

Exhibit D

American Bar Association's August 2009 "Consultant's Memo"

**CONSULTANT'S MEMO # 1—Revision 1
August 2009**

Standard 503

Introduction

Over the last several months there has been significant publicity about the plans of several law schools to initiate special admission programs for cohorts of entering students that do not require the use of the LSAT. We believe that all of these programs have been brought to the attention of the Accreditation Committee, and the Committee has had ongoing dialogue with the schools about these programs and their compliance with the Standards. Rule 25 does not permit me to release compliance information tied to individual schools, but I am able to provide general information about the approach taken by the Accreditation Committee and the Council in dealing with these special admissions programs.

Standard 503 In General

Standard 503 says in relevant part: **A law school shall require each applicant for admission as a first year J.D. student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's educational program.** Additionally, Interpretation 503-1 says: *A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall establish that such other test is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's educational program.*

Interpretation 503-1 makes it clear that the burden is on the law school to demonstrate the validity and reliability of any test or assessment methodology, other than the LSAT, that is used for law school admission purposes. I should note that "validity" and "reliability" are terms of art in the world of testing. Validity asks if the scores reflect what the test or assessment method is intended to measure. Reliability asks if repeated applications of the test or assessment method will produce substantially the same results. The LSAT has been determined to be a valid and reliable test for law school admission purposes. For each of the law schools proposing to use something other than the LSAT for admissions purposes, the Accreditation Committee has asked that the school provide certain information so that the Committee can determine if Standard 503 and Interpretation 503-1 are satisfied, and if not, whether a variance pursuant to Standard 802 is warranted. In each case where an admissions program implicating the concerns of Standard 503 has been brought to the attention of the Committee, the school has been asked to answer the following questions:

Is the Law School using the SAT, ACT, or some test other than the LSAT for admissions purposes; and if so, what evidence does the School have that the test is "... a valid and reliable test to assist the school in assessing the applicant's capability to satisfactorily complete the school's educational program"?

Does the Law School intend to seek and obtain a variance of Standard 503 from the Council?

The basic issue for the Committee to decide under Standard 503 is whether admissions criteria being employed by the special admissions program are comparable to the admissions criteria being applied under the standard admissions program (i.e. the admissions program under which most incoming J.D. students are admitted). The assessment methods used should be shown to be valid for the intended purpose (i.e., to assess "the applicant's capability of satisfactorily completing the school's educational program"), by demonstrating that the performance of students admitted under the special criteria is, in general, about as good or better than that for students admitted under the standard criteria.

Once the Committee has received and reviewed the requested information, it will make a determination as to compliance with Standard 503, and Interpretation 503-1. If the school satisfies the requirements, that ends the inquiry. If the school is not able to demonstrate compliance through the documentation and evidence it submits, it can either end the program or seek a variance from Standard 503 pursuant to Standard 802.

Variances Under Standard 802

Standard 802 provides: *If the Council finds that the proposal is nevertheless consistent with the general purposes of the Standards, the Council may grant the variance, may impose conditions, and shall impose time limits it considers appropriate.* The relevant part of Standard 802 is the one relating to experimental programs. Interpretation 802-1 permits the granting of a variance for an experimental program based on all of the following:

- (1) Good reason to believe that there is a likelihood of success;
- (2) High quality experimental design;
- (3) Clear and measurable criteria for assessing the success of the experimental program;
- (4) Strong reason to believe that the benefits of the experiment will be greater than its risks; and
- (5) Adequately informed participation by students involved in the experiment.

The Accreditation Committee, in assessing the application for a variance, will consider (among other things) whether the program in question is one that might, with further evidence from experience, be found to be in compliance with Standard 503 and Interpretation 503-1. It is also important to keep in mind that under Standard 802 and Interpretation 802-5, variances are school-specific and based on the circumstances existing at the law school filing the request.

Committee and Council Determinations To Date

The Accreditation Committee, at its April 2009 meeting voted to find one admissions program that uses a test other than the LSAT in its admissions process in compliance with Standard 503. The Committee also voted to recommend, and the Council at its June 2009 meeting voted to approve, variances to Standard 503 for several other law school admission programs. The applications for variances in these cases were found to comply with the requirements of Standard 802. The Committee has since recommended, and the Council approved at its July meeting, a variance for one additional school. Thus, there are currently five programs not relying on the LSAT for admissions purposes that have received variances to Standard 503. One school was able to demonstrate compliance with Standard 503 despite not using the LSAT because it has a joint degree program that has been using a different admissions test for many years. The school was able to present historical data showing that the students admitted using the other test performed as well as, or better than, students admitted who presented an LSAT score.

Each school that was granted a variance received a letter detailing the terms of the variance and the response required by the law school over the five year period of the variance. Even though the details of the variances are confidential pursuant to Rule 25, the critical part of the letter that each school received reads in part:

CONCLUSIONS:

- (2) *In accordance with Standards 503 and Interpretations 503-1 and 503-2, the Committee concludes that it has reason to believe the admissions criteria employed under the Program may be comparable to the admissions criteria applied by the Law School under its regular admissions program, and that the assessment methods used in connection with the Program may be valid and reliable for the purpose of assisting the Law School and applicants to assess the applicant's capability to successfully complete the Law School's educational program.*
- (3) *The Committee further concludes that the Program is consistent with the general purposes of the Standards, within the meaning of Standard 802.*
- (4) *The Committee further concludes that the Program is an experimental program based on all of the following:*
 - (1) *Good reason to believe that there is a likelihood of success;*
 - (2) *High quality experimental design;*
 - (3) *Clear and measurable criteria for assessing the success of the experimental program;*
 - (4) *Strong reason to believe that the benefits of the experiment will be greater than its risks; and*

- (5) Adequately informed participation by students involved in the experiment.
- (5) The Committee recommends that the Council grant a variance under Standard 802 and Interpretations 802-1(b) and 802-5 for five years to the Law School with respect to the Program, as presented by the Law School, and to the admissions criteria used in connection with the Program.

RESPONSE REQUESTED:

In the event the Council grants a variance, the Committee requests that the Law School report by September 15 of each year regarding the following:

- (a) For the most recent entering class, the number of students who applied for admission under the Program, the number of those students admitted, and the number who matriculated.
- (b) For the various student populations referred to in paragraph (a), the distribution, mean, median, and standard deviation of the following: SAT score; ACT score; UGPA; and LSAT scores for those applicants under the Program who took the LSAT and reported LSAT scores.
- (c) A report on the reliability of the assessment method used in connection with the Program.
- (d) A report on the performance (including means, medians, and standard deviations) of students who matriculated under the Program, with respect to first semester Law School GPA, first year Law School GPA, cumulative GPA, attrition, graduation rate, bar passage, and employment; and a comparison of such data with corresponding data for students who matriculated under the Law School's regular admission program.
- (e) A report on any other evidence or studies regarding the validity of the assessment method used in connection with the Program and the comparability of that assessment method with the assessment method used under the Law School's regular admission program.
- (f) A description of the regular admission program of the Law School then in effect and the assessment method used under it.
- (g) A description of the person or persons who performed the psychometric and other analyses reported to the Committee in connection with paragraphs (a)-(e), above.
- (h) A report on the impact of the Program on the Law School's obligation to comply with Standard 212(a), and a description of the actions undertaken by the Law School to assure compliance with Standard 212(a) in light of the implementation of the Program.

- (i) *The information provided to applicants to the Law School under the Program regarding the experimental character of the admissions aspects of the Program.*
- (j) *The information provided to applicants to the Law School under the Program regarding the possible need for such students to take the LSAT in order to apply to another law school as either first-year or transfer students.*
- (k) *A report on the means by which the Law School complies with Standard 509 and Interpretation 509-1(1), concerning the publishing of basic consumer information regarding admissions, for students admitted to the Law School under the Program. Such consumer information shall include information on the LSAT scores of students admitted under the Program, both separately for such students and in the aggregate with all students admitted to the Law School.*

Summary

The Committee urges any school that is considering implementing a special admission program not requiring the use of the LSAT to consider the analysis above, to give notice to the Consultant's Office, and to be prepared to address all the issues identified and provide the documentation and evidence outlined above.