positive statistical relationship with student success data, such as LGPAs.

216. F. Robert Wilson, Wei Pan & Donald A. Schumsky, *Recalculation of the Critical Values for Lawshe's Content Validity Ratio*, 45 MEASUREMENT & EVALUATION COUNSELING & DEV. 197, 197–98 (2012) (citing Charles H. Lawshe, *A Quantitative Approach to Content Validity*, 28 PERS. PSYCH. 566 (1975)).

D. FUTURE RESEARCH

Southwestern's research team was intentional in the design and data collection process of this project, giving way to enough annual and longitudinal data for future research. The main goal of this project is to collect the data needed to complete psychometric analyses that assess the validity of the waitlist interview measure. These research efforts will include item response theory modeling to explore the dimensionality and item functioning of the measure, factor analysis and item analysis with larger sample sizes, and analyses needed for continuous improvement planning. Also, with the annual and longitudinal data collected, three main areas of research will be further explored: (1) law school success predictability; (2) inter-rater reliability; and (3) implicit bias identification and reduction.

1. Law School Success Predictability

The predictability of the Southwestern waitlist interview measure will add to the construct validity and work as a foundation for the predictive validity of the measure. Simple linear regressions will be conducted to examine the predictive relationships between waitlist interview rubric scores and factors identified or working as a proxy for "law school success," beyond GPAs. In addition, multivariate regressions, including mediation and moderation analyses, will be conducted to explore how multiple admissions factors, including the waitlist interview rubric scores, contribute to and impact the factors of "law school success." It is hypothesized that the waitlist rubric score will enhance the predictive power of admission factors, even if it cannot be used as a standalone predictor of "law school success." This hypothesis keeps the focus on the use of multiple admission factors in student selection and not introducing another model focusing on one factor over others.²¹⁷

217. The research team will be assessing the value of analyzing bar success predictability, given the anticipated changes in bar exams across the country. See, e.g., *Content Scope Outlines for Public Comment*, NAT'L CONFERENCE OF BAR EXAM'RS (2022), <https://nextgenbarexam.ncbex.org/csopc-register> [<https://perma.cc/3GDQ-GP42>]; *Blue Ribbon Commission on the Future of the Bar Exam: Report and Recommendations*, THE ST. BAR OF CAL. (Mar. 7, 2023), <https://www.calbar.ca.gov/Portals/0/documents/reports/BRC-Report-and-Recommendations.pdf> [<https://perma.cc/76US-CMEG>].

2. Inter-Rater Reliability

The rubric data from interviewer training practices will be used to examine inter-rater reliability of the measure and make small adjustments to the waitlist interview process and rubrics. In 2019, inter-rater reliability and implicit bias were added to waitlist interviewer trainings. Several vignettes of a diverse group of law school applicants were developed for waitlist interviewers to practice using the waitlist interview rubrics and evidence collection process. Reliability is the consistency of a measure and inter-rater reliability is the consistency of raters to use the measure.²¹⁸ For this research, inter-rater reliability is the consistency of the waitlist interviewers to use the waitlist interview questions and rubrics. The inter-rater reliability results will be added to the evidence to be used to validate the measure and as a companion to implicit bias analyses.

3. Implicit Bias Identification and Reduction

While the bulk of the data being collected in this research is quantitative/numerical, qualitative/narrative data is also being collected. This qualitative/narrative data is coming from the waitlist interview evidence of rubric scores provided, waitlist interviewers' comments and notes, notes of the discussions within research team, and waitlist interviewers' evaluations. All of this data could be used with the quantitative/numerical data to explore ways of identifying and measuring potential sources of implicit bias in the admissions process. The waitlist interviewer training has included applicant vignettes that are evaluated by all interviewers so the data can be used for both inter-rater reliability analyses and additional data for implicit bias exploration. Southwestern believes that research on implicit bias, especially implicit bias within the admissions process, is critical to working to meet the visionary goal of a diverse law school student population and legal profession.

CONCLUSION

Law schools must do better. When it comes to admissions decisions, the unjustified overreliance on the traditional numerical indicators of law school potential—in particular, LSAT scores—cannot continue. This exclusionary practice limits ac-

218. See BOND & FOX, *supra* note 212, at 146, 159–61; Findley et al., *supra* note 182, at 146–47.

cess to legal education and importantly the profession—impacting diversity. This is especially problematic because the LSAT doesn't measure all that matters for law school performance and practice success. Bold action is required to define merit broadly and provide opportunities grounded in a spectrum of competencies and lived experiences. Those who aspire to pursue legal education and a career in the law deserve better—as does the public and the profession. The decades-long pervasive hold that the numbers have on law school admissions not only needs to be questioned, as thoughtful commentators have done for many years, but also addressed through evidence-based improvements to law school admissions.

This Article has: (1) detailed the harmful shortfalls of the current admissions practices; (2) outlined the processes to develop a valid and reliable admissions interview tool; and (3) presented a reliable and valid measure to be used for admissions. Together these provide an evidence-based way forward.

Law school admissions practices have far-reaching consequences. It's not just about who gets into law school. It's about who has the opportunity to enter the legal profession and impact the legal system. This is a position of enormous trust and one that demands continuous examination and improvements—especially to remove unjustifiable hurdles. The Authors echo the profound words of F.G.: "You are deserving of a law school experience and only a law school that is worthy of you will see that you are more than the numbers on paper!"²¹⁹ As gatekeepers to the legal profession, we can and must do better.

219. See *supra* text accompanying note 3.

APPENDIX A: STUDY DESIGN DETAILS

To provide foundational context for Southwestern's project, it's helpful to offer an overview of the critical components of undertaking an empirical study. It is important to have a strong empirical research design to produce empirical evidence that supports the results presented. Any empirical research design begins with what we already know and the empirical evidence that supports these theories. In this case, previous empirical research has shown that additional factors need to be measured and included in the admissions process.²²⁰ Next steps in the empirical research process are to use the previously established empirical evidence to design a research project that adds to this empirical evidence. Southwestern's research project identified additional admissions factors and employed a psychometric research design; psychometrics is the research practice of formal development of reliable and valid measures/assessments.²²¹

In the planning of empirical research, it is very important to establish the data collection process, the data to be collected, and the desired sample size prior to the start of the research. Southwestern established that they were going to collect data using a rubric system to collect a series of categorical variables that would fit into the formal psychometric analyses for reliability testing. This data would be collected for all waitlist applicants and be collected annually so sample sizes would be ample enough for annual and longitudinal analyses.

Lastly, it is important to plan the validity of the empirical results to be presented by establishing an empirical research design that limits threats to internal validity²²² and, in this case, strengthens the validity of the measure being developed. With a

220. *See supra* Part III.

221. BOND & FOX, *supra* note 212, at 269–70.

222. The internal validity of a research design is directly related to the ability of the research design to have evidence of causality (cause and effect). Therefore, the threats to internal validity threaten the amount and strength of the causal evidence produced by the research design. The one-group portions of the research design could potentially have threats of internal validity of: ambiguous temporal precedence, history, maturation, testing, instrumentation, and regression artifacts. The multi-group portions of the research design could potentially have the following internal threats to validity: differential selection, selection/differential history, V maturation, selection/differential testing, selection/differential instrumentation, selection/differential regression artifacts, and selection/differential attrition. BURKE JOHNSON & LARRY CHRISTENSEN, *EDUCATIONAL RESEARCH: QUANTITATIVE, QUALITATIVE, AND MIXED APPROACHES* 253–56 (4th ed. 2012).

solid plan and empirical research design, the data produced can be used in several different ways and be consistently collected over time for longitudinal research work.

The Southwestern waitlist interview survey research used a psychometric-focused research design, keeping in mind the need for data for future quasi-experimental research.²²³ The purpose of this research was to produce a measurement tool that was reliable and valid in its measurement of the "readiness for law school" construct, meeting the ABA Standards for admissions, while fulfilling the need of an admissions measurement tool that used a more holistic approach to applicant evaluation. Within the research design, this project set out to establish reliability, content validity, construct validity, and predictive validity of the developed measure.

The construct "readiness for law school" was defined by Southwestern's admissions team using current admission expectations, Southwestern's mission statement, and the future admission goals of Southwestern. Other institutions would start with their own mission statement and admission goals to define "readiness for law school." The established definition of the main construct was then used to identify Foundations that could be measured as sub-constructs of this main construct.

Enthusiasm and completeness were selected as additional constructs to ensure each waitlist applicant was only compared to themselves in relation to their body language and amount of provided details during their waitlist interview, thus reducing avenues for bias to impact admission decisions. When implicit bias is not uncovered to mitigate the impacts of it, implicit bias can manifest in ways that negatively impact other people.²²⁴

The construct of enthusiasm, the construct of completeness, and all sub-constructs of the "readiness for law school" construct were defined both generally and contextually. The defining process for the identified sub-constructs began with general definitions that were then adjusted by the Southwestern admissions team to parallel the definition of the main construct, "readiness for law school."

223. A quasi-experimental research design uses an experimental research design but is unable to have random assignment of participants into groups. This type of research design is regularly used in educational settings when participants self-select into treatment group or when denying participants the treatment would be considered unethical. *Id.* at 319–23.

224. Marks & Moss, *supra* note 32, at 244–45.

In conjunction with the defining of all constructs and sub-constructs, interview questions were developed. Each interview question was designed with the Foundations it was to measure in mind. The Southwestern admissions team and their expert went through several iterations of interview questions, examining the delivery of the questions, as well as the opportunities for the applicant to display the associated Foundations. This process ended with three interview questions: one baseline interview question to establish rapport with the waitlist applicant and the interviewer while establishing a baseline measure of enthusiasm and completeness, and two required interview questions that focused on the measurement of the sub-constructs and thus the construct of “readiness for law school.”

Once final drafts of the interview questions were written and all the constructs and sub-constructs were fully defined, rubric scales were selected. While enthusiasm and completeness use a five-point scale, all interview question rubrics use a three-point scale in the measure of sub-constructs. The five-point used for the measure of enthusiasm and completeness gives a wider range of measure for these two constructs that are measured for all interview questions, including the baseline interview question. The three-point scale of the interview question rubrics gives waitlist interviewers clearly described rubric categories allowing for expeditious selection.

Once the rubrics were developed, it was next important to understand how each of the Foundations and the categories may “look” in the interview setting. Developing descriptions of the rubric categories was done both to increase consistency (reliability; inter-rater reliability) and attempt to reduce potential bias from impacting admission results. This process of category description also added to efforts to reduce implicit bias impacts by giving waitlist interviewers consistent definitions and descriptions to choose from for each applicant (Appendix C: Interview Rubric).²²⁵

With the understanding that the law school admissions process includes inherent avenues of bias that impact admissions decisions, the Southwestern admissions team and their expert decided to also include the requirement of evidence for selected rubric categories. This evidence would collect data for inter-rater

225. See Hershey H. Friedman, Paul J. Herskovitz & Simcha Pollack, *The Biasing Effects of Scale-Checking Styles on Response to a Likert Scale*, 792 PROC. SURV. RSCH. METHODS SECTION 792, 792 (1993) (noting how survey responses can be biased by question phrasing and formatting).

reliability analyses and assist waitlist interviewers to make conscious rubric selections. For the constructs of enthusiasm and completeness, this evidence established a set of data for each applicant to be compared only to themselves in the fluctuations of their body language and in the level of detail provided while answering the interview questions. Lastly, the collected evidence provided qualitative data that was examined for potential implicit bias and potential threats to inter-rater reliability.

APPENDIX B: INTERVIEWER FEEDBACK FORM

1. Approximately how many interviews did you conduct?
 - a. 0–5
 - b. 6–10
 - c. 11–15
 - d. 16–20
 - e. 21–30
 - f. 31–40
 - g. 41–50
 - h. 50+
2. Approximately how much preparation time did you take before each interview?
 - a. Less than 10 minutes
 - b. 10–20 minutes
 - c. More than 20 minutes
3. Typically, how long did each interview last? (open-ended)
4. How much time would you consider ideal for each interview?
 - a. Less than 30 minutes
 - b. About 30 minutes
 - c. About 45 minutes
 - d. Longer than 45 minutes
5. Approximately how much time did you take to complete the interview survey after each interview?
 - a. Less than 10 minutes
 - b. 10–20 minutes
 - c. More than 20 minutes
6. Did you exclude either of the required 2 questions (i.e., big project description, and aspects of law school that will help the student succeed)?
 - a. Yes
 - b. NoWhy/Why Not? (open-ended)
7. Did you decide to exclude either of the optional questions (i.e., personal challenge discussed in personal statement or other essay, and attentive listening example)?
 - a. Yes
 - b. NoWhy/Why Not? (open-ended)

8. Did you use any of your own questions during the interviews you conducted?
- Yes
 - No
- Why/Why Not? (open-ended)
9. Conditional question: If yes, what is/are your own questions that you asked? Why were your own questions more informative than the pre-written questions?
10. For each of the following statements please select your level of agreement/disagreement²²⁶:

Statement	(1)	(2)	(3)	(4)	(5)	(6)
Conducting the WL interviews using the pre-written questions was easy						
Conducting the WL interviews using the pre-written questions was challenging						
Using the rubric(s) with the pre-written interview questions was easy						
Using the rubric(s) with the pre-written interview questions was challenging						
For most interviews, 45 minutes was enough time to conduct the interview						
For most interviews, 45 minutes was not enough time to conduct the interview						
The interview set up process was easy						
The interview set up process was challenging						
Within the interview set up process, providing my availability was easy						
Within the interview set up process, providing my availability was challenging						

226. (1) = Strongly Disagree; (2) = Disagree; (3) = Slightly Disagree; (4) = Slightly Agree; (5) = Agree; (6) = Strongly Agree.

Statement	(1)	(2)	(3)	(4)	(5)	(6)
Within the interview set up process, being assigned interviewees was easy						
Within the interview set up process, being assigned interviewees was challenging						
Within the interview set up process, accessing the interviewee's/applicant's information in preparation for the interview was easy						
Within the interview set up process, accessing the interviewee's/applicant's information in preparation for the interview was challenging						
The new WL interview rubric was helpful in the assessment of each interviewee's/applicant's potential for law school						
The new WL interview rubric was not helpful in the assessment of each interviewee's/applicant's potential for law school						
Required question 1 was helpful in the assessment of each interviewee's/applicant's potential for law school (Describe a time you had to set a goal for a large project over an extended amount of time. How did you prioritize and track the progress of tasks? How did you stay engaged, diligent and overcome significant obstacles?)						
Required question 1 was not helpful in the assessment of each interviewee's/applicant's potential for law school (Describe a time you had to set a goal for a large project over an extended amount of time. How did you prioritize and track the progress of tasks? How did you stay engaged, diligent and overcome significant obstacles?)						

Statement	(1)	(2)	(3)	(4)	(5)	(6)
Required question 2 was helpful in the assessment of each interviewee's/applicant's potential for law school (Knowing that law school is a rigorous commitment, what aspects of law school will help YOU persevere to successful completion of law school and readiness for practice (even if you think some of those aspects are challenging for you)?)						
Required question 2 was not helpful in the assessment of each interviewee's/applicant's potential for law school (Knowing that law school is a rigorous commitment, what aspects of law school will help YOU persevere to successful completion of law school and readiness for practice (even if you think some of those aspects are challenging for you)?)						
Optional question 1 was helpful in the assessment of each interviewee's/applicant's potential for law school (As you referenced in your personal statement (or diversity or other essay), you faced the challenge of (insert personal challenge described in personal statement/essay). How did you respond to the challenge of adversity? What skills did you use to manage the stress?)						

Statement	(1)	(2)	(3)	(4)	(5)	(6)
Optional question 1 was not helpful in the assessment of each interviewee's/applicant's potential for law school (As you referenced in your personal statement (or diversity or other essay), you faced the challenge of (insert personal challenge described in personal statement/essay). How did you respond to the challenge of adversity? What skills did you use to manage the stress?)						
Optional question 2 was helpful in the assessment of each interviewee's/applicant's potential for law school (Give me an example of when you took the initiative to use your active listening skills and how it paid off for you.)						
Optional question 2 was not helpful in the assessment of each interviewee's/applicant's potential for law school (Give me an example of when you took the initiative to use your active listening skills and how it paid off for you.)						

11. For each of the following statements please select your level of agreement/disagreement²²⁷:

Statement	(1)	(2)	(3)	(4)	(5)	(6)
The Enthusiasm scale was helpful in the assessment of each interviewee's/applicant's potential for law school						
The Enthusiasm scale was not helpful in the assessment of each interviewee's/applicant's potential for law school						

227. (1) = Strongly Disagree; (2) = Disagree; (3) = Slightly Disagree; (4) = Slightly Agree; (5) = Agree; (6) = Strongly Agree.

Statement	(1)	(2)	(3)	(4)	(5)	(6)
The Completeness scale was helpful in the assessment of each interviewee's/applicant's potential for law school						
The Completeness scale was not helpful in the assessment of each interviewee's/applicant's potential for law school						
Providing evidence of the selected level of Enthusiasm was helpful in the assessment of each interviewee's/applicant's potential for law school						
Providing evidence of the selected level of Enthusiasm was not helpful in the assessment of each interviewee's/applicant's potential for law school						
Providing evidence of the selected level of Completeness was helpful in the assessment of each interviewee's/applicant's potential for law school						
Providing evidence of the selected level of Completeness was not helpful in the assessment of each interviewee's/applicant's potential for law school						

12. For each of the following statements please select your level of agreement/disagreement²²⁸:

Statement	(1)	(2)	(3)	(4)	(5)	(6)
My own questions were more helpful than the new WL rubric in the assessment of each interviewee's applicant's potential for law school.						

228. (1) = Strongly Disagree; (2) = Disagree; (3) = Slightly Disagree; (4) = Slightly Agree; (5) = Agree; (6) = Strongly Agree.

Statement	(1)	(2)	(3)	(4)	(5)	(6)
My own questions were more helpful than required question 1 in the assessment of each interviewee's/applicant's potential for law school (Describe a time you had to set a goal for a large project over an extended amount of time. How did you prioritize and track the progress of tasks? How did you stay engaged, diligent and overcome significant obstacles?)						
My own questions were more helpful than required question 2 in the assessment of each interviewee's/applicant's potential for law school (Knowing that law school is a rigorous commitment, what aspects of law school will help YOU persevere to successful completion of law school and readiness for practice (even if you think some of those aspects are challenging for you)?)						
My own questions were more helpful than optional question 1 in the assessment of each interviewee's/applicant's potential for law school (As you referenced in your personal statement (or diversity or other essay), you faced the challenge of (insert personal challenge described in personal statement/essay). How did you respond to the challenge of adversity? What skills did you use to manage the stress?)						
My own questions were more helpful than optional question 2 in the assessment of each interviewee's/applicant's potential for law school (Give me an example of when you took the initiative to use your active listening skills and how it paid off for you.)						

13. What suggestions/recommendations do you have to improve the WL interview rubric (including interview rubric, interview questions, and interview process)? (open-ended)

APPENDIX C: INTERVIEW RUBRIC

In conducting the interviews, please use below definitions to assess the applicant's enthusiasm and completeness in answering questions.

A reminder that the goal is for the interview to be more conversational than feel like a test or assessment.

Level of Enthusiasm in Answering

Enthusiasm in answering is defined by the comfort level, intellectual curiosity, passion and sincerity or genuineness a candidate shows when responding to an unexpected question that does not have a right or wrong answer. The enthusiasm in answering should be assessed by the response given, how that response focuses on substance over form and by the non-verbal indicators of general enthusiasm (tone of voice and body language). Please document evidence that supports the level of enthusiasm in answering.				
Level One	Level Two	Level Three	Level Four	Level Five
Candidate was uncomfortable with the question (whether for reasons related to no right answer or other reasons), showing no passion and or sincerity in the response		Candidate showed some discomfort with the question but was able to answer the question with passion and sincerity		Candidate showed comfort and intellectual curiosity with question; Candidate showed passion and sincerity when responding

Level of Completeness in Answering

Completeness in answering is defined by how the candidate is able to fully respond to the question with a detailed and organized response that answers each part of the question with multiple perspectives and evidence, when appropriate, and a conclusion that stems from the evidence presented. Please document evidence that supports the level of enthusiasm in answering.				
Level One	Level Two	Level Three	Level Four	Level Five
Candidate did not respond to all parts of the question and lacked evidence or multiple perspectives, when appropriate; Candidate's response was not organized and did not have a clear conclusion		Candidate responded to all parts of the question but did not provide evidence or multiple perspectives, when appropriate; Candidate gave an organized response but had no clear conclusion		Candidate responded to all parts of the question using evidence or multiple perspectives, when appropriate; Candidate gave an organized response that ended in a conclusion that stemmed from the evidence presented.

Initial Question

1. Baseline question for Enthusiasm: What are some of your hobbies or passion projects?

Level of Enthusiasm in Answering	Enter Rating One through Five	Level of Completeness in Answering	Enter Rating One through Five
Evidence for Level of Enthusiasm		Evidence for Level of Completeness	

Required Question 1:			
Describe a time you had to set a goal for a large project over an extended amount of time. How did you prioritize and track the progress of tasks? How did you stay engaged, diligent and overcome significant obstacles?			
After reading the question give the applicant time to prepare their answer. Let the applicant know that they can take all the time they need to think, but probably 5 minutes will be enough. Show the applicant the question page for reference while they prepare their answer. Offer paper and pen if they'd like to organize their thoughts in writing			
Response Notes:			
Level of Enthusiasm in Answering	Enter Rating One through Five	Level of Completeness in Answering	Enter Rating One through Five
Evidence for Level of Enthusiasm		Evidence for Level of Completeness	

Foun- dation	Definition	Level One Description	Level Two Description	Level Three Description
Set goals & make a plan to meet them	Identify purpose; set specific, measurable, realistic goals; break goal down into smaller tasks; review goal/tasks regularly and track progress.	Candidate did not establish a clear goal, purpose for the goal or breakdown of smaller tasks of the goal.	Candidate had an established goal described but the purpose for the goal and or the tasks associated with the goal were not clear.	Candidate clearly described a purpose and realistic, measurable goal(s). Candidate established tasks and tracked the progress of tasks.
Prioritize & manage multiple tasks	Maintain in an organized manner a list of all tasks; identify tasks that are important and/or urgent; accurately estimate length of time and/or effort; flexibility when required.	Candidate did not describe a clear list of tasks nor did the candidate display the ability to adjust to the inclusion/exclusion of tasks.	Candidate was able to list tasks but was not clear about setting priorities and time requirements. Candidate did display the ability to adjust to the inclusion/exclusion of tasks to/from the list.	Candidate described the list of tasks clearly showing they can prioritize and assign time requirements appropriately. Candidate displays the ability to adjust task priorities and task inclusion/exclusion when necessary.
Resilience/ Grit & Diligence	Respond constructively in the face of adversity; mental and emotional rigor; persistent effort.	Candidate did not associate an adversity with their own efforts.	Candidate minimally described an adversity they faced so it is unclear if they were able to use mental rigor, emotional ri-	Candidate was able to describe the adversity they faced and how they overcame that adversity. Candidate described a use

			gor, and persistent effort to overcome the adversity.	of mental rigor, emotional rigor, and persistent effort in overcoming adversity.
Strong work ethic	Record of disciplined and hard work; intrinsic motivation; growth mindset; attention to detail; follow through.	Candidate did not display the levels of intrinsic motivation and or growth mindset needed to have a record of disciplined and hard work with an attention to detail.	Candidate displayed a minimal record of disciplined work with an attention to detail and follow through. Candidate minimally displayed the use of intrinsic motivation and growth mindset.	Candidate displayed a record of disciplined and hard work with an attention to detail and follow through. Candidate displayed the use of intrinsic motivation and a growth mindset.
Resourcefulness	Ability to find timely and creative ways to handle tasks or resolve problems; deal skillfully and promptly with a variety of situations.	Candidate did not describe ways to handle tasks or resolve problems.	Candidate described timely/ prompt, skillful, and creative ways to handle tasks and or resolve problems but it is unclear if candidate would be able to apply these skills in a variety of situations.	Candidate described timely/ prompt, skillful, and creative ways to handle tasks and/or resolve problems. Candidate displayed ability to apply these skills to a variety of tasks and or problems.

Required Question 2:			
<p>Given your individual areas of strengths and/or challenges, what aspects of Southwestern law school will help YOU persevere to successful completion of law school and readiness for practice?</p> <p>Encourage the applicant to collect their thoughts before answering and let them know that they probably don't need as much time to think as the first question.</p>			
Response Notes:			
Level of Enthusiasm in Answering	Enter Rating One through Five	Level of Completeness in Answering	Enter Rating One through Five
Evidence for Level of Enthusiasm		Evidence for Level of Completeness	

Founda- tion	Definition	Level One Description	Level Two Description	Level Three Description
Take in- dividual responsi- bility for actions and/or work	Take owner- ship of one's actions and/or work, espe- cially when the outcome may not be desirable (e.g. not blaming others or cir- cumstances); emotional regulation.	Candidate did not de- scribe how they would take owner- ship of ac- tions and/or work. Seemed can- didate would blame others or circum- stances. Candidate does not demonstrate an ability to regulate emotions.	Candidate was able to minimally describe how they would take owner- ship of ac- tions and/or work. Candidate demon- strates some ability to regulate emotions.	Candidate was able to describe in detail how they would take owner- ship of ac- tions and/or work while demonstrat- ing emotional regulation.
Listen at- tentively & display attention to detail	Appropriately respond re- garding own strengths and areas that need improve- ment related to law school; display knowledge about South- western; de- scribe how they'd use those re- sources for success.	Candidate was unable to discuss their strengths and areas that need improve- ment related to law school; dis- played no knowledge (or almost none) about Southwest- ern re- sources.	Candidate minimally discussed their strengths and areas that need improve- ment related to law school; mini- mally dis- played knowledge about South- western re- sources; and minimally described how they'd	Candidate discussed their strengths and areas that need improve- ment related to law school; displayed knowledge about South- western re- sources; and described how they'd use those re- sources for success.

			use those resources for success.	
Resourcefulness	Ability to find timely and creative ways to handle tasks or resolve problems; deal skillfully and promptly with a variety of situations.	Candidate did not describe ways to handle tasks or resolve problems.	Candidate described timely/prompt, skillful, and creative ways to handle tasks and or resolve problems but it is unclear if candidate would be able to apply these skills in a variety of situations.	Candidate described timely/prompt, skillful, and creative ways to handle tasks and/or resolve problems. Candidate displayed ability to apply these skills to a variety of tasks and or problems.