



September 19, 2016

From Scott DeVito, dean and professor of law at Florida Coastal School of Law

July 2016 Florida Bar Results

The July 2016 Florida Bar results for first-time takers were released. Florida Coastal School of Law was ninth (out of 11) in the state with a pass rate of 52% (state average of 68.2%).

To all of our bar passers, we (your professors, administrators and peers) congratulate you. Your hard work and determination have paid off. You are now poised to begin your legal careers and I am confident that I will hear great things about you in the coming years.

To all who worked hard but did not succeed *this* time, we admitted you, not because we hoped you could succeed, but because we know you will succeed. It is true that you have not yet passed, but we have confidence that you will soon realize your full potential, and we are here to help.

Nonetheless, this marks another bar exam where Coastal Law bar takers have not been as successful as they and we had hoped. Our recent first-time bar success level is unacceptable, and it is the proverbial elephant in the room.

As dean and professor of law at Coastal Law, I am incredibly frustrated, but not for the reasons one may assume. I'm frustrated that we, in the legal profession, are not focused on the most important measure that is in dire need of improvement.

I write today to argue, as have others before me, that we are ignoring the cultural crisis that has been staring us right in the face for decades. The legal profession is just 12% diverse.¹ As I will show below, adopting an LSAT checkpoint-based model for admissions will result in a continuation of a legal profession where African Americans, Asians, Hispanics, and Native Americans continue to be woefully under-represented while White Americans continue to be over-represented. Our nation's larger problems will not be resolved until we have a legal profession that represents all of the people in our country.

The 150 Checkpoint

Right or wrong, LSAT scores and state bar exam pass percentages are the holy grails for every law school in the country. Conventional wisdom tells us law schools should accept only students with LSAT scores of 150 or above, and that students below that threshold will struggle with bar exams and experience disappointment in the job market.

Well, conventional wisdom rubs me the wrong way. I have a fulfilling life, because my father was able to overcome benchmarks and break through the stereotypes of race to get a college degree. My father was an Italian American. When my father was a child, Italians were considered mentally inferior and, in New York, were sent to vocational high schools preparing them for a trade. My father was trained to be a carpenter. When I was one-year-old, he became disabled due to a work-related injury. He decided to use that disability as an opportunity to go to college. At that time, the college required students to

¹ See, e.g., Deborah L. Rhode, *Law is the least diverse profession in the nation. And lawyers aren't doing enough to change that*, THE WASHINGTON POST, May 27, 2015, available at https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/?utm_term=.d5fa070fb607 (stating that 88% of lawyers are white).

“pass” an “IQ” test. My father did not pass.

That should have been the end. He should have stayed on disability for the rest of his life and we, his children, should have ended up having to scramble for any opportunity we could get. Instead, my father did what he always did. He fought back. He took remedial classes and received straight A's in them. When he went to the college and asked, “If I am not smart enough for college, how could I get straight A's in all of these pre-college classes?” They had no choice. They let him in.

He graduated with a degree in mathematics while driving a cab at night and helping my mother raise three children. He won third place in a New York City chess championship, started a highly successful computer consulting business, earned enough to buy multiple pieces of commercial real estate in New York City, bought and ran two successful restaurants, started two retail stores, and, after moving to North Carolina, was elected a county commissioner.

Not bad for a man who the *objective* tests said wasn't smart enough for college.

Yes, I have a personal stake. I don't like purportedly objective tests or benchmarks. And I don't like racial injustice.

Race and the 150 LSAT Checkpoint

America has come to a demographic crossroads—transitioning from a majority White society to a racial plurality society. At over 88% White (a demographic more consistent with the 1970s² than the mid-2010s), the legal profession sits on the wrong side of that crossroads.

² U.S. Census Bureau, *A Look at the 1940 Census*, https://www.census.gov/newsroom/cspan/1940census/CSPAN_1940slides.pdf (showing a population that is 87.5% white in 1970).

If recent critics of law school admission practices get their way by preventing anyone with an LSAT below 150 from entering law school because they are at too high a risk of failing the bar, then the profession will remain stalled on the wrong side of the crossroads.

Here's why.

As the chart below shows, many diverse students fall well below the 150 cut-off:

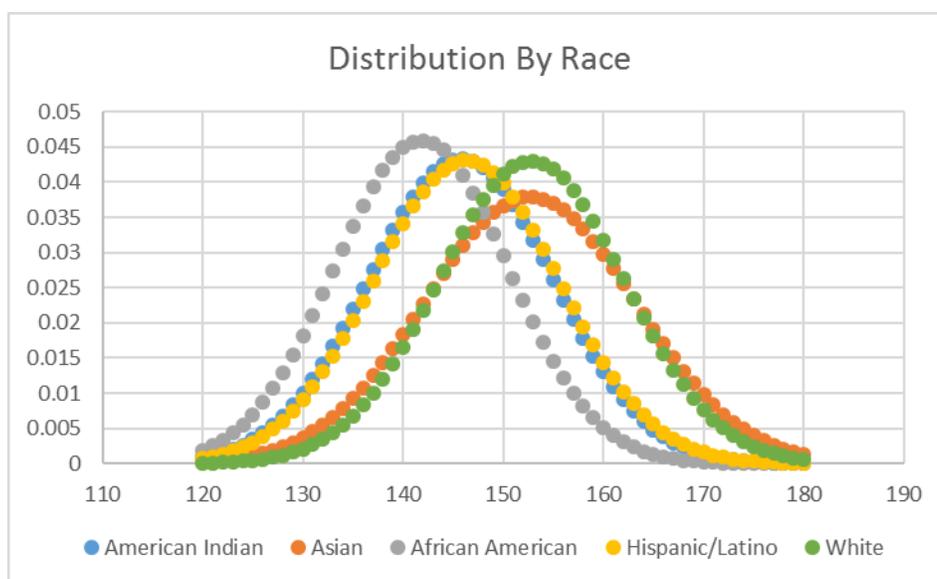


Chart 1

In addition, based on LSAT's reported distributions by race³ and the U.S. Census data,⁴ there are 62.1% fewer Hispanics, 37.5% fewer American Indians, 2.3% fewer Blacks,

³ I calculated the distribution for each racial classification reported by LSAC based on the assumption of a normal distribution and the means and standard deviations reported by LSAC. See Susan P. Dalessandro et al., *LSAT Performance With Regional, Gender, and Racial/Ethnic Breakdowns: 2007-2008 Through 2013-2014 Testing years*, 23, available at [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-14-02.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-14-02.pdf) (reporting mean and standard deviation by "Race/Ethnicity" for 2013-14)

⁴ All demographic calculations were derived from U.S. Census reports. For example, the data for race and college attainment was derived from U.S. Census Bureau, Current Population Survey, 2015 Annual Social and Economic Supplement. Similarly, general statistics relating to race/ethnicity were derived from U.S. Census Bureau, State Population Estimates by Age, Sex, Race, and Hispanic Origin, 2012. Released June 13, 2013. For reasons of readability and time, I have not "shown the work" required to create the statistics used in this blog post. But, with the sources referenced herein, they can easily be recreated to confirm their accuracy.

6.9% more Whites, and 36.7% more Asians taking the LSAT than we would expect given the racial makeup of the 25-34-year-old population (Chart 2).

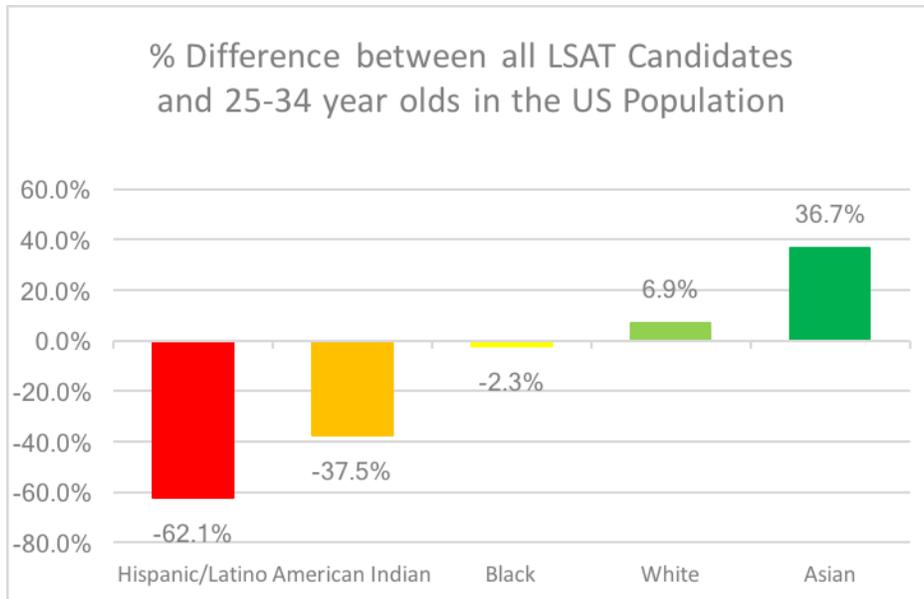


Chart 2

If we shift the comparison from the general population to 25-34 year olds with a four-year degree we continue to see racial disparity.⁵ There are 15.5% fewer Asians, 50% fewer Blacks, and 48% fewer Hispanics that pass the 150 LSAT checkpoint than we would expect given the population of college educated 25-34 year olds.

The only group that outperforms expectations under the 150 LSAT checkpoint is 25-34-year-old Whites with a four-year degree. Eight point two percent more of them get through the checkpoint than we would expect (Chart 3).

⁵ And that ignores the fact that who goes to college is not representative of our population. Skewing the data from the outset.

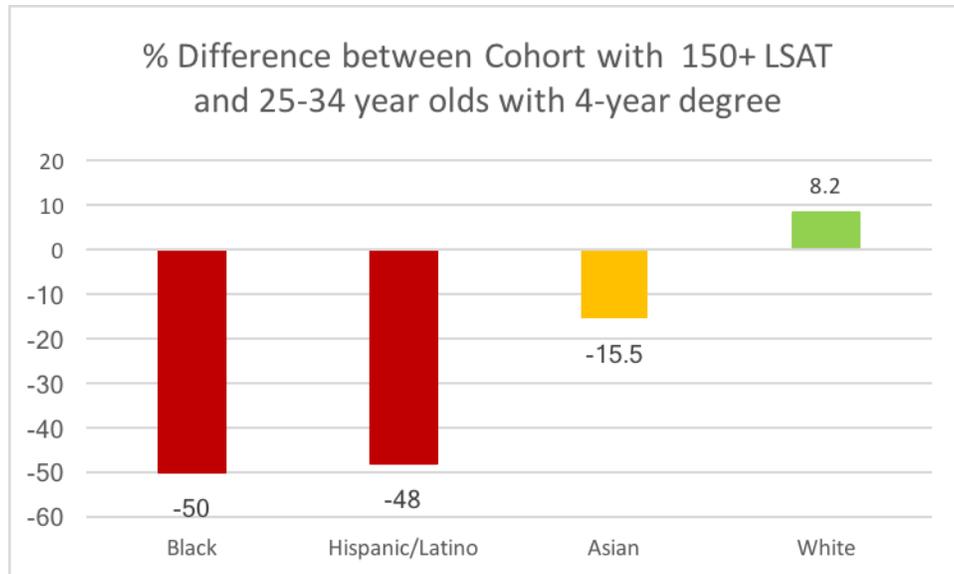


Chart 3

Students Below the 150 Checkpoint Can Succeed

Some may argue that admitting students with LSATs below 150 to increase diversity is really just economic exploitation of vulnerable populations. As a result, even though the 150 LSAT checkpoint reinforces structural racism, it is better than economic exploitation.

That argument only works if it is true (it isn't) that students with LSATs below 150 cannot pass the bar at reasonable levels. At Florida Coastal, we have had many students with LSATs below 150 and they passed at levels well above the ABA's contemplated 75% pass rate within 2 years of graduation. (Table 2).

LSAT range	Bar pass rate ⁶	Count
<140	87%	15
140-144	83%	186
145-149	86%	636

Table 1

Let me be clear. I am not saying that we should admit students to the legal profession that we do not think can succeed. What I am saying is the only solution to the bar results problem that I currently have, using higher LSAT scores as a checkpoint, will harm another outcome—diversity in the legal profession. That is deeply frustrating.

The problem is that if you ask the majority of our critics which is more important, first-time bar passage rates or a culturally diverse student body, I feel comfortable wagering the former would be considered more important.

Coastal Law and the 150 LSAT Cutoff

Sadly, I must also now count myself in that category (at least as a functional equivalent) as I raise Coastal Law's LSAT credentials to achieve better bar results.

Our goal is for Coastal students to pass the bar at a first-time rate of *at minimum 75%*. To achieve this goal, we have, in the last two years, undertaken key changes that will soon raise our first-time bar passage.

Certain changes, like changes to the curriculum and offering BarBri to students at no additional charge, will have and have had immediate effects on bar passage. These changes have already improved our MPRE results where we were first in the state this August. Others, like raising incoming credentials, will take time to cycle through.

We have raised our incoming LSAT requirements by five points and plan to raise it two more in the subsequent admission cycle. This will return us to admission criteria where we had consistent first-time passage in the mid-70s.⁶

⁶ Coastal Law's first-time pass rate was consistently in the mid 70s prior to 2010 when our median LSAT was 150.

While I am sure that these changes will achieve the desired bar pass result, I am frustrated by having to raise incoming credentials in this way.

Bolder Changes Needed

As a law school dean, I have no power to directly alter the structural social inequities that are the root cause of the problem of low LSATs (e.g., systematic underfunding of poorer and non-white public schools). But, I do have power to address the problem of racial diversity in the legal profession at the level of our law school.

At minimum, Coastal Law rejects the 150 LSAT cutoff. We believe that students with LSATs below 150 can succeed—and we have proof that they do.

So do many first and second tier law schools—as the number of students with LSATS in the high 130s and the low 140s who transfer from Coastal to those schools clearly demonstrate.

Our willingness to admit lower LSAT score applicants has gotten us a lot of heat. Given our recent first-time bar pass rates, some of that heat is clearly earned—our first-time bar pass rates are not where they should be. We have taken major steps to improve first-time bar pass outcomes. These changes, including changes to our incoming LSAT quartiles, will produce great improvements in coming administrations of the bar.

But there is something disconcerting here. I have just explained, hopefully persuasively, that the 150 LSAT cut-off will only reinforce structural racism and that students well below that threshold can succeed at law school. At the same time, I have pointed out that we are, to a great degree, bowing to that 150 LSAT cut-off by moving to a 147 bottom quartile.

The net result of this is clear. Our bar pass rates will go up. Our diversity rate of 40% will go down.

Students with LSATS well below 150 can, often do, succeed by even the “objective” criteria of first time bar pass. The 150 LSAT checkpoint reinforces structural racism in our society in the very profession that should be at the center of overturning structural racism. In that context, adopting a 150 LSAT checkpoint, is wrong-headed.

I will be honest. While I am dedicated to solving this problem, I do not have the solution.

I ask our critics and the legal profession in general: are we going to allow the consequences of structural racism in the modern world to continue to be mirrored in the legal profession?

If we are to effect that change, we must come together to figure out how to make changes in legal education to pull the legal profession out of the past and into the demographics of the future.

Because the status quo can't be our answer.