

THE RONALD H. BROWN CENTER FOR CIVIL RIGHTS AND
ECONOMIC DEVELOPMENT
SYMPOSIUM

**MISUSE OF THE LAW SCHOOL
ADMISSIONS TEST, RACIAL
DISCRIMINATION, AND THE DE FACTO
QUOTA SYSTEM FOR RESTRICTING
AFRICAN-AMERICAN ACCESS TO THE
LEGAL PROFESSION**

JOHN NUSSBAUMER[†]

INTRODUCTION

Efforts during the past ten years to diversify America's law schools by enrolling more African-American students have failed because those responsible for law school admissions and accreditation practices have created a de facto and racially discriminatory quota system that restricts African-American access to the legal profession.

African-Americans comprise approximately 13% of the United States population.¹ The total number of African-Americans enrolled at all ABA-approved law schools peaked in

[†] Professor and Associate Dean, Thomas M. Cooley Law School at Oakland University, member of the National Bar Association Law Professors Division, and member of the ABA Section of Legal Education Diversity Committee. Cooley Law School enrolls more African-American students than any other ABA-approved law school in the country except for Howard University School of Law. See ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 2006, at 26, 29 (2005). I wish to thank Cooley-Oakland students Philip Vera and Andrew Meier, and *St. John's Law Review* for its help with this Article.

¹ JESSE MCKINNON, U.S. CENSUS BUREAU, CENSUS 2000 BRIEF: THE BLACK POPULATION tbl.1 (2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-5.pdf>.

1994 at 9681 students,² which at that time represented 7.5% of all enrolled students. Total law school enrollment in 1994 was 128,989 students,³ and total minority enrollment was 24,611 students.⁴

From 1994–2004, the ABA Council of the Section of Legal Education and Admission to the Bar fully or provisionally approved fifteen new law schools.⁵ During this same period, total law school enrollment increased to 140,376 students (+8.8%) and total minority enrollment increased to 29,489 students (+19.8%).⁶ But, total African-American enrollment decreased from 9681 to 9488 students (-2%),⁷ which represents just 6.8% of all enrolled students.

This same pattern repeats itself in the total number of J.D. degrees awarded to African-American graduates of ABA-approved law schools. This number peaked in 1998 at 2943 degrees awarded.⁸ Since then, while the total number of degrees awarded to all law school graduates increased to 40,018 in 2004 (+1.4%),⁹ the total number of degrees awarded to African-American graduates during the same period decreased to 2719 (-7.6%).¹⁰

A similar pattern is evident in the number of African-American applicants in the pipeline to law school. The Law School Admissions Council recently released its preliminary data

² Am. Bar Ass'n, Minority Enrollment 1971-2002, <http://www.abanet.org/legaled/statistics/minstats.html> (last visited Jan. 10, 2006).

³ Am. Bar Ass'n, J.D. Degrees 1984-2004 (Total/Women/Minorities), <http://www.abanet.org/legaled/statistics/jd.html> (last visited Jan. 10, 2006).

⁴ *Id.*

⁵ Am. Bar Ass'n, ABA Approved Law Schools, <http://www.abanet.org/legaled/approvedlawschools/year.html> (last visited Jan. 10, 2006).

⁶ See Am. Bar Ass'n, J.D. Degrees 1984-2004 (Total/Women/Minorities), *supra* note 3.

⁷ See Am. Bar Ass'n, Minority Enrollment 1971-2002, *supra* note 2. Most of the growth in total minority student enrollment during this period came from Asian-American and Pacific Islander students, which grew from 7196 to 10,856 students (+50.9%). Native American enrollment grew from 873 to 1106 students (+26.7%), and Mexican-American and other Hispanic enrollment grew from 6054 to 7445 students (+22.9%). Puerto Rican enrollment decreased from 718 to 594 students (-17.3%). *Id.*

⁸ Am. Bar Ass'n, Minority Degrees Awarded (by ethnic group) 1980-2004, <http://www.abanet.org/legaled/statistics/mindegrees.html> (last visited Jan. 10, 2006).

⁹ See Am. Bar Ass'n, J.D. Degrees 1984-2004 (Total/Women/Minorities), *supra* note 3.

¹⁰ See Am. Bar Ass'n, Minority Degrees Awarded (by ethnic group) 1980-2004, *supra* note 8.

for the Fall 2005 entering class at ABA-approved schools. While the number of total applicants for the year fell by 4.6%,¹¹ the number of African-American applicants fell by 8.2%, nearly double the national rate.¹² In contrast, the number of Caucasian applicants fell by just 3.3% and the number of Hispanic/Latino applicants actually increased by 1.8%.¹³ Only one ethnic group had a greater decrease in applicants than African-Americans.¹⁴

These statistics make clear that American legal education is moving backwards, not forwards, in providing access to law school for African-American students. Simultaneously, the number and percentage of African-American students enrolled in ABA-approved schools and of African-American graduates of those schools decreased while the number and percentage of African-American applicants in the pipeline to law school also decreased.

This triple downward spiral is directly contrary to the clear intent of the ABA's elected leadership, which has made diversifying the profession one of the ABA's top priorities.¹⁵ Most recently, ABA President Michael S. Greco created the ABA Presidential Advisory Council on Diversity in the Profession, which is focusing its efforts on expanding the pipeline to law school for racial and ethnic minorities.¹⁶ As stated by Evett L. Simmons, the Chair of the Presidential Advisory Council:

The American Bar Association's Presidential Advisory Council on Diversity in the Profession offers programs and services to improve diversity in the "pipeline" to the legal profession. Our charge is to increase the number of people of color on the track to becoming lawyers.¹⁷

¹¹ Law Sch. Admission Council, Volume Summary Data, <http://www.lsac.org/LSAC.asp?url=/lsac/lsac-volume-summary.asp> (last visited Jan. 10, 2006).

¹² LAW SCH. ADMISSION COUNCIL, CURRENT VOLUME SUMMARY (2005).

¹³ *Id.*

¹⁴ The number of Chicano/Mexican-Americans fell by 10%. *Id.*

¹⁵ See George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 103-04 (2003) (observing that the ABA's elected leadership has made increasing racial and ethnic diversity one of the ABA's central priorities, and the organization has proceeded on many fronts to achieve this goal by creating commissions, diversity initiatives, action groups, councils, and minority scholarships).

¹⁶ See Am. Bar Ass'n, Presidential Advisory Council on Diversity in the Profession, <http://www.abanet.org/leadership/councilondiversity/home.html> (last visited Jan. 10, 2006).

¹⁷ *Id.*

This Article examines two obstacles that African-Americans currently face in obtaining admission to law school. The first is law school admissions practices that have a disparate impact on minority students and appear to be driven by competitive, economic motives. And the second is law school accreditation practices that have a disparate impact on minority students without valid, reliable, and objective evidence establishing that these practices have a legitimate educational purpose.

I. LAW SCHOOL ADMISSIONS PRACTICES

On September 7, 2005, St. John's University School of Law hosted a national conference to examine the relationship between the LSAT, the *U.S. News & World Report* law school rankings, and minority admissions.¹⁸ The materials for the conference summarized the problem with current law school admissions practices as follows:

Many law schools use the LSAT as the principal criterion for admissions to increase their *U.S. News & World Report* rankings. This over-reliance on the LSAT is contrary to the instructions of the Law School Admission Council, which designed the test. Moreover, this over-reliance has a deleterious effect on the admission of students of color.¹⁹

To explore this hypothesis, statistical studies were prepared of the eight largest law school markets in the United States, where the competition among ABA-approved schools is the most intense.²⁰ Each of the eight studies examined whether law schools in these markets increased their 25th percentile LSAT scores during the two-year period between 2002 and 2004, and whether this shift corresponded to changes in African-American student enrollment. All data for these studies was derived from the 2004 and 2006 editions of the *ABA-LSAC Official Guide to ABA-Approved Law Schools*, reporting data for fall 2002 and fall

¹⁸ See St. John's Univ. Sch. of Law, The LSAT, *U.S. News & World Report*, and Minority Admissions, http://new.stjohns.edu/academics/graduate/law/pr_low_050913.sju (Sept. 13, 2005).

¹⁹ RONALD H. BROWN CTR. FOR CIVIL RIGHTS AND ECON. DEV., ST. JOHN'S UNIV. SCH. OF LAW, THE LSAT, U.S. NEWS & WORLD REPORT, AND MINORITY ADMISSIONS 1 (2005).

²⁰ The eight markets studied were California (eighteen schools), New York (fifteen schools), Florida (eight schools), Washington, D.C. (nine schools), Illinois (nine schools), Ohio (nine schools), Texas (nine schools), and Massachusetts (seven schools). See *infra* App. A.

2004, respectively. All schools for which data was available for both years were included in the studies.

Tables 1 through 8 in Appendix A summarize the data, which is further discussed below. The results reveal that most law schools increased their 25th percentile LSAT scores during the two-year period studied, and that most of these schools saw a substantial decrease in their African-American student enrollment.

A. California Law Schools

Eighteen law schools in California were fully or provisionally approved by the ABA Council of the Section of Legal Education and Admission to the Bar during the period studied. Fifteen of these eighteen schools increased their 25th percentile LSAT scores, with an average increase of 2.80 points, and total African-American enrollment at eleven of these fifteen schools declined by an average of 18.3%. Only four schools increased their 25th percentile score and also increased African-American enrollment.

Overall, while total student enrollment at these eighteen schools increased from 14,264 to 15,760 (+10.5%), total African-American enrollment declined from 639 to 632 (-1.1%), a net difference of 11.6%, and the percentage of African-American students enrolled decreased from 4.5% to 4.0%.

B. New York Law Schools

Fifteen law schools in New York were fully or provisionally approved by the ABA Council of the Section of Legal Education and Admission to the Bar during the period studied. Twelve of these fifteen schools increased their 25th percentile LSAT scores, with an average increase of 3.08 points, and total African-American enrollment at nine of these twelve schools declined by an average of 21.6%. Only three schools, including St. John's University, increased their 25th percentile LSAT score and also increased African-American enrollment.

Overall, while total student enrollment at these fifteen schools increased from 14,573 to 15,054 (+3.3%), total African-American enrollment declined from 1053 to 954 (-9.4%), a net difference of 12.7%, and the percentage of African-American students enrolled decreased from 7.2% to 6.3%.

C. Florida Law Schools

Eight law schools in Florida were fully or provisionally approved by the ABA Council of the Section of Legal Education and Admission to the Bar during the period studied. Seven of these eight schools increased their 25th percentile LSAT scores, with an average increase of 2.14 points, and total African-American enrollment at four of these seven schools declined by an average of 25.8%. Only three schools increased their 25th percentile score and also increased African-American enrollment.

Overall, while total student enrollment at these eight schools increased from 6234 to 7130 students (+14.4%), total African-American enrollment declined from 557 to 508 students (-8.8%), a net difference of 23.2%, and the percentage of African-American students enrolled decreased from 8.9% to 7.1%.

D. Washington, D.C. Area Law Schools

Nine law schools in the Washington, D.C. area were fully or provisionally approved by the ABA Council of the Section of Legal Education and Admission to the Bar during the period studied. Six of these nine schools increased their 25th percentile LSAT scores, with an average increase of 1.83 points, and total African-American enrollment at three of these six schools declined by an average of 25.7%. Only three schools increased their 25th percentile LSAT score and also increased African-American enrollment.

Overall, while total student enrollment at these nine schools increased from 9087 to 9170 (+0.9%), total African-American enrollment declined from 1296 to 1252 (-3.4%), a net difference of 4.3%, and the percentage of African-American students enrolled decreased from 14.3% to 13.7%.

E. Illinois Law Schools

Nine law schools in Illinois were fully or provisionally approved by the ABA Council of the Section of Legal Education and Admission to the Bar during the period studied. Eight of these nine schools increased their 25th percentile LSAT scores, with an average increase of 1.88 points, and total African-American enrollment at five of these eight schools declined by an average of 16.6%. Only three schools increased their 25th percentile LSAT score and also increased African-American

enrollment.

Overall, while total student enrollment at these nine schools increased from 6696 to 7207 (+7.6%), total African-American enrollment remained essentially unchanged, a net difference of 7.6%, and the percentage of African-American students enrolled decreased from 6.3% to 5.8%.

F. Ohio Law Schools

Nine law schools in Ohio were fully or provisionally approved by the ABA Council of the Section of Legal Education and Admission to the Bar during the period studied. Seven of these nine schools increased their 25th percentile LSAT scores, with an average increase of 2.86 points, and total African-American enrollment at four of these seven schools declined by an average of 14.3%. Only three schools increased their 25th percentile LSAT score and also increased African-American enrollment.

Overall, while total student enrollment at these nine schools increased from 5156 to 5319 (+3.2%), total African-American enrollment decreased from 327 to 312 (-4.6%), a net difference of 7.8%, and the percentage of African-American students enrolled decreased from 6.3% to 5.9%.

G. Texas Law Schools

Nine law schools in Texas were fully or provisionally approved by the ABA Council of the Section of Legal Education and Admission to the Bar during the period studied. Eight of these nine schools increased their 25th percentile LSAT scores, with an average increase of 2.75 points, and total African-American enrollment at three of these eight schools declined by an average of 14.3%. Only three schools increased their 25th percentile LSAT score and also increased African-American enrollment.

Overall, while total student enrollment at these nine schools increased from 7716 to 7898 (+2.4%), total African-American enrollment remained unchanged, a net difference of 2.4%, and the percentage of African-American students enrolled decreased from 7.7% to 7.5%.

H. Massachusetts Law Schools

Seven law schools in Massachusetts were fully or provisionally approved by the ABA Council of the Section of

Legal Education and Admission to the Bar during the period studied. Six of these seven schools increased their 25th percentile LSAT scores, with an average increase of 2.50 points, and total African-American enrollment at four of these six schools declined by an average of 11.5%. Only two schools increased their 25th percentile score and also increased African-American enrollment.

Overall, while total student enrollment at these seven schools increased from 7077 to 7319 students (+3.4%), total African-American enrollment increased from 392 to 404 students (+3.1%), a net difference of 0.3%, and the percentage of African-American students enrolled remained unchanged at 5.5%.

I. Summary

Four distinct conclusions may be drawn from this data. First, 82% (69/84) of the schools studied raised their 25th percentile LSAT scores during the two-year period. Second, 62% (43/69) of the schools that raised their 25th percentile scores saw their African-American student enrollment decrease by an average of 19%. Third, while total student enrollment at all schools increased from 70,803 to 74,857 students (+5.7%), total African-American enrollment decreased from 5277 to 5074 students (-3.8%), a net difference of 9.5%. Lastly, the percentage of African-American students enrolled decreased from 7.6% to 7.0%.

In terms of statistical significance, using Pearson's chi-square, the correlation between increasing 25th percentile scores and decreasing numbers of African-American students was statistically significant ($p=.023$). The probability that this happened by chance was just 2.3%, or less than 2.3 chances out of 100. The correlation between increasing 25th percentile scores and decreasing percentages of African-American students was also statistically significant ($p=.012$). The probability that this happened by chance was just 1.2%, or less than 1.2 chances out of 100.²¹

This data makes clear that schools are raising their 25th percentile LSAT scores and that this corresponds with a downward trend in African-American student enrollment. These

²¹ I wish to thank University of Dayton School of Law Professor Vernellia R. Randall for this statistical analysis.

conclusions serve to reinforce the current sentiment among the scholarly legal community towards the use of the LSAT. If the views expressed at the St. John's conference are reflective of American legal education as a whole, there appears to be a widely-shared consensus that the influence of *U.S. News & World Report* rankings is pushing schools to increase their LSAT scores to enhance their competitive standing. This strategic use of LSAT scores runs contrary to the Law School Admissions Council cautionary guidelines for use of the LSAT in the admissions process.²²

Among other things, those guidelines specifically state that the LSAT "should be used as only one of several criteria for evaluation and should not be given undue weight solely because its use is convenient" and that "[c]ut-off LSAT scores . . . are strongly discouraged" because, "[s]ignificantly, cut-off scores may have a greater adverse impact upon applicants from minority groups than upon the general applicant population."²³

By giving undue weight to the LSAT, or by using cut-off scores for consideration of applicants in violation of LSAC guidelines, law schools are denying admission to students whose LSAT scores previously qualified them for admission to those same schools just a few years ago. Schools that engage in these practices with knowledge of the disparate impact these practices have on African-American student enrollment are at risk of discrimination lawsuits. As stated by LSAC President Phil Shelton at the St. John's conference:

[T]he evidence is very clear that the test has a disparate impact based on race, and if the test is being used contrary to LSAC guidelines that could provide a valid basis for proving racial discrimination.²⁴

II. LAW SCHOOL ACCREDITATION PRACTICES

Schools that commonly accept students with LSAT scores of

²² See St. John's Univ. Sch. of Law, *supra* note 18.

²³ LAW SCH. ADMISSIONS COUNCIL, CAUTIONARY POLICIES CONCERNING LSAT SCORES AND RELATED SERVICES (1999), available at <http://www.lsacnet.org/lscac/publications/CAUTIONARYpolicies2003.pdf>.

²⁴ See St. John's Univ. School of Law, *supra* note 18 (summarizing the comments of Phil Shelton, President of the Law School Admission Council, at the St. John's School of Law conference: "The LSAT, *U.S. News & World Report*, and Minority Admissions").

less than 141 are often pressured by the Accreditation Committee and the Council of the ABA Section of Legal Education and Admission to the Bar to limit the number and proportion of such students admitted. As the immediate past Chair of the Accreditation Committee recently testified with regard to a school whose students had a median LSAT score of 141, "That's just not going to cut it . . . [t]here is [a] very strong need to upgrade the student numbers [and] . . . [t]here's no question in my mind that the ABA would find those numbers, as they did when it was at 147, to be very, very short of the mark."²⁵

The existence of a de facto LSAT cut-off score for accreditation purposes has been noted by others in previous case studies.²⁶ "Although these strict requirements do not appear explicitly in the official accreditation standards, the ABA interprets and applies its standards to create the requirements."²⁷ This cut-off has a disparate impact on African-American students, who have mean LSAT scores of approximately 143-144. As a result, nearly half of all African-American law school applicants are effectively precluded from attending law school based on their LSAT scores.²⁸

As the two case studies below document, pressure is exerted both in the initial accreditation process and in the periodic inspection process that all accredited schools must undergo every seven years. Initial accreditation is withheld by the Accreditation Committee and the Council until schools reduce the number and proportion of these students. Schools subject to periodic inspection are kept on report and threatened with sanctions until the number and proportion of these students is reduced.

The Committee and the Council justify these practices, as one of their staff members explained at the St. John's conference, as necessary to maintain quality and prevent consumer fraud. However, neither the committee nor the Council will reveal the empirical bases for their reasoning. No published study has demonstrated that this unwritten, but regularly enforced LSAT

²⁵ John O'Brien, Dean of New Eng. Sch. of Law, Testimony Before the Massachusetts State Board of Higher Education 230 (Mar. 24, 2005).

²⁶ Shepherd, *supra* note 15, at 114 (noting that the ABA denies accreditation to schools with average LSAT scores below roughly 142 and typically denies accreditation to those schools admitting students with LSAT scores below 140).

²⁷ *Id.*

²⁸ *Id.* at 104-05.

cut-off is a statistically valid and reliable predictor of academic success, particularly when low-scoring students are offered structured academic support programs. Committee policy also makes it difficult for outsiders to gain access to the records and data needed to perform a comprehensive study of these practices.

Limited case-study-oriented data can, however, be gleaned from published sources such as the annually-published *ABA-LSAC Official Guide to ABA-Approved Law Schools*.²⁹ As the two case studies presented below illustrate, the de facto cut-off has had a disparate impact on minority student enrollment in general, and on African-American student enrollment in particular.

A. Case Study One—Initial Accreditation

Law School X had been seeking initial accreditation, and was recently granted full approval by the Council after a provisional approval process that lasted more than five years. The school has an opportunity-oriented admissions philosophy. School X is located in a major metropolitan area with a large minority and African-American population, and seeks to provide non-traditional students with access to the legal profession.

In order to achieve full approval, School X increased its 25th percentile LSAT score from 138 to 148 over a six-year period. This ten-point increase is approximately double what the Law School Admissions Council considers statistically significant. As Table 9 in Appendix B shows, this change corresponded with a significant decline in minority and African-American student enrollment at the school.

From 1999 to 2004, while total enrollment at School X increased from 168 to 220 students (+31%), total minority enrollment decreased from 125 to 102 students (-18%), a net difference of 49%, and African-American student enrollment decreased from 104 to 71 students (-32%), a net difference of 63%. The percentage of minority students decreased from 74% to 46% and the percentage of African-American students decreased from 62% to 32%.

²⁹ Each annual edition reports data provided by all accredited schools in the fall of each year. Each edition reports data for the fall two years before the date of the edition. For example, the 2006 edition reports data provided in the fall of 2004. See *ABA-LSAC Official Guide to ABA-Approved Law Schools: Searchable Edition*, <http://officialguide.lsac.org/docs/cgi-bin/home.asp> (last visited Jan. 10, 2006).

B. Case Study Two—Periodic Inspection

Law School Y has been accredited since 1975. This school had been kept on report and threatened with sanctions by the Accreditation Committee and the Council between 1998 and 2003. The school invested more than two million dollars in developing quality academic support programs from 2000 to 2004. As of today, its annual budget for direct academic support programs exceeds three-quarters of a million dollars.

Like School X, School Y has an opportunity-oriented admissions philosophy that seeks to provide non-traditional students with access to the legal profession. When pressured by the Accreditation Committee to reduce the number of accepted low-scoring students, School Y presented data to the Accreditation Committee showing that between six and seven out of every ten students with LSAT scores of less than 141 succeeded academically. Nevertheless, School Y was told that the number and proportion of students it admitted with LSAT scores below 141 was too high and would have to be reduced. The school repeatedly requested an explanation from the ABA Consultant's Office, the Accreditation Committee, and the Council of how they had settled on 141 as the dividing line for admissions, but never received any explanation.

After being threatened with sanctions, this school eventually raised its 25th percentile LSAT score from 139 to 143 over a six-year period. The overall growth at the school during this period masks the decline in the proportion of minority and African-American enrollment. Table 10 in Appendix B shows that this change coincided with a decline in minority and African-American student enrollment at the school. As School Y's 25th percentile LSAT score increased over the past four years, the percentage of minority students fell from a high of 35% in 2001 and 2002 to 27% in 2004 (-8%). The percentage of African-American students fell from a high of 23% in 2001 to 15% in 2004 (-8%).

C. Summary

Both School X and School Y continue to provide superior minority access, and continue to value diversity in the legal profession, a priority esteemed by the American Bar Association. Yet, the LSAT-based practices of the Accreditation Committee and the Council undercut the schools' commitment by excluding

qualified minority and African-American students from the opportunity to prove through actual performance that their LSAT scores do not accurately predict their ability to succeed in law school. This unsubstantiated reliance on the LSAT reflects the elitist perspective of the schools that are represented on the Council. A majority of these schools have few African-American students, either in total numbers or as a percentage of their student populations.³⁰

These exclusionary practices have a disparate impact on minority students in general, and on African-American students in particular. In the name of excluding those students who would inevitably fail, the philosophy of the Accreditation Committee also sacrifices those students who would succeed despite low LSAT scores.

III. CONCLUSION AND RECOMMENDATIONS

In other fields of law, we ordinarily do not make significant distinctions in terms of moral culpability between actors who cause harm purposely, with the conscious objective to cause that harm, and actors who cause harm knowingly, with knowledge that the harm is practically certain to occur.³¹ Even if the law schools and the ABA Council profess to have no racially discriminatory purpose, they remain responsible for creating a de facto and racially discriminatory quota system that effectively restricts African-American access to the legal profession.

The stark results of this limited, preliminary analysis suggest the need for a full-scale investigation of the admissions policies and practices at all ABA-approved law schools to determine if their policies and practices violate the LSAC guidelines. In addition, the exclusionary impact of Accreditation

³⁰ Ten schools currently have representatives on the Council. The schools, along with the number and percentage of African-American students they enroll based on data from the 2006 *ABA-LSAC Official Guide to ABA-Approved Law Schools* are: Boston University (thirty-six African-American students / 4.2%); California-Hastings (twenty-four African-American students / 1.9%); California Western (nineteen African-American students / 2.0%); New England School of Law (thirty-nine African-American students / 3.5%); New Mexico (twelve African-American students / 3.5%); NYU (one hundred nineteen African American students / 8.8%); Oregon (fourteen African-American students / 2.6%); Quinnipiac (twelve African-American students / 1.8%); Stetson (sixty-three African-American students / 6.8%); and Temple (eighty-one African-American students / 7.7%). *ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS*, *supra* note †, at 25–27, 29–32.

³¹ *See, e.g.*, MODEL PENAL CODE § 210.2(1)(a) (1980).

Committee and Council policies is, at a minimum, sufficient to shift the burden to the Committee and the Council to justify these practices with valid, reliable, and publicly available statistical studies. The Committee and the Council must produce objective evidence showing that students with lower LSAT scores who are provided with properly structured academic support programs do not have a reasonable chance of succeeding in law school. In the absence of such studies, these practices amount to institutionalized racial discrimination.

In addition, changes must be made in the ABA Standards for Approval of Law Schools. Those standards currently do not prohibit schools from increasing their LSAT scores to maintain or improve their *U.S. News* rankings, even if this is done with actual knowledge of the disparate impact this has on minority admissions.³² The ABA Council recently rejected, without explanation, a proposed change in the standards that would have prohibited schools from using an admission policy or practice “that has the effect of discriminating on the basis of race . . . unless that policy or practice has been proven by objective evidence to be valid and reliable in assessing an applicant’s capability to satisfactorily complete the school’s educational program.”³³

If the downward slide in African-American enrollment is to be halted and reversed, at least two changes must be made in the accreditation standards. First, admissions policies or practices that have a disparate impact on minority admissions must be prohibited, unless those policies and practices are proven by objective evidence to be valid and reliable indicators of an applicant’s capability to satisfactorily complete a school’s educational program. Second, law schools must be prohibited from misusing the LSAT contrary to LSAC guidelines.

If law schools and the ABA Council will not voluntarily change or properly justify their policies and practices, aggrieved African-American applicants who are denied admission to law

³² See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 210(b) (2004–2005). Section 210(b) prohibits a school only from affirmatively precluding admission “on the basis of race.”

³³ See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, PROPOSED CHANGES IN STANDARDS §§ 210–12 (2005); see also Memorandum from Gary Palm & Vernella Randall to Standards & Review Comm., Section of Legal Educ. & Admissions to the Bar §§ 210–15 (Jan. 31, 2005).

2006] *RESTRICTING ACCESS TO THE LEGAL PROFESSION* 181

school should initiate legal action on the ground that these policies and practices constitute knowing racial discrimination in violation of federal law.