

What's Wrong With This Picture?

By Francine Cullari

Imagine being Angelo Binno, a blind college graduate. You speak three languages fluently. You graduated from high school in three years. After graduating from college, you obtain employment with the U.S. Department of Homeland Security and a high-level security clearance. You hope to become a lawyer. You are ready to take the Law School Admission Test (LSAT), but... the LSAT is not ready for you.

About one-third of the LSAT questions require spatial reasoning and diagramming of visual concepts for successful completion (see sidebar for an example). As a blind person, you know that even if you receive an accommodation, whether computer, reader, or braille, you will not be able to use spatial reasoning and diagramming to answer the questions. The test itself puts a blind applicant at a competitive disadvantage to a sighted person.

You petition law schools to waive the LSAT for consideration of your application. You want to be treated the same as Richard Bernstein,¹ a blind Michigan attorney. Northwestern University Law School waived the LSAT for Bernstein in 1996. The law schools you contact indicate the American Bar Association (ABA) adopted a rule that same year requiring standardized test scores for law school entry.² Waiving or exempting an applicant from the test puts a school at risk of “appropriate” remedial action, sanctions, probation, or loss of accreditation.

The ABA's position is that it *does not* require the LSAT itself, only a valid and reliable test—but there is no other standardized law school admission test that meets the standard. Perhaps the National Council of Bar Examiners could suggest a solution, as it is presented with a similar problem on bar exams. The council's approach is reflected in the comment of its attorney: “The kids who take the [bar] exam who *aren't* disabled have a right to compete with every-

one else on a level playing field.”³ Yes, you read that correctly.

You take the exam, and the results are poor. Three Michigan law schools deny your admission.

Your next stop? Enter Richard Bernstein again. Bernstein has hoped for the right plaintiff to present himself or herself to challenge the disadvantage for blind law school applicants since he became an attorney 11 years ago.

His plaintiff arrived last year in the form of, yes, Angelo Binno. *Angelo Binno v The American Bar Association*,⁴ alleging violation of the Americans with Disabilities Act, is now pending in the U.S. District Court of Judge Denise Page Hood. The Michigan attorney general has joined the plaintiff, alleging a violation of the Michigan Civil Rights Act.⁵

The Americans with Disabilities Act⁶ states:

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

The ABA has filed a motion for summary disposition, primarily on the basis that it does not administer the test. It points a finger at the Law School Admission Council (LSAC), arguing that the ABA does not require the LSAT—any approved standardized test is sufficient. It further states that law schools are free to assign whatever weight they choose to the test scores. The plaintiff claims the ABA accreditation standard itself violates the Disabilities Act per se by de facto requiring the LSAT. In response, the ABA alleges that a variance from the standard can be granted and points a second finger at law schools who do not apply for a variance. But the

plaintiff maintains that it is nearly impossible for a school to request and be granted a variance within the admissions time frame. A school would have to create its own exam, have it verified and certified, and administer it—all within the admissions time frame.

Take a minute to remind yourselves why the LSAT is so important for applicants. LSAT scores are a prime determinant of acceptance, of the possibility of a career in a college senior's chosen field. Why is it so important for law schools? Along with law school reputation (not grade point averages), the LSAT is the prime determinant of law school rankings, issued annually by *U.S. News and World Report*.⁷ Law schools can protest all they want about *U.S. News* rankings, but they are ever cognizant of their standings because students, attorneys, and other schools pay attention to the rankings.

This lawsuit is not the first time the LSAT has been challenged. In 2002, the LSAC settled a suit by the U.S. Department of Justice to allow persons with cerebral palsy to have extra time to take the LSAT and to pay the victims monetary compensation.⁸ Bar exams have been similarly challenged, with California, the District of Columbia, and Vermont ordered by courts to provide special software for visually impaired bar applicants; a Maryland judge declined to order assistance.⁹

Why are law schools, the LSAC, and the ABA making it so difficult for blind people to enter law school? There is no doubt that a blind person can practice law. Richard Bernstein practices daily and would amaze any attorney. He prepares with an assistant, memorizes courtroom logistics, argues his own cases, knows exhibits intimately and presents them to witnesses faultlessly, and is articulate and often eloquent. His courtroom demeanor is so seamless, viewers are surprised he is completely blind.

Consider contacting the ABA (particularly if you are a member), the LSAC, and your law school to encourage them to allow schools

to waive the standardized test for admission for the visually disabled so blind applicants to law school “have a right to compete with everyone else on a level playing field.” ■

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FOOTNOTES

1. Cullari, *Citizen Lawyer: Richard Bernstein*, 85 Mich B J 34 (January 2006), available at <<http://www.michbar.org/journal/pdf/pdf4article959.pdf>>. All websites cited in this article were accessed February 15, 2012.
2. ABA Standards and Rules of Procedure for Approval of Law Schools (2011–2012 ed), Standard 503, p 38, and Rule 13, pp 83–84.
3. Marklein, *Test firms clash with disabled*, USA Today, December 29, 2011, p 3A, available at <http://www.usatoday.com/NEWS/usaedition/2011-12-29-disabilities_ST_U.htm> (emphasis added).
4. *Angelo Binno v The American Bar Association*, No. 2:11-CV-12247 (ED Mich).
5. MCL 37.1401 *et seq.*
6. 42 USC 12189; see also 28 CFR 36.309.
7. Cullari, *Law school rankings fail to account for all factors*, 81 Mich B J 52 (September 2002), available at <<http://www.michbar.org/journal/pdf/pdf4article480.pdf>>.
8. U.S. Dept of Justice, *Law School Admission Council Settles ADA Testing Discrimination Lawsuit with Department of Justice*, available at <http://www.justice.gov/opa/pr/2002/February/02_crt_102.htm>.
9. Marklein, *supra* n 3.

Sample LSAT Questions Requiring Spatial Reasoning and Diagramming

Directions: Each group of questions in this section is based on a set of conditions. *In answering some of the questions, it may be useful to draw a rough diagram.*

Each of seven travelers—Norris, Oribe, Paulsen, Rosen, Semonelli, Tan, and Underwood—will be assigned to exactly one of nine airplane seats. The seats are numbered from 1 through 9 and arranged in rows as follows:

- Front row: 1 2 3
- Middle row: 4 5 6
- Last row: 7 8 9

Only seats in the same row as each other are immediately beside each other. Seat assignments must meet the following conditions:

- Oribe’s seat is in the last row.
 - Paulsen’s seat is immediately beside Rosen’s seat and also immediately beside an unassigned seat.
 - Rosen’s seat is in the row immediately behind the row in which Norris’ seat is located.
 - Neither Semonelli nor Underwood is seated immediately beside Norris.
1. Which one of the following is a pair of travelers who could be assigned to seats 2 and 8, respectively?
 - (A) Norris, Semonelli
 - (B) Oribe, Underwood
 - (C) Paulsen, Oribe
 - (D) Rosen, Semonelli
 - (E) Underwood, Tan
 2. If Semonelli and Underwood are not assigned to seats in the same row as each other, which one of the following must be false?
 - (A) Norris is assigned to seat 2.
 - (B) Paulsen is assigned to seat 5.
 - (C) Rosen is assigned to seat 4.
 - (D) Tan is assigned to seat 2.
 - (E) Underwood is assigned to seat 1.
 3. If Semonelli is assigned to a seat in the same row as Underwood, which one of the following travelers could be assigned to a seat immediately beside one of the unassigned seats?
 - (A) Oribe
 - (B) Rosen
 - (C) Semonelli
 - (D) Tan
 - (E) Underwood
 4. If the seat to which Tan is assigned is immediately beside a seat assigned to another traveler and also immediately beside one of the unassigned seats, which one of the following must be true?
 - (A) Tan is assigned to a seat in the front row.
 - (B) Tan is assigned to a seat in the last row.
 - (C) Oribe is assigned to a seat immediately beside Semonelli.
 - (D) Oribe is assigned to a seat immediately beside Tan.
 - (E) Semonelli is assigned to a seat immediately beside Underwood.
 5. If Oribe is assigned to a seat immediately beside one of the unassigned seats, which one of the following must be true?
 - (A) Oribe is assigned to seat 8.
 - (B) Tan is assigned to seat 2.
 - (C) Underwood is assigned to seat 1.
 - (D) Seat 4 is unassigned.
 - (E) Seat 9 is unassigned.