

2022

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### Recommended Citation

Garrett, Courtney (2022) "Aptitude Testing as a Racially Discriminatory and Class-Skewed Method of Regulating College Admissions. How Did It Start and Who Profits from the Current Scheme?," *Tennessee Journal of Race, Gender, & Social Justice*: Vol. 12: Iss. 1, Article 3.

Available at: <https://ir.law.utk.edu/rgsj/vol12/iss1/3>

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APTITUDE TESTING AS A RACIALLY DISCRIMINATORY AND CLASS-SKEWED METHOD OF REGULATING COLLEGE ADMISSIONS. HOW DID IT START AND WHO PROFITS FROM THE CURRENT SCHEME?

*Courtney Garrett\**

Research Overseen by: Richard Delgado and Jean Stefancic

I. INTRODUCTION

As I sit here in my nice, ranked law school, I think of how lucky I am. Several of my fellow Black classmates gather, and we all think about how lucky we are to be here. From a large pool of applications, we are the chosen few to represent our minority. How lucky are we, right? The following year, we greet the next group of lucky minorities and tell them how lucky they are to be here, but the statement now turns to a question. Are we lucky, or did we manage to beat a stacked agenda? Is the eerily similar number of admitted law students a true representation of qualified individuals or designed results?

The lack of minority representation in academic programs stems from the intentional effects of aptitude testing. For example, the law school admissions test (“LSAT”) is designed to induce predictable results that place Black students in adverse situations. The LSAT has tended to prevent many students from entering law school, but Black students in particular.<sup>1</sup> Some scholars, such as Vernellia Randall, label the LSAT as another form of institutional racism.<sup>2</sup> Other scholars, such as Professor Richard Delgado, have documented the problematic history of the founders of aptitude testing in America,<sup>3</sup> as well as how it continues to yield disparate results.

The LSAT is one of the most difficult entrance exams for applicants seeking to attend any postgraduate course of study. Many law schools use the test to gauge how successful a student will be during the first year.<sup>4</sup> LSAT scores are generated and posted on a website that is controlled by an organization known as the Law

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<sup>1</sup> Vernellia R. Randall, *The Misuses of the LSAT: Discrimination Against Blacks and Other Minorities in Law School Admissions*, 80 ST. JOHN’S L. REV. 107, 120–24 (2006).

<sup>2</sup> *Id.* at 107.

<sup>3</sup> Richard Delgado, *Official Elitism or Institutional Self Interest? 10 Reasons Why UC-Davis Should Abandon the LSAT (and Why Other Good Law Schools Should Follow Suit)*, 34 U.C. DAVIS L. REV. 593, 595–97 (2001).

<sup>4</sup> Lily Knezevich & Wayne Camara, *The LSAT is Still the Most Accurate Predictor of Law School Success*, LAW SCHOOL ADMISSION COUNCIL, <https://www.lsac.org/data-research/research/lsat-still-most-accurate-predictor-law-school-success> (last visited Mar. 13, 2022).

School Admissions Council (“LSAC”),<sup>5</sup> which essentially oversees the application process from start to finish. Actual administration of the LSAT is conducted by the Educational Testing Services (“ETS”).<sup>6</sup> However, the history of the ETS has alarmed many Critical Race Theory scholars, such as Richard Delgado and Jean Stefancic.<sup>7</sup> Their research, along with that of other scholars, has unveiled the discriminatory roots in aptitude testing, ranging from the SAT to professional tests such as the LSAT, GRE, and MCAT. The following analysis will examine both the discriminatory effects of aptitude testing and those who consequently benefit from its implementation.

The requirements for aptitude testing are a modern form of discrimination and should be corrected to ensure equal access to higher education. Poorly written aptitude tests like the LSAT, MCAT, and GRE favor Caucasians over minorities and do not test the relevant skills needed to be a professional in any of the associated professions.<sup>8</sup> Even more crucial to this process, testing scores dictate scholarship decisions by schools. This creates an added barrier to minorities in need of financial assistance due to racial wealth gaps. Aptitude tests are gate keepers to higher education; therefore, we should use other methods to gauge applicants for graduate programs.

## II. THE CONTROVERSIAL HISTORY OF APTITUDE TESTING

Minorities seem to always find themselves amid rallies and demonstrations against social injustice. This history of protest has deep roots within the realm of equal opportunities to education. The American education system was predominantly segregated until the Supreme Court unanimously ruled in *Sweatt v. Painter*<sup>9</sup> that a separate state law school for African Americans was not equal to the all-white University of Texas, and, therefore, the plaintiff should be admitted to the university.<sup>10</sup> The percentage of minority law students, primarily Mexican American and African American, tripled from 1971 until 1996, but has drastically slowed following anti-affirmative action initiatives, such as California’s Proposition 209 in 1996.<sup>11</sup> Although the number of Black law school students has risen since 2019,

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<sup>5</sup> *About the Law School Admission Council (LSAC)*, LAW SCHOOL ADMISSION COUNCIL, <https://www.lsac.org/about> (last visited Mar. 13, 2022).

<sup>6</sup> *Id.*

<sup>7</sup> Delgado, *supra* note 3, at 595–97.

<sup>8</sup> Delgado, *supra* note 3, at 597–600.

<sup>9</sup> 339 U.S. 629 (1950).

<sup>10</sup> *70 Years After ‘Sweatt,’ How Much Progress have African American Law Students Made?*, A.B.A. (Feb. 16, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/02/70-years-after-sweatt--how-much-progress-have-african-american-1/>.

<sup>11</sup> *Id.*

the increase is on a decelerating trend, as ABA data has revealed that Black enrollment in law schools dropped four consecutive years from 2014 to 2018.<sup>12</sup>

Although the total number of law school graduates is rising, the failure of schools to accept minorities at a similarly increasing rate creates a noticeable shortage of diversity and minority representation. Similarly, minorities enroll in law school in demonstrable numbers, but a large disparity exists in the attrition rates between whites and nonwhites, particularly among African Americans.<sup>13</sup> For example, in 2016, white students comprised 62% of first-year law students and 49% of first-year attrition.<sup>14</sup> In contrast, minority students made up only 30% of first-year enrollment but accounted for 44% of attrition.<sup>15</sup>

### A. Eugenics and Aptitude Testing

Before the LSAT became the dominant entrance exam for law schools, the Scholastic Assessment Test (“SAT”) served as a barrier for those who desired to pursue a legal career.<sup>16</sup> Although Henry Chauncey is credited as the creator of the SAT, Carl Brigham was the test’s original architect.<sup>17</sup> As a firm believer in the purification of races, Brigham believed Catholics, Jews, and East Europeans represented a defective strain of humanity.<sup>18</sup> Through his position as an early president of the College Board, Brigham created a universal standardized test for the Board in the early 1900’s that became the precursor of the modern SAT.<sup>19</sup> Prior to developing the SAT, Brigham had created intelligence tests for United States Army recruits during World War I.<sup>20</sup> The SAT, consequently, was designed to test aptitude rather than the actual knowledge of a student.<sup>21</sup> Henry Chauncey, a former student of Carl Brigham’s Princeton lectures, became an advocate of the testing method and utilized the test to select scholarship students from a pool of applicants

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<sup>12</sup> *ABA Required Disclosures*, A.B.A., [https://www.americanbar.org/groups/legal\\_education/resources/statistics/](https://www.americanbar.org/groups/legal_education/resources/statistics/) (last visited Mar. 13, 2022).

<sup>13</sup> *Law School Enrollment by Race & Ethnicity (2018)*, ENJURIS, <https://www.enjuris.com/students/law-school-race-2018.html> (last visited Feb. 5, 2022).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Delgado, *supra* note 3, at 596.

<sup>17</sup> Ann LoLordo, *Testing 'Big Thought' to Increase Diversity; SAT: Henry Chauncey, Who Led the Development of the First College Admissions Test, Defends the Program Against 'Meritocracy' Critic*, THE BALTIMORE SUN (Mar. 19, 2020, 12:00 AM), <https://www.baltimoresun.com/news/bs-xpm-2000-03-19-0003190155-story.html>.

<sup>18</sup> Delgado, *supra* note 3, at 596.

<sup>19</sup> LoLordo, *supra* note 17.

<sup>20</sup> Delgado, *supra* note 3, at 595.

<sup>21</sup> Delgado, *supra* note 3, at 596.

at Northeastern prep schools.<sup>22</sup> Brigham may have served as the test’s architect, but it was his pupil’s great success as head of the Educational Testing Service that brought testing to a wide audience.<sup>23</sup>

Brigham’s history of personal biases against ethnic and racial groups invites investigation into the built-in biases that lurk within his designed testing programs. Brigham was a eugenicist who designed the SAT with the hopes that it would help prove the superiority of the white race and prevent “the infiltration of white blood into the Negro.”<sup>24</sup> According to his former college, Princeton University, Brigham was a member of the Advisory Council of the American Eugenics Society and asserted that “Nordic races” were markedly superior to others.<sup>25</sup>

### III. ARGUMENTS AGAINST APTITUDE TESTING’S BIAS

Aptitude testing produces biased results that favor white students and exploit deficiencies in minority students.<sup>26</sup> Recent studies have pinpointed bias in the questions of standardized tests, which discriminate in favor of certain races, just as Brigham intended.<sup>27</sup> Standardized testing originated in the early twentieth century to demonstrate the intellectual superiority of northern European whites as its originators subscribed to eugenic theories that consider non-whites and southern European immigrants as sources of contamination to the human gene pool.<sup>28</sup>

The testing gap has not resulted from poor genes, but rather from inadequate educational opportunities that began at an early age.<sup>29</sup> For decades, minority students have particularly struggled to meet the national proficiency bar for

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<sup>22</sup> LoLordo, *supra* note 17.

<sup>23</sup> LoLordo, *supra* note 17.

<sup>24</sup> Sidney Fussell, *The Problem with the SAT’s Idea of Objectivity*, THE ATLANTIC, (May 18, 2019), <https://www.theatlantic.com/technology/archive/2019/05/college-board-sat-adversity-score/589681/>.

<sup>25</sup> Robert Klitzman, *Proceeding with Great Caution*, PRINCETON ALUMNI WEEKLY, (Mar. 9, 2020),

<https://www.bing.com/search?q=proceeding+with+great+caution+princeton&cvid=bfd2568daccf4f5caa3dbb94dbfb3091&aqs=edge..69i57j69i64.14726j0j4&FORM=ANAB01&PC=HCTS>.

<sup>26</sup> National Center for Education Statistics, Digest of Education Statistics Table 226.10, U.S. Dept. of Ed. (2009), [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_226.10.asp](https://nces.ed.gov/programs/digest/d19/tables/dt19_226.10.asp).

<sup>27</sup> Maddy Gates, *A Civil Rights Challenge to Standardized Testing in College Admissions*, HARV. C.R. C.L. L. REV. (Nov. 12, 2019), <https://harvardcrcl.org/a-civil-rights-challenge-to-standardized-testing-in-college-admissions/>.

<sup>28</sup> Delgado, *supra* note 3, at 595.

<sup>29</sup> Eric Dubow, Paul Boxer & Rowell Huesmann, *Long-term Effects of Parents’ Education on Children’s Educational and Occupational Success: Mediation by Family Interactions, Child Aggression, and Teenage Aspirations*, WAYNE STATE UNIV. PRESS (July 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2853053/>.

reading.<sup>30</sup> A significant reason for this deficiency can be attributed to the long-term effects of poor education.<sup>31</sup> It is important to consider how this bias sets in by design rather than by accident, starting with a Black child's early years.<sup>32</sup>

The long-term effects of poor school environments created educational gaps for parents in non-white homes.<sup>33</sup> Studies show that an educated parent provides a child a better chance for educational success.<sup>34</sup> However, minorities have been denied access to literacy in America for decades; as a result, this lack of access has given white homes a crucial literacy advantage compared to minority homes.<sup>35</sup> By age two, disparities already present themselves between Black and white children in development skills.<sup>36</sup> These issues may be attributed to parents who are ultimately the child's first teacher.<sup>37</sup> Although research has pointed to the lack of time and to family obligations as valid reasons for the disparity, some minority parents are simply not comfortable with reading.<sup>38</sup> This discomfort can be traced to long-standing anti-literacy laws, which were a response to the increased support to abolitionism and education of both enslaved and free blacks in northern states.<sup>39</sup> Following the end of slavery, Blacks continued to face opposition against progress in education.<sup>40</sup> Blacks and other minorities were constantly denied admission to schools.<sup>41</sup> Therefore, children in non-white homes became more likely to lack a proper educational foundation because of an uneducated or unavailable parent.<sup>42</sup>

Eugenicists use literacy weaknesses to exploit minorities.<sup>43</sup> The SAT is a demonstrable example of how testing administrators have weaponized this known weakness to their advantage in aptitude testing. The verbal section of the SAT uses language that is commonly used amongst white students and this places minorities

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<sup>30</sup> Natalie Wexler, *How 'Reading Instruction' Fails Black and Brown Children*, FORBES (June 6, 2020), <https://www.forbes.com/sites/nataliewexler/2020/06/06/how-reading-instruction-fails-black-and-brown-children/?sh=20559a7c4ebe>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Dubow et al., *supra* note 29.

<sup>34</sup> Dubow et al., *supra* note 29.

<sup>35</sup> Lindsey Cook, *U.S. Education: Still Separate and Unequal*, U.S. NEWS (Jan. 28, 2015), <https://www.usnews.com/news/blogs/data-mine/2015/01/28/us-education-still-separate-and-unequal> (stating Black parents, most of whom are less educated than their white counterparts, don't expect their children to attain as much education as white parents expect).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Colette Coleman, *How Literacy Became a Powerful Weapon in the Fight to End Slavery*, HISTORY (Jan. 29, 2021), <https://www.history.com/news/nat-turner-rebellion-literacy-slavery>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Wexler, *supra* note 30.

<sup>43</sup> Wexler, *supra* note 30.

at a disadvantage.<sup>44</sup> In 2019, white test-takers averaged 565 on the evidence-based reading and writing (“ERW”) portion of the exam as compared to Black students who averaged 479.<sup>45</sup> The verbal section of the SAT is replete with bias based on the wording of the exam.<sup>46</sup> A study called “Differential Item Functioning” examined questions where students with similar academic backgrounds and achievements gave answers differentiated by race—i.e., Black and white students predicted to get similar scores answered the questions differently along racial lines.<sup>47</sup> The test revealed that the SAT utilizes certain expressions attributable to the dominant culture, which for American society, benefits white students as compared to Black students.<sup>48</sup> In 2015, the Brookings Institute conducted a study of the SAT that showed white students averaging scores of 534, while Black and Latino students ranged significantly lower with Black students averaging the lowest score of 428.<sup>49</sup>

The effects of the literacy tactics used on aptitude tests are comparable to the literacy tests that prevented minorities from voting during the Jim Crow era.<sup>50</sup> Literacy tests were used to prove a citizen’s ability to read and understand English, which was a measure to ensure that the applicant was an educated and informed voter.<sup>51</sup> Like the SAT, administrators of literacy tests for voting in the early nineteenth century utilized vocabulary that was not commonly known or understood by uneducated Black people.<sup>52</sup> Many Black people failed to pass literacy tests because of institutionalized discrimination from both lack of educational opportunities and often the grading by testing site administrators. Ultimately, the literacy test disqualified minorities and the poor who were never afforded opportunities to become educated due to racial and economic status.<sup>53</sup> It would be naive for any person to think that the same discriminatory tactics present within voting literacy tests did not loom in the thought patterns of the designers of the LSAT or SAT. Systematic racism can be significantly more effective when

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<sup>44</sup> Mark Wilson & Maria Santelices, *Unfair Treatment? The Case of Freedle, the SAT, and the Standardization Approach to Differential Item Functioning*, 80 HARV. ED. REV. 107 (2010), <https://bearcenter.berkeley.edu/sites/default/files/Wilson%20%2322.pdf>.

<sup>45</sup> National Center for Education Statistics, *supra* note 26.

<sup>46</sup> Gates, *supra* note 27.

<sup>47</sup> Wilson & Santelices, *supra* note 44.

<sup>48</sup> Wilson & Santelices, *supra* note 44.

<sup>49</sup> Richard Reeves, *Race Gaps in SAT Scores Highlight Inequality and Hinder Upward Mobility*, BROOKINGS INSTITUTE (Feb. 1, 2017), <https://www.brookings.edu/research/race-gaps-in-sat-scores-highlight-inequality-and-hinder-upward-mobility/>.

<sup>50</sup> National Museum of American History, *Literacy Tests*, NATIONAL MUSEUM OF AMERICAN HISTORY (last visited Feb. 4, 2022), <https://americanhistory.si.edu/democracy-exhibition/vote-voice/keeping-vote/state-rules-federal-rules/literacy-tests>.

<sup>51</sup> National Museum of American History, *supra* note 50.

<sup>52</sup> National Museum of American History, *supra* note 50.

<sup>53</sup> National Museum of American History, *supra* note 50.

hidden within facially-neutral systems that, in actuality, discriminate against minorities. Like the verbal section of the SAT, literacy tests exploited the disadvantages of minorities.<sup>54</sup> While aptitude tests were implemented within the realm of educational opportunities and not voting rights, these entrance exams should be viewed as inflicting the same damaging effects and establishing the same socio-economic and racial barriers as the literacy tests of the Jim Crow era.

Similar to the literacy tests of the Jim Crow era, several studies have revealed that standardized tests are written without much consideration towards their discriminatory impact.<sup>55</sup> These studies reveal that thinking styles vary from person to person resulting in different expectations as to what answers are correct on standardized tests.<sup>56</sup> The SAT is notorious for having multiple right answers and punishing test candidates who deviate from the test designer's thought process.<sup>57</sup> Furthermore, experts have found several mistakes in the verbal test section of the SAT.<sup>58</sup> These issues are reflective in many aptitude tests; for example, on one multi-state bar examination administered by ETS, thirty to forty "correct" answers were found to be wrong.<sup>59</sup> When considering these errors, aptitude tests should meet the same ill fate as the literacy tests and be removed as a benchmark for students' actual success.

Test scores create a disheartening picture of the disparity between white students and minorities. Test scores from the SAT and LSAT candidly show the divergent results between race.<sup>60</sup> Black students' LSAT scores average around 142, while the average for white students' range around 153.<sup>61</sup> The mean score of the SAT reflects a similar gap among races as most minorities average over 50 points lower than white students.<sup>62</sup> More specifically, white students earned an average score around 1114 on the SAT, while Black students and other minorities averaged significantly lower, with the average ranging around 950.<sup>63</sup>

The scores and studies of the LSAT and SAT not only show a significant gap, but also show that no remedy to minimize or the reduce the gap in results has been successfully implemented. Furthermore, it can be argued that the ETS and other test designers would be better suited to ignore these disparities in order to

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<sup>54</sup> National Museum of American History, *supra* note 50.

<sup>55</sup> Delgado, *supra* note 3, at 595.

<sup>56</sup> Delgado, *supra* note 3, at 599.

<sup>57</sup> Delgado, *supra* note 3, at 599.

<sup>58</sup> Delgado, *supra* note 3, at 598.

<sup>59</sup> RICHARD DELGADO, ADRIEN WING & JEAN STEFANCIC, *LAW UNBOUND*, 199 (1st ed. 2007).

<sup>60</sup> National Center for Education Statistics, *supra* note 26.

<sup>61</sup> Scott Jaschik, *Do Law Schools Limit Black Enrollment With LSAT?*, *INSIDE HIGHER ED.* (Apr. 15, 2019), <https://www.insidehighered.com/admissions/article/2019/04/15/study-argues-law-schools-limit-Black-enrollment-through-lsat>.

<sup>62</sup> National Center for Education Statistics, *supra* note 26.

<sup>63</sup> National Center for Education Statistics, *supra* note 26.



preserve favorable results the more dominant socio-economic groups that utilize their products.

As a means to combat this discrimination, civil rights lawyers recently sent demand letters to universities such as the University of California to stop the consideration of SAT and ACT scores in admissions process decisions.<sup>64</sup> The lawyers argued that the exams are a proxy for race and wealth rather than a predictor of college success.<sup>65</sup> In 2017, the College Board added a new assessment tool to the exam after noting the disadvantages. The Board included the test-taker's neighborhood crime rate, high school curriculum, and the education level of their parents. While these attributes could aid in reducing the impact of discriminatory testing, pilot colleges only used it as a tool for reevaluation after an initial application rejection.<sup>66</sup>

#### IV. GRADUATE EXAMS ARE NOT PROPER TOOLS FOR PROFESSIONAL FIELDS

In America, graduate programs rely on skill specific entrance exams to determine whether a student is a viable candidate.<sup>67</sup> The ETS administers several, but we will take a closer look at the four most commonly administered exams. The LSAT, Medical College Admission Test ("MCAT"), Graduate Management Admissions Test ("GMAT"), and Graduate Record Examination ("GRE") are each used to predict a student's success in some of America's most well-established career paths such as lawyers, doctors, and master's degree programs.<sup>68</sup> These exams are popular with time-pressured admissions offices. However, are the test results accurately determining the most qualified candidates, or they merely producing another hurdle for minorities? Studies and scholarship report that these results may be flawed, yet, graduate programs continue to utilize the tests results as the most determinative factor for admission of the most likely to be successful candidates in graduate programs.<sup>69</sup>

Aptitude testing currently only tests one style of learning, and it ignores the concept of four ways of learning, called the VARK learning style model, which was introduced by Neil Fleming in 2006.<sup>70</sup> According to this model, students can learn

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<sup>64</sup> Gates, *supra* note 27.

<sup>65</sup> Gates, *supra* note 27.

<sup>66</sup> Fussell, *supra* note 24.

<sup>67</sup> Laura Bridgestock, *Graduate Admissions Tests at a Glance: GMAT, GRE, LSAT, TOEFL & IELTS*, TOP UNIVERSITIES (Apr. 17, 2021), <https://www.topuniversities.com/student-info/admissions-advice/graduate-admissions-tests-glance-gmat-gre-lsat-toefl-ielts>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> IJ Prithishkumar & SA Michael, *Understanding Your Student: Using the VARK Model*, 60 J. POSTGRAD MED. 183 (2014), <https://www.jpgmonline.com/article.asp?issn=0022-3859;year=2014;volume=60;issue=2;spage=183;epage=186;aulast=Prithishkumar>.

by visual, auditory, reading and writing, and kinesthetic styles of learning.<sup>71</sup> Reading and writing-based learners have an advantage because they read printed texts to gain information as compared to other learners, who preferably gather information through the other described ways.<sup>72</sup> As a result, each specific learning type requires a different manner of testing to assess performance and adequacy.<sup>73</sup> Former Harvard professor Howard Gardner expanded on Fleming's scholarship when he introduced his eight types of human intelligence.<sup>74</sup> These intelligences are spatial, bodily-kinesthetic, musical, linguistic, logical-mathematical, interpersonal, intrapersonal, and naturalistic.<sup>75</sup> A doctor or lawyer may require more than just writing skills; many professionals perform tasks such as heart surgery or public speaking, which may require more than writing skills. Therefore, universities should replace the current graduate entrance exams with more reliable and responsible alternatives for gauging future candidates that test other types of learning styles.

Although graduate exams have been defended as a reliable tool for determining success in graduate programs, several flaws have come to light in their ability to gauge students beyond the first few years, especially post-graduation. For example, the LSAT has been lauded as the best tool for gauging how a student will perform during their first year of courses, but studies have easily debunked this justification.<sup>76</sup> The LSAT predicted approximately sixteen percent (16%) of the variation for first year students, while the test could only predict .27% for the second year and .17 % for third year performance.<sup>77</sup> Similarly, higher scorers on the GRE took longer to graduate than modest scorers. For example, at Yale, the correlation between GRE scores and academic success was negative for female graduate psychology students.<sup>78</sup> These statistics demonstrate that the LSAT and GRE are demonstrably unable to gauge the success of candidates in a graduate program.

Like the LSAT, the MCAT and other graduate exams have had similar difficulties in gauging performance of future candidates. Recent studies have

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Michele Marenus, *Gardner's Theory of Multiple Intelligences*, SIMPLY PSYCHOLOGY (June 9, 2020), <https://www.simplypsychology.org/multiple-intelligences.html>.

<sup>74</sup> Kumar Mehta, *A Harvard Psychologist Says Humans Have 8 Types of Intelligence. Which Ones Do You Score the Highest in?*, CNBC (Mar. 10, 2021), <https://www.cnbc.com/2021/03/10/harvard-psychologist-types-of-intelligence-where-do-you-score-highest-in.html>.

<sup>75</sup> *Id.*

<sup>76</sup> Delgado, Wing & Stefancic, *supra* note 59, at 200.

<sup>77</sup> Delgado, Wing & Stefancic, *supra* note 59, at 200.

<sup>78</sup> Delgado, Wing & Stefancic, *supra* note 59, at 200.

shown that MCAT scores do not reflect performance.<sup>79</sup> Although evidence exists that the exam predicts success on multiple choice-based assessments, data shows a weak correlation at best.<sup>80</sup>

In addition to failing to predict academic success during the admissions process, materials tested on graduate exams rarely correlate with actual performance in the specific job fields. The LSAT and MCAT are used to test candidates for admission to law school and medical programs, respectively. The LSAT tests candidates on several subjects in a strictly timed setting. However, the exam only tests candidates on verbal fluency and reasoning rather than important skills needed for future attorneys, such as the ability to command probability, reasoning, humanistic thought, historical thought, or knowledge of human motivation and psychology.<sup>81</sup>

The MCAT, for comparison, tests foundational concepts in science inquiry and reasoning skills.<sup>82</sup> But its predictability drops sharply after the first year of medical school and is especially poor beginning at Step 2 of medical programs, which assesses an examinee's ability to apply medical knowledge, skills, and understanding of clinical science.<sup>83</sup> As a result, graduate programs attempt to utilize a holistic approach, similar to law schools, by factoring high GPAs in science degree programs.<sup>84</sup> However, the absence of an emphasis on critical thinking and acquisition of skills and competencies has resulted in doctors incapable of independent practice.<sup>85</sup> Health professionals must use critical thinking skills when they reflect on knowledge derived from other interdisciplinary subject areas in order to provide a holistic healthcare approach to their patients.<sup>86</sup> Therefore, using aptitude tests as tools for gauging actual success in classrooms and careers cannot be determined at a high level of efficiency.

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<sup>79</sup> Aaron Saguil et al., *Does the MCAT Predict Medical School and PGY-1 Performance?*, 180 MIL. MED. (2015), <https://europepmc.org/article/MED/25850120>.

<sup>80</sup> *Id.*

<sup>81</sup> Delgado, *supra* note 3, at 598.

<sup>82</sup> Assoc. of American Medical Colleges, *Research to Evaluate the Fairness, Use, and Predictive Validity of the MCAT Exam Introduced in 2015*, MEDICAL COLLEGE ADMISSION TEST at 9 (Mar. 2020), <https://www.aamc.org/system/files/2020-03/services-mcat-article-collection-academic-medicine-03212020.pdf>.

<sup>83</sup> Saguil et al., *supra* note 79.

<sup>84</sup> Jacqueline Gauer, Josephine Wolff & Brooks Jackson, *Do MCAT scores predict USMLE scores? An Analysis on 5 Years of Medical Student Data*, 21 MED. ED. ONLINE 1 (2016), [https://www.researchgate.net/publication/310487961\\_Do\\_MCAT\\_scores\\_predict\\_USMLE\\_scores\\_An\\_analysis\\_on\\_5\\_years\\_of\\_medical\\_student\\_data](https://www.researchgate.net/publication/310487961_Do_MCAT_scores_predict_USMLE_scores_An_analysis_on_5_years_of_medical_student_data).

<sup>85</sup> Zayabalaradjane Zayapragassarazan, Vikas Menon, SitanshuSekar Kar & Gitanjali Batmanabane, *Understanding Critical Thinking to Create Better Doctors*, 1 J. ADVANCES MED. ED. & RSCH. 9 (2016), <https://files.eric.ed.gov/fulltext/ED572834.pdf>.

<sup>86</sup> *Id.*

Universities should implement other tools to gauge the success of candidates by evaluating performance and character.<sup>87</sup> Admissions staffs should evaluate a student's personal statement, letters of recommendation, work and activities, and character statements.<sup>88</sup> However, graduate institutions give a large weight to entrance exam scores before even considering other application materials.<sup>89</sup> Institutions should instead abolish the test evaluation and place more emphasis on other qualities instead.<sup>90</sup>

Administrators should evaluate a candidate without giving undue weight to their test scores.<sup>91</sup> Law schools should conduct interviews of candidates to evaluate their skills as students and possible future attorneys.<sup>92</sup> They could examine files for behavioral clues from a set of questions aimed at ascertaining how a candidate has behaved in certain situations. (*See* Appendix A). As an example of the simple effectiveness of this manner of testing, Israeli Security Agents were able to use behavioral cues from two questions to determine a terrorist.<sup>93</sup> The U.S. Army uses a similar interview process to gauge a potential promotion candidate's oral and critical thinking skill.<sup>94</sup> Some universities utilize similar interviews by alumni to evaluate potential candidates before making acceptance decisions;<sup>95</sup> however, the process should be implemented in all graduate programs. Students could compete in competitions, such as mock trial competitions or written advocacy briefs, to determine if they possess the qualities of a great lawyer.<sup>96</sup> Regardless of the method implemented, alternatives to using aptitude tests such as the LSAT or MCAT are available and should be considered for use by admissions teams.<sup>97</sup>

Although the aptitude tests have predicted the success of candidates, their accuracy level is too low to justify their controlling weight in an applicant's

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<sup>87</sup> Delgado, *supra* note 3, at 612.

<sup>88</sup> Rebecca C. Flanagan, *Do Med Schools Do It Better?: Improving Law School Admissions by Adopting a Medical School Admissions Model*, 53 DUQ. L. REV. 75, 90 (2015), [https://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1154&context=fac\\_pubs](https://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1154&context=fac_pubs).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 97.

<sup>91</sup> *Id.* at 92.

<sup>92</sup> *Id.* at 94.

<sup>93</sup> Cathal Kelly, *The 'Israelification' of Airports: High Security, Little Bother*, TORONTO STAR (Dec. 30, 2009), [https://www.thestar.com/news/world/2009/12/30/the\\_israelification\\_of\\_airports\\_high\\_security\\_little\\_bother.html](https://www.thestar.com/news/world/2009/12/30/the_israelification_of_airports_high_security_little_bother.html).

<sup>94</sup> Denver G. Smith, *The Board: How to Survive the "Hot Seat"*, NCO J. (2021), <https://www.armyupress.army.mil/Journals/NCO-Journal/Archives/2021/August/The-Board/>.

<sup>95</sup> Mark Drozdowski, *An Inside Look at Alumni Interviews*, BEST COLLEGES (Jan. 25, 2021), <https://www.bestcolleges.com/blog/inside-look-alumni-interviews/>.

<sup>96</sup> Delgado, *supra* note 3, at 613.

<sup>97</sup> Delgado, *supra* note 3, at 613.

admission application.<sup>98</sup> An alternative admissions process would allow students to participate in a holistic approach to their test scores or abolishing the test requirements completely.<sup>99</sup> This is the “test optional” route currently in use at several elite private schools.<sup>100</sup> As these select schools implement their holistic application process, other universities should also seek to find alternative options to aptitude testing.

V. IF NOT ABOLITION OR MODIFICATION OF THE TESTS, WHY NOT MAKE TEST PREP ACCESSIBLE?

Aptitude testing for minorities is a well-established challenge, but test preparation services have improved test takers’ chances at achieving higher scores.<sup>101</sup> Test preparation services have expanded over the years, and they allow candidates to utilize tutors who specialize in various types of exams.<sup>102</sup> However, test preparation materials are subject to exuberant costs. White candidates often enroll in test preparation courses, but the high cost of these services is an obstacle for most minority candidates, particularly the indigent.<sup>103</sup> Even more, Black people are among the lowest earners in terms of income, which drastically reduces access to test preparation services without assistance from an outside source.<sup>104</sup> Due to the disproportionate differences in available funding, test preparation should be made accessible by creating programs to assist in reducing the cost for qualifying individuals.

The aforementioned racial wealth gap originated shortly after the end of slavery in the mid-nineteenth century.<sup>105</sup> *The Washington Post* has stated, “In 1863, Black Americans owned one-half of 1 percent of the national wealth” and now currently own “just over 1.5 percent for roughly the same percentage of the overall population.”<sup>106</sup> As further evidence of this issue, “the typical Black family has just

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<sup>98</sup> Delgado, *supra* note 3, at 613.

<sup>99</sup> Flanagan, *supra* note 88, at 97.

<sup>100</sup> Delgado, *supra* note 3, at 611.

<sup>101</sup> Rael Moore, Edgar Sanchez & Maria San Pedro, *Investigating Test Prep Impact on Score Gains Using Quasi-Experimental Propensity Score Matching*, ACT at 1 (June 2018), <https://www.act.org/content/dam/act/unsecured/documents/R1710-investigating-test-prep-impact-2018-07.pdf>.

<sup>102</sup> *Id.* at 2.

<sup>103</sup> *Id.* at 24.

<sup>104</sup> Calvin Schermerhorn, *Why the Racial Wealth Gap Persists, More than 150 Years After Emancipation*, WASHINGTON POST (June 19, 2019), <https://www.washingtonpost.com/outlook/2019/06/19/why-racial-wealth-gap-persists-more-than-years-after-emancipation/>.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

1/10th the wealth of the typical white one.”<sup>107</sup> This wealth gap has played an integral role in reducing the ability of Black Americans to create future economic success. For example, Black Americans were largely unable to buy homes and access lines of credit from banks due to redlining of communities during the housing boom era of the mid-twentieth century.<sup>108</sup> During this same period, in 1948, President Harry Truman ordered the military to integrate and created the G.I. Bill of Rights to assist veterans with housing, education, and jobs.<sup>109</sup> Between 1944 and 1971, it spent \$95 billion on benefits but left administration to the states, resulting in Black veterans being frequently denied access to benefits due to discriminatory policies.<sup>110</sup> In the context of the Social Security program, two-thirds of Black people never received the same benefits that provided necessary wealth-building opportunities for Caucasians.<sup>111</sup> At the time, a majority of Black people still lived in the South and were illiterate, which led to them working jobs as domestic and farm labor.<sup>112</sup> Unfortunately, the Social Security Act excluded both farm and domestic workers from accruing benefits., and as a result of these long-standing and deeply rooted issues of poverty, many Black and minority candidates are unable to afford the added expenses of tutoring for aptitude tests.<sup>113</sup>

Many Caucasians can afford tutoring services for areas that they struggle with, while Black people are left with minimal options to receive any help. In addition to the existence of this actual wealth gap, white Americans severely underestimate the concept of the racial wealth gap and assume that Black wealth is about 80% to that of whites.<sup>114</sup> In reality, the median white household is much higher compared to Black households.<sup>115</sup> In 2019, the median white household held \$188,200 in assets—7.8 times that of the typical Black household.<sup>116</sup> These statistics demonstrate that many Black students lack resources to afford the high cost of tutoring.

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Kimberly Amadeo, *Racial Wealth Gap in the United States: Is There a Way to Close It and Fill the Divide?*, THE BALANCE (Jan. 20, 2022), <https://www.thebalance.com/racial-wealth-gap-in-united-states-4169678>.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Larry DeWitt, *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, 70 SOC. SEC. BULL. (2010), <https://www.ssa.gov/policy/docs/ssb/v70n4/v70n4p49.html>.

<sup>114</sup> Amadeo, *supra* note 109.

<sup>115</sup> Emily Moss, Kriston McIntosh, Wendy Edelberg & Kristen Broady, *Up Front: The Black-White Wealth Gap Left Black Households More Vulnerable*, BROOKINGS INSTITUTE (Dec. 8, 2020), <https://www.brookings.edu/blog/up-front/2020/12/08/the-Black-white-wealth-gap-left-Black-households-more-vulnerable/>.

<sup>116</sup> *Id.*

Although state and federal governments provide financial aid assistance programs to indigent Americans for college,<sup>117</sup> a program to assist with funding for test preparation could lower the cost of both undergraduate and graduate programs, and lead to an improvement in the number of minorities admitted. Recently, severe inflation has only heightened the need for financial assistance in education.<sup>118</sup> Student housing is an essential cornerstone of student life for any college or university.<sup>119</sup> However, housing prices and demand soared to record highs throughout the country during the pandemic.<sup>120</sup> The demand created a shortage in available houses on the market, which led to a corresponding rise in rent.<sup>121</sup> Because Black students are already more likely to borrow in graduate school than their white peers, the recent economic crises has only deepened the need for new and innovative scholarships for under-privileged students.<sup>122</sup> Scholarships for both undergraduate and graduate school reduce the impact of financial need but are often distributed based on merits such as aptitude test scores.<sup>123</sup> Unfortunately for minorities, white students often score higher and benefit from merit-based scholarships more often than Black students.<sup>124</sup> “Since the introduction of the Guaranteed Student Loan program in 1965 and the Pell Grant in 1972, governments, institutions, and outreach programs have experimented with using financial aid to increase college access, choice, and affordability[,]”<sup>125</sup> but these programs do not address the barriers to other financial opportunities such as merit-based scholarships. The government should implement grants or subsidies for tutors specializing in training to assist minorities. The effect could lower the gap in test scores between the minority and Caucasian races, while simultaneously reducing the financial impact of earning a

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<sup>117</sup> Bridget Long, *What Is Known About the Impact of Financial Aid? Implications for Policy*, NATIONAL CENTER FOR POST-SECONDARY RESEARCH at 1 (Apr. 2008), <https://ccrc.tc.columbia.edu/media/k2/attachments/impact-financial-aid-ncpr.pdf>.

<sup>118</sup> *Id.* at 42.

<sup>119</sup> Statista Research Department, *U.S. Student Housing - Statistics & Facts*, STATISTA (Dec. 16, 2021), <https://www.statista.com/topics/5120/housing-for-students-in-the-us/>.

<sup>120</sup> Chris Arnold, *It's Not Just Home Prices. Rents Rise Sharply Across the U.S.*, NPR (Feb. 14, 2022), <https://www.npr.org/2022/02/14/1080145270/its-not-just-home-prices-rents-rise-sharply-across-the-u-s>.

<sup>121</sup> *Id.*

<sup>122</sup> Ben Miller, *Graduate School Debt: Ideas for Reducing the \$37 Billion in Annual Student Loans That No One Is Talking About*, THE CENTER FOR AMERICAN PROGRESS (Jan. 13, 2020), <https://www.americanprogress.org/article/graduate-school-debt/>.

<sup>123</sup> *Find and Apply for as Many Scholarships as you Can—It's Free Money for College or Career School!*, FEDERAL STUDENT AID (Accessed, Feb. 27, 2022 at 9:46 AM), <https://studentaid.gov/understand-aid/types/scholarships> (the National Defense Student Loan Program began in 1958, but it was not until the 1960s that wider access to financial aid began to be a serious goal of the federal government).

<sup>124</sup> *Id.*

<sup>125</sup> Long, *supra* note 117.

degree. Thus, a government intervention could create faster results than the natural progression of economic cycles.

## VI. A ROADMAP AHEAD FOR ABOLITIONISM

How each state addresses these issues is often dependent on the political party in power. George Lakoff, a retired professor from the University of California, describes how politicians often use metaphors that describe the nation as a family.<sup>126</sup> His theory concluded that Republicans could be viewed as the strict father and Democrats as the nurturing parent.<sup>127</sup> The following roadmap will provide three different avenues to optimize the chance for success in the varying political environments throughout the country.

In a Republican environment, changes should be presented in language that promotes investments rather than handouts. Republicans say that prosperous companies will boost economic growth for everyone and tend to promote supply-side economics.<sup>128</sup> Currently, the shortage in teachers has worsened since the arrival of the pandemic.<sup>129</sup> In response, states are considering seeking teachers without formal training programs to temporarily combat the shortage.<sup>130</sup> As classrooms become led by teachers not trained to adequately prepare students for higher education opportunities, it could be an appropriate time for an advocate to lobby for funding for tutors to reduce the stress for school systems. Republicans legislators and leaders could supplement the growth with funding that would not require parents to pay for the costs of such services. This step could be a way to introduce outside teaching materials and could later be presented as an avenue for specialty tutors for aptitude testing. The teaching shortage has been an ongoing problem with no clear solutions in sight.<sup>131</sup> Therefore, this opportunity could remain a possibility for advocates after the pandemic's end.

Although the Republican environment requires an economical approach, a Democratic environment would require a more empathic strategy. Democratic

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<sup>126</sup> Chris Benderev, Maggie Penman & Renee Klahr, *When It Comes to Our Politics, Family Matters*, NPR (Sept. 13, 2016), <https://www.npr.org/2016/09/13/493615864/when-it-comes-to-our-politics-family-matters>.

<sup>127</sup> *Id.*

<sup>128</sup> Kimberly Amadeo, *Democrats or Republicans: Which is Better for the Economy? By Many Metrics, It's the Party that Doesn't put Business First*, THE BALANCE (Feb. 21, 2022), <https://www.thebalance.com/democrats-vs-republicans-which-is-better-for-the-economy-4771839>.

<sup>129</sup> Pratiksha Ghildial, *How Covid Deepened America's Teacher Shortage*, BBC NEWS (Dec. 21, 2021), <https://www.bbc.com/news/world-us-canada-59687947>; see also Mark Scolforo, *Amid Scrambles for Teachers, Some Fear Worse Shortages Ahead*, U.S. NEWS (Feb. 3, 2022), <https://www.usnews.com/news/us/articles/2022-02-03/amid-scrambles-for-teachers-some-fear-worse-shortages-ahead>.

<sup>130</sup> See *supra* note 129.

<sup>131</sup> See *supra* note 129.



leaders have long admired Civil Rights leaders and movements that affect change. Finding notable speakers could spark change and raise this issue as a topic for rising Democratic leaders. A great starting point is Historically Black College Universities (HBCUs). HBCUs are normally utilized as a battle ground for elections.<sup>132</sup> Many HBCUs are supported by various celebrities and notable alumni, ranging from Oprah Winfrey to Spike Lee.<sup>133</sup> Students could advocate for funding to access tutoring or pursue the end of aptitude testing. The effectiveness of this style of advocacy was demonstrated through Black Lives Matter, a movement that started within the Black community and prompted several politicians to create bills and debate over new policies for policing in America.<sup>134</sup> Large corporations, such as Nike, have been huge financial supporters of HBCUs and could be a powerful ally for fundraising and media attention.<sup>135</sup> This attention has the potential to place many Democrat leaders on high alert of the issues and could spark similar attention for policies that would ease tensions. Thus, starting at an HBCU could bring the issue to Democratic debate tables at a fast pace in local communities.

School systems present a different challenge for advocates of change. Consider two avenues that could allow for the amendment or abolishment of aptitude testing's grasp in school systems, particularly colleges. The U.S. News & World Report presents rankings for schools across America that are normally a point of pride and advertising for the reporting universities. Students benefit from ranking through employment opportunities as employers presume the candidate is more educated or has a higher level of skills. However, these rankings are partially based on the results of biased aptitude testing. Schools use scholarship funding to entice candidates with higher test scores to attend their university.<sup>136</sup> As a further advantage, applying students can use concurrent scholarship offers as a point to

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<sup>132</sup> Errin Haines, *HBCUs a Growing Force to be Reckoned with in 2020 Presidential Race*, 11 ALIVE (Sept. 13, 2019), <https://www.11alive.com/article/news/politics/hbcu-2020-election/85-687a479e-6bca-464a-8857-4f90afa01e7b>.

<sup>133</sup> #TeamEBONY, *15 Celebrities Who Graduated from Historically Black Colleges & Universities*, EBONY (Oct. 7, 2018), <https://www.ebony.com/entertainment/celebrities-graduated-historically-black-colleges/>.

<sup>134</sup> Josh Campbell, *After Weeks of Protests, Meaningful Police Reform Appears Unlikely*, CNN (June 28, 2020), <https://www.cnn.com/2020/06/28/politics/floyd-police-reform-unlikely/index.html>.

<sup>135</sup> Jeroslyn Johnson, *Nike Continues to Celebrate HBCUs With Yardrunners Campaign*, YAHOO (Nov. 7, 2021), <https://www.yahoo.com/video/nike-continues-celebrate-hbcus-2021-131527626.html>.

<sup>136</sup> Douglas Belkin, *Is it Fair to Award Scholarships Based on the SAT?*, WALL STREET JOURNAL (Feb. 2, 2020), <https://www.wsj.com/articles/is-it-fair-to-award-scholarships-based-on-the-sat-11580639400>.

negotiate for higher scholarship offers.<sup>137</sup> Universities covet higher scores as they become a point of comparison among competing universities.<sup>138</sup> In response, abolitionists should boycott the reporting of test scores or lobby for different metrics. Removing the pressures and hierarchy of college rankings based on aptitude testing scores and possibly shifting the rating scales of universities to academic accomplishments becomes a more accurate and reflective tool.

Another strategy is the use of social change estates, that have schools named in their honor. Many schools reap direct benefit of social change icons such as Thurgood Marshall, Martin Luther King and other notable leaders by naming their institutions in their honor.<sup>139</sup> Many of these leaders have estates that oversee the actions and representation of their beloved relatives, and their estates would not want to be associated with media publications and reports that describe these institutions as academic lynching grounds. Leveraging these relationships would be an effective tool to encourage universities and colleges to implement positive change and reduce the use and application of discriminatory practices, such as aptitude testing.

## VII. CONCLUSION

Critical race theorist Richard Delgado was invited to speak at a commencement ceremony in 1996 at his former college, Berkley University Law School. Delgado graduated from the college in 1971, but his admission into the university was the result of an affirmative action bill which had recently been repealed. Delgado's graduating class was comprised of an astounding 30 percent of minorities compared to today's much lower number. Instead of giving a traditional speech, Delgado went down the list of minorities' accomplishments since their graduation in 1971, ranging from presidents of banks to partners and directors of legal services, thus, showing how affirmative action changed the lives and trajectory of each minority it reached.

Affirmative action can produce more success, but it cannot be accomplished without action. American schools have an ongoing problem that was created by intent rather than by coincidence. Readers of this article have been exposed to the problematic history of many of the most used aptitude testing formats and the results that place minorities at a disadvantage. Even further, the generational wealth gap results in specialized tutors being out of reach for minority homes. Schools

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<sup>137</sup> Kristen Moon, *How to Appeal your Financial Aid Offer and Get More Money: A Step-by-Step Guide*, FORBES (Jan. 27, 2019), <https://www.forbes.com/sites/kristenmoon/2019/01/27/how-to-appeal-your-financial-aid-offer-and-get-more-money-a-step-by-step-guide/?sh=2097890122f4>.

<sup>138</sup> Sarah Wood, *31 Colleges with the Highest SAT Scores*, U.S. NEWS & WORLD REPORT (Oct. 31, 2022), <https://www.usnews.com/education/best-colleges/slideshows/colleges-with-the-highest-sat-scores>.

<sup>139</sup> Thurgood Marshall Law School is a law school located in Houston, TX.

make the issue worse by limiting scholarship funding to applicants with higher aptitude test scores rather than their prior performance in schools and experiences relevant to their prospective professional careers. Therefore, the new roadmap for abolitionists has the potential to create more success stories like Richard Delgado and move American classrooms closer to equality in the future.

## APPENDIX A

A list of questions that could help an interviewer gauge a candidate.

### **Character**

1. Have you ever organized a movement or petition to influence a change?
2. If you could change one weakness, what would it be?
3. Define in your own words what public service means to you.
4. Have you ever conducted community service? If so, what kind?
5. What has been your biggest challenge in life?

### **Moral**

6. If there were no laws against theft, would you keep money you discovered laying around the office or classroom?
7. Have you ever worked or studied with someone of a different race, sex orientation or gender?

### **Leadership**

8. What is your definition of leadership?
9. Can you tell us about a time when you were placed in a leadership position?
10. What would you have done differently?