



Alison Monahan: Welcome back to the Law School Toolbox podcast. Today, we're excited to have David Klieger, Manager of Testing and Psychometrics at [Aspen Publishing](#), here with us to talk about equity in standardized testing. Your Law School Toolbox host today is Alison Monahan, and typically, I'm with Lee Burgess. We're here to demystify the law school and early legal career experience, so that you'll be the best law student and lawyer you can be. Together, we're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). I also run [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can always reach us via the [contact form](#) on LawSchoolToolBox.com, and we would love to hear from you. And you can check out the Bar Exam Toolbox podcast if the bar exam is on your radar. And with that, let's get started.

Welcome back to the Law School Toolbox podcast. Today we're excited to have David Klieger, Manager of Testing and Psychometrics at Aspen Publishing, here with us to talk about equity in standardized testing. Welcome, David.

David Klieger: It's a pleasure to be here. Thank you.

Alison Monahan: Oh, it's my pleasure. To start us off, can you just give people some information about your background and your work, just so they have some context here?

David Klieger: Sure. So, I have a background both in law and in psychometrics, quantitative methods and statistics. So, I attended law school at the University of Pennsylvania, and after I obtained my JD degree, I practiced law for several years. And then I decided to make a career change, and I then pursued a doctorate in industrial organizational psychology, with a focus on psychometric statistics and quantitative methods. And after I acquired my PhD, I started working at Educational Testing Service, ETS, where I was for many years in a scientific role. And I also was in a business role for a time. And among the work I did at ETS was introducing the GRE into the law school admission space. And I was working on a lot of different types of assessment on different higher educational markets, but that was my transition into the legal education space. And then I was introduced to [JD-Next](#), and JD-Next made a transition from ETS to Aspen Publishing. And I now have a role at Aspen Publishing, supporting the JD-Next program.

Alison Monahan: Awesome. I can't wait to talk more about that, and very impressive background. It sounds like you like school about as much as I do. If people want to learn more about you or reach out, how can they do that?



David Klieger: Certainly, they can track me down through Aspen Publishing. Aspen Publishing has a URL – aspublishing.com. And they also can find information on [JD-Next](#) there. And then my email address is david.klieger@aspublishing.com. And of course I can be found on [LinkedIn](#), as well as through Google and Bing searches.

Alison Monahan: Awesome. Frame this for me: Why is standardized testing an equity issue?

David Klieger: Because for many decades, there have been these score gaps seen in terms of these types of tests. So, the average score for certain historically underrepresented groups has been lower, and substantially lower than the average score for traditional majority groups. And that difference, given how much the test is used in admissions decisions – that gap, that score disparity does result in different admission rates for these different groups. And the historically underrepresented groups have continued to be historically underrepresented because of those score gaps that, again, have persisted for many decades.

Alison Monahan: I've definitely read quite a bit about that. And we'll talk later about whether these tests are even really predictors of anything in law school. But tell me a little bit about JD-Next. What is it and how is it different?

David Klieger: So, JD-Next is an eight-week asynchronous online course that is designed to do three things. One, to provide a preview of what law school is going to be like, because the course is a simulation of exactly what a Contracts Law class in your first year would look like. And it also includes an authentic-looking final exam. And so it provides a preview of what your law school experience academically would look like. And so if someone isn't sure if they want to attend law school, it's a great opportunity at a very reasonable cost – \$299, to make that determination, as opposed to learning the hard way when you're already in your first semester of law school, where spending up to \$37,000 and change, to spend that per semester to learn the hard way is rather costly. And then there's also the psychological commitment that you have in law school, which is significant; you're giving up lost wages. So, there is a huge convenience in that preview advantage of JD-Next. Also, JD-Next provides a course – it is a course – and so it prepares people better to succeed in law school. In fact, there's scientific research that shows that by taking the JD-Next course and final exam, you can expect a 0.2 boost in your law school grade point average, which is very significant, given the importance of law school grades. And that boost holds across different racial and ethnic groups, which is very important for equity. And then finally, JD-Next is also a final exam, and the scientific peer-reviewed published research shows that the JD-Next final exam is highly predictive of law school academic success, and that the score gap one sees, if one sees one at all on the JD-Next final exam, is significantly smaller than the score gap one sees



for traditional standardized testing. So, there's another huge equity piece there as well. JD-Next is a combination of benefits that act synergistically to provide people with a preview, to prepare them better for law school, and to provide an authentic-looking data point to help students and institutions see if this is a good fit, if law school is going to be a good fit.

Alison Monahan: So, the idea is someone would do this program, basically, and then the school would use that information to help with the admissions decision?

David Klieger: So, JD-Next can be used in multiple ways. One way is, yes, to use the JD-Next exam as an admissions test. Another way JD-Next can be used is as a bridge program. So, a law school in theory could ask its admins, for example, in the summer immediately prior to matriculation into the first year, to take this course to prepare them for law school, even if these individuals have already been admitted. It might also be that the test could also be used to help decide who to take off a waitlist. That's another potential use of JD-Next. Law schools may be interested in partnering with Aspen on JD-Next. Also, undergraduate institutions for pre-law may want to partner with JD-Next to help provide access for their undergraduate students into the law school space. So, there are many different types of uses. There are other uses as well, but those are the main ones.

Alison Monahan: Nice. We have a similar program called [Start Law School Right](#), that is designed for people to do in the summer after they've been admitted. But similar idea – you don't want to show up the first day having no idea how to read a case or what a class looks like or what you should be paying attention to. So, I definitely support this idea of getting that information in front of people at an earlier point. And that is one of the things that we've said about Start Law School Right – if you take this and you hate it, maybe law school is not the right place for you to be spending \$200,000.

David Klieger: I completely agree. And I did want to add that the purpose of JD-Next is to teach the underlying skills that are important for success in law school. The course is embedded within the context of a Contracts Law class, but the main purpose isn't to teach Contracts Law, but rather to teach the underlying skills, which are transferable across different law school subject areas.

Alison Monahan: Yeah, definitely agree. We use Torts, but same idea. You read one case, you work with that case. We give you a couple of other pieces of information, you start putting that together, you take an exam. I think that sort of process is really valuable for students, and however they end up doing that, I think doing it one way or another before showing up to the first day of law school is a great



idea. How are schools and students liking this? Have you gotten any feedback on it?

David Klieger: Oh, we've had tremendously positive feedback, both from institutions and individuals who have participated in JD-Next. People do see it as just a very different way of going about helping aspirants to law school, aspirants to legal careers. We've gotten a lot of very positive feedback from individuals who come from non-traditional backgrounds, who don't have any familiarity with what law school is going to be like. They don't have social connections, which help them understand what it is they might be getting themselves into. So there's an additional equity piece there in that JD-Next provides information to people who really don't know much about what law school is like.

Alison Monahan: Definitely. No, I 100% agree on that as well. That's one of the reasons we did our course – you should just be able to find this out. It's funny, my business partner, both of her parents were lawyers, so she had much more contacts than the average person. But when I went to law school, I knew some lawyers but I didn't know what I was getting into. So, I think having that across the board for anyone has a lot of value. Alright, let's shift gears a little bit. You are an expert on standardized testing – I was really excited to learn that – and I want to dig into this a little bit because I think this is such an important conversation. How do we decide that a test, say the LSAT or the GRE, what are these even measuring? What are they trying to measure? And how do we know if they're valid or reliable assessments?

David Klieger: Ideally, an admissions test would measure and assess the determinants of success in a future educational environment, and there are typically many different determinants of success in these environments, including law school. So, there are ones that are skills-based, ones that are knowledge-based, ones that might be based on skills like perseverance, grit, teamwork. And so those assessments should be trying to tap into those important determinants. The way we decide on what those determinants would be is to look at what it is we're trying to predict. So, our stakeholders have told us that they are interested in different aspects of future success, including grades. We know in law school, grades are especially important, so our assessments are in part designed to try to predict law school academic performance, but they can be predicting other things as well. There has been research done in the past to look at other outcomes beyond just grades. In law school, of course, we're also interested in attrition, we're interested in bar exam passage, we're interested in employment success or getting a job within a reasonable amount of time upon graduation from law school. So it's not all necessarily about grades, but grades are definitely a major component of measuring law school success. So, we want, ideally, our tests, our assessments to be being able to predict those things. And



the way we try to determine whether they're achieving those goals is to, on the frontend, make sure we carefully think about the content of the assessments, whether that content makes sense for what it is we're trying to predict. We look at whether the constructs or the concepts that we're trying to measure align with how the test is being designed. And we also, on the backend, can look at, when the rubber hits the road, the extent to which these tests are predicting the things that we believe they should be predicting. And we do that statistically and psychometrically. When we're designing the tests, there are a number of different kinds of granular level analyses we could do on the test questions and on the possible response options, so that we make sure we have a well-designed test in advance. And then, like I said, on the backend, after the test is administered, we can look at how well the test performed. And of course, throughout this process, we care about, or we should care about fairness, that the test is operating in a valid and reliable way for all individuals, irregardless of their demographic background.

Alison Monahan: And I remember looking into this quite a while ago, but I seem to recall that even the combination of LSAT and GPA was not a super strong predictor of law school success. How well do these traditional tests measure what we're trying to measure or predict a certain outcome?

David Klieger: I will say as to the JD-Next final exam, it is highly predictive of law school academic success. There are different findings across different higher educational sectors, so the predictive power of these tests is not necessarily the same across all these different sectors, for a whole host of complicated reasons. I will say that tests do tend to predict better for law school academic success than, say, for success in other areas of higher education. But what continues to be a problem for legal education, which is a problem universally, are these score gaps. And I think that's where JD-Next particularly shines. And it's part of my goal to not only promote the predictive power of tests, but also that equity piece.

Alison Monahan: And that makes sense to me. What you're testing is literally tracking what you will be doing in law school, versus something like the LSAT. We had an LSAT tutor on the podcast recently and he mentioned that the LSAT is changing. They're getting rid of the logic games, which to me would be terrible, because I loved those, but most people hate them. And of course schools, as you mentioned, thanks to you, went from taking the LSAT to also taking the GRE. What are your thoughts on some of these changes? Were these logic games ever predictive of my ability to write a Civ Pro exam? I don't know. At some point you just throw your hands up and say, "Yesterday that was predicting something and now it's not." So, what are we doing here?



David Klieger: I have had a number of conversations about what's called "content validity", which is the extent to which the content of various tests out there are capturing what we think they should be capturing. JD-Next was designed to actually look like what you actually have to do in law school, as opposed to being a measure of more general skills. And we have seen some research which shows that there are advantages to using what they call these "domain-specific" or more directly "authentic" assessments, in lieu of more general assessments of more general skills. So, I am a big supporter of making tests look like the very thing that you're being asked to do should you be admitted to wherever it is you're applying.

Alison Monahan: My theory on standardized testing, I sometimes say I got through life basically on standardized testing. I've always just been good at it. But I think it's testing everything from even the elementary school level testing, all the way through the SAT, the LSAT, the GRE. I've taken all these, I've done really well on all of them. But I think it's testing a very specific type of, to some extent, knowledge. But I would really say, honestly, a lot of it's more just, can you do things quickly? I say sometimes I'm a quick thinker, but not a very deep thinker, and I think that's interesting in the law school context because, to some extent, I think law school exams are also testing quick thinking. But in the actual legal practice, we might not want that. We might not want the person who can just give you the answer off the cuff and may or may not be right. We maybe should be testing for something else. What are your thoughts?

David Klieger: I agree, having been a legal practitioner, that the actual practice of law does provide some different kinds of challenges and different kinds of opportunities to solve legal problems, so it's not all about being a quick thinker. To give the tests their due, quick thinking can be that the test's value, it can be important for success as a lawyer at times. But I do agree that no test can be perfect, and there are determinants of success as a lawyer, which tests are not perfectly capturing.

Alison Monahan: We also work with students taking the bar exam, and the bar exam itself, the UBE version at least, is shifting in the next few years quite dramatically. And I think they're trying to shift it to more of what you're talking about – the things you would actually be expected to do in practice, versus multiple-choice questions, which, again, does that make sense as a way to test my ability to do something as a patent litigator? I'm not sure. Probably not. But it is what it is. You have to do it. Do you think people are starting to think more broadly about these equity pieces, which also exist on the bar exam? And whether these are fair tests.

David Klieger: Oh, fairness has always been a big a topic of conversation when it comes to testing, and it's even perhaps more so these days. And yes, I do believe that



changes in the bar exam are in part to try to address concerns about equity and diversity in the legal profession. And I think it's important to do whatever we can to try to maintain that validity, that important predictive power of our assessments, but also do it in a way that addresses some really longstanding concerns about fairness and giving everyone reasonable opportunity to be successful.

Alison Monahan: Right. I sometimes say if you did in practice what you're expected to do on the bar exam, you would almost certainly be committing malpractice. Lawyers just don't operate that way. I'm a patent litigator and someone walks in and says, "Oh, I was in a car accident last night. What can you tell me about that?" You need to call a criminal defense lawyer. Don't talk to me about this. I'm not going to be hit by the bar, like, "Oh yeah, in my learned opinion, I think this is what you should do." This is insanity. On that fairness piece, one thing that people can get really up in arms about on testing is around testing accommodations. So, walk me through why these exist and if they're really giving people an unfair advantage.

David Klieger: So, those who are provided an accommodation first of all have to generally provide adequate evidence and documentation of a need for that accommodation. And the accommodations have to be reasonable and they are required by law, I just want to state that. And in addition, people can be very successful if they are provided with reasonable opportunity to be successful. And as a society, we have made that determination that there are a lot of people out there who can be tremendously productive and tremendously successful if there're these reasonable changes to the testing environment, because as you yourself have said, what you have to do down the road in an actual career is not necessarily fully being captured by the environment in which you're taking the test. So, what you're doing is basically trying to put the accommodated test-taker in a more fair position to try to better capture what they truly can do when they're really out there, in an educational environment or in their job. So it really is a promotion of equity as opposed to doing some unfair injustice to anyone. It's actually their accommodation to try to really show what people are capable of.

Alison Monahan: Yeah, we had someone on recently talking about this and she was saying that she's seen studies that suggest that for people who don't need extra time, giving them more time actually doesn't help, which totally tracks for me. If you're already finished, there's really no reason. But it is one of those things that people get very upset about in some cases, we've gotten some interesting emails. Alright, before we wrap up, I want to talk to you about the future here. How do you see standardized testing in the law school space, maybe even in the bar space evolving? I know it sounds like JD-Next is an interesting option. Do



you see that hopefully that's going to get some uptake, or what are your thoughts here?

- David Klieger: I do believe that JD-Next is a great model for the future, because it isn't just a test. It also is a preparation that's, again, authentic-looking. It provides that preview and it's directly assessing what it is you're expected to do in a future environment. So I think that it is a great path forward, and the fact that it provides that additional equity is critically important. So I do think it serves as a great role model. I think that new technology is going to change assessment, the nature of assessment. I also know that there's a great interest in trying to assess additional determinants of success that go beyond what the traditional tests are assessing. And I think that the future is going to be very interesting.
- Alison Monahan: That is a really intriguing point. You alluded to this earlier, some of the things like grit or resilience. Is that something we could potentially test?
- David Klieger: Oh, absolutely. There's a whole history of testing these socio-emotional skills, and I think that there will continue to be opportunity to do that.
- Alison Monahan: That would be fascinating. How would you test that? Is it a multiple-choice type thing or do I have to go to an interview? What does that look like?
- David Klieger: Because people often know how to fake their answers to these kinds of assessments, because they know that they want to show that they're responsible and good team players and good leaders, there are different ways of trying to best address these socio-emotional skills. And one is to use what's called "forced choice measures". And what they basically do is force you to choose among two good things or two bad things as to which best describes you. And you can actually by administering a pattern of these types of questions, figure out where someone stands in terms of these different socio-emotional skill areas. And it's very hard to fake those kinds of assessments, so there actually is a way to successfully administer those kinds of socio-emotional measures.
- Alison Monahan: That is very interesting. I remember a very long time ago, I was applying for a job out of college, I think at the Enterprise rental car place, which would have been a terrible fit for me. And I think they gave me one of the early versions of these tests where it's, "Oh, of course, I would show up on time to work, I would never be late." But apparently I failed the test and they figured out it wasn't a good fit, which was probably best on all sides. But yeah, I think that sort of thing is so interesting, because those skills actually are such a big part of really succeeding as a lawyer, and they're just not being captured by the LSAT at this



point. Alright, we're about out of time. Any final thoughts you'd like to share here?

David Klieger: I just want to say that anyone who is interested in law school should pursue their dreams, and they should know that if they are interested in JD-Next or in learning about JD-Next, that they should definitely reach out to Aspen Publishing, because we really want to support their success.

Alison Monahan: Okay. And it sounds like that would be the best way to get in touch, is just reach out to Aspen via their website.

David Klieger: That is one way to do that. Yes, that would be a great way to do it.

Alison Monahan: Awesome. Well, thank you so much for joining us.

David Klieger: Thank you very much for having me.

Alison Monahan: My pleasure. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We would really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to Lee or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website [contact form](#) at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

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