

California Bar Exam Cut Score and the Impact on Diversity of the Legal Profession

Presentation for the California Assembly Judiciary Committee

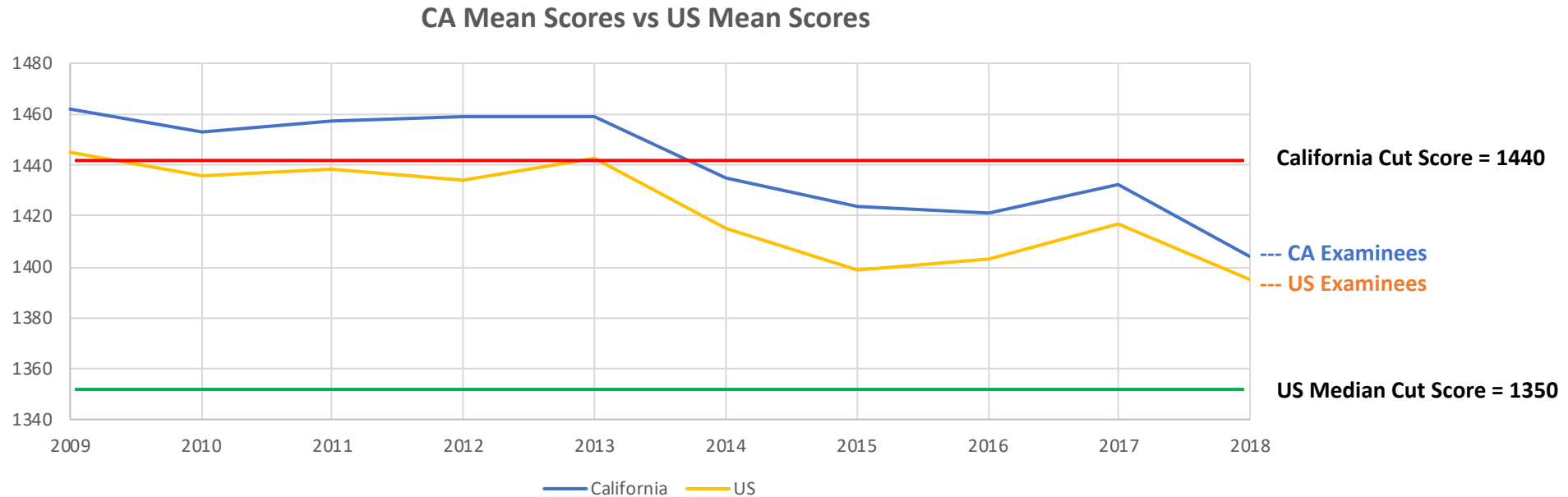
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Why California's 1440 Cut Score is Impacting Diversity

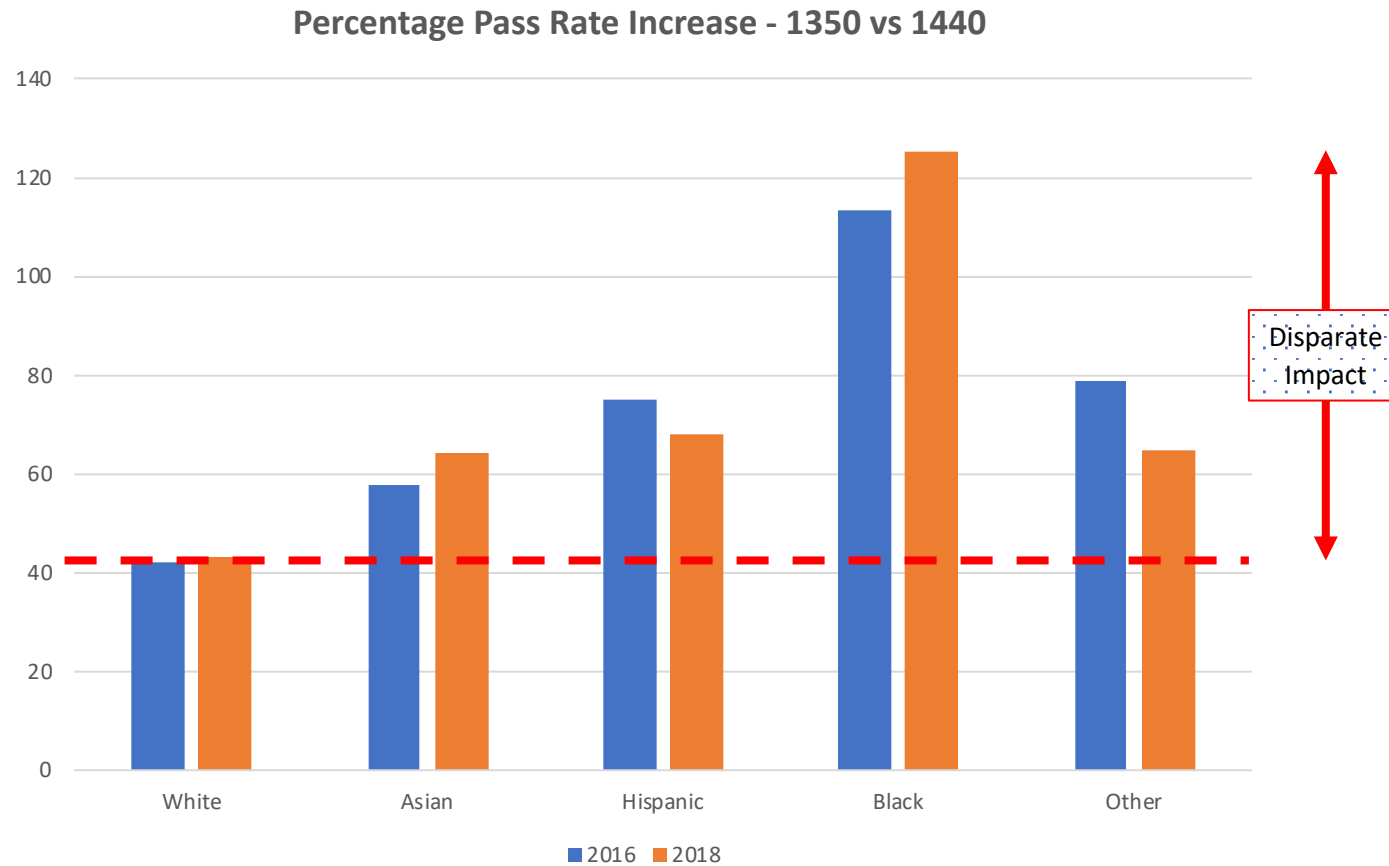
- The California cut score is set at 1440 - ***90 points higher than the median US cut score of 1350.***
- State Bar statistics reflect that the use of 1440 had a significant disparate impact on all minority groups when July 2016 and 2018 pass rates were compared by race/ethnicity.
- As of 2018, the majority of examinees are minorities, better reflecting the diversity of California. However, the licensee population is failing to reflect the same change in demographics, with diversity of the profession only increasing 4% between 2006 and 2017.
- The disparate impact of California's continued use of the 1440 cut score creates an inverse impact – the more successful that California law schools have been in training and graduating qualified diverse applicants – the greater the negative impact that continued use of the 1440 cut score has on the diversity of the legal profession in California.

CA Examinees Significantly Outperform the U.S.



- California examinees (blue line) consistently outscore the national mean score (yellow line) by 10-25 points.
- California examinees perform significantly above the national median score of 1350 (green line).
- The use of the California cut score of 1440 (red line) results in an approximate 50% failure rate in CA (July 2017) vs. an average US bar exam failure rate of 25% (2017 NCBE statistics).
- If applied to the 48 other US jurisdictions that use a national standard of 1330-1380, the California 1440 cut score would result in the national pass rate dropping from 75% to 54% (July 2017 NCBE statistics).

The Use of 1440 Has a Disparate Impact on Minorities



- Simulating the national mean score of 1350 in 2016 and 2018, the CA pass rate of minority examinees would increase appx. 20% to 80% more than white examinees.
- If the pass rates for all groups improved in a proportionate manner, the scoring would be considered race-blind.
- However, this dramatic disparity for a state-sponsored pre-employment licensing exam raises the issue of disparate impact on the basis of race/ethnicity.

The Diversity of Examinees Has Increased From 2009-2018

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of overall takers (July Exams)	8667	8562	8456	8737	8900	8504	8323	7737	8546	8071
Number of takers reporting race	8239	8028	8080	8337	8470	8074	8086	7525	8298	7838
Percentage - Minority Bar Exam takers	40%	41%	41%	41%	43%	45%	47%	48%	49%	52%

Source: Annual General Statistics Report – State Bar of California

- The diversity of California Bar Exam examinees has significantly increased from 40% (2009) to **52%** (2018).
- During the same approximate period, the percentage of minority members of the State Bar has only increased from 16% (2006) to 20% (2017).
- The differential between the significant increase in the percentage of successful minority law school graduates who are sitting for the Bar Exam and the relatively insignificant increase in the diversity of the Bar is an indicator that a barrier to increasing diversity of the profession is not the lack of diversity in law schools, but is the disparate impact that the 1440 cut score has on minority examinees.

The Effect of Using 1440 – More than 8,000 Fewer Diverse Attorneys

	2011	2012	2013	2014	2015	2016	2017	2018	TOTAL
Estimated Number of CA Examinees	9,871	10,183	10,271	9,996	9,847	9,132	9,699	9,338	78,337
Percentage of CA Minority Examinees	41%	41%	43%	45%	47%	48%	49%	52%	
Percentage of CA Takers Above 1350 and below 1440 *	23%	24%	22%	25%	25%	24%	23%	23%	
Estimated Number of Additional Licensed Minority Attorneys **	931	1,002	972	1,125	1,157	1,052	1,093	1,117	8,448

* Estimate based on published NCBE Score distributions.

** Number of additional Minority attorneys passing with scores of 1350 or above may be understated due to a higher proportion of scores between 1350-1440 scored by minority examinees indicated by limited data released by State Bar of California Office of Research and Institutional Accountability for 2016 and 2018.

- California’s high cut score results in an additional 22-25% of all takers failing the California Bar Exam who would pass in jurisdictions using the national median cut score.
- Between 2011 and 2018, approximately 8,448 additional diverse attorneys qualified for licensure at the national median cut score of 1350, but were denied licensure in California by use of the 1440 cut score.

Conclusions

- California's continued use of the unvalidated and abnormally high 1440 cut score vs the national median cut score of 1350 is the reason that California's passing rates are dramatically and disproportionately lower than the national pass rates.
- The disparate impact of the California 1440 minimum cut score may serve as the most significant barrier to licensure for qualified minority law school graduates.
- If California applied the national median cut score of 1350, more than 8,000 additional minority lawyers would have been licensed in California between 2011-2018.
- Although diversity initiatives remain an important strategy for improving the diversity of the State Bar and should continue to be funded and pursued . . . addressing the disparate impact of the 1440 cut score by adopting the national median cut score of 1350 will have the most immediate and significant impact on the diversity of the legal profession in California.