

# SOCIETY OF AMERICAN LAW TEACHERS

## SALT on the LSAT

**December, 2003**

Although law schools have access to a host of relevant information about candidates for admission, an applicant's Law School Admission Test (LSAT) score has become the most determinative factor in the admission process.

In response to the volume of applications facing admission officers; to the competition created by the misleading but widely-read magazine "rankings"; and to the vociferous complaints of anti-affirmative action forces, the objective-sounding, labor-saving standardized test is riding a tidal wave of popularity.

The LSAT is now widely used as a predictor of success throughout law school and on the bar exam, purposes neither contemplated nor advocated by the test-makers themselves. Most disturbingly, over-reliance on the LSAT serves as a significant barrier to achieving excellence and diversity in our law schools and in the legal profession.

As the largest membership organization of law professors in the nation, SALT urges law schools, the Law School Admission Council (LSAC), the Association of American Law Schools (AALS), the American Bar Association (ABA) and others committed to our profession and the public we serve to abandon the improper use of this test. Together, we must identify and promote more accurate ways of defining and measuring merit. This Statement, and the proposals for reform discussed herein, are designed to further this endeavor.

[A more detailed, thoroughly-documented version of this Statement will appear in a forthcoming issue of the Journal of Legal Education.]

## I

### TODAY'S LSAT: SADDLING ITS MODEST GOALS WITH CRYSTAL-BALL EXPECTATIONS

Notwithstanding the protestations of the LSAC and its psychometricians, who merely sought to design a test that accurately measures limited skills, test scores continue to be accepted today as a gross measure of intelligence and/or of the test taker's general knowledge and academic competence.

The LSAT is a standardized, three-hour, multiple-choice examination which is intended to measure aptitude, not achievement – a much-contested intention itself. The test purports to measure reading comprehension and analytical and related reasoning skills. The resulting test score is said to predict whether an applicant will successfully complete the first year of law school. Yet even this limited claim is contested. One study finds that the test explains only 16% of the variance in grades among students enrolled at ABA accredited law schools (while the LSAT combined with UGPA explains 25% of the variance). Even more problematic is the variation in the correlation between LSAT scores and first-year grades from school to school. Further, race and gender continue to be negatively correlated with such test scores.

Despite the test-makers' modest goals and warnings from the LSAC against over-reliance on LSAT scores, many deans, faculties and law school admission officers continue to treat the test as a nearly-definitive measure of aptitude and merit. Notwithstanding the claims in glossy law school catalogues that admissions is a "personalized", "holistic" process, studies demonstrate that 70-80% of all admissions are determined strictly on the numbers.

The LSAC has emphasized that modest differences in test scores do not matter. Even as much as ten points under the current scoring system is inconsequential in predicting the relative success of students in law school. Yet, despite these cautionary words and the availability of "banded scores", law schools continue to use the LSAT as a blunt instrument to determine the fate of applicants whose scores may be within two or three points of each other and to set absolute lines of demarcation for admission. In addition, over-reliance on the LSAT as a valid predictor of first-year grades ignores a large body of scholarship suggesting that law students of color and non-traditional students confront an unfamiliar and often hostile learning environment which may compromise their ability to do well during the first year despite subsequent success in the second and third years and in the profession.

Analytical and reasoning skills and reading comprehension are not the only important (and testable) features of a well-structured first-year curriculum. Over-reliance on the LSAT reflects an unjustifiably narrow emphasis that undervalues other important lawyering skills and core values of the profession. Although the LSAT was never designed to predict overall performance in law school or professional competence in the practice of law, even employers have been known to ask candidates for their LSAT scores in job interviews with firms in the private sector, government agencies, courts and even in legal education.

Far too much emphasis has been placed on how an applicant will do on a first-year essay exam when making the fundamental determination as to whether he or she will make a good lawyer. To the extent that law schools and prospective employers over-rely on the LSAT, they fail to give appropriate consideration to other attributes and skills that are important to success in law school and, ultimately, in the delivery of legal services. The LSAT does not measure motivation, perseverance, character, interpersonal skills, problem-solving skills, oral communication, empathy for clients, commitment to public service or the likelihood that the applicant will work with underserved communities. Law schools, by neglecting these important qualities, do a disservice to the legal profession and its clients, and they limit the legal profession's ability to provide meaningful access to legal services to all segments of society.

If law schools are utilizing the LSAT to assist them in selecting those applicants who will be the most successful as law students and, ultimately, as practitioners and public servants, their reliance is misplaced.

## II

### INSTITUTIONAL PRESSURES TO MISUSE THE LSAT

Admission professionals at law schools across our nation are under tremendous pressure to secure the admission of students with high test scores. This pressure is the result of three forces: A) popular magazine "rankings" and their appeal, in our status-driven culture, to all of us in the academic food chain – applicants, enrolled students, faculty members, administrators, alumni/ae, employers and benefactors; B) the cost-saving aspects of a number-based admission process, which reduces much of the need for human intervention; and C) diversity opponents and others who argue that less reliance on test scores and greater attention to other qualifications will compromise America's traditional "meritocracy."

#### A) U.S. News & World Report Rankings

Ostensibly, *U.S. News & World Report* ranks law schools for the benefit of consumers, namely potential law students and their parents. While this ranking has been condemned by the AALS and the ABA for its methodological errors as well as for its incompleteness, rankings are closely followed by faculty members and administrators, as well as by prospective applicants. In this race to improve or at least maintain their rankings, schools fear a fall down the pecking order and hail a rise as proof of significant institutional improvement. Deans regularly refer to improved rankings and high median LSAT scores in fundraising campaigns and in developing alumni/ae relations.

*U.S. News* relies heavily on the mean LSAT of the enrolled law school class, and a difference of one point may separate a "first tier" from a "second tier" school. Consequently, many admission officers, under increasing pressure from deans and

professors to better market their school in the popular press, pay inordinate attention to LSAT scores. The process has become a numbers game, with admission officers calculating how many students with certain scores have to be admitted before they can begin to admit candidates with lower scores but with greater over-all merit.

Some law schools, concerned about the effect of the rankings on their ability to compete for students, have adopted quick-fix methods to raise LSAT scores in order to maintain or improve their rankings in *U.S. News*. Former AALS president Dale Whitman has warned about the incentives for unethical behavior: "The desire for high rankings seems increasingly to induce us to behave in ways that we would not otherwise choose and to distort our educational judgments and priorities." The questionable behaviors he reports include everything from the commonplace distortion of the selection process in order to maintain an LSAT median that preserves or improves a school's ranking to soliciting the transfer of minority students enrolled in neighboring institutions in their second year when their LSAT scores will not affect the ranking of the school.

The belief that LSAT scores measure the quality of the incoming class and the need to maintain a high median LSAT for ranking purposes has also affected the distribution of financial aid. Schools now "buy" high LSAT scores without regard to need. Given the prohibitive cost of legal education, the enormous debt burden facing so many students, and the limited availability of loan forgiveness programs for students who pursue public interest employment, the practice of using LSAT scores in awarding financial aid is disturbing.

The LSAT was not designed to measure the relative worth of law schools. Educational quality can be measured by numerous indicators, including, dare we say, the quality of classroom teaching, as well as the quality and variety of clinical offerings, faculty scholarship, faculty standing in the legal community, the richness and diversity of the student body, the quality of services provided to students, the level of student satisfaction, the success of its graduates, and much more. Unfortunately, the LSAT has been accorded a significance and carries a weight far beyond its original, intended purpose.

#### B) Cost-Saving

By and large, law schools have progressed from a system where faculty committees set admission standards, reviewed all the files and made the hard decisions; to hiring admission professionals to help faculty with the process; and now, to turning over the task almost exclusively to the admission office. Admission professionals bring valuable training and expertise to the process, yet the sheer volume of their work can be overwhelming, and, most significantly, they are under increasing pressure from deans and faculty members to raise median LSAT scores. Inevitably, over-reliance on the LSAT has become widespread, and individual assessments have become increasingly cursory. With the "presumptive deny" and "presumptive admit" systems, it has been reported that admission officers at nearly one-half of our nation's law schools read less than 30% of the files; at 75% of the schools, they read less than one-half of the files; and at only 10% of the schools do they read more than 70% of the files.

Over-reliance on the LSAT offers an inexpensive, simplified way to make admission decisions. The process is streamlined, efficient and predictable, but it fosters a misguided sense of certainty about the performance of admittees and unfairly results in the rejection of deserving students. Nor is it likely to identify and select the most capable future lawyers best suited to serve all segments of society. Not surprisingly, it also serves to perpetuate an overwhelmingly white legal profession. Because faculty members at so many law schools have abdicated their role of thoroughly reviewing applicant files, they remain largely unaware of the dominant role that the LSAT plays at the expense of other criteria. In short, we have turned a human enterprise into a numbers game which compromises other genuine efforts to achieve an excellent and diverse bar.

The LSAT has become an enormously popular labor-saving device which, conveniently but undeservingly, has been accorded the career-defining attributes of a crystal ball. The pursuit of excellence requires that we avoid seductive shortcuts in the admission process, always keeping in mind the goals of our institutions and the central role which our profession plays in a nation committed to principles of justice and equality. Former ABA president William Paul has urged us to abandon our over-reliance on the LSAT and put more of our budget into the admission process in order to better assess personal qualities such as character, leadership and proclivity toward serving the underserved. This approach, he acknowledged, would require, at the least, more careful file review, and perhaps even personal interviews – interviews that would reveal those marvelous applicants with focus and direction and clarity of purpose, the ones who have asked the deeper questions and are less likely to become dissatisfied later.

### C) Today's Anti-Diversity Forces and the Racialized Legacy of Standardized Testing

Although the LSAC maintains that its test “is fair to all takers regardless of racial, ethnic, gender, regional, or national background,” test results vary significantly along race, gender and class lines. While there are many theories but no definitive explanation for these differences in performance, an understanding of the history of standardized testing may provide some valuable insights.

From the very beginning, standardized tests were used to “prove” the superiority of Northern European whites, the inferiority of African Americans, Jews and Southern European immigrants and as evidence of the need for restrictions on immigration. Indeed, Carl Brigham, who devised the first standardized test for use in college entrance exams and who subsequently headed the Educational Testing Service, had once been a major proponent of immigration restrictions and eugenics. The pioneers of ability testing developed their tests as part of a call for “standards” in the professions, often a euphemism for racial, ethnic and income-status exclusions.

The elite law schools began using aptitude tests in the early twentieth century. Their use spread, and in the late 1940s an organization was formed to develop a test for law school admissions. The first LSAT-type test in 1947 was based upon the original IQ test and data collected by the Army to test recruits in World War I. Such data had also been used to prove that Eastern European immigrants and African Americans were less intelligent than Northern and Western Europeans. Thus, the original LSAT had historical roots in efforts to substantiate racial inequality and nativism.

Despite this history, contemporary discourse insists on correlating test scores with intelligence and merit. Today, the Educational Testing Service (ETS) and the LSAC are working hard to eradicate any risk that the LSAT itself operates to unfairly disadvantage minority groups, yet the racialized history of standardized testing fuels current debates about the significance of racial, class and gender differentials in performance. The belief that test scores are a measure of cognitive ability leads inevitably to discussions of racial inferiority/superiority and the privileges that should belong exclusively to those who are superior. Despite attempts by the LSAC to clarify the purpose and the meaning of test scores, public discourse and even some judicial decisions continue to conflate test scores, intelligence and merit.

Conservative legal scholars and others opposed to affirmative action all make the same argument: merit is best measured by UGPA and LSAT scores, and, thus, racial and ethnic minorities are, as a group, less meritorious – that is, less qualified – than whites. Given the prevalence of racially-based attitudes in American society generally and our culture’s abiding faith in the ability of science to devise some standard by which human capabilities can be measured, standardized tests have enormous appeal. Tests are potent symbols, especially when the aggregate difference in performance between whites and certain minority groups is invoked by those who wish to “prove” that the quality of higher education has been impaired by the admission of “unqualified” minorities. In this argument, we hear the echo of the past, the notion that Western culture is at risk unless those who do not belong, those who are inferior, are kept at bay.

Recently, the Supreme Court, in *Grutter v. Bollinger*, recognized that law schools can legitimately seek to devise a race-conscious admission process designed to create a challenging and diverse learning environment and, ultimately, to graduate better qualified legal professionals. Over-reliance on the LSAT impedes the attainment of these objectives.

### III

## PROPOSALS FOR REFORM

We at SALT recognize that there are risks inherent in any process that involves subjective judgment. Unrestrained and standardless procedures invite abuse and bias. In offering recommendations for reform, we strive for an admission process which identifies the finest candidates for a law school education and service to the public.

#### A) Reform the Way Test Scores Are Reported

SALT urges the LSAC to continue to publicly caution against over-reliance on LSAT scores for law school admission. Unfortunately, one potentially effective attempt at reform, the use of “banded scores” in addition to a single numerical score for each candidate, has been largely ignored by law schools, as well as by the magazine rankings. Currently, the LSAC is experimenting with offering school-specific LSDAS reports in place of individual test scores. SALT recommends that the LSAC not report individ-

ual scores at all but, rather, report simply that a test taker's performance was below average, average or above average. As noted above, slight numerical differences have no statistical significance whatsoever. We also recommend the adoption of a reporting system that would alert schools to the potential of applicants whose performance on the LSAT exceeds (or falls short of) what might have been predicted on the basis of socio-economic factors.

B) Create a More Realistic and Useful Definition of "Merit"

The LSAT does not and was not intended to predict future success in professional practice. Current research into lawyer competencies suggests that other skills can and should be tested. In addition, recent research on various forms of intelligence should continue to be investigated in order to devise more sophisticated, more encompassing and less hegemonic means of testing.

The goal of admitting the most qualified entering class of law students cannot be achieved as long as the LSAT remains the dominant factor in admissions. As the LSAC reminds us, the LSAT "simply cannot be the single most important variable" in the admission process, and its use beyond statistical prediction of first-year grades is indefensible. True "merit" embraces far more qualities than can be measured on a three-hour standardized test. SALT believes that law schools must identify and utilize other, more meaningful criteria in making admission decisions. We recommend "whole file" review, paying close attention to the many relevant criteria noted above, and the renewed engagement of faculty members in that process. Admission officers should also take into account the needs of those individuals and communities underserved by the legal profession, a problem attributable, in part, to long-standing, LSAT-driven admission practices.

Simply stated, law schools cannot continue to verbalize a commitment to excellence, equality and diversity in the legal profession while continuing to utilize the LSAT as the primary gate-keeper. Significant efforts are being made to re-define merit in the admission process, and SALT encourages increased support for this work by the LSAC and other funding organizations, as well as by faculty members and administrators, the practicing bar, and all other stakeholders.

C) If All Else Fails, Abandon the LSAT as a Criterion for Admission to Law School

If law schools continue to compete for distinction through popular magazine rankings, where high LSAT scores determine success; if there remains an unwillingness to challenge the perception that standardized tests measure innate intelligence; if those who administer admission programs continue to rely on the LSAT even when there is no correlation between test scores and either the performance of their students or the professional contributions of their graduates; if budgetary constraints are such that a careful, "whole file" review system is regarded as prohibitively expensive and time-consuming, then it may be in the best interests of legal education to entirely abandon the Law School Admission Test.



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*Founded in 1972, the Society of American Law Teachers has grown to become the largest membership organization of law professors in the nation. SALT has sustained an activist agenda to make the legal profession more inclusive, enhance the quality of legal education, and extend the power of law to underserved individuals and communities. SALT's programs, projects and activities are infused with the values of diversity, equality, justice and academic excellence.*

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