

# PERSPECTIVES

## Teaching Legal Research and Writing

### A NEW DIRECTION IN WRITING ASSESSMENT FOR THE LSAT

BY ANNEMARIE BRIDY

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In January of 2001, the Law School Admission Council (LSAC) embarked on a multiyear program to research and develop a scored writing assessment for use in law school admissions. LSAC test developers now face the challenge of designing a test of core writing skills that effectively gauges the preparedness of law school applicants to begin learning to “write like lawyers.” To meet this challenge, LSAC has already taken a number of important steps, including conducting preliminary studies to identify the appropriate domain of skills to be assessed. Since the project’s inception, LSAC test developers have been engaged in an ongoing dialogue with writing specialists and teachers of legal writing, who have agreed to offer advice and to evaluate the merits of various possible question types and test designs. At present, LSAC is working collaboratively with writing assessment specialists at the Educational Testing Service (ETS) to design and pilot-test prototype question and test formats. A final decision about whether to operationalize a scored writing assessment for the Law School Admission Test (LSAT) will not be made for a few more years and will depend in part on the outcome of a formal field-testing program, which will follow the research and development program currently underway.

This article will acquaint legal research and writing teachers, with whom LSAC shares an interest in promoting the development of strong writing skills among future lawyers, with LSAC’s work in the area of writing assessment. Beginning with a brief introduction to writing assessment on

the LSAT, it goes on to consider some of the important issues motivating and impacting the development of a new writing test for possible future use on the LSAT.

#### Why Assess Writing on the LSAT?

LSAC has long believed that writing skills are important in law school, and that such skills should be assessed on the LSAT and considered by schools when admissions decisions are made. Although law school applicants are routinely required to compose a personal statement, it is an important caveat that such statements are often prepared with the aid of professional writers and editors. One study has shown that the personal statement, though potentially a valuable indicator

VOL. 11

NO. 2

WINTER

2003

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*Perspectives: Teaching Legal Research and Writing*

is published in the fall, winter, and spring of each year by West.

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of an applicant's personal interests and qualities, is not necessarily a reliable indicator of writing ability.<sup>1</sup> Grades in undergraduate writing classes can be a useful indicator of writing ability, but many candidates applying for admission to law school will not have had to produce a piece of sustained analytical writing since their freshman or sophomore year in college. The LSAT thus represents an opportunity to elicit an authentic sample of an applicant's writing that gives evidence of his or her current writing ability level. In developing a new writing assessment for the LSAT, LSAC test developers are proceeding from the premise that there is valuable information to be derived from the well-focused "snapshot" of a test taker's writing ability that can be elicited by a carefully designed instrument administered and scored under controlled conditions.<sup>2</sup>

### How Has the LSAT Assessed Writing Historically?

The LSAT has included a writing component since the early 1960s, though the nature of the writing portion of the test has evolved over time in keeping with shifts in writing assessment theory and writing pedagogy. In the 1960s and 1970s, the LSAT featured a multiple-choice writing ability test designed to assess sentence-level writing skills (grammar, syntax, usage, diction). In 1980, this test was eliminated, along with the writing score. In 1982, an unscored writing sample was introduced, and in 1985 the current "decision-problem" format was adopted.

The current format, developed by writing specialists in consultation with law school faculty, presents test takers with a fictional scenario in which a choice between two options must be made, considering two guidelines and a constellation of relevant facts (Fig. 1). The test taker is given 30 minutes in which to write an essay supporting one or the other of the two choices, using the guidelines and facts provided. Rather

than centrally scoring test-taker essays, LSAC photocopies and sends them to each of the schools to which an applicant applies. Admissions committees then review and evaluate the samples at their discretion.

Henry Petersen, a student of fashion design, must choose one of two summer internships. Write an argument in favor of his taking one internship rather than the other based on the following criteria:

- Henry wants to make contacts that will help his career after he graduates.
- Henry wants to learn as much as possible about the process of developing a creative idea into a marketable product.

Alfin Inc. has offered Henry one of the ten internships it offers every summer to promising design students. Alfin is a well-established clothing company with offices around the world. The interns work in the company's headquarters. Henry would be part of a large team working on a line of children's casual clothing to be marketed the following spring. Alfin has one of the oldest internship programs in the industry, and many former interns have gone on to illustrious and successful careers in the fashion world.

Rafaela Ufuzzi has offered Henry an internship at her fledgling clothing company. Only a few years out of school herself, Ufuzzi has already attracted attention for her bold, innovative designs. Sales of her clothing have increased dramatically over the last year, and her work was recently featured in a major fashion magazine. Henry would be the only intern in Ufuzzi's small company. In addition to working on a line of clothing that Ufuzzi has promised to produce for a major department store, Henry would also be expected to help with whatever projects come their way over the summer.

Figure 1: Example of an LSAT Decision Problem

Even though decision-problem writing samples are not scored, the current format has a clear advantage over the multiple-choice test it replaced, in that it requires test takers to employ "higher-order" writing skills. These include the ability to argue logically in writing, the ability to organize and present information coherently, and the ability to anticipate and answer objections to a stated position. Because these skills are more closely aligned with the sophisticated writing skills required in actual law school writing tasks,<sup>3</sup> the current format is more accurately representative of

<sup>1</sup> See, e.g., Donald E. Powers and Mary E. Fowles, *The Personal Statement as an Indicator of Writing Skill: A Cautionary Note*, *Educational Assessment* 4 (1), 75-87 (1997).

<sup>2</sup> It is important to emphasize that LSAT scores are intended to function as a complement to other indicia of an applicant's qualifications and never as the sole arbiter of an applicant's qualifications. In keeping with this principle, an LSAT writing score would be intended to augment other evidence of writing ability contained in an applicant's file.

<sup>3</sup> These would include, among others, such tasks as briefing cases, writing legal memoranda and appellate briefs, and composing responses to exam questions.

the domain of skills with which the test is concerned—what assessment professionals call the “construct.” Although it is not impossible to design multiple-choice test questions that effectively test higher-order writing skills, constructed-response formats (i.e., formats requiring test takers to compose their own responses) like the decision problem are much more conducive to testing writing skills beyond the sentence level.

Notwithstanding its fuller representation of the construct relative to that of prior formats, the current LSAT writing assessment does not parallel peer assessments, including the Graduate Record Exam (GRE), the Graduate Management Admission Test (GMAT), and the Medical College Admission Test (MCAT), all of which dedicate at least 60 minutes of testing time to writing, and all of which report a separate score for writing. In each of these three tests, the greater time afforded allows for the administration of two writing tasks, a doubling that significantly increases the stability and consistency of reported scores.<sup>4</sup> Given that an increase in the number of tasks from one to two or more significantly increases score reliability, test formats currently under consideration by LSAC call for both multiple writing tasks and increased testing time.<sup>5</sup>

<sup>4</sup> The GRE and GMAT writing assessments each consist of two discrete writing tasks—analysis of an argument and presentation of a perspective on an issue. The MCAT writing assessment consists of two identically formatted but substantively different writing prompts. Thus, GRE and GMAT “double” in the sense of having two distinct writing tasks; MCAT doubles in the sense of having two instances of the same task. From the point of view of construct validity, the complementarity of the GRE/GMAT model is arguably preferable to the redundancy of the MCAT model; discrete tasks can theoretically cover a fuller range of the skill domain (i.e., for more complete construct representation). However, administering two instances of the same task can produce a higher degree of score reliability.

<sup>5</sup> Two-essay assessments, in which both essays are read and scored by two different raters, have substantially higher score reliabilities than assessments based on single essays. One way of measuring score reliability is to calculate the likelihood that a test taker taking the same test on two separate occasions will earn about the same score both times. This measure of reliability is known as “test-retest reliability.” See Hunter Breland, Brent Bridgeman, and Mary E. Fowles, *Writing Assessment in Admission to Higher Education: Review and Framework*, GRE Board Research Report No. 96-12R (1999).

### Why Report a Score for Writing?

There are both practical and theoretical reasons why reporting a score for writing on the LSAT is a good idea. From a practical standpoint, the high volume of applicant files and the significant degree of training and coordination required to systematically evaluate the current writing samples militate against effective and consistent use of the writing sample in admissions decisions. A recent LSAC survey found that the degree to which the sample is used, as well as the way in which it is evaluated, varies widely from one law school to the next (and sometimes even within admissions committees at individual schools). Some schools reported that they do not use the sample at all. As it stands, the economy of the admissions process at many schools does not allow for a careful reading of all applicant writing samples, which means that potentially valuable information about applicants’ writing ability is being lost. Reporting a score for writing could contribute to a more nuanced and complete evaluation of applicants than is possible with the current unscored format. For example, a below-average writing score might function as a fortuitously early sign that an otherwise qualified applicant would benefit from tutoring or other academic support services. Conversely, an above-average writing score might serve to highlight or corroborate other indications of academic strength in an applicant’s file.

From the point of view of assessment theory, the lack of standardization within and across schools in the evaluation of the current LSAT writing samples is less than optimal. At the most basic level, the purpose of a standardized assessment is to allow the proverbial comparison of apples to apples. In the absence of a clearly articulated score scale based on specific performance criteria, those charged with evaluating the writing samples could be prone either to disregard them altogether or to evaluate them idiosyncratically. This uncertainty with respect to performance criteria affects test takers as much as it does admissions decision makers. The requirement that test takers produce a writing sample when they take the LSAT is intended to convey the message that law schools take writing seriously because it plays such an important role in

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both law school and the legal profession. In a very real sense, however, the medium may be undermining the message; in the absence of a score, it is difficult to persuade law school applicants that the writing sample actually counts.<sup>6</sup>

Furthermore, candidates (unless they take the initiative to contact each of the schools to which they intend to apply) have no clear idea how their writing samples will be factored into admissions decisions. This lack of clarity may lead to diminished motivation on the part of test takers, which may in turn lead to underperformance on the assigned writing task. In order to be sure that a test provides a true measure of a test taker's best efforts, it is important that the test taker be sufficiently motivated. It is doubtful whether an unscored writing assessment can inspire the high level of motivation that underlies test-taker performance on the scored, multiple-choice sections of the LSAT.

### How Will the Newly Developed Writing Assessment Be Scored?

Standardized writing assessments are scored, and writing scores are reported, in a variety of ways depending on the purpose and design of the assessment in question. Multiple-choice tests of writing ability are relatively unproblematic (and inexpensive) to score; each item has a single correct answer, and answer sheets can be machine scored. Constructed-response tests of writing are more difficult (and more expensive) to score; the range of test-taker responses is extremely varied, and the process of evaluation necessarily involves the subjective judgment of trained raters. The subjective element inherent in the scoring of constructed-response writing assessments is often cited by critics of standardized tests, who suggest that rater subjectivity leads to randomness and unreliability in the scoring process. While concern about the impact of rater subjectivity on score reliability is legitimate, the case tends to be overstated due to lack of understanding of the strict procedural controls and carefully articulated

<sup>6</sup> Test preparation providers counsel test takers to spend their energy on the multiple-choice sections of the test and not to fret too much over the writing sample.

scoring criteria that govern the scoring enterprise in most large testing programs.

In the GRE program, for example, each essay is scored by two qualified raters, who are thoroughly trained to apply a scoring guide tailored to the format of the assessment.<sup>7</sup> Before scoring “live” essays, raters score a set number of prescored essays to “calibrate” themselves to the score scale. Raters who are unable to calibrate are disqualified from scoring. During scoring sessions, raters are carefully monitored to ensure that the scores they assign are neither too lenient nor too stringent in comparison with those assigned by other raters. They are also monitored to ensure that they are applying the scoring guidelines consistently to successive essays over the course of the scoring session. In the event that the two raters' scores are discrepant by more than one point (on a six-point scale), a third, highly experienced reader adjudicates the discrepancy. Otherwise, the two scores are averaged and rounded-up to the next highest point.

GRE raters score test-taker essays holistically, which is to say they assign a single score that reflects the quality of each essay considered as a whole.<sup>8</sup> Like GRE, many other testing programs use a six-point holistic scoring scale, although the score scale can be expanded or contracted depending on the complexity of the tasks in the assessment and the needs of score users. For example, it may be adequate in certain contexts to divide essays into only three categories—below average, average, and above average. In other contexts, a higher degree of discrimination among written performances may be desirable. Some programs score essays analytically rather than holistically, assigning a number of separate scores or “subscores” to reflect the test taker's level of mastery of discrete skills within the domain.

Because LSAC has not yet settled on a specific design for the new writing assessment, it is too soon to project how LSAT writing scores will be assigned and reported if the assessment is

<sup>7</sup> Information on the scoring process for the GRE analytical writing assessment was taken from publications available on the GRE Web site <[www.gre.org](http://www.gre.org)>.

<sup>8</sup> For a detailed discussion of the theory and practice of holistic scoring, see Willa Wolcott and Sue M. Legg, *An Overview of Writing Assessment* (1998).

operationalized.<sup>9</sup> Regardless of the test design, however, every effort will be made to ensure that the score scale and the method of score reporting are maximally informative to both test takers and admissions committees. One possibility that LSAC is actively exploring involves including diagnostic information with score reports. Such information could be used productively by both test takers (who could seek extra help in targeted areas) and law schools (which could identify particular segments of the skill domain in which individual students require further development).

### How Might an LSAT Writing Score Be Used?

In addition to designing the assessment and establishing scoring and score-reporting frameworks, LSAC must consider the critical issue of score use. There is always a danger, when a new quantitative measure of skills is introduced into an admissions process, that applicants will see themselves and their multifarious abilities “reduced to a number.” To avoid this pitfall, LSAC is considering how to reconcile the introduction of standardization into the writing component of the test with the preservation of the individual expression that is so important to writing. How can the new assessment be designed to function both quantitatively and qualitatively? Other important questions relating to score use also arise: What consequences, intended or otherwise, might the introduction of a scored writing assessment have on the practices of admissions committees and on law school applicants themselves? To what specific diagnostic uses could the new writing assessment be put? In what way might the addition of a scored writing assessment impact minority applicants? How should a writing score be weighed in relation to other indicators of writing ability in an applicant’s file? These questions and others like them will continue to be discussed with various elements of the LSAC constituency as the program progresses.

<sup>9</sup> The assessment, whatever its design, will emphasize analytical writing skills beyond the sentence level. The primary emphasis in scoring will therefore be on critical thinking and analytical writing skills rather than on surface features such as grammar and mechanics.

### Conclusion

Adopting a scored writing component and providing schools and test takers with detailed supporting materials could introduce important elements of transparency and predictability into the assessment of writing on the LSAT. All LSAT stakeholders stand to benefit from this proposition. Because test takers would know in advance how their writing will be evaluated, they would be better able to prepare effectively. Such preparation would ideally include an increased curricular focus on writing by law-school-bound undergraduates. Test takers would also recognize that strong writing skills could translate into a tangible competitive advantage in the admissions process, so they would be highly motivated to prepare and perform well. Admissions committees would receive information about the writing ability of applicants that is easily comparable, readily accessible, and statistically reliable. Ultimately, legal writing teachers also stand to benefit, as students would arrive at law school with a heightened awareness of the importance of writing and with a firmer grasp of the fundamental skills underlying effective legal writing.

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“All LSAT stakeholders stand to benefit from this proposition.”