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Chairperson Steven R. Smith and Council Members
Council of the Section on Legal Education and Admission to the Bar
American Bar Association
321 N. Clark Street, 21st Floor
Chicago, IL 60610

Re: Recommendation of Questionnaire Committee

Dear Chairperson Smith and Members,

I write in opposition to the recent recommendation of the Questionnaire Committee that seeks to change the long-established practice of reporting the average LSAT score of those matriculants who have taken the LSAT examination on more than one occasion and instead report the highest score for those matriculants.[1] The recommendation is well-intentioned but will have unintended consequences that will move legal education backwards in two important areas:

1) it will further intensify the current over-reliance on the LSAT score in the law school admissions process; and

2) it will further disadvantage minority applicants, and especially African-American and Hispanic applicants, as they attempt to attend law school and join the legal profession.

I discuss these consequences in the body of this letter and then urge the Council to reject the Committee's recommendation.

As an alternative to rejection, the Council might wish to consider referring the matter for further study. When you, the Consultant and his staff examine the matter, I am sure that you will be struck – as I and many other observers were struck – by the absence of reported studies, surveys and other written material in support of the proposed change and the lack of careful consideration of possible unintended consequences. When the LSAC decision and Questionnaire Committee recommendation were announced, they were not accompanied by any projections of the number of test-takers under the new

[1] The views expressed in this letter are my own personal views, based on many years as a civil rights advocate and 25 years as a law professor. They are not the official views of this law school, its faculty or administration.

regime and their likely academic and demographic characteristics. They did not provide any surveys of the likely impact of the proposed change on law school admissions behavior or any evaluations of the impact of the changes on minority applicants.[2]

The lack of information about the likely effects of the change is surprising, given the ready availability of data from the undergraduate standardized tests (the SAT and ACT) and undergraduate admissions policies. Most colleges and universities have for many years operated under the "highest score" regime recommended by the Questionnaire Committee and, as one would predict, there are many more repeat test-takers: 55% for the SAT and 36% for the ACT, as compared to approximately 22% for the LSAT.[3] One would have expected the LSAC or the Committee to have discussed whether they expected the number of LSAT repeat test-takers to increase from the current 22% of LSAT to the SAT or ACT numbers, or to an even higher number (because law school applicants have a longer time-period in which to take repeated tests). Further, one would have expected a discussion of expected changes, if any, in the academic and demographic composition of the likely new repeat test-takers, again with comparisons to the SAT and ACT data.

The lack of written reports and analyses is particularly notable, given that the LSAC has long studied the issue of repeat test-takers. The most recent such study, LSAT Technical Report 02-02 issued in December, 2005, reaffirmed the 1970, 1990 and 1999 studies and stated that, "Average LSAT either alone or in combination with UGPA produces the most accurate prediction. If a general rule that will be most fair to the majority of law school applicants is to be applied, the data support the recommendation of using the average score."[4] Given this long history of support for the average score, one would have expected the LSAC or the Committee to have addressed either why the recommended change is consistent with these reports or, if inconsistent, why it is preferable to the "general rule that will be most fair to the majority of law school applicants."

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[2] I attach to this letter and discuss on the next two pages the only two writings on this recommendation that I have been able to find: a February 14, 2006 email to law school admissions officers from Mr. Philip Shelton and a February 16, 2006 email to law school deans from Dean Allan Easley. It may be that the LSAC or the Questionnaire Committee relied on internal documents or studies that have not yet been made available. If so, they could be reviewed and discussed in the context of a remand for further study.

[3] The SAT information is from page 25 of a College Board booklet, SAT Program Handbook 2005-2006 (2005), http://www.collegeboard.com/prod_downloads/prof/counselors/tests/sat/2005-06-SAT-program-handbook.pdf The ACT information is from a 1998 ACT report, Kevin M. Andrews and Robert L. Ziomek, "Score Gains on Retesting with the ACT Assessment," (ACT Research Report Series 98-7). There are anecdotal reports that the number of ACT repeat test-takers has increased since the issuance of the 1998 report. The LSAT information is from the LSAT Technical Report cited in footnote 3.

[4] Lisa A. Stillwell, Andrea E. Thornton and Peter J. Pashley, "The Validity of Law School Admission Test Scores for Repeaters: 1997 Through 2000 Entering Law School Classes." (LSAC, LSAT Technical Report 02-02, Dec. 2005), available at http://members.lsacnet.org. This report refers to the 1999 report, which gives the references to the 1990 and 1970 studies.

I have found only two written statements that bear on the proposed change, one from Philip Shelton, President of the LSAC, and one from Dean Allen Easley as Chair of the Questionnaire Committee. In a February 14, 2006 email to law schools, Mr. Shelton announced the decision of the LSAC Board of Trustees to remove the paragraph on repeater scores from the LSAC's "Cautionary Policies Concerning LSAT Scores and Related Services." In explaining the rationale for the decision, the email stated that "That language had encouraged the use of the average of multiple scores, in the absence of information suggesting that one or more single scores should be ignored. The revised Cautionary Policies are silent on this topic."[5]

In his email to law deans informing them that the Questionnaire Committee would be considering a change in the LSAT score reporting standard, Dean Easley presented the best argument for adopting the change:

> ... the ABA's requirement that LSAT data on entering classes be based on the average score and the significance attached to that LSAT data by US News, was causing some schools to misuse multiple LSAT scores by refusing to ever exercise discretion against using the average score in admissions decisions. For example, when there were good reasons to believe that the low score among multiple scores was not reliable (e.g., the applicant was seriously ill during administration of the test), some schools were unwilling to give applicants the benefit of the higher score because for US News ranking purposes the average score is still what would count.[6]

A "highest score" reporting requirement certainly addresses the narrow specific problem identified in Dean Easley's email – law school unwillingness "to give applicants the benefit of the higher score." However, his email does not address broader systemic issues and does not discuss whether the proposed change will help or hinder progress towards the more important goal – the individualized assessment of each applicant. It is widely agreed that such an individualized assessment is best achieved through an increased emphasis on factors other than the LSAT score and a concomitant decreased emphasis on the LSAT score. No one has addressed, at least in publicly available writings, whether the "highest score" reporting program will lead to a decreased emphasis on the LSAT score or, as I fear, whether it will instead intensify the current over-emphasis on the LSAT score and trigger a repeat test-taker chase for ever higher "high scores." That is a critical question that Council must address and answer with care and confidence in considering the proposed recommendation.

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[5] February 14, 2006 email from Phil Shelton to admit-l listserv. I have not seen any supporting or explanatory material that may have been presented to the LSAC Board of Trustees in support of the Board decision.

[6] February 16, 2006 email from Dean Allen K. Easley to Deans@Mail.ABANet.org

Likely Effects of the Proposed Change

I would now like briefly to highlight the likely effects of the proposed changed from an "average score" to a "highest score" reporting policy, focusing on the effects on applicant behavior, law school behavior and minority applicants. The Council must consider the effects on these important parts of the law admissions "system" and not focus solely and narrowly on "fairness" to a particular individual applicant under the current system.

Effect on Applicant Behavior

If adopted, the proposed change will increase the number of repeat test-takers and the distribution of those repeat test-takers, with more repeat test-takers with above-median scores. Currently, approximately 22% of the applicant pool takes the test two or more times, and the largest number of repeat test-takers have LSAT scores below the national median. Given the practice of most law school admissions offices of averaging scores in most instances, most students with scores at or above the median are reluctant to take the test again, because a lower score can hurt as much as a higher score can help. However, with a "highest score" reporting policy, applicants at all score levels will have an incentive to take the test again with a chance to improve their score. Such repeat test-taking will have a strong upside and, at many schools, no downside. One can also reasonably project, from past data, that most repeat test-takers will achieve higher scores.

How many repeaters would there be in a revised system? Operating under a similar "highest score" system, 55% of SAT test-takers take the test more than once. It seems likely that the number of LSAT repeaters will be at least that high. An increase in repeat test-takers is not inherently a bad thing. However, before adopting a recommendation that will cause such a large change, policy makers need both to assess carefully the likely size of the increase and then to evaluate thoroughly its impact on all parts of the law admissions system.

Effect on Law School Admission Practices

Before evaluating whether to adopt, modify or reject a recommendation that will change the LSAT scores of over half of the applicant pool, the LSAC and the Questionnaire Committee need to survey law school admissions officers and to study undergraduate admissions practices that have for years operated under the "highest score" policy. However, even without those surveys and studies, common sense suggests that there is a significant risk that the proposed change, if adopted, will lead many, perhaps most law schools to give LSAT scores even more weight in the admissions process and to do even less individualized assessment. Reporting only the highest score of repeat test-takers creates a strong incentive to make decisions based exclusively on the high test score, even though it is well-established that, for most applicants, the average score is the

best predictor of law school performance. There is a substantial risk that a "highest score" policy would lead many law schools away from their current practice of "refusing to exercise discretion against using the average LSAT score" to the converse and still-bad practice of rarely using the average score and almost always using the highest score. Such practices would in turn cause more applicants to become repeat test-takers and would further contribute to the fetishizing of the LSAT score in the admissions process.

Effect on Minority Applicants

There is an unacceptably high risk that the proposed change, if adopted, will have an adverse impact on minority applicants. Any change that increases the importance of the LSAT in the admissions process will be detrimental to minority applicants, who as a class have lower LSAT scores. Further, it is likely that a disproportionate number of the new repeat test-takers seeking to improve their LSAT scores will be white applicants. Additionally, existing data confirms that white and Asian repeat test-takers have a larger average increase in LSAT score than do African-American and Hispanic repeat test-takers. A large jump in the number of repeat test-takers, combined with this differential in repeat score increases, will further magnify the LSAT gap between white and Asian applicants and African-American and Hispanic applicants.

Conclusion

The "highest score" recommendation of the Questionnaire Committee is well-intentioned but ill-advised. Its likely consequences will soon be regretted. It will move law school admissions away from, rather than towards, the important goals of individualized assessment of applicants and greater opportunities for minorities. I urge the Council to reject the recommendation.

Very truly yours,

Sam Stonefield
Associate Dean for External Affairs
and Professor of Law

cc: John A. Sebert, Consultant on Legal Education
Hulett H. Askew, Consultant-Designate