

Measuring Merit: The Shultz-Zedeck Research on Law School Admissions¹

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Introduction

Law schools profess a commitment to racial diversity both for the educational benefits diversity confers and for its contribution to the profession. But they admit students based on standards and practices that, while not discriminatory in a legal sense, undeniably favor white applicants. In practice, the Law School Admissions Test (LSAT) drives admissions decisions more than any other factor, despite the fact that it disproportionately disadvantages (and excludes) applicants of color. If it is true that racial diversity is crucial to quality legal education and to an effective legal profession—and we believe it is—then the right thing to do is to consider whether our current admissions practices can be changed for the better. This essay describes research that explored that question.

In the late 1990s, the Berkeley law faculty and dean charged a new committee with considering the appropriate definition of “merit” in law school admissions. The committee concluded that current admission standards were inadequate. The LSAT is a narrow test, designed only to predict first-year grades, and 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, the committee determined, should care not just about academic proficiency but also about potential professional competence. Despite acknowledging important overlap between the skills of attaining high law school grades and those of high quality professional performance, the committee determined that

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additional elements related to professional performance should be considered when selecting students for admission. Commentators had long critiqued the LSAT as too narrow, but—during 60 plus years of LSAT use—no persuasive additions or alternatives had emerged. Was there a valid way to expand the focus?

With this question in mind, two of us (Marjorie Shultz and Sheldon Zedeck) undertook an empirical study. The study grew out of the literature and methods of personnel psychology and employment selection and its goal was to determine whether different, less academic testing could predict effective professional performance. We also expected that such tests, unlike school-oriented cognitive tests, would reduce or eliminate racial and ethnic disparities in law school admission testing. The findings of research on employment selection suggest that particular job performance predictors, such as personality tests and situational judgment tests, show few race- or gender-correlated differences. We hypothesized that just as such tests, adopted by courts, have reduced unjustified employment discrimination, broader measures of merit predictive of lawyering competence would also yield more racially equitable outcomes in law school admissions.

The research process unearthed a complex model of lawyering. It confirmed that professional competence requires not only the analytic quickness and precision that law school currently seeks, teaches and rewards but that it also requires relational skills, negotiation and planning skills, self-control and self-development, creativity and practical judgment, among other proficiencies. The research confirmed that selection based on this more complete model of lawyering greatly reduces racial disparities and captures a more fundamental meaning of merit which should drive admission decisions. Finally, and importantly, the research showed that professional competence can be predicted with objective tests. Just as the LSAT predicts likely academic success as a first-year law student, the generally race-neutral assessments that Shultz and Zedeck created and tested as a part of this research project predict a different sort of merit—likely success as a practicing, problem-solving attorney.

Part I of this essay engages the ongoing conversation on diversity's value. We began our research as a search for a more compelling account of merit that might also produce broader, fairer and less racially disparate bases of assessment. This section argues that a substantive commitment to racial inclusivity—whether for reasons of equality or because diversity adds value to both legal education and the profession—demands that we examine current admission practices. Today the question of who belongs in any given law school, or in law school at all, turns almost exclusively on the applicant's predicted ability to get good grades as a first-year law student. Law schools, almost all claiming to share our commitment to diversity, are not blind to the racial harms that accompany this measure of merit. But rather than taking a hard look at whether we have adequately or accurately identified the qualities students should exhibit when preparing to become a legal professional, legal education largely relies on affirmative action to ameliorate the effects

of the LSAT's racial disparities. That approach is imperfect for a host of reasons. Embedded in affirmative action policies is an assumption that most minority applicants are not as qualified as admitted white applicants. More pragmatically, use of affirmative action in higher education is under attack.² Should race-conscious admissions practices be further constricted, every law school that values diversity will have to explore race-neutral means of achieving it. The Shultz-Zedeck research suggests a theoretically grounded and empirically validated approach to that goal.

The research, described in Part II, offers a much more complete and complex view of lawyering than is found in legal education's current model. Law school admissions tests were originally pegged to first-year grades on the assumption that success during the first year predicted success as a lawyer.³ But the Shultz-Zedeck research bypasses the use of arguably discriminatory proxies like first-year grades⁴ and asks the direct question: what does lawyering success look like and what competencies must one possess to achieve it? Then, with a battery of tests, the research predicted not the likelihood of excelling at grades, a proxy for lawyering success, but the likelihood of success itself, and did so in a race-neutral way.

The Shultz-Zedeck research provides a new foundation for thinking about the purpose of legal education and who deserves a law school seat. Using the Shultz-Zedeck approach in addition to the LSAT could expand beyond the narrow prediction of law school grades to a more robust set of qualifications that seek also to predict professional competence. Such use could also introduce race-neutral results to help offset the adverse impact from heavy reliance on the LSAT.

A. Racial Inclusion in the Legal Profession

Race-conscious affirmative action was intended to combat discrimination and its effects. In recent decades, however, the Supreme Court has limited the use of race-conscious admissions practices to measures designed to further diversity, rather than those focused on leveling the playing field. Questions about what it takes to achieve diversity, what diversity brings to the classroom

2. Last year's *Fisher v. University of Texas at Austin* was just the latest high profile challenge to the legal use of race-conscious measures in higher education admissions. The Court's opinion in that case claimed to affirm prior holdings permitting affirmative action, but it emphasized the requirement that a university exhaust race-neutral means prior to considering race. It is not difficult to imagine the myriad follow-on cases that will challenge the practices of individual admissions offices for failing to satisfy this requirement. *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411, 2420 (2013).
3. See William P. LaPiana, Professor, New York Law School, *A History of the Law School Admission Council and the LSAT*, Keynote Address at the LSAC Annual Meeting (1998).
4. See William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 Cal L. Rev. 1055, 1101-1106 (2001) (exploring "evidence suggesting that the environment of legal education is contaminated by racial bias, which calls into question the neutrality of using law school grades to validate the LSAT").

and the profession beyond dominate public conversations about race and legal education today. The notions that racial and ethnic diversity alter the learning experience in meaningful ways and are necessary ingredients for an effective profession are contested ideas both at the U.S. Supreme Court⁵ and in political discourse. So academia's willingness to defend diversity's value is important if it is to be achieved. But real commitment to racial inclusion in the profession also requires an examination of ongoing and potentially unjustified barriers to applicants of color. Why does affirmative action, a problematic and legally unstable practice, continue to be necessary? Why is it that without race-conscious admissions practices the most elite law schools would admit almost no black or Latino applicants?⁶ On a practical level, we know the answer to that question. Law schools rely heavily on the LSAT for admissions decisions, despite little or no evidence that the LSAT predicts lawyering competence and despite the fact that LSAT scores show a marked disparate impact on the basis of race.

Quality, equality and diversity in legal education and the profession would be served if law schools would take a hard look at their definition of merit, of "who belongs." Modern discourse about diversity treats it as separable from equality. But that superficial approach fails to consider the obvious: race must be considered in admissions decisions or otherwise talented students of color would be disproportionately excluded because of past—and current—discrimination. This section both engages the larger discussion about why racial inclusion matters and suggests that real commitment to diversity requires exploring every legitimate avenue to achieve it, including questioning our own habitual but potentially harmful practices.

Racial inclusion in law school began as a legal and moral claim about equality. The argument for inclusion declared that, not only does the Constitution prohibit segregation but it is morally repugnant to deny a student an education—or to limit its quality—because of race. The first steps toward removing those unconstitutional and immoral race-based barriers were straightforward (if anything but simple). Courts held that the Constitution's

5. In his dissent in the leading case on race-conscious admissions in higher education, Justice Antonin Scalia mocked the contribution of educational diversity to citizenship development: "This is not, of course, an educational benefit on which students will be graded on their Law School transcript (Works and Plays Well with Others: B+) or tested by the bar examiners (Q: Describe in 500 words or less your cross-racial understanding). For it is a lesson of life rather than law, essentially the same lesson taught to (or rather learned by, for it cannot be taught in the usual sense) people three feet shorter and twenty years younger than the full-grown adults at the University of Michigan Law School, in institutions ranging from Boy Scout troops to public-school kindergartens." *Grutter v. Bollinger* 539 U.S. 306, 347 (2003).
6. See Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admissions Decisions*, 72 *NYU L. Rev.* 1, 18-29 (1997); Brief of the Law School Admission Council as Amicus Curiae in Support of Respondents, at 2. *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013) ("The simple, demonstrable statistical fact is that most selective law schools in this country will have almost no students of certain races unless they adopt admissions policies designed to alter that outcome.").

equal protection clause prohibited law schools, like all other schools, from excluding applicants because of their race. But the legacy of segregation and inequality runs deep—impacting the relative quality of neighborhood schools, the financial means of entire communities and families within them, the decision-making of school officials who may well have thought themselves colorblind but who continued to mentor, teach, admit and evaluate students differently depending on the students' race. And this legacy continued (and continues) to leave students of color, on average, differently situated with respect to educational markers than most white students. Removing explicit barriers was not enough to undo the effects of centuries of slavery, segregation and other forms of legal and extralegal discrimination.⁷ In response to this reality, law schools (along with other institutions of higher education) took affirmative steps to eliminate the vestiges of segregation “root and branch”⁸ and admit students of color through an admissions process that considered not only numeric academic indications of potential but also the race of the applicant.

Courts quickly lost patience with race-consciousness as a remedy for systemic discrimination. Whether this shift stemmed from an honest belief that race-based remedies were no longer necessary (or compromised core values), or was simply a new expression of hostility toward discrimination claims and prioritization of white viewpoints, the effect was the same. Universities (and law schools) that hoped to maintain their admissions criteria and educate a racially diverse class of students had to justify affirmative action in a way less likely to trigger Supreme Court skepticism. The emphasis moved away from the moral struggle for equality and toward the value that diversity brought.⁹ Racial and ethnic diversity adds value in the classroom: law students receive a superior education when they experience it in a diverse environment. And racial and ethnic diversity adds value to the profession: lawyers serve entirely too central and important a role in our political structures, in our economy,¹⁰

7. Research on “stereotype threat,” for example, suggests that marginalized groups may experience depressed performance on high stakes testing as a result of pressure and anxiety associated with that marginalization. *See, e.g.*, Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 *Am. Psychol.* 613 (1997); Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 *J. of Personality and Social Psychol.* 797, 799-801 (1995).
8. *Green v. County School Board of New Kent County*, 391 U.S. 430, 438 (1968).
9. Derrick Bell noted that the question of adding value is almost always about adding value to white people's experience and goals. *See* Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *Harv. L. Rev.* 518 (1980) [hereinafter *Board of Education and the Interest-Convergence Dilemma*]; Derrick Bell, *Diversity's Distractions*, 103 *Colum. L. Rev.* 1622 (2003) [hereinafter *Diversity's Distractions*].
10. For a version of this argument focused on large corporate law firms and their desire for diversity, see David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity is Good for Business”*: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar, 117 *Harv. L. Rev.* 1548 (2004).

in institutions both legal and otherwise to be drawn overwhelmingly from a single (white) subgroup of the population.”

Given the high court’s skepticism of affirmative action’s ability to remedy “societal discrimination” (whether past or present) without imposing greater harm, law schools were right to embrace these value-added arguments. Diversity does and should change both the educational experience and the quality of the legal profession. A recent study on the effect of racial diversity on the law school experience confirms the intuition of affirmative action’s proponents: “race/ethnicity [is] a significant factor associated with differences of sociopolitical attitudes, experiences, discrimination histories, behaviors during law school and professional aspirations.”¹² And those differences change the conversation, and thus the learning experience, in the classroom.

The race-correlated differences that the study’s authors detailed not only have an impact on a lawyer’s schooling, they arguably also alter the legal profession itself and its relationship with the larger society. Consider just two of the survey categories: “experiences of discrimination and coping” and “pursuit of social justice.”¹³ Each of these categories included a variety of questions, with the answers broken down on two separate axes: gender (male and female) and race (white and black). Sixty-three percent of black men and thirty-one percent of black women answered that they had at some point been stopped unfairly by police.¹⁴ Twenty-five percent of white men and ten percent of white women said the same.¹⁵ Thirty-three percent of black men and thirty-five percent of black women reported that they had been unfairly discouraged from continuing their educations, while only five percent of white men and thirteen percent of white women reported being similarly discouraged.¹⁶ On the question of social justice/individual rights attitudes, twice as many white students as black students believed that “in America today, every person has an equal opportunity to achieve economic success.”¹⁷

11. This was the thrust of the Court’s opinion in *Grutter*. That not only is racial diversity beneficial to legal education but a diverse legal profession is essential to a well-functioning military, to business organizations, and to society as a whole. *Grutter v. Bollinger*, 539 U.S. 306, 330-31 (2003).

12. Charles E. Daye, A.T. Panter, Walter R. Allen & Linda F. Wightman, Does Race Matter in Educational Diversity? A Legal Empirical Analysis, *Rutgers Race & the Law Review Symposium* 76-S, 188-S (2012).

13. The survey categories included: Race Relations and Racial Issues; Discrimination against Societal Groups; Pursuit of Social Justice; Individual Rights; Personal Background Factors; Diversity of Family Background; Experiences of Discrimination and Coping; Undergraduate Academic Experiences; and Personal Diversity Beliefs. *See id.*

14. *Id.* at 123-S.

15. *Id.*

16. *Id.*

17. *Id.* at 112-S.

These beliefs and experiences (along with many others) cannot help but inform a lawyer's day-to-day work. A prosecutor who has experienced harassment by the police may well bring a different sense of skepticism to her cases. A corporate lawyer who believes that it takes more than just hard work and skill to achieve economic success may be more likely to perform pro bono work that provides opportunities for communities where economic success is not so easily come by. Lawyers give meaning to concepts like "rights," "fair," "reasonable" and "justice." They arbitrate disputes among conflicting groups and entrenched interests. They work to further individual, corporate and community goals. In all of these tasks, it matters what a lawyer understands about the world, what she believes to be possible. To the extent the experiences and attitudes that act together to create a world view are correlated with race, racial diversity changes and improves the profession and allows it to serve an incredibly diverse and interconnected society's interests.

But law schools' current admissions practices hinder the creation of a racially inclusive legal profession (even when other alternative approaches are emerging¹⁸). And the Supreme Court's psychic shift from remedying discrimination to the value of diversity has allowed educators like us to take our eyes off questions of equity. We stopped asking ourselves whether our own methods were fair and appropriate, despite ample evidence that our narrow focus on the LSAT favors white students.

In the quest to find law school applicants who are likely to excel as first-year students,¹⁹ admissions offices focus on a combination of undergraduate grades and LSAT scores. Schools vary in how they weight the LSAT relative to the undergraduate grade-point average, but almost every school weighs the LSAT much more heavily.²⁰ And while personal statements, resumes and letters of recommendation (the stuff of holistic review) matter at the margins, the lion's share of almost every law school class is admitted based primarily on the strength of individual applicants' combined undergraduate grades and LSAT, or index scores.²¹ Taken together, these facts mean that most law school applicants are admitted or rejected from any given school based heavily on

18. See, e.g., Kimberly West-Faulcon, *More Intelligent Design: Testing Measures of Merit*, 13 U. Pa. J. Const. L. 1235 (2011).

19. The LSAT has limited ambitions. According to LSAC, it is designed to predict first-year grades and nothing more. It tests "the reading and comprehension of complex texts with accuracy and insight; the organization and management of information and the ability to draw reasonable inferences from it; the ability to think critically; and the analysis and evaluation of the reasoning and arguments of others." About the LSAT, LSAC, *available at* <http://www.lsac.org/jd/lsat/about-the-lsat.asp>.

20. See Kidder, *supra* note 4, at 1103.

21. See Phoebe A. Haddon & Deborah W. Post, *Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and Redefinition of Merit*, 80 St. John's L. Rev. 41, 62-64 (2006); See also Linda F. Wightman, *The Consequences of Race Blindness: Revisiting Prediction Models with Current Law School Data*, 53 J. Legal Educ. 229, 235 (2003); William C. Kidder, *The Rise of the Testocracy: An Essay on the LSAT, Conventional Wisdom, and the Dismantling of Diversity*, 9 Tex. J. Women & L. 167 (2000).

their LSAT scores. In fact, differences of just a few points can affect whether a student will be admitted or rejected—despite the fact that the LSAC (which creates and administers the test) itself advises against relying on fine-grain score distinctions in that way.²²

Academics familiar with the unequal race distribution of LSAT scores seem to be uncomfortable with—but resigned to—heavy reliance on the test, believing it is the best measure we have. But it is not at all obvious that the LSAT is our best available method for determining who will, and who will not,²³ become lawyers. In fact, the authors of a longitudinal study of three generations of students of color admitted to University of Michigan Law School noted that “LSAT scores and UGPA scores . . . seem to have no relationship to success after law school, whether success is measured by earned income, career satisfaction or service contributions.”²⁴ Nonetheless, law schools—professional schools—rely more heavily²⁵ on academic factors in making decisions than do most graduate departments that train people primarily for academic careers. Law schools also place greater weight on academic test scores than do other professional schools such as medicine or business.

The racial harm from this heavy LSAT reliance is difficult to overstate. Research consistently shows that, on average, white students perform better on standardized tests, including the LSAT, than black or Latino applicants.²⁶

22. See *infra* note 25.

23. White law school applicants have much higher odds of acceptance to law school than do black or Latino applicants. See Tamar Lewin, Law School Admissions Lag Among Minorities, N.Y. Times, Jan. 6, 2010, available at http://www.nytimes.com/2010/01/07/education/07law.html?_r=0 (“[F]rom 2003 to 2008, 61 percent of black applicants and 46 percent of Mexican-American applicants were denied acceptance at all of the law schools to which they applied, compared with 34 percent of white applicants.”).

24. David L. Chambers, Richard O. Lempert & Terry K. Adams, Michigan’s Minority Graduates in Practice: The River Runs through Law School, 25 Law & Soc. Inquiry 395, 401 (2000).

25. To temper this overreliance on LSAT scores, the LSAC promulgated a set of cautionary policies. See Cautionary Policies Concerning LSAT Scores and Related Services, LSAC (2005), available at <http://www.lsac.org/lscresources/publications/pdfs/cautionarypolicies.pdf> (warning against giving the test “undue weight . . . solely because its use is convenient,” as well as against “plac[ing] excessive significance on score differences.”). LSAC began banding to “represent a range of scores that has a certain probability of containing the test taker’s actual proficiency level. The score bands reported for the LSAT are designed to include the test taker’s actual proficiency level in approximately 68 percent of cases. In other words, there is a 68 percent level of confidence that the test taker’s true score actually falls within the band.” A score of 160, for example, usually results in a score band of something like 157-163. What is a Score Band?, U. of Dayton (1997), available at <http://academic.udayton.edu/thewhitestlawschools/2005twls/chapter2/scorebands.pdf>. Despite these cautions and practices, in recent decades score differences on the LSAT have become more, not less, important to law school admissions. See, e.g., Haddon & Post, *supra*, note 21.

26. See, e.g., Frank L. Schmidt & John E. Hunter, Employment Testing: Old Theories and New Research Findings, Am. Psychologist, 36, 1128-37 (1981) [hereinafter Employment Testing] (recognizing average differences on cognitive tests across racial groups and testing explanatory theories); Wightman, Threat to Diversity, *supra* note 6, at 18-20 (providing an

The mean LSAT score among white test takers in the 2008-2009 testing year was about 152. The mean score among black test takers was 142, and among Latinos it was 146.²⁷ To get a feel for what these differences represent, consider the LSAT score spread at a few representative law schools. At Columbia Law School, for example, the 25th percentile LSAT score was 171 for the entering class of 2011. The 75th percentile score for that class was 175. Further down in the top tier²⁸, the 25th percentile LSAT score at Fordham was 163. Fordham's 75th percentile score was 167. In other words, 50 percent of Fordham's entering class had an LSAT score that fell in the narrow band of 163-167. Fifty percent of Columbia's fell into the band between 171 and 175. At another New York school, Albany Law School,²⁹ the band stretched from 151-157. Relatively small, arguably meaningless, differences in LSAT scores thus are likely to make a huge difference in the admissions process.

At most law schools, the negative impacts of the LSAT have been at least partly ameliorated through an admissions process that occasionally looks at a variety of factors other than test scores and grades, including race.³⁰ If a school does care about admitting a diverse class, then this holistic, race-conscious review is a necessary caveat to LSAT-driven acceptances. The LSAC itself recently asserted that the "inescapable lesson of the statistical evidence compiled year after year by LSAC is that, unless America's law schools are allowed to adopt race-conscious admissions policies, many of the nation's lawyers will be trained in an environment of racial homogeneity."³¹

The race-conscious measures that most schools use to combat the problems with the LSAT and admit a more diverse class than they otherwise would are helpful but imperfect. Law school classes are without question more diverse today than they were 50 years ago, but they still show the effects of historical discrimination as well as our acceptance of a functional definition of merit that has significant adverse impact. In 2010, just 4.8 percent of lawyers were black

example of average LSAT score differences across races and ethnicities).

27. Susan P. Dalessandro, Lisa A. Stilwell, Jennifer A. Lawlor & Lynda M. Reese, LSAT Performance with Regional, Gender, and Racial/Ethnic Breakdowns: 2005-2006 Through 2011-2012 Testing Years, LSAT Technical Reports 19 (2012), available at <http://www.lsac.org/lisacresources/research/tr/pdf/tr-12-03.pdf>.
28. Colloquially, the "top tier" has come to mean the top 50 schools. All of these numbers are available through the U.S. News & World Report ranking website, available at <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings>. For a discussion of the power of and problems with this ranking system, see Laura Rothstein, *The LSAT, U.S. News & World Report, and Minority Admissions: Special Challenges and Special Opportunities for Law School Deans*, 80 *St. John's L. Rev.* 257 (2006).
29. Albany Law School is considered a "third tier" law school.
30. Brief of the Law School Admission Council as Amicus Curiae in Support of Respondents, *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013), *supra* note 6, at 2 (noting that most law schools make explicit use of race in admissions process to ensure racially diverse class).
31. *Id.*

and 3.7 percent Latino. In the 2012-2013 school year, out of 44,481 entering law students, 3,816 were black³² and 4,040 Latino (about 8.5 percent and 9 percent, respectively).³³ Meanwhile, African Americans represent 12.6 percent of the American population, while about 16 percent of the population is Latino.³⁴

Affirmative action has plenty of substantive critics. Scholars on both the left and right have argued that race-conscious admissions processes are too opaque, poorly tailored and insufficient to achieve anything like true equality of educational access.³⁵ And external forces—state ballot measures that ban race-conscious measures and legal challenges questioning their constitutionality—regularly threaten to further unravel the already tenuous fabric of affirmative action. On its face, the Supreme Court’s decision last term in *Fisher v. University of Texas*³⁶ upheld *Grutter* and maintained the affirmative action status quo. But its language placed renewed emphasis on exhausting race-neutral means before resorting to race-conscious measures. Depending on how admissions officers and lower courts interpret that exhortation, race may no longer be considered in many, if not most, admissions decisions. Should that happen,

32. Elizabeth Chambliss suggests that this low number may be, in part, self-perpetuating. “The low level of black representation in the profession may discourage promising black students from considering law and limit black lawyers’ chances to find mentors and role models within the law.” “More Men Black Lawyers, But Racial Gap Remains” Diversity Inc. (quoting Chambliss discussing the findings of Miles to Go: Progress of Minorities in the Legal Profession, ABA Commission on Racial and Ethnic Diversity in the Legal Profession (2005)), available at <http://www.diversityinc.com/diversity-recruitment/more-black-men-lawyers-but-racial-gap-remains/>.
33. The American Bar Association’s data on the demographics of the profession can be found at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011.authcheckdam.pdf. The ABA’s law school enrollment numbers can be found at http://www.americanbar.org/groups/legal_education/resources/statistics.html.
34. 2010 Census Data, U.S. Census Bureau, available at <http://www.census.gov/2010census/data/>.
35. For very different arguments about the problems with affirmative action in higher education compare Bell, Diversity’s Distractions, *supra* note 9 (suggesting that race-conscious admissions, as currently practiced, are less about providing opportunity for students of color and more about providing cover for institutions that want to continue relying on entrenched admissions practices that benefit the white elite), with Richard Sander, A Systemic Analysis of Affirmative Action in American Law Schools, 57 Stan. L. Rev. 367 (2004) (suggesting that affirmative action creates a mismatch effect that leads black law students to struggle academically and actually depresses the number of black attorneys); *but see* Ian Ayres & Richard R. W. Brooks, Does Affirmative Action Reduce the Number of Black Lawyers?, 57 Stan. L. Rev. 1807 (2005) (showing that affirmative action increases the number of black attorneys); Daniel E. Ho, Affirmative Action’s Affirmative Action: A Reply to Sander, 114 Yale L.J. 2011 (2005) (taking issue with Sander’s methodology); and David B. Wilkins, A Systemic Response to Systemic Disadvantage, 57 Stan. L. Rev. 1915 (2005) (arguing that black lawyers gain benefits from prestigious degrees that may outweigh the value of law school grades).
36. 631 F.3d 213 (5th Cir. 2011) cert. granted, 132 S.Ct. 1536 (2012).

legal education's traditional method of diversifying its classes, especially at the most elite levels, may disappear.³⁷

California provides an important post-affirmative action test case. We know from that state's experience, where race-based affirmative action is banned, that if law schools no longer can use race as a diversity factor in admissions, the number of black and Latino students they enroll will drop dramatically. According to a recent look at the data at the most elite California law schools, despite a large increase in the number and the test scores of African Americans applying to American law schools, African American enrollments at Berkeley Law and UCLA Law have decreased since the passage of Proposition 209 (which banned use of race in public education and contracting) on average by half or more.³⁸ In a post-affirmative-action world, schools committed to diversity may have to find another way to achieve it.

Attacks on race-conscious admission measures may require law schools to do what should have been done long ago: move beyond arguments about how to achieve diversity, given current admissions standards, and question the standards themselves. To maintain an equitable admissions system and continue to contribute to a racially diverse legal profession, law schools may have to redefine qualification and merit in ways that are less racially harmful.³⁹ The Shultz-Zedeck research points toward an alternative—tests that may help legal educators assess law school applicants in a way that is both race-neutral and more keyed to effective lawyering.

II. Shultz-Zedeck Research Findings—Redefining Merit

The end of affirmative action in California prompted Shultz and Zedeck to re-think the meaning of merit in law school admissions. Once they decided that professional promise should be included in admission calculations, it became essential to investigate whether additional or alternative approaches to assessing applicants could be fruitfully used. They did not want to discard the LSAT/UGPA as a tool. In fact from the beginning they assumed that law schools would continue to rely on those numbers, perhaps as a first hurdle in the admissions process. But they wanted to know whether it was possible to

37. While Fisher itself presented a constitutional challenge and thus immediately impacts only public universities, Title VI prohibits discrimination at any university that accepts federal funds and every university accepts federal funds. The discrimination that Title VI prohibits is prohibited by the equal protection clause. In other words, as go public schools, so private schools will per force follow.
38. See William C. Kidder, *Misshaping the River: Proposition 209 and Lessons for the Fisher Case*, 39 J.C. & U.L. 53, 54-55 (2013). Some of this drop was because fewer black students were accepted; and some of it can be attributed to a yield question: fewer black students who were admitted wanted to attend UC schools after Proposition 209.
39. For a theoretical discussion on the relationship between measures of merit and bias, see Daria Roithmayer, *Deconstructing the Distinction Between Bias and Merit*, 85 Cal. L. Rev. 1449 (1998) (arguing that “merit standards disproportionately exclude white women and people of color because merit standards were developed by dominant social groups in ways that have disproportionately benefited their descendants”).

predict more directly which applicants promised to be effective lawyers. Based on the success of related research in Zedeck's field of personnel psychology, they believed that lawyering performance might be predictable and that particular non-cognitive job-performance-based measures were unlikely to reproduce the same racial disparities that arise from LSAT scores.

A. Background

Personnel—or industrial—psychology has a long history of helping organizations create and implement hiring (or selection) procedures that both predict relevant job skills and avoid racially disparate results.⁴⁰ As a discipline, personnel psychology studies job analysis, definitions and measurements of job performance, performance appraisals and employee hiring and training. Because of this expertise, the EEOC has long relied on personnel psychologists to help flesh out regulations for the antidiscrimination mandate of Title VII of the Civil Rights Act. Title VII prohibits employers from using a hiring test with disparate racial results unless that test is sufficiently job related.⁴¹ And in fields where many pencil-and-paper cognitive tests proved both racially discriminatory and insufficiently related to relevant work tasks, personnel psychologists stepped in to help create better tests and strategies for using test results.⁴² These tests—in fields as varied as firefighting and medicine—begin with a rigorous job analysis. What are the constituent tasks and skills of this job? What competencies are required to be effective at it? From these analyses, psychologists create situational judgment, biographical and personality assessments that reveal aptitudes, tendencies and behaviors that correlate with the essential skills and competencies required for success in the job. The literature shows that these types of tests not only are helpful in selecting effective employees, but that they produce far less disparity among racial subgroups than more traditional cognitive tests.⁴³

40. Frank L. Schmidt & John E. Hunter, The validity and utility of selection methods in personnel psychology: Practical and theoretical implications of 85 years of research findings, 124 *Psychological Bulletin*, 262 (Sept. 1998); Ann Marie Ryan & Nancy T. Tippins, Attracting and Selecting: What Psychological Research Tells Us, 43 *Hum. Resource Mgmt.* 305 (2004).

41. The standards for determining whether a test is fair and nondiscriminatory are found in the Uniform Guidelines for Employee Selection Procedures [hereinafter UGESP], 29 C.F.R. § 1607 (1978). The UGESP were adopted in 1978 by the Equal Employment Opportunity Commission, Civil Service Commission, Department of Labor, and the Department of Justice.

42. *See, e.g.*, Wayne F. Cascio, James Outtz, Sheldon Zedeck & Irwin L. Goldstein, Statistical Implications of Six Methods of Test Score Use in Personnel Selection, 4 *Hum. Performance* 233 (1991); David Chan & Neal Schmitt, Situational Judgment and Job Performance, 15 *Hum. Performance* 233 (2002); Robert Hogan, Joyce Hogan & Brent W. Roberts, Personality Measurement and Employment Decisions: Questions and Answers, 51 *Am. Psychol.* 469 (1996).

43. *See* Leaetta M. Hough, Frederick L. Oswald & Robert E. Ployhart, Determinants, Detection, and Amelioration of Adverse Impact in Personnel Selection Procedures: Issues, Evidence, and Lessons Learned, 9 *Int'l J. of Selection and Assessment* 152 (2001).

Personnel psychology principles regarding selection and discrimination in employment should also help guide the law school admissions process. Law schools not only choose law students but they are the de facto gate-keepers to the legal profession. Admission to law school is the narrowest point in the path to the legal profession, making law school admission not only an academic hurdle but a professional one.

B. The Research

In 1998, informed by this employment law and employment practices background, Shultz and Zedeck began a long-term research project to look for methods that, combined with the index score, would allow law schools to do a better job of admitting prospective lawyers with strengths in a variety of relevant lawyering capacities. The research produced a set of core, general skills and competencies for lawyering as well as tests capable of predicting competency levels for most, if not all, of them. The scores on those tests did not appear to be correlated with race. In other words, high scores—scores that predicted strength in a given lawyering competency—were fairly evenly spread among races and ethnicities for each of the lawyering competencies (called “effectiveness factors”). The theoretical and methodological foundations of the Shultz-Zedeck research, as well the study’s methodology and detailed findings, are available at length in a report published in *Law & Social Inquiry*.⁴⁴ We will give a brief summary here.

The first task in the research was to define successful or effective lawyering. Rather than relying on traditional measures of success—bar passage, salary or time passed before achieving partner status—the researchers decided to follow the path laid out in personnel psychology and ask more fundamental questions. What does it mean to lawyer? What are lawyering’s constituent competencies? To answer this, they conducted hundreds of interviews with lawyers, law faculty, law students, judges and clients and asked questions like, “If you were looking for a lawyer for an important matter for yourself, who would you identify and why? What qualities and behavior would cause you to choose that attorney? What kind of lawyer would you want to teach or be?” In the course of these conversations, consensus coalesced around 26 factors of lawyering effectiveness. Some of those factors were unsurprising and, indeed, the very skills at the core of legal education: analysis and reasoning, influencing and advocating, and writing. But others were perhaps more surprising and not likely to be measured by the LSAT or first-year grades. Some of these included problem solving, practical judgment, listening, organizing and managing one’s own work, building and developing relationships (with clients, with other attorneys) and the ability to see the world through the eyes of others.⁴⁵ Some of

44. Marjorie M. Shultz & Sheldon Zedeck, Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions, 36 *Law & Soc. Inquiry* 620 (2011).

45. The complete list of Effectiveness Factors is: analysis and reasoning; creativity/innovation; problem solving; practical judgment: researching the law; fact finding; questioning and interviewing; influencing and advocating; writing; speaking; listening; strategic

the 26 factors are especially relevant to lawyering within particular institutions or contexts, but many extend across categories (although particular forms of their expression may vary) and are core to most lawyers' day-to-day work.

The next step was to define the lawyering competencies and determine what excellent (and less than excellent) performance in each would look like. The research team did this by developing a pool of behavioral examples for each of the 26 effectiveness factors. The researchers asked focus groups of lawyers, "What behavior would tell you a lawyer had or lacked effectiveness in 'listening'?" for example. This process resulted in more than 800 descriptions that represented poor, below average, average, good and outstanding behaviors across the 26 factors. Next, more than 2,000 Berkeley Law alumni evaluated each example on a scale from 1 to 5 for its level of effectiveness. These data—the behavioral examples for each of the 26 factors and the effectiveness ranking for each example—allowed Shultz and Zedeck to create a set of lawyer performance measurement scales. The researchers then adapted the scales to an assessment instrument that would allow rating a lawyer's professional performance in a systematic, structured and standardized manner. The instrument allows a performance appraiser to ask questions like: "Are my employee's analysis and reasoning behaviors more like a 2 or a 4 on the rating scales?" Or: "When my employee engages in problem solving, does her process more closely resemble the examples rated a 3 or those rated a 5?"

This definitional and description phase set up the ultimate research question: can tests predict propensities in these 26 lawyering competencies like the LSAT predicts first-year grades? Is it possible to provide law school admissions offices with evidence that an applicant is likely to be a good lawyer as well as a good first-year student? Shultz and Zedeck looked for tests that might predict actual performance on these lawyering factors. In the end, they selected five existing tests and wrote or adapted three other tests. The tests included measures of situational judgment, personality, organizational fit, expectations and self-expression monitoring. One asked for and assessed relevant biographical information.

Because the situational judgment tests and the requests for biographical data produced especially robust data, it is worth explaining a bit about these assessment measures. Situational judgment tests measure an individual's judgment about and reaction to various difficult scenarios. In personnel psychology, these measures have proven important predictors of work performance. The tests pose hypothetical situations and ask a test-taker what her likely response would be. For example, one question, determined

planning; organizing and managing one's own work; organizing and managing others (staff/colleagues); negotiation skills; ability to see the world through the eyes of others; networking and business development; providing advice & counsel & building relationships with clients; developing relationships within the legal profession; evaluation, development, and mentoring; passion and engagement; diligence; integrity/honesty; stress management; community involvement and service; and self-development.

to reflect competency in three areas (influencing and advocating, developing relationships, and integrity) asks:

You learn that a co-worker, Angela, whom you helped train for the job, copied some confidential and proprietary information from the company's files. What would you do?

- a. Tell Angela what I learned and that she should destroy the information before she gets caught.
- b. Anonymously report Angela to management.
- c. Report Angela to management and after disciplinary action has been taken, tell Angela that I'm the one that did so.
- d. Threaten to report Angela unless she destroys the information.
- e. Do nothing.

Research in personnel psychology also suggests that eliciting targeted information about an applicant's history can predict work-related skills and competencies. These biographical data assessments ask a factual question about the test taker's life, such as, "How many times in the past year were you able to think of a way of doing something that most others would not have thought of?" and provide three or four potential answers (along the lines of "one to three times," "five to ten times," etc.) to pick among.⁴⁶

Finally, 15,750 people (then-current Berkeley Law students and alumni of Hastings College of the Law and Berkeley Law who graduated between 1973 and 2006) were invited to participate in the research. More than 1,100 did so. Each participant took a battery of tests (including the situational judgment test, the biographical data test and a variety of personality evaluations). Each participant also identified four people (two current peers and two current superiors), who could assess his/her job performance by using a subset of the effectiveness factors previously described that related to his/her practice and situation.⁴⁷ The research hypothesis was that results on some or all of those tests would correlate with the test taker's rated competencies in a relevant subset of the 26 effectiveness factors—and thus be predictors of professional competence.

The results of this phase showed real potential to create admissions tests capable of predicting lawyering performance. In other words, participants' test results did correlate with lawyering skill. Each participant took an hour-long test made up of about 30 questions drawn randomly from the situational judgment and biographical tests, which also included personality tests that Shultz and Zedeck selected at the outset. Not every question was useful. In fact

46. For more details on these tests and the validation methodologies, see Shultz & Zedeck, *Predicting Lawyer Effectiveness*, *supra* note 44.

47. In addition to engaging in the effectiveness assessments and taking the tests, each participant provided basic biographical data including gender, age, ethnicity, law school and employment information. With the permission of participants, Shultz and Zedeck obtained LSAT and law school performance data either from the LSAC or from the law schools for additional analysis.

a couple of the personality tests were rejected as not terribly helpful. But one of the personality tests⁴⁸ and many of the situational judgment and biographical data questions⁴⁹ yielded important and interesting results. Participants' aggregate answers to those questions correlated to their lawyering abilities. In other words, lawyers who had been evaluated as superior communicators on the Shultz-Zedeck scales consistently chose answer A on question x, C on question y, and B on question z. Poor networkers created similar patterns on questions e, f, and g. In the end, answers to the valid questions on these new tests predicted participants' competency levels for almost all 26 of the effectiveness factors. The LSAT and UGPA were not particularly useful for predicting lawyer performance on the large majority of the 26 effectiveness factors. In fact, the LSAT correlated with 12 of the factors, with four of those correlations positive and eight negative (e.g., networking/business development and community service).⁵⁰ The new tests, however, predicted almost all 26 competencies. Moreover, the new tests' correlations were generally higher, though moderately so, with even the small subset of the most academically associated competencies (analysis and reasoning, researching the law, writing) than the LSAT's correlation with those same factors. And consistent with what personnel psychology has generally found, neither the actual assessments of the lawyers' job performance (based on the effectiveness factor ranking scales), nor their scores on the battery of tests that predicted professional competence, showed correlations to race that were practically significant. While the LSAT favors white applicants, these new tests show promise to place applicants on a level playing field, regardless of race.

C. Next Steps and a Research Agenda

The transformation of this initial research into a workable admissions test would come with further research. The first phase of the study looked only at lawyers who graduated from Berkeley Law and Hastings College of the Law. A next phase would begin earlier in career development (applicants rather than lawyers) and include people who will land at a much broader range of schools. Ideally, a longitudinal validation study would give a version of a new test—consisting of a mix of the best situational judgment, biographical data and personality assessment questions—to law school applicants. Researchers would then track test takers through the application process, through law school (or lack thereof, should some test takers decide not to go to law school

48. This test was the Hogan Personality Inventory (HPI). For more information on the HPI see Robert Hogan, Joyce Hogan & Rodney Warrenfeltz, *The Hogan Guide: Interpretation and Use of Hogan Inventories* (Hogan Assessment Systems 2007).

49. The research team drafted the situational judgment (SJT) questions and the biographical data (BIO) questions themselves. In doing so, they relied on the personnel psychology principles described above. Some of the SJT and BIO questions were thrown out as invalid, but many proved scientifically valid. Our claims of correlation are based on those validated questions. Future tests would have to go through similar validation processes.

50. The results of positive and negative vary depending on the performance measure. For more information, see Shultz & Zedeck, *Predicting Lawyer Effectiveness*, *supra* note 44.

or not be admitted), and into the beginning stages of their careers (and perhaps beyond). Throughout, researchers would examine whether the test takers' predicted lawyering abilities (represented by their scores on the Shultz-Zedeck tests) correlated with appraisals of their lawyering skills. In other words, could we replicate the correlations we found in the initial study?

That same research process would consider the question of coachability. A typical response of someone who hears about this research for the first time begins with, "Wow, that's amazing! Is it for real?" A longitudinal study that captures a broad range of applicants/students/lawyers⁵¹ would confirm the answer to that first question. The second set of questions sound something like, "But what happens when Kaplan and Princeton Review create Shultz-Zedeck prep courses—is this test coachable? Will that create the same racial disparities all over again?" And those are fair and important questions.

The testing literature defines coaching (or "coachability") in two different ways. Coaching can instruct, enhancing students' knowledge and abilities, or it can improve students test taking orientation, increasing "familiarity, confidence and experience with standardized tests and test formats."⁵² The former isn't terribly problematic from a validity standpoint. If students develop skills that will improve their lawyering abilities as they prepare for the tests, the profession benefits. The problem with coaching as instruction stems from uneven resource distribution. If it turns out to be true that Kaplan can create preparation courses that improve students' abilities (and thus scores), then those who have access to prep courses will have scoring advantages. And depending on the magnitude of those advantages, it is possible that coaching could diminish the racial equity benefits of the Shultz-Zedeck test. We believe it unlikely that a test prep course could significantly alter students' abilities, as they relate to the 26 dimensions in six weeks or so. Moreover, many of the S-Z tests used empirically-based scoring, meaning that "right" answers were determined not in the abstract but by choosing as "correct" the choices made by attorneys who were most highly rated on the factor at issue. But we need more information.

Coaching that improves test-taking skills, "characterized by intensive, short-term, massed drill on items similar to those in the test," has implications for a test's validity. This kind of coaching's impact on "cognitive" tests (like the LSAT) has been studied extensively, albeit mainly by the two opposing interest groups—test administrators, and test preparation companies.⁵³ Predictably,

51. We imagine that this research would also capture and track non-lawyers: applicants who did not go to law school, who left law school early, and lawyers who left the profession.
52. Chaitra M. Hardison & Paul R. Sackett, Use of Writing Samples on Standardized Tests: Susceptibility to Rule-Based Coaching and the Resulting Effects on Score Improvement, 21 *Applied Measurement in Educ.* 227, 228 (2008).
53. *See, e.g.*, Robert L. Linn, Admissions Testing: Recommended Uses, Validity, Differential Prediction, and Coaching, 3 *Applied Measurement in Educ.* 297 (1990); Devon W. Carbarido & Cheryl I. Harris, The New Racial Preferences, 96 *Cal. L. Rev.* 1139 (2008); Lani Guinier, Reframing the Affirmative Action Debate, 86 *Ky. L.J.* 505 (1997-1998).

research sponsored by the LSAC finds negligible impact from coaching while test prep sponsors find significant score improvement after good coaching. Relatively little research, however, has considered coaching's effects on other kinds of performance tests.⁵⁴ What we do know about coaching and situational judgment tests seems to suggest that some question formulations are less susceptible to coaching than others⁵⁵ and that tests with complex scoring systems (asking not only for the best answer to a question but also the worst, for example) and heterogeneous content might be less susceptible to coaching than tests designed to predict a narrow set of skills.⁵⁶ That is generally good news—questions can be rephrased, if research suggests they should be, and the Shultz-Zedeck test involves complex content. But research on the actual test must be done before we can declare with any certainty that it is both valid and racially equitable in the face of potential coaching. The Shultz-Zedeck study provides sufficiently promising results that further research is worth doing.

D. Implications for Admissions

Schools could begin to use the tests now and take part in continuing research or they could wait until further research has replicated the first study's results. Either way, our hope is that applicants will be able to take the Shultz-Zedeck test in conjunction with the LSAT (which would avoid the added burden of a second test date). The test probably would take no longer than an hour to administer and it would include a mixture of situational judgment, biographical data and personality questions. Law schools could use the results of the test in several different ways. If, for example, a school wanted to maintain a threshold level of predicted academic success among its students, it could set an LSAT floor. Applicants whose LSAT met or exceeded that floor would be among the pool eligible for further consideration. At that point, the LSAT would cease to be relevant and applicants could be judged based on scores related to the lawyering effectiveness measures and other less tangible factors. Alternately, applicants could be grouped together within LSAT bands and the Shultz-Zedeck tests used to decide among students within each band. Admissions officers could also combine the new test scores with the LSAT and undergraduate grades to create a new composite score, and use that score in much the same way as the index score is used now—preferring applicants with higher overall composite scores over those with lower scores. Another version of that approach would be to admit a set number of students, perhaps 20 percent of the class, based primarily on traditional index scores and use

54. See Michael J. Cullen, Paul R. Sackett & Filip Lievens, Threats to the Operational Use of Situational Judgment Tests in the College Admission Process, 14 *Int'l J. of Selection and Assessment* 142, 143 (2006).

55. See Filip Lievens, Tine Buyse, Paul R. Sackett & Brian S. Connelly, The Effects of Coaching on Situational Judgment Tests in High-Stakes Selection, 20 *Int'l J. of Selection and Assessment* 272, 276 (2012).

56. See *id.* at 280.

the new composite number to guide decisions on the rest of the class.⁵⁷ All of these options would reduce the arguably discriminatory nature of law school admissions, some more than others. The best approach certainly will not be developed quickly but a moral commitment to equality demands that we invest the time.⁵⁸

III. Conclusion

For too long law schools have employed overly narrow admissions practices that tend to favor white applicants at the expense of applicants of color. Those practices seek out applicants who promise to get better first-year grades, grades that reward stylized argumentation and the analytic reasoning necessary to excel at it. Growing consensus suggests that lawyers need to know how to do so much more than reason and argue. They counsel and advise, they collaborate and build relationships, they fact-find and engage in research, they problem-solve. And success as a lawyer depends upon the ability to do all of this and more with integrity and skill. The Shultz-Zedeck research suggests two important and interrelated findings: it is possible to test for the propensity to be a good lawyer, robustly defined, and—if we admit students on the basis of these tests—law school admissions will become more racially equitable.

The next research and implementation steps cannot happen without a commitment from the law school community. To conduct further research we need funding and participation at much higher levels. This research offers an important starting place for any school that is committed to contributing to a diverse and skilled legal profession. But we cannot continue it without a

57. Whichever option law schools choose, they will not be the first institutions to consider situation judgment-like or personality tests for admissions. In medical fields, interpersonal situational judgment tests are used in admissions in Belgian medical schools and to certify general practitioners in the United Kingdom. See Filip Lievens, Tine Buyse & Paul R. Sackett, *The Operational Validity of a Video-Based Situational Judgment Test for Medical College Admissions: Illustrating the Importance of Matching Predictor and Criterion Construct Domains*, 90 *J. of Applied Psychol.* 442 (2005). The Association of American Medical Colleges, the body that administers medical schools' admissions test (the MCAT), recently considered adding personality measures to the test. While the association decided against it for now, sections were added on the behavioral sciences and critical thinking in a cross cultural context. See Pauline W. Chen M.D., *A Better Medical Admissions Test*, N.Y. Times, May 5, 2011, available at [www. http://well.blogs.nytimes.com/2011/05/05/a-better-medical-school-admissions-test/](http://well.blogs.nytimes.com/2011/05/05/a-better-medical-school-admissions-test/). The Educational Testing Service has created an online evaluation called the Personal Potential Index (PPI) that assesses creativity, communication skills, teamwork, resilience, planning and organization and ethics and integrity. A variety of business and graduate schools accept PPI scores, in addition to traditional cognitive measures, for admissions purposes. See Patrick C. Kyllonen, *The Research Behind the ETS Personal Potential Index (PPI)*, Educational Testing Service (2008), available at http://www.ets.org/Media/Products/PPI/10411_PPI_bkgrd_report_RD4.pdf.
58. We believe that, while beyond the scope of this paper, the research also has obvious implications for curriculum reform. For the beginnings of discussions of what those implications might be, see William D. Henderson, *A Blueprint for Change*, 40 *Pepperdine L. Rev.* 461 (2013); Kristen Holmquist, *Challenging Carnegie*, 61 *J. Legal Educ.* 353 (2012).

serious commitment of money and time from legal educators and the broader community interested in finding a way to ensure a racially inclusive profession.