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Statement in Support of Eliminating the Requirement of an Admissions Test
Submitted by Society of American Law Teachers
For the April 2, 2011 meeting of the Standards Review Committee

Law schools are the initial gatekeepers to the legal profession, admitting only a small percentage of applicants. The admissions process is the doorway to the formation of a lawyer, including the shaping of a lawyer's professional and moral identity. The humbling impact of this gate-keeping function underscores the importance of getting the admissions process right. The law school admissions process must reflect the professional and moral imperatives of the practice of law: it must be fair and principled. Lawyers and law schools must challenge admissions procedures that undermine fairness and principled reasoning just as lawyers are expected to be advocates for change whenever fairness and principled reasoning are undermined.

SALT applauds the ABA for meeting these professional and moral imperatives by reviewing the role of the LSAT in the accreditation process. Although the LSAT is generally accepted as a better predictor of success in the first year than undergraduate grade point average, its actual ability to predict success is widely acknowledged to be quite limited. More importantly, a broad base of research reveals that the LSAT has a chilling effect: (1) law schools disregard the LSAC's cautionary instructions about the limited utility of the LSAT and instead rely primarily on this numerical data for admissions purposes; (2) law schools increasingly rely on the LSAT to award "merit" scholarships instead of offering scholarships based on need; 3) the LSAT does not measure a student's potential for success later in law school, success in passing the bar, or success in law practice; and (4) the LSAT excludes otherwise meritorious candidates from underrepresented populations, including students of color and students from lower socio-economic status. As a result, law schools' overreliance on the LSAT erects an unfair barrier to access to the profession. Moreover, the LSAT's monopoly on admissions practices chills competition from alternative admissions procedures. As long as the LSAT retains an iron grip on the admissions process, law schools will continue to exclude deserving students, to the detriment of the legal profession and to society as a whole.[1]

[1] William D. Henderson, *The LSAT, Law School Exams, and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed,* 82 TEXAS L. REV. 975. 977 (2004); Phoebe A. Haddon & Deborah W. Post, *Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and A Redefinition of Merit*, 80 ST. JOHN'S L. REV. 41, 54-55 (2006) ("The [LSAT] test score, a product of one three-hour test, has a statistically significant correlation to first-year grades and is offered as a reliable predictor of whether an applicant will succeed in the first year of law school. But even this limited claim is contested, and the LSAC itself states that any predictive validity must be assessed on an individual school basis."); 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, 599-600 (2001) ("Even aside from conceptual incoherence, or perhaps because of it, the LSAT and other standardized tests simply are not very good at doing what they profess to do, namely predict first year grades"); Vernellia R. Randall, *The Misuse of the LSAT: Discrimination against Blacks and other Minorities in Law School Admissions,* 80 ST. JOHN'S L. REV. 107, 125 (2006) (discussing the insignificance of the average correlation coefficient for the LSAT and UGPA as poor predictors of first year law school performance).

Law Schools Misuse the LSAT

Although it is subject to dispute, or at least several caveats,[2] the LSAT is generally accepted as the best available predictor of success in the first year of law school.[3] But even construed in the most favorable light, the LSAT is simply that and no more.[4] It does not accurately predict success later in law school.[5] It does not predict success in classes where students integrate doctrine with other legal skills in ways that replicate how lawyers employ doctrinal analysis in practice.[6] The LSAT was not designed to, nor does it, accurately predict success in practice.[7]

Indeed, the LSAT was never intended to monopolize admissions decisions. The LSAC has issued several public advisories about the limited utility of the LSAT, specifically cautioning that "LSAT scores… do not measure, nor are they intended to measure, all the elements important to success at individual institutions."[8] Moreover, the "LSAT does not measure every discipline-related skill necessary for academic work, nor does it measure other factors important to academic success."[9] The LSAC explicitly urges schools not to "use the LSAT score as a sole criterion for admission;"[10] instead, schools should only use LSAT scores as "one of several criteria for evaluation…"[11] Anticipating one of the purported justifications for over-reliance on the LSAT, the LSAC specifically states the LSAT "should not be given undue weight solely because it is convenient."[12]

But law schools do not listen to the LSAC's warnings. Instead, law schools persist in over-relying on the LSAT in their admissions procedures. Most law schools are willing to sacrifice fair and principled admissions decisions in order to exploit efficiency and rankings.[13] LSAT scores are one of the few factors within a school's control with regard to *U.S. News and World Report* rankings. Median LSAT scores for a school's entering class account for 12.5% of the data used

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[2] *Supra* note 1.

[3] Haddon & Post, *supra* note 1, at 53; Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 233 (2006).

[4] The LSAT's tenuous correlation to performance in the first year of law school must also be reexamined in light of momentum for holistic reforms to legal education. In many ways, the first year of law school is far more traditional than the second and third year of study: the latter courses often (and increasingly) entail greater focus on skills, such as clinical or experiential opportunities. Indeed, the lack of correlation between the LSAT to second and third year performance (as well as the lack of correlation between the LSAT and success in practice) exposes the outdated focus of the LSAT: it does not measure the types of skills and abilities that are stressed later in law school and in practice. As law schools evolve and better incorporate the types of practical skills and professional judgment called for in the Carnegie Foundation Report, why should admissions be tied to the anachronistic scope of the LSAT?

[5] Haddon & Post, *supra* note 1, at 53-54; 59-60; *see also* Leah Christensen, *The Power of Skills: An Empirical Study of Lawyering Skills Grades As the Strongest Predictor of Law School Success,* 83 ST. JOHN'S L. REV. 795 (2009)(finding that the strongest predictor of law school success was students' grades in lawyering skills courses, followed by UGPA and then LSAT score)

[6] See e.g. Andrea A. Curcio, Gregory T. Jones, and Tanya M. Washington, *Does Practice Make Perfect? An Empirical Examination of the Impact of Practice Essays on Essay Exam Performance*, 35 FL. ST. L. REV. 217, 293 (2008)(finding that although LSAT scores correlated with grades in first year doctrinal courses, there was no correlation between LSAT score and students' legal research and writing course grade); Henderson, *supra*. Note 1 (finding LSAT score correlated best with in-class timed exams, and had much less of a correlation when students were given exams that mirrored how lawyers evaluate issues in practice, and had virtually no correlation to students' grade on an appellate brief or oral advocacy assessment).

[7] *Id.* at 53-54; 59-60; Stake, *supra* note 3, at 234.

[8] LAW SCH. ADMISSION COUNCIL, CAUTIONARY POLICIES CONCERNING LSAT SCORES & RELATED SERVICES (2005) http://www.lsac.org/LSACResources/Publications/PDFs/CautionaryPolicies.pdf (last visited March 24, 2011).

[9] *Id.*

[10] *Id.*

[11] *Id*

[12] *Id.*

[13] Paula Lustbader, *Painting by the Numbers: The Art of Providing Inclusive Law School Admissions to Ensure Full Representation in the Profession*, 4 (work in progress on file with the author).

by *U.S. News and World Report* in its rankings.[14] The bottom line is that as long as the incentives for using the LSAT remain the same, and as long as law schools are allowed to continue to use the LSAT score as the primary indicator, they will — no matter what the professional and moral costs.

Over-Reliance on the LSAT Results in Fewer Needs-Based Scholarships

Many law schools have changed their financial aid policies over the last several years in an effort to boost their US News & World Report rankings by raising the LSAT scores of their incoming students. Indeed, a recent report of a special committee of the Council of the Section of Legal Education and Admissions to the Bar explicitly raised this as one of the three most worrisome adverse effects of the rankings. The Report stated:

The current methodology tends to discourage the award of financial aid based upon need. Because median LSAT score and median UGPA are so important to the current rankings, law schools have abandoned other measures of merit or need in awarding financial aid. This can have the effect of shifting financial aid to those students with LSAT scores that will assist a school in achieving its target median for rankings purposes. The result is that students with the greatest financial need often are relegated to heavy borrowing to attend law school.[15]

Over-reliance on the LSAT thus has had the pernicious effect of reversing the long-established policy of offering scholarships to low-income students. This, in turn, contributes to the declining enrolment of low income and minority students as described below.

The ABA Accreditation Standards Provide an Unintentional De facto Minimum LSAT Score and Compound the Inequitable Impact of the LSAT as the Dominant Admissions Criterion

Although the LSAC discourages "cut-off scores (those below which no applicants will be considered),"[16] law schools use the LSAT as a hatchet for precisely that purpose. This "cut-off" occurs even though the ABA does not require a minimum LSAT score.[17] In recent history, it has been noted that the ABA has denied accreditation to schools that admitted students with LSAT scores lower than 143.[18] In fact, it has been noted that the ABA denies accreditation to schools that admit any applicant with an LSAT score of 140.[19] Therefore, the practical effect of these accreditation denials is a de facto "cut-off score" range of 141-143.[20] An even higher cut-off score has been reported among New York schools which reportedly do not accept students with LSATs below 150.[21]

LSAC recently released data establishing an average LSAT score of 143.5 for African-American students.[22] Application of the ABA de-facto standard to this average would mean the automatic disqualification of half of the African-Americans who take the LSAT.[23] And, if law schools are increasingly refusing to accept students with LSATs below 150,

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[14]Robert Morse and Sam Flanagan, *Law School Rankings Methodology*, http://www.usnews.com/education/best-graduate-schools/articles/2011/03/14/law-school-rankings-methodology-2012

[15]Report of the Special Committee on the U.S. News and World Report Rankings, Section on Legal Education and Admissions to the Bar, July 15, 2010.

[16]*Id.*

[17]Haddon & Post, *supra* note 1, at 65 (2006); John Nussbaumer, *Misuse of the Law School Admissions Test, Racial Discrimination, and the De Facto Quota System for Restricting African-American Access to the Legal Profession*, 80 ST. JOHN'S L. REV. 167, 176 (2006)

[18]George B. Shepard, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 104-05; 114 (2003).

[19]*Id.* at 114.

[20]Haddon & Post, *supra* note 1, at 65.

[21]Thomas Adcock, *Deans, Professors Ponder Reasons for Decline in Minority Enrollment,* NEW YORK LAW JOURNAL, Nov. 14, 2008

[22]Shepard, *supra* note 18, at 104-05, 120.

[23]Nussbaumer, *supra* note 17, at 176

the result is an inevitable decline in enrollment of African-American students in law school.[24] African Americans are not the only students who are denied admission by this de-facto cut-off score. Various studies also show that other minority students score significantly lower than whites on the LSAT.[25] LSAT scores are also lower for students from lower socio-economic groups and for students with certain learning styles.[26] Careful studies and common sense reveals that many students within these under-represented groups are otherwise meritorious candidates for the study and practice of law.[27] Such promising students add vital diversity and talent to legal education and to the legal profession, but simply because they tend to score lower on the LSAT, they face higher obstacles to admission. This result is unjust, unprincipled, and unacceptable.

The ABA has identified the diversification of the profession as one of its top priorities.[28] Diversity in legal education not only enriches the educational experience for all students, but also enhances the capabilities and wisdom of the legal profession. The perverse impact of the LSAT on diverse student populations is directly contrary to the stated intent of the ABA.

Over-Reliance on the LSAT Stifles the Advancement of Viable Alternatives

Despite the warnings of the LSAC and the good intentions of the ABA, the LSAT has eclipsed alternative measures for assessment and admissions.[29] Because of the various incentives discussed above, law schools invest in sustaining the monopoly of the LSAT. The LSAT's dominant role in the law school admissions process has chilled the development of viable, demonstrated alternatives.

Fortunately, some strong scholarship and research – including research funded by LSAC– suggests some alternatives that would benefit from further revisions to the ABA accreditation standards. SALT and other entities have discussed some of these innovations in prior position statements: the use of banded-reporting;[30] alternative assessment tests that measure potential to succeed in practice;[31]qualitative indicators;[32]adjusted test scores for race and socio-economic background;[33] and so-called "whole file" reviews;[34] are just some of the promising alternatives that warrant further investment.

But to meaningfully develop these alternatives, the chilling effect of the LSAT must be addressed. Eliminating Standard 503 will help to correct persistent over-reliance on the LSAT.

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[24] Adcock, *supra* note 21.
[25]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, 599, 605 (2001).
[26]*Id.* at 599-601.
[27]*See* generally, Randall, *supra* note 1, at 121, 125; Harvard Law Review Assoc*., The Relationship Between Equality and Access in Law School Admissions,* 113 HARV. L. REV. 1449, 1460 (2000).
[28]Nussbaumer, *supra* note 17, at 169; Shepard, *supra* note 18, at 103.
[29]Randall, *supra* note 1, at 111 ("At least ninety percent of law schools have admission practices that presumptively deny applicants based on where they fall on a grid formulated around LSAT and UGPA.").
[30]Haddon & Post, *supra* note 1, at 88
[31]*See* LAW SCHOOL ADMISSIONS PROJECT: LOOKING BEYOND THE LSAT, University of California Berkeley Law, http://www.law.berkeley.edu/beyondlsat/ (last visited March 20, 2011); *see also* Lustbader, *supra* note 13, at 30.
[32]Harvard Law Rev. Assoc., *supra* note 27, at 1449, 1460; Delgado, *supra* note 25, at 613.
[33]Haddon & Post, *supra* note 1, at 89; Delgado, *supra* note 25, at 604.
[34]*Id.* at 92.

Conclusion

The LSAT was never intended to dominate the law school admissions process. And yet, various incentives compel law schools to prize the LSAT as the primary criterion for admission. The misuse of the LSAT has resulted in an unfair and unprincipled admissions process that negatively impacts legal education, the legal profession, and society as a whole.

As the gateway to the profession, the admissions process must be fair and principled. Fair and principled admissions procedures seek to increase enrollment of meritorious students from underrepresented and diverse populations. Fair and principled admissions procedures employ a variety of measures to predict law school success and success in practice. Fair and principled admissions procedures can achieve all these goals and still satisfy ABA accreditation standards.[35] But as long as the incentives for exploiting the LSAT as a primary indicator remain the same, law schools have shown they will not change their admissions practices in any meaningful way. The proposal to eliminate Standard 503 will help to correct this chilling effect, and will enable schools to adopt admissions procedures that embody the noble professional and moral imperatives of the legal profession. In line with eliminating the test as an explicit admissions criterion, Interpretation 501-3 should be reworded to make clear that compliance with Standard 301 is not dependent on LSAT scores.

[35]Lustbader, *supra* note 13, at 49-51.