April 2, 2018

Dean Maureen O’Rourke, Chair
Council of the ABA Section of Legal Education and Admissions to the Bar
(via e-mail to jr.clark@americanbar.org)
321 North Clark Street, 21st Floor
Chicago, IL 60654

Re: Proposed Elimination of ABA Accreditation Standard 503
(Requiring an Admission Test)

Dear Dean O’Rourke and Members of the Council:

I write regarding the November 3, 2017 action of the Council, submitted for notice and comment, to remove the requirement of an admissions test (Standard 503) and to revise Standard 501 by moving into the black letter of that Standard the factors noted in the current Interpretation 501-1. Those factors bear upon the Standard 501(b) requirement that “[a] law school shall only admit applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.”

I have served as the dean of Baylor Law School since 1991 and have, since the mid ‘80s, been a regular participant in ABA and AALS re-inspection teams, serving many times as a chair, a team member, or a special fact-finder. I have the highest respect for the outstanding work done by both the ABA Section of Legal Education, led so effectively by Barry Currier, and for the LSAC, likewise led so effectively by Kellye Testy.

The point of this letter is “let’s slow down and not take a brash jump into unknown territory.” Legal education is yet dealing with years of re-assessment of its aims, fiscal uncertainty, market disruption and many struggling or failed law schools. Is it in the best interest of prospective law students, legal education and the profession to now cast aside a soundly developed and vetted test, the LSAT? This would be done in favor of a test, the GRE, designed for a different purpose and now embraced in some quarters for marketing purposes rather than because it has been deemed to satisfy the objectives of the current Standard 503 or the objective of Standard 501(b).

Maybe the changes are well grounded. Then again, maybe they are not. They appear to rest upon a concept of “let’s disrupt the status quo and see what happens.” We just do not know. The status quo sometimes needs disruption. However, I like to have a good sense of what the scene will look like following disruption. We do not have that in this instance.
To be sure, I’m not an unabashed lover of the LSAT. If we are honest, all of us have seen students who scored in the high 160’s, but they “just don’t get it” – not as a student and not as a lawyer. We also know that there are students who have scored in the mid 140’s, who through drive, hard work, a sense of purpose and a focus go on to perform honorably in the profession by their careers of service to their communities. All this said, the LSAT does provide what I believe we all have affirmed in so many venues, i.e., that the test does provide a good, albeit imperfect, guide to first-year law student performance.

Also, there is a painful irony at work here. As legal educators, we all (let’s admit it) worship and genuflect at that altar of the LSAT for the purposes of rankings, yet now there is this move *suddenly and without a clear blueprint ahead to toss it overboard* to serve transient, and even shallow, marketplace motivations.

So long as the LSAT is the currency of the *U.S. News* rankings, if alternate tests are used for admissions, will schools fill the lower part of their classes with, e.g., GRE takers? Will acceptance of the GRE score funnel students into the law school application process who are actually focused upon law school? The LSAT is taken by those who already have a developed desire to go to law school. They are not “neutrals” who can be “picked off” by making handy the use of a GRE score taken for graduate school admission purposes.

Medical schools use the MCAT not because it is mandated, but because medical schools can be assured that those applying are not doing so as an afterthought (“Well, I already took the GRE for graduate school; I think I’ll run that up the flagpole on a medical school application. Why not?”).

Also, the LSAT is a uniform experience for law school applicants. The LSAT allows applicants to gauge, at least to some extent, their own competitive prospects among law schools, or for that matter, their prospects for any given law school. A standard test measure allows those who hail from less academically distinguished backgrounds, underrepresented groups, and less privileged backgrounds to say “Hey, I can do this!”

We have moved within a rather tight time frame from:

1. all must take the LSAT; to
2. some need not take the LSAT [itself now a defunct provision]; to
3. a proposed [but withdrawn] “you can use the GRE [or another test] if you can establish that it is valid and reliable [i.e., through the agency of the ETS]; to
4. a test is not necessarily required at all.

This sequence does not evidence a calm, deliberate, evidence-based approach that places the welfare of prospective law students first above the raw marketplace (and possible gaming possibilities).
Then, there is all this alacrity of process in the context of a roiling legal education landscape.

Consider the following:

1. the current instability of the legal education market;
2. the closing, placement on probation, or censure of many schools for failing to show that their graduates can be successful on the bar exam;
3. the reorganization of the Section (absorption into the Council of the Accreditation Committee and the Standards Review Committee);
4. the move to ten-year sabbatical re-inspections; and
5. the Standard 316 emphasis upon successful bar exam passage rates (which, to be sure, can be a back-stop to dispensing with a test, but whether it would will only be known years after the matriculation of GRE takers or those who take no test).

My request is simple. Can we just slow all this down? We are weighing a decades-old reliable (though not perfect) test against what is nearly akin to a “flavor of the day” approach that may be driven by our lesser selves in the marketplace.

We must instead rely upon soundly validated, interest-free values and calm deliberation. This is what we must do for the welfare of those considering entry into our profession, legal education and for the profession.

With very best regards, I am

Sincerely,

Bradley J.B. Tober
Dean
M.C. & Mattie Caston Professor of Law