"TRUTH-IN-TESTING LEGISLATION"
AN ANALYSIS OF POLITICAL AND
LEGAL CONSEQUENCES, AND PROSPECTS

Monograph 83-6

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This monograph explores the history of "truth-in-testing" legislation nationally and the educational, legal and political consequences of law enacted in California and New York State. It describes in detail the requirements of existing law and proposed legislation to require public filing of standardized admission tests. Conclusions are drawn concerning the efficacy of existing law, the adequacy of agencies' response to law, and the prospect for broader legislation in the future.

A major finding is that the New York State law establishes a de facto national standard for "limited" (disclosure of some but not all tests) test disclosure. Even though the state has experienced difficulty in implementing this statute, the law demonstrates that legislation requiring "limited" test disclosure is feasible for some, if not all, standardized admission tests. However, several complex legal and Constitutional issues related to right to due process and property rights remain unresolved. A lawsuit challenging the New York State law is pending.

Apart from placing more tests in the public domain, the paper observes that legislation seems to be of limited value concerning improvement in test-use practices or improvements of the educational process. Finally, the paper concludes that consideration of legislation broader in scope, regulating directly how standardized admission tests are used in the admission process, is likely. Such legislation would require direct government intervention into the governance of higher education -- a step that requires thoughtful examination from both a legal and educational perspective.
I. Introduction

Standardized admissions tests clearly are used by institutions of higher education as a sorting mechanism and as one of several means of distributing access to various types of postsecondary education in America. This assertion is generally accepted by both supporters and critics of such tests. Yet, while institutional users of admissions tests believe that such tests have helped to broaden access, critics argue instead that tests are used to deny access to certain groups of students. The matter of whether tests are used equitably for all students, and if a sufficient amount of information is made publicly available about the purposes and uses of postsecondary standardized admissions tests by test sponsors and test producers, has been hotly debated in recent years.

The central focus of this debate has been so-called "truth-in-testing" legislation—legislation that would require that information about standardized admissions tests be filed publicly, and upon request immediately following a test administration, that test questions and answers be returned to students. Since 1978, the forum for this debate has been the United States Congress and roughly 30 state legislatures. As with any controversial public-policy issue, the exchange of viewpoints often has been acrimonious and not always enlightening. Proponents of legislation tend to focus on the failures and inadequacies of standardized admissions tests, and conversely opponents focus on the benefits of testing.
Proponents and Opponents

The advocates of legislation typically claim that immediate disclosure of test questions and answers will serve the interests of students by making the testing process more open to public scrutiny. They also contend that law requiring that more information about tests be made public will help to reduce misunderstanding about tests in both the general public and the education profession, and thereby will help to ensure their proper use. Foremost among these proponents are the Public Interest Research Groups (PIRG), a national not-for-profit network of consumer advocate groups with Ralph Nader as a leading spokesman, and other associations representing students, parents, teachers, and minorities, such as the National Education Association (NEA), National Parent Teacher Association (NPTA), and National Association for the Advancement of Colored People (NAACP). This informal coalition supporting the legislation believes that: standardized tests play too important a role in education and society; test results are often overemphasized in judging candidates; test sponsors are not accountable to the public's interest; rights of test subjects are not adequately protected; and tests systematically discriminate against certain groups in society.

Opponents, on the other hand, contend that they are not opposed to "openness" in testing in principle. Leading opponents of legislation include the Educational Testing Service (ETS), the American College Testing Program (ACT), and test sponsors such as the College Board, the Law School Admissions Council (LSAC), and the Association of American Medical Colleges (AAMC), as well as other leading educational associations including the American Association of Collegiate Registrars and Admissions Officers (AACRAO), and American Council on Education (ACE). These actors vigorously oppose legislation largely because they believe: government intrusion in any part of the admissions process is unwarranted; mandatory disclosure of tests is unlikely to add to
the public's understanding of the testing process, and will not supply the public with substantive information beyond that already available; and testing legislation may have latent damaging effects on the quality, fairness and availability of certain tests.

There has been no dearth of redoubtable spokesmen from both camps, including proponents such as consumer advocate Ralph Nader, Althea L. Simmons (NAACP), and Terry Herndon (NEA), and opponents such as Albert Shanker (AFT), Harold Howe (Ford Foundation) and the distinguished psychologist and civil rights advocate Kenneth B. Clark. Yet, with such expert opinion from educational and civic leaders it remains difficult for concerned parties to reconcile differences in perspectives, and to discover wherein lies the "truth" about the need for direct government regulation of admissions tests. For example, Kenneth B. Clark sharing his reaction to New York State Testing Law, enacted in 1979 wrote:

It is my contention that the law is a placebo. However laudable its intentions, this law cannot force test companies to explain the meaning of test scores to students; and certainly this law cannot deal with the complex issues of test validity and the role of cultural factors in influencing test results. The construction, evaluation and interpretation of tests are highly technical matters which must be dealt with by on-going research and by those who are trained in this specialty. The important problem of the use and abuse of standardized tests cannot be resolved by a simplistic law which confuses this issue with consumer protection problems.¹

Conversely, the Honorable Ted Weiss (D-NY) in explaining the purpose of H. R. 4949, the Educational Testing Act of 1979, which he sponsored, countered with:

[The bill's overall aim is] to improve the accountability of the standardized testing process and to ensure a greater degree of fairness in this area . . . . A few testing companies today exercise enormous power over the educational and occupational future of millions of Americans. The testing industry, despite its influence over vital aspects of individuals' lives, operates in a most unaccountable fashion. Like utilities, testing corporations perform a public function. Unlike utilities, they are almost totally exempt
from public scrutiny. . . . my legislation in no way attempts to
dictate what questions should or should not be asked on a test, nor
does it try to alter the admissions criteria developed by colleges,
graduate and professional schools. Instead, the bill seeks to make
test-takers more fully informed about the standardized exam process,
and it aims to lend emphasis to the ways in which these tests do not
measure certain traits and abilities.\(^2\)

These two statements indicate the difficulty facing educators and legislators in determining whether to support enactment of testing legislation. As these statements illustrate, one's position depends heavily on one's predisposition toward the issue. Because both proponents and opponents of legislation can mount impressive objective and normative evidence to support their respective positions, discerning which side the weight of the evidence supports is made more difficult when one takes into account the highly emotional and subjective aspect of the issue—basic concerns about fairness and equality of educational opportunity, and accountability in the admissions process.

It is not unfair to characterize both sides of the legislative debate since 1978 as often being self-serving and polemical, depending too much on hyperbole and questionable anecdotal information. Furthermore, analysis of the issue is made all the more difficult by the politicization of the debate. As with any public issue that manifests itself legislatively, legislators' consideration of testing legislation in the states and in Congress has depended greatly on proponents' and opponents' ability to build coalitions, and to mobilize political support to influence law makers. For the most part legislators are not technically knowledgeable about testing or postsecondary admissions, and they are busy balancing judgments about many competing issues. Not surprisingly, the result has been that some legislative decisions have been made independently of the substantive educational and public policy merits of the issue. In legislatures, public policy decisions may be made as often for the "wrong" as for the "right" reasons, because there is a heterogeneity of public interests, not simply a single apparent one.
Purpose and Scope

The central purpose of this paper is to review briefly the legislative history of testing legislation and the effect of existing law in two states, California and New York, and to analyze critically the public policy and legal questions fueling and resulting from such legislation. The key policy question is not whether postsecondary standardized admissions tests should be regulated—they already are in certain ways. Rather, what is at issue is the proper mode of regulation and whether or not state or federal legislation under current consideration is well suited to protect the competing interests of test takers, test users (institutions of higher education) and test producers.

Specifically, the paper will draw conclusions concerning:

1. The feasibility and efficacy of existing law in meeting proponents' stated objectives;
2. The adequacy of test sponsors' policy responses to legislation;
3. The prospect for broader legislation in the future; and
4. The principal lessons learned from the legislative debate during the past five years that might help guide public policy makers, test makers and sponsors, test users and takers.

While this paper will analyze contemporary political, public policy, and legal issues surrounding testing legislation and will draw conclusions about the effect of existing law, it is beyond its scope to examine several other important aspects of the broader issue of test use and public accountability. For example, it will not discuss whether or not society is well served by use of standardized admissions tests or alternatives to the use of such tests. Additionally, the paper will not explore important theoretical or technical measurement and psychometric concerns raised by legislation. It is also beyond the boundaries of this paper to discuss the potential effect of testing
legislation on tests other than postsecondary admissions tests, such as government civil service tests, occupational licensure tests or tests used in primary and secondary schools. The legislation itself limits the paper's scope because it has concerned itself almost exclusively with postsecondary admissions tests rather than other types of standardized testing. Table 1 lists the six major postsecondary admissions tests about which this paper will be concerned.

<table>
<thead>
<tr>
<th>Test Name</th>
<th>Admission Use</th>
<th>Test Sponsor</th>
<th>Test Developer</th>
</tr>
</thead>
<tbody>
<tr>
<td>American College Testing Assessment Program (ACT)</td>
<td>Undergraduate</td>
<td>American College Testing Program (ACT), Iowa City, Iowa</td>
<td>ACT</td>
</tr>
<tr>
<td>Scholastic Aptitude Test (SAT)</td>
<td>Undergraduate</td>
<td>The College Board New York, New York</td>
<td>Educational Testing Service (ETS), Princeton, N.J.</td>
</tr>
<tr>
<td>Graduate Management Admission Test (GMAT)</td>
<td>Graduate Business/Management</td>
<td>Graduate Management Admission Council, Princeton, New Jersey</td>
<td>ETS</td>
</tr>
<tr>
<td>Graduate Record Examination (GRE)</td>
<td>Graduate/Professional</td>
<td>Graduate Record Examination Board, Princeton, New Jersey</td>
<td>ETS</td>
</tr>
<tr>
<td>Law School Admission Test (LSAT)</td>
<td>Law School</td>
<td>Law School Admission Council (LSAC), Newtown, Pennsylvania</td>
<td>ACT, ETS</td>
</tr>
<tr>
<td>Medical College Admission Test (MCAT)</td>
<td>Medical School</td>
<td>Association of American Medical Colleges (AAMC), Washington, D.C.</td>
<td>American Inst. for Research in Behavioral Sci. Palo Alto, Ca. (ACT administers MCAT for AAMC)</td>
</tr>
</tbody>
</table>
Finally, I will not attempt to criticize the substantial and often polemical literature surrounding "truth-in-testing" legislation (to be referred to from here on as "testing legislation"). Much has been written on the topic in the past several years. I recommend to interested readers the bibliographies contained in Searching for the Truth About Truth-in-Testing Legislation (Education Commission of the States, 1980) and Ability Testing: Uses, Consequences and Controversies (National Academy Press, 1982). Perhaps the best collection of primary documents reflecting all sides of this controversial issue is to be found in more than 2,000 pages of testimony and supporting evidence collected by the House Subcommittee on Elementary, Secondary and Vocational Education of the Committee on Education and Labor, on the "Truth in Testing Act of 1979, and Educational Testing Act of 1979" (H.R. 3564 and H.R. 4949); and joint hearings of that subcommittee and the Subcommittee on Post-secondary Education on "The Educational Testing Act of 1981" (H. R. 1662). In addition to depending heavily on these documents, I will draw also upon policy documents of test sponsors, opponents and proponents of legislation, as well as on state legislation and related information that I have collected as a participant observer during the period 1979-1984.

II. The Content and Chronology of Testing Legislation

Concern about the appropriate use of postsecondary standardized admissions tests is not new. Early in this century influential educators such as Nicholas Murray Butler, President of Columbia University and Charles W. Elliot, President of Harvard, were concerned about how to identify academically talented youth who might benefit from a college education, and about the appropriateness of aptitude and achievement tests to measure students' academic potential. Neither individual could have foreseen the innovation in test and
measurement theory, and testing technology that took place between the First and Second World Wars, the exponential increase in demand for higher education during the 1950's and 1960's, and the vast expansion of this country's public higher education system during the decades of the sixties and seventies. Whereas the College Board was founded in 1900 to help develop a common essay admissions test to be used for admissions by roughly a dozen selective colleges in the East, by the decade of the 1970's the Scholastic Aptitude Test (SAT)--a non-essay test--alone was offered to 1,000,000 students applying to more than 1,500 four-year colleges annually. The growth of large test development and marketing organizations has been relatively recent. The Educational Testing Service (ETS) was not created until 1947, and the American College Testing Program (ACT) did not appear until 1959. As higher education has expanded tremendously to accommodate more individuals, so too there was an expansion in the use of standardized tests.

Origins of Testing Legislation

The widespread use of standardized admissions tests, such as the ACT, SAT, GMAT, GRE, and LSAT, during the past two decades together with the broadening of the types of postsecondary educational opportunities available, and recent extensive public questioning of traditional structures in American society, have helped to generate closer public scrutiny of testing. As the Education Commission of the States indicates, recent legislative investigation of post-secondary admissions testing "is an old issue in a new context." Earlier studies and critiques of the role of admissions tests were conducted in the 1960's and 1970's, but not in the context of the consumer movement that produced "truth-in-lending" and "truth-in-packaging" legislation, or open government initiatives which have created "sunshine" laws and "freedom of information" acts.
It was not until 1976-77 that public policy concern about the role of standardized tests in postsecondary admissions manifested itself as a legislative issue. The importance of the consumer movement and campus student activism cannot be underestimated as important catalysts in igniting legislative interest nationally. Even though scholars such as Banesh Hoffman and Oscar Buros, and a leading civil rights organization, the NAACP, were long critical of some practices of test makers and test users, testing legislation did not appear until Nader-supported student/consumer groups began to highlight the matter of alleged widespread test misuse, and began to form the nascent political coalitions to promote such legislation. Legislation to regulate standardized admissions tests was drafted for introduction in New York State in 1976 and finally considered formally by committee in 1978. A bill (H. R. 6776--The Testing Reform Act of 1977) was introduced in Congress in the spring of 1977, and the first law explicitly governing postsecondary admissions tests was enacted in California in 1978.

Following these initial efforts in New York and California, legislation designed to regulate postsecondary admissions tests was considered in roughly 20 states by 1980 and by nearly 30 by 1982. Additionally, several bills were introduced in Congress during the same period of time. That state and federal legislators have devoted so much time and interest in this issue, it is significant politically and educationally. Before moving on to discuss the consequences and efficacy of existing law governing postsecondary admissions tests, it is important to summarize briefly the history of testing legislation; its goals; arguments raised by proponents and opponents, and their respective legislative strategies; and related events that have affected the outcome of legislation in the states and Congress.
Arguments For and Against Legislation

Even though testing legislation itself is very complex, two of its provisions--requiring that a test taker have the right to request that a copy of test questions and correct answers be returned immediately following the administration of a test, and that the test be filed publicly with a government agency (test disclosure)--have been the central issue of contention. Whereas proponents of legislation argue that test disclosure is a simple matter of fairness and a fundamental consumer right, test publishers and sponsors contend that the unfortunate consequence of such disclosure is to reduce the availability of tests themselves, because disclosed test questions cannot be reused in later test administrations, and new tests cannot be produced as fast as the inventory of current tests are disposed. Although proponents maintain that test disclosure will serve the interests of students by making the testing process more open to public scrutiny, opponents claim that such disclosure will diminish the availability and possibly quality of tests, increase production costs and raise test fees, and thereby inconvenience students. Testing legislation advocates offer that test makers operate under a veil of secrecy, thereby abusing or violating the rights of test takers. On the other hand, supporters of testing counter that substantial information about standardized admissions tests is available publicly, and that proponents confuse "secrecy" with the need to keep tests "secure" so that they can be reused, in the interest of educational and economic fairness to students who take them.

Table 2 which is taken from the Education Commission of the States' (ECS) excellent 1980 analysis of testing legislation summarizes succinctly the major arguments, pro and con, concerning the need for legislation governing disclosure of postsecondary standardized admissions tests. \(^{12}\)
## Table 2  THE DEBATE ABOUT TESTING LEGISLATION IN SUMMARY

### I. Debate about Role and Power of Testing Companies

<table>
<thead>
<tr>
<th>Anti-testing Sentiments</th>
<th>Pro-Testing Sentiments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tests have profound influence upon American lives and life chances.</td>
<td>Tests have little influence compared to family, social and educational influences, grade point average.</td>
</tr>
<tr>
<td>Testing companies are unaccountable to their dependent public—particularly true of the Educational Testing Service (ETS) and American College Testing (ACT).</td>
<td>Commercial test publishers are accountable to market forces; test makers, including ETS and ACT, are accountable to professional standards, education community, higher education communities, courts, client groups, trustees and Internal Revenue Service.</td>
</tr>
<tr>
<td>Testing companies are too secretive; test takers do not know enough about tests; researchers cannot study them.</td>
<td>Critics confuse security—a technical issue—with secrecy; ample test information is available both to test takers and qualified researchers.</td>
</tr>
<tr>
<td>Massive testing does more harm than good (e.g., consumes time better spent learning, alters curriculum, stigmatizes children, misleads public, etc.).</td>
<td>The public and higher education have asked for massive testing; testing produces information useful for improving education; it does more good than harm (e.g., takes little time, diagnoses problems, helps administrators, etc.).</td>
</tr>
<tr>
<td>Tests are inherently biased against pluralism, tend to further stratify society.</td>
<td>The culture is inherently biased; bias in tests is being minimized; don't blame the messenger; testing helps minorities.</td>
</tr>
<tr>
<td>Tests are widely misused and misunderstood.</td>
<td>Test companies try hard to curb abuse, educate users.</td>
</tr>
</tbody>
</table>
### Table 2  THE DEBATE ABOUT TESTING LEGISLATION IN SUMMARY

II. Debate about Quality of Standardized Machine-Scored Tests Used Primarily for Prediction

<table>
<thead>
<tr>
<th>Critics of Standardized Tests</th>
<th>Defenders of Standardized Tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tests concentrate on easily measured cognitive skills, ignoring higher level skills (e.g., problem solving), imagination, creativity, etc.</td>
<td>Society values intellectual achievement, cognitive skills; education (especially higher education) stresses those skills; others (e.g., teachers) are better able to assess imagination, creativity, etc.</td>
</tr>
<tr>
<td>Theory upon which testing rests is simplistic, outdated and sketchy.</td>
<td>Theory upon which education rests may be simplistic, outdated and sketchy; test theory is better than critics think and always improving.</td>
</tr>
<tr>
<td>Test information is much less precise than testers pretend.</td>
<td>Test information is improving in precision and is better than massive subjectivity.</td>
</tr>
<tr>
<td>Tests are seldom valid even by test makers' standards.</td>
<td>Many tests are rigorously validated and most do what they are designed to do.</td>
</tr>
<tr>
<td>Tests are developed subjectively and always contain controversial items.</td>
<td>Tests are developed by educators and scholars, some of whom always disagree with others; in the main, they do what they are supposed to do.</td>
</tr>
<tr>
<td>Test scores do not predict success in later life.</td>
<td>Test scores accurately predict such things as academic success in first year of college, first year of medical or law school, etc.; they are not designed to predict success in later life.</td>
</tr>
<tr>
<td>Formal qualities of multiple-choice tests convey messages that undercut reasoning skills, writing ability, accurate perception of the world.</td>
<td>No empirical data are offered to support such fears; testing consumes too little of a student's time to have such effects.</td>
</tr>
</tbody>
</table>
### Table 2  THE DEBATE ABOUT TESTING LEGISLATION IN SUMMARY

#### III. Debate about Need for Testing Legislation

<table>
<thead>
<tr>
<th>Pro-Legislation Sentiments</th>
<th>Anti-legislation Sentiments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade inflation, misuse have combined to give tests too much influence in admissions decisions.</td>
<td>Higher education's need for students has lessened importance of admissions test scores.</td>
</tr>
<tr>
<td>A commitment to &quot;truth in lending,&quot; &quot;truth in advertising,&quot; sunshine laws and consumerism should extend to an area as important as admissions testing.</td>
<td>Test publishers and higher education institutions already provide ample information and protection; analogies to consumer movements are misleading.</td>
</tr>
<tr>
<td>Because admissions tests have such influence, there is an overriding public interest at stake.</td>
<td>There are several competing public interests at stake; critics have not established an overriding need for legislation.</td>
</tr>
<tr>
<td>Legislation will promote greater accuracy, validity of tests.</td>
<td>Legislation calling for full disclosure will lower the quality of tests.</td>
</tr>
<tr>
<td>Legislation will encourage use of multiple criteria in selection process.</td>
<td>Most institutions already use multiple criteria and test agencies encourage the practice.</td>
</tr>
<tr>
<td>The admissions test industry is not accountable to anyone.</td>
<td>The industry is accountable to the psychometric profession, market forces, academic community.</td>
</tr>
<tr>
<td></td>
<td>Federal legislation would constitute dangerous, if not unconstitutional, federal incursion into education.</td>
</tr>
<tr>
<td></td>
<td>Legislation interferes with First Amendment right of colleges to determine who they want to teach.</td>
</tr>
</tbody>
</table>
Table 2  THE DEBATE ABOUT TESTING LEGISLATION IN SUMMARY

IV. Debate about Full Disclosure and Other Aspects of Legislation

Arguments Against Full Disclosure

- Students cannot learn much from examining their test items.
- Teachers may try to increase aptitude test scores by teaching the test items, thus damaging curriculum.
- Full disclosure will compromise test security; compromised security means less confidence in tests.
- Release of items will lead to invalid interpretations and misunderstandings.
- Accumulation of disclosures over the years will erode test quality and utility.
- Good items are the result of a costly, technical and professional process; they should be husbanded to have long life.
- Sample tests are sufficient.
- It makes more sense to disclose a full specimen of the test before the test taking session, so test taker knows what to expect.
- Disclosure will remove economic competitive incentive to create new and better tests.
- If admissions officers lose confidence in test scores, disadvantaged students will suffer.
- Disclosure means fewer test administrations per year in order to keep a test secure as long as possible.
- Disclosure will decrease amount of time available for development, leading to greater possibility of biased items creeping into tests.
- Disclosure will benefit expensive coaching schools, further hurting poor students.
- Disclosure makes comparability measurement more difficult.
- Disclosure requirement constitutes seizure of private property without due process and in violation of proprietary rights protected by copyright laws.
Table 2  THE DEBATE ABOUT TESTING LEGISLATION IN SUMMARY

IV. Debate about Full Disclosure and Other Aspects of Legislation

Counter Arguments about Full Disclosure

- Students can learn about tests and test strategy from examining test questions.
- Security need not be an issue; new measurement technology could enable testers to eliminate the problem.
- Development costs would not increase as much as testers suggest.
- Items now available only to expensive coaching schools would be available to everyone, benefiting poor students.
- There are many solutions to the comparability problem; the laws do not adversely affect comparability measurement.
- The fairness issue takes precedence over technical matters.
- Disclosure will help admissions officers as well as students.

V. Arguments Against Release of All Studies, Evaluations or Statistical Reports Pertaining to a Test

These provisions may interfere with academic and institutional freedom in violation of the First Amendment of the U. S. Constitution.

As the ECS study indicates, however, an important caveat is in order regarding this summation of arguments for and against legislation. The reader should not casually draw the conclusion that proponents and opponents of legislation can be divided neatly into bipolar camps. Some opponents to legislation would not disagree with some of the sentiments of proponents regarding test use. Similarly, not every proponent of testing legislation would argue that test makers thoroughly disregard the public's interest in testing. For example, the NAACP appeared before Congress in support of federal testing legislation; yet, the National Association for Equal Opportunity in Higher Education (NAFEO), an association of presidents of historically black colleges and universities, took the opposite position. Whereas the NEA has taken a strong position in favor of legislation, the American Federation of Teachers (AFT) has taken the reverse position. Yet each one of these influential organizations which has supported the others on civil rights and educational opportunity issues in the past, emphatically supports "openness" and "fairness" in the admissions testing process.

From a legislator's perspective in judging whether or not to enact law, one should keep in mind that the norm in state legislatures and Congress is not to pass new law. Most legislation that is introduced is not enacted into law. Thus, the burden of justifying the need for pioneering legislation rests disproportionately with proponents of legislation. The heavier burden is on proponents to illustrate that legislation should be enacted, rather than on opponents to prove that it is not required. As will be discussed in more detail later, proponents of legislation captured a distinct advantage by putting opponents on the defensive by indicating that opponents were against "truth," "fairness," and "openness." Yet, opponents have had an advantage arguing that the status quo ante has worked well for test takers seeking admission to college, and that most of the public information that legislation would
require to be filed is already available. Accordingly, opponents have maintained that legislation is not needed because it might fundamentally upset a process that has worked well. They have been able to argue that gradual change rather than rapid transformation, which law would provide, is required. In this respect, the conservative nature of the legislative process has worked to opponents' advantage and proponents' disadvantage.

It is beyond the scope of this paper to analyze a priori each of the arguments put forth for and against legislation. Instead, the strength of these arguments can be judged better by evaluating the operation and effect of enacted law. Therefore, at the risk of over-generalizing, but for the purpose of analyzing whether law governing postsecondary admissions tests fulfills the goals of proponents or the fears of opponents, it is necessary to state succinctly the asserted reasons for legislative initiatives, goals of legislation and the operational elements of such legislation.

Goals of Testing Legislation

As Table 2 illustrates, proponents' arguments concerning the need for legislation focus fundamentally on reasons related to accountability and fairness in test use. To summarize again, proponents of testing legislation have maintained that test makers and sponsors should be regulated because: standardized admissions tests play too important a role in determining who may be granted access to postsecondary educational opportunities; test sponsors are largely unaccountable to the public for their product; and consumer rights of individual test takers are not adequately protected. Accordingly, proponents assert that full (unlimited) test disclosure (making public of each version of a test every time it is administered) is required to protect test takers' interests.
In proposing legislation, proponents' specific legislative goals have been to:

1. provide test takers with additional and reliable information about tests and their usage;

2. reduce inequities among different groups of test takers caused by unequal access to test-related information;

3. improve a test's quality and its educational value by promoting greater public scrutiny through disclosure;

4. reduce occurrences of test misuse and administrative errors by providing more information to test users (schools and colleges); and

5. protect test takers' private and consumer rights.

To accomplish these goals legislation has typically contained several common requirements, as follows:

1. disclosure (public filing) of information related to test construction, administration, and interpretation and reporting of test scores;

2. unlimited disclosure of test questions and answers to test takers immediately following a test administration;

3. public filing of research reports related to psychometric properties of a test;

4. disclosure of financial information by test makers and sponsors; and

5. codification of test takers' private and consumer rights, and legal remedies for violation of such rights.

The legislation which has been introduced in 26 states, in addition to California and New York where law has been enacted, is remarkably similar in its provisions principally for two reasons. First, New York State was the initial state to adopt a "comprehensive" testing law in 1979—one requiring unlimited test disclosure. The California law as enacted in 1978 did not require that test questions and answers be returned to students (it has since been amended to broaden its requirements to provide for limited test disclosure). Accordingly, the New York law became the model on which legislators elsewhere patterned legislation. Additionally, leading proponents of legislation, Nader-supported Public Interest Research Groups and state
affiliates of the NEA, chose not to stray too far from the New York model in promoting legislation throughout the nation. It was to proponents' advantage, if legislation were to have a national affect, to support enactment of bills in the states that were similar in their requirements.

Concerning the content of legislation formally introduced and considered during the past five years, it is useful to note two features about the legislation's scope that have been extremely important in the legislative debate for substantive as well as strategic reasons. With few exceptions (e.g. H. R. 3564, and bills in Illinois, Massachusetts and New Jersey) legislation typically has focused its requirements solely on postsecondary admissions tests. School and college guidance and placement tests, and government civil service tests often have been explicitly exempted from a bill's coverage. Employment, and occupational and licensing tests also typically have been excluded from legislation promoted by advocates of testing legislation.

Another important aspect of the legislation's scope is that prominent test makers such as ETS and ACT have been the principal target of the regulatory provisions, not institutions of higher education. In other words, the bills have placed the burden for complying with their provisions on the testing agencies that provide tests, not on the institutions that require them and which govern how they are used in the admissions process. In effect, narrowing the scope of proposed statutes to cover principally postsecondary admissions tests and test makers, has provided proponents the advantage of focusing legislative attention on only part of a complex and controversial issue, without risking the adverse reaction of broader interest groups within and outside education concerned about testing. But it also has had the disadvantage of drawing legislators' attention to the rather self-serving interests of some proponents --selective regulation of certain tests and test sponsors, but not others.
Legislative History of Bills to Regulate Testing

Table 3 presents an overview of the history of testing legislation in the states and in Congress and a chronology of law enacted in California and New York. As this table indicates, in addition to the two states that have enacted law, more than 80 bills have been formally introduced in 26 states since 1979 and five bills have been introduced in Congress—one in 1977, two in 1979 and two in 1981. Additionally, several state legislatures, including those in Connecticut, Kentucky, Louisiana, and Rhode Island, adopted formal or informal resolutions (not indicated in Table 3) to study the need for testing legislation. Only the Kentucky legislature has conducted a formal legislative committee study of the issue under the aegis of Senate Resolution 43 adopted in 1982.

<table>
<thead>
<tr>
<th>State</th>
<th>Bill Number</th>
<th>Primary Sponsor (Party Affiliation)</th>
<th>Year Enacted (Effective date)</th>
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<td>California (CA)</td>
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<td>Sen. Dunlap (D)</td>
<td>1978 (1-1-79)</td>
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<tr>
<td>(Chapter 3 CA Education Code)</td>
<td>S. B. 101</td>
<td>Sen. Marks (R)</td>
<td>1981 (7-1-82) Vetoed by Gov.</td>
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<td>S. B. 735</td>
<td>Sen. Torres (D)</td>
<td>(9-27-83)</td>
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<tr>
<td>New York (NY)</td>
<td>S. B. 5200-A</td>
<td>Sen. LaValle (R)</td>
<td>1979 (1-1-80)</td>
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<td>(Chapter 7-A NY Education Law)</td>
<td>A. B. 8479-A</td>
<td>Assem. Silver (D)</td>
<td>1980 (6-1-80)</td>
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<td>S. B. 9142-A</td>
<td>Sen. LaValle (R)</td>
<td>1980 (6-30-80)</td>
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<td></td>
<td>S. B. 3571</td>
<td>Sen. Halperin (D)</td>
<td>1981 (6-29-81)</td>
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<td>S. B. 6335</td>
<td>Sen. LaValle (R)</td>
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<td>S. B. 10125</td>
<td>Sen. LaValle (R)</td>
<td>1982 (6-28-82)</td>
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<td></td>
<td>S. B. 6038-A</td>
<td>Sen. LaValle (R)</td>
<td>1983 (11-2-83)</td>
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Table 3  STATE LAW AND PROPOSED STATE AND FEDERAL LEGISLATION
GOVERNING DISCLOSURE OF STANDARDIZED POSTSECONDARY ADMISSIONS TESTS,
1978-1983

**LEGISLATION FORMALLY INTRODUCED AND DEFEATED OR DEFERRED**

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<td>Colorado</td>
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<td>H. B. 3</td>
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<td>H. B. 797</td>
<td>Rep. Hearnes (D)</td>
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### Table 3  STATE LAW AND PROPOSED STATE AND FEDERAL LEGISLATION GOVERNING DISCLOSURE OF STANDARDIZED POSTSECONDARY ADMISSIONS TESTS, 1978-1983

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<td>H. B. 439, 440</td>
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<td>South Carolina</td>
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<td>South Dakota</td>
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### FEDERAL LEGISLATION—FORMALLY INTRODUCED AND DEFERRED

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<th>Fav. Cte Report</th>
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<td>Rep. Harrington (D-MA)</td>
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<td>Rep. Weiss (D-NY)</td>
<td>1979 (96th Congress)</td>
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<td>1979 (96th Congress)</td>
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<td>Rep. Gibbons (D-FL)</td>
<td>1981 (97th Congress)</td>
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At first glance it may appear that testing legislation has been a partisan issue with the Democrats leading the way. However, such a generalization is a misleading one. The tendency for Democrats rather than Republicans to act as primary sponsors of bills probably reflects more that Democrats have been in control of most of the Senates or Houses of state legislatures where bills have been introduced. Furthermore, it has not been unusual for many cosponsors to "sign on" to these bills, often with several Democrats and Republicans sponsoring a bill. The fact that Republicans as well as Democrats have been keenly interested in testing legislation is illustrated by the California and New York laws where two Republicans (Senator Marks in California and Senator LaValle in New York) have been principal movers of test disclosure laws in two respective state legislatures with strong Democratic representation. There also seems to be little meaningful geographical bias in interest in testing legislation. Including California and New York, bills have been formally introduced in five Middle Atlantic states; seven Midwestern states; three New England states; six Southern states, and seven Western and Southwestern states.

In retrospect, testing legislation received a substantial amount of attention in some states often for reasons not directly related to the asserted merits of test disclosure. For example, interest in the legislation in Florida probably came as much from a larger concern about equity among blacks and whites in gaining access to the flagship state university as in the asserted benefits of test disclosure. A similar concern helped to promote committee interest in the legislation introduced in Maryland. In Louisiana, a special legislative interest in teacher certification and use of the National Teachers Exam, a product of ETS, helped to bring about introduction of several bills. Proponents placed high symbolic importance on legislation in New Jersey which happens to be ETS' home state; and in some cases, such as Missouri, Ohio, and Oregon, idiosyncratic factors, such as legislators' personal experiences
with tests and election politics, merged with the interests of proponents in
these states to help focus attention on legislation.

In other states where bills were introduced but not enacted it is diffi-
cult to generalize about why legislation was proposed in the first place, or
why it failed to receive favorable legislative action. Each state's political
culture and the particular idiosyncrasies of individual legislators, proponents
and opponents varied from state to state. Additionally, the dynamic nature of
the controversy ensured that the unfolding of events, such as the development
of national test disclosure policies by major test sponsors after enactment of
the New York Law and litigation associated with that law, clearly affected
legislative outcomes.

It is noteworthy, especially in light of the substantial amount of nation-
al press attention given to testing legislation, that bills were introduced
but never granted formal committee consideration in 11 states. For example,
in Pennsylvania six bills were introduced between 1979 and 1983, not one of
which has ever received a formal committee hearing. Among the 15 states where
bills were considered formally, committees favorably reported bills in seven
of the 15. In no case where a bill was favorably reported by committee did
the legislation go any farther in the legislative process. Similarly in
Congress, after holding 12 days of extensive hearing on H. R. 3564, H. R. 4949
Education and Labor Committee failed to take action, thereby allowing the
bills to die.

It may be somewhat surprising to some observers given the relatively high
level of legislative interest and activity during the past five years, that
the California and New York State laws enacted in 1978 and 1979, respectively,
remain the only two statutes requiring disclosure of standardized admissions
tests. The reluctance of other state legislatures and Congress to enact law
might be explained fundamentally by three important factors:

1. adoption of effective tactics and strategies by opponents to influence the outcome of legislation;

2. legal and operational problems associated with implementing the New York law; and

3. adoption of national test disclosure policies by test sponsors and test producers in response to the New York law. (The first factor will be discussed in more detail in this section, while the latter two will be explored in section III.)

Legislative Tactics and Strategies

Test producers and sponsors clearly were surprised by the enactment of the New York law in June 1979. Even though a law had been passed in California one year earlier, the testers were not well prepared to respond to the lobbying efforts in favor of S. 5200 put forth by proponents of the bill, including the New York Public Research Interest Group and the New York Education Association. Indeed, Senate hearings on the bill during the spring of 1979 left some legislators confused and frustrated with test sponsors' highly technical, complex, and sometimes aloof and self-serving explanations of why they could not comply with a law requiring immediate disclosure of tests. Opponents' arguments relied heavily on testimony regarding the bill's perceived harmful effect on test validity, "equating" (the statistical process of ensuring that one version of a test is comparable to another), and the costs of designing and administering the tests.

Proponents conversely focused heavily on the simpler concepts of "fairness" and "openness" in testing, and on alleged egregious errors of test makers and sponsors such as ETS, the College Board, and the Law School Admissions Council in tolerating misuse of and mis-scoring of tests. The confluence of the appeal of the proponents' presentation, the naïveté of opponents in working within the legislative arena and the dedication of Senator Kenneth P. LaValle, who chaired the Senate Higher Education Committee, to push the bill through the
legislature, worked together to bring about the bill's approval. (For example, there is little evidence that test sponsors such as the College Board, AAMC, and LSAC mobilized their member constituents effectively to oppose the bill until late in the legislative process. Additionally, some testing proponents believed wrongly that even if the law was enacted, there was a good chance for the governor to veto the bill. Governor Carey not only signed the bill into law on July 13, 1979, but also enthusiastically endorsed it.\textsuperscript{14}

The law's enactment received a substantial amount of attention during 1979-80. Publication of reports related to testing, including Ralph Nader's 500-page report (The Reign of ETS) excoriating ETS for its abuse of power, and a Federal Trade Commission staff report on the effects of "coaching" (test preparation courses) on test scores, heightened public interest in testing legislation.\textsuperscript{15} Congressional hearings on the need for legislation began during the summer of 1979, and by mid-winter of 1980 bills modeled after the New York law appeared in several state legislatures. Proponents of legislation, buoyed by their success in New York State and armed with a substantial amount of information collected there, encouraged the introduction and passage of similar bills in other states and in Congress. Their aim was to enact a federal bill, or alternatively, to enact enough legislation in the states to require test sponsors to adopt \textit{de facto} national test disclosure policies.

As the national legislative debate unfolded, some of the major opponents to the legislation learned from their legislative mistakes and moved to accommodate, and therefore, to neutralize many of the arguments advanced by proponents of legislation. For example, sponsors of the ACT, SAT, LSAT, GRE, GMAT announced that they would comply with the New York law, even though the immediate effect of the law in many cases was higher test fees and fewer test administrations. Conversely, some other test sponsors announced that they would withdraw testing services from New York State, and one sponsor, the Association of American Medical Colleges, challenged the law on legal and
Constitutional grounds. These initial consequences of the new law were reported in detail by New York State Education Commissioner Gordon Ambach in October 1979.\textsuperscript{16}

Opponents of the legislation began to stress a central theme before Congress and state legislatures. They requested legislators to delay final action on bills, to provide test sponsors the time to adjust to and evaluate the effects of the New York law. Fred Hargadon, Dean of Admissions at Stanford University and Chairman of the College Board in 1979, in his July 31 Congressional testimony requested that Congress:

\ldots let this issue ferment for a while yet, so that we all see and learn from the experience gained in connection with the State legislation already enacted and so the College Board and other testing organizations can have time to explore more thoroughly the feasibility and cost of a testing program that would satisfy both the proponents of test disclosure and the proponents of a testing program that produces reliable and valid results.\textsuperscript{17}

The testimony of other major opponents to the federal legislation echoed Hargadon's plea to postpone favorable action on the bills until the effect of New York law could be evaluated. Test agencies began to moderate their adamantly opposition to bills, and instead began to stress the "voluntary," "self-regulatory" efforts of the testing community to accomplish the goals attributed to the New York law, but without the imposition of regulation. Thus a strategy of delay and adjustment, without rejecting outright the notion of limited test disclosure (disclosure of some versions but not each version of a test), was being established.

In their testimony before Congress and state legislatures proponents of legislation emphasized instances of inherent test bias, misuse of tests, inequities among economically advantaged and disadvantaged students in access to test preparation courses, and the absence of corporate accountability of testers. On the other side, advocates of testing began to emphasize the
tests' reliability for all groups of students, how tests were used to help broaden access to postsecondary education, the ways in which test makers were accountable publicly, and the kinds of information about the tests that were already available to students.

Testing organizations began to take steps immediately following enactment of the New York law to provide for test disclosure nationally, as well as in New York State. The College Board, for example, announced in 1980 that it would make available nationally copies of SAT's disclosed that year in New York as well as publish additional data about the properties of the SAT. Short of disclosing the SAT nationally, the College Board adopted new policies to provide for a national score verification service for students who wished to confirm the accuracy of their test scores. Also, the College Board began returning test questions and answers to all students taking the Preliminary Scholastic Aptitude Test/National Merit Scholarship Qualifying Test (PSAT/NMSQT). The LSAC initiated investigation of the feasibility of a national test return service based on the model provided by the New York law. In response to asserted public concerns during the final days of 1979, ETS and its major test sponsor clients promulgated a set of "Public Interest Principles" committing ETS to several safeguards regarding the design and use of its tests.¹⁸

In addition to taking positive action to show to legislators and the public that the testing community was not opposed to accommodating some of the interests of testing legislation, opponents of legislation did not miss the opportunity to exploit to their advantage some of the early negative consequences of the New York law. The law which went into effect in January 1980, in the middle of the academic and testing year, did not begin to operate as auspiciously as many of its supporters had hoped it would. As Commissioner Ambach's initial impact report indicated, some test sponsors, especially smaller ones testing in the field of allied health, announced that they would
no longer offer tests in New York. Other major sponsors announced that testing programs such as the ACT and SAT would continue, but with fewer test administrations and higher fees for test takers in New York.

Perhaps more significantly, the College Board filed a complaint in November 1979 in New York Supreme Court seeking a judicial determination of whether the New York law had "extraterritorial" application. Even more threatening to the law's enforcement was the Association of American Medical Colleges suit filed in December 1979 in U. S. District Court [Northern District of New York AAMC v. Carey Civil Action 79-CV-730] seeking injunctive relief from the law's application to the MCAT on legal and Constitutional grounds. The College Board's complaint was not ruled upon because of a favorable regulatory interpretation and eventual amendments to the law that clarified that the law applied only within the territorial boundaries of New York State. The AAMC was successful in obtaining a temporary injunction in January 1980 barring the law's application to the MCAT.

Furthermore, initial student demand for test disclosure during January-June 1980 was not as enthusiastic for some tests as proponents had envisioned. There was high demand for the LSAT's disclosed in New York in 1980. By spring 1980 more than 20% of the LSAT test takers requested that their test questions and answers be returned. However, relatively few individuals taking tests such as the GRE (3%), GMAT (11%), SAT (5%), and ACT (less than 1%) availed themselves of the test return option. Early analyses by the College Board and ACT indicated that it was the economically and educationally advantaged student, not the disadvantaged student (converse to what proponents had asserted would result) who sought the new services allowed by the law. Proponents asserted that the fee charged for the test return service and the absence of adequate information about the availability of the test return option artificially depressed students' requests. Testing legislation opponents, then, by
emphasizing the new positive steps mentioned previously, by initiating legal challenges to the new law, and by recording and analyzing the student reaction to the test return provision, were able to delay or defeat enactment of additional legislation in the states.

On the Congressional scene, opponents not only used these tactics to help slow down movement of the Weiss and Gibbons bills, but also developed and emphasized legal (copyright) and Constitutional (states' sovereignty over education policy) arguments cautioning Congress against unwarranted federal intervention. Simultaneously, some test sponsors considered the strategy of seeking a preemptive federal bill in case several dissimilar state bills were enacted. This strategy, however, was discarded in favor of arguing against federal intervention, and continuing to oppose bills in the states on a case-by-case basis.

Finally, testing legislation opponents, in pursuing their strategy, focused legislators' attention on the 1980 ECS report and the then pending report on Ability Testing by the National Academy of Science cautioning legislators against enactment of law modeled after the New York law. Opponents emphasized the complex educational, social and legal questions raised by the law, and asked legislators to evaluate carefully the two independent studies before taking favorable action on legislation. Also, test makers and sponsors pledged to study the New York experience and to report back to state and federal legislative committees on that law's effect on their testing activities.

In summary, during 1980-81 after enactment of the New York law, when opponents and proponents alike were busy formulating positions to influence legislation nationally, both sides fostered strong arguments for and against additional legislation. Notwithstanding the sometimes aloof and pedantic presentations of some opponents, and the stridency and shrill hyperbole of some proponents, for the most part, the legislative process worked well in providing
a public forum for thoughtful consideration of the pros and cons of the complex issue of test disclosure. Both proponents and opponents possessed special strengths and weaknesses in promoting their particular viewpoints. For example, proponents of legislation were able to appeal to the legitimate anti-testing sentiments of legislators and special interest groups whose personal experiences with tests had been negative. But, proponents suffered from not being well organized in some states, especially West of the Alleghenies, and, therefore, were unable to build effective political coalitions to move the legislation. The absence of active promotion of the legislation by state NEA affiliates especially diminished the legislation's chances for passage in some states. On the other hand, testing organizations which opposed legislation had the disadvantage of being viewed by legislators as members of a profit-oriented "industry" resisting regulation. Yet to their benefit, testing agencies developed the ability to use effectively information accenting the benefits of standardized tests, and to mobilize local coalitions opposed to legislation.

Possible Reasons for Inaction on Testing Legislation

Given that proponents presented strong reasons for legislators to act in their favor, why then did so many state legislatures (except for California and New York) and Congress overwhelmingly not act favorably on testing legislation? There are several factors that might assist in explaining why proponents of testing legislation were not successful in having laws enacted outside of the California and New York. Perhaps most important among such factors was the move by major test sponsors, especially those served by the Educational Testing Service, to adopt national test return policies modeled after the requirements of New York law. By 1981 most test sponsors (ACT and the AAMC being the principal exceptions) had adopted or announced forthcoming implementation of a national test return policy. (These policies are discussed in Section III.)
In effect, then, the New York law and to a lesser degree the California law produced a *de facto* national test disclosure practice without additional law being enacted in Congress or other states. Thus, testing organizations and institutions of higher education have been able to argue convincingly that additional law is not required to accomplish the goal of test disclosure. Furthermore, by acquiescing and developing a "voluntary" national standard for limited test disclosure, as opposed to one prescribed by law, testing organizations used to their advantage the conservative nature of the legislative process to blunt enactment of legislation. Their successful appeal to legislators to delay final action on proposed bills until more information about the educational, economic and legal effects of the New York law could be considered allowed them time to accommodate changes in their testing practices.

Furthermore, in addition to defusing legislation in other states by providing for test disclosure without the imposition of law, an equally damaging factor to the prospect of enacting law elsewhere has been the litigation initiated by the AAMC challenging the legality and Constitutionality of the New York statute. The temporary injunction won by the AAMC barring the law's application to the MCAT sent a signal to legislators in other states that major problems with the law were not resolved, even after enactment of several amendment (see Table 3) to the law. Thus, some test sponsors were able to exploit to their political advantage the negative aspect of the litigation while at the same time adjusting to accommodate and neutralize the central goal of the legislation—test disclosure. Given factors such as legal uncertainty surrounding the New York law, the primacy of the state and not the federal government in regulating education, and the absence of a compelling reason for federal intervention, it is not surprising that Congress, too, failed to act favorably on testing legislation. It should be emphasized, however, that it is doubtful that testing organizations would have moved nearly as quickly to accommodate provisions of legislation without the threat of enactment of law.
Some proponents may be dissatisfied that many test sponsors still do not provide for "full" (unlimited) test disclosure--that is, disclosing each test administered to students--and instead provide for "partial or limited" test disclosure (disclosing some, but not all of the administrations of a particular test). One might conclude, however, that enactment of the New York law set the stage for a reasonable public policy compromise. In the eyes of many legislators the national compromise that has been reached, largely through enactment of a single law in New York, serves students and the public well by providing them with reasonable access to standardized postsecondary admissions tests, and also serves the interests of testing organizations and colleges by allowing them continuing authority and flexibility in setting policy regarding the availability and use of such tests.

Other variables related more to legislative tactics also help to explain the absence of additional law. Principally, proponents of legislation, like opponents, made some missteps in promoting legislation, especially in the states. First, proponents often were not able to or did not choose (in the case of the NEA) to entice key legislators (i.e. leaders or education experts) to be sponsors of bills. Important legislators who were knowledgeable about higher education, although not always predisposed on the side of opponents, often reacted negatively to the simplistic arguments of some proponents which largely discounted educational, legal and operational problems associated with administering legislation. For example, proponents tended to lump all tests together and to blur rather than clarify for legislators the important differences among tests. In many cases, this tactical error assisted opponents by allowing them to highlight the complex and technical aspects of testing, and to emphasize the difficulty of drafting legislation that could regulate uniformly different types of tests. Not surprisingly, important opinion leaders in legislatures who were troubled about how to deal with these complexities, more often than not opposed rather than supported bills.
Finally, proponents may have underestimated opponents' strategic and tactical responses to legislation. Even though opponents' immediate reaction was extremely defensive (test agencies often characterized legislation as an all out attack on testing), their later, more reasoned, reaction was to accommodate actively many of the concerns of proponents. Opponents also became more skillful at building legislative coalitions to support their interests and appealed broadly to all levels and sectors of the educational enterprise. While some proponents of legislation viewed testing organizations as one monolithic "industry," they neglected to take into account the political influence of thousands of individual schools, colleges and universities which are served by, rather than serve, testing organizations, and which actively opposed testing legislation. Even though testing organizations had the financial resources to engage professional public affairs experts and lobbyists to assist in responding to legislation, the most potent force in opposing bills was schools and colleges themselves.

III. The California and New York Laws--Their Provisions and Consequences

The California and New York State legislatures took their pioneering steps on testing legislation in 1978 and 1979, respectively, and have been busy since that time refining these laws. Even though the two laws are similar in some respects, they are also very dissimilar in scope with respect to test disclosure requirements. The complexity of legislating to regulate certain aspects of admissions testing is vividly illustrated by the fact that the California law has been amended twice (the Governor vetoed the more recent amendment) since its original enactment in 1978. The New York law has been amended six times since 1979 (see Table 3), most recently in 1983. Table 4 provides a summary of the major provisions of these two laws as well as a summary of the requirements of proposed federal legislation.
Table 4
SUMMARY OF MAJOR REQUIREMENTS OF STATE LAW AND
PROPOSED FEDERAL LEGISLATION CONCERNING TEST DISCLOSURE

New York State -- Article 7-A New York Education Law

Tests to Which Law Specifically Applies

- Any standardized test designed for use and used for postsecondary or professional school admissions.

Tests Specifically Excluded

- Civil service exams, and any test used for other than admissions purposes, including placement and credit-by-examination tests.

Required Disclosure to State Agency

Test agency must file with Commissioner of Education:

- evaluations or statistical reports pertaining to a test;

- within 30 days of score release for a test offered to more than 2,000 individuals annually test agency must file:
  a) test questions and answers,
  b) rules for converting raw scores;

- For a test given to fewer than 2,000, public filing required every 3 years;

- For any test form given to fewer than 5,000 or 5 percent of total test-taking population, public filing required every 3 years;

- For College Board Achievement Tests and GRE Advanced Tests only, disclosure of questions and answers of one form of each type of test required every 5 years for tests given to 5,000 or more test subjects; for tests given to fewer than 5,000, disclosure required every 8 years.

Required Disclosure to Test Taker

- Upon request of test taker and within 90 days of filing with state for tests filed immediately, test agency must return:
  a) test questions and answers and copy of answer sheet,
  b) raw score;

- Information test agency must provide at time of test registration or with score report:
  a) purposes, uses, subject matter of test,
  b) explanation of score scale, standard errors, correlation with grades and income,
Table 4
SUMMARY OF MAJOR REQUIREMENTS OF STATE LAW AND PROPOSED FEDERAL LEGISLATION CONCERNING TEST DISCLOSURE

c) how scores are reported,
d) promises or covenants made with test taker on accuracy of scoring, policies on inaccuracies,
e) who owns scores and how they are retained,
f) information about test-return service.

Special Provisions

- Prohibits reporting of scores to an institution without consent of test taker;
- Requires that tests are given at special times for reasons of religious observance, must be offered an equal number of times as regularly scheduled test dates. Also requires that at least one such special test date be set aside annually for disclosure to test takers;
- Test agency may charge "nominal" fee for test disclosure service;
- Information provided to test subject must also be provided to any institution receiving score report.

Penalties

- Civil penalty of not more than $500.00 for each violation.

Rule-making Authority

- State Commissioner of Education.

California -- Chapter 3, Part 65, California Education Code

Tests to which Law Specifically Applies

- Test used for postsecondary admission given to at least 3,000 individuals each year in California.

Tests Specifically Excluded

- Any test or part of a test used solely for placement, guidance, credit-by-examination, or high school graduation.

Required Disclosure to State Agency

- Annually, copies of nonsecure tests similar to tests given during prior 3 years;
Table 4
SUMMARY OF MAJOR REQUIREMENTS OF STATE LAW AND
PROPOSED FEDERAL LEGISLATION CONCERNING TEST DISCLOSURE

- Annually, information conforming to American Psychological Association
  guidelines concerning psychometric properties of a test;

- Information about:
  - purpose of test, where and when administered,
  - number of times test given annually,
  - number of individuals taking test once, twice or more,
  - number of individuals who registered but did not take test,
  - test fees collected annually,
  - total direct and indirect expenses,
  - fees collected from admissions data assembly service.

Required Disclosure to Test Taker

- Prior to Administration of test statement of:
  - purpose,
  - subject matter and skills measured,
  - how test is scored and relationship between scores and knowledge measured,
  - basis for reporting scores to institutions,
  - representative set of sample test items.

- For half of regular test administrations and at least one special test
  administration annually of undergraduate admissions tests (i.e. ACT, SAT), and upon request of test taker, test agency must return:
  - test questions and answers and copy of answer sheet,
  - raw scores and scoring instructions.

- As an alternative to this service, a test agency may provide for test
  review centers.

- At time of reporting test scores, information about:
  - score scale,
  - meaning of score,
  - standard error of measurement of test,
  - predictive validity of test, grades, and both combined.

Special Provisions

- Information required to be disclosed to test taker at time of score
  reporting must be provided annually to institutions receiving test
  scores and to California Postsecondary Education Commission.

- Test sponsor may charge a nominal fee not exceeding direct cost for
  test return service.
Table 4  
SUMMARY OF MAJOR REQUIREMENTS OF STATE LAW AND 
PROPOSED FEDERAL LEGISLATION CONCERNING TEST DISCLOSURE

Penalties
  o Civil penalty of not more than $750.00 for each violation.

Rule-making Authority
  o Not specified.

Federal Legislation -- 97th Congress, 1981-82
H. R. 1662

Tests to Which Legislation Specifically Applies
  o Standardized tests used for determining admission in postsecondary institutions or tests for preliminary preparation.

Tests Specifically Excluded
  o Tests designed solely for non-admission placement or credit-by-examination.

Required Disclosure to Federal Agency
  o Test agency must provide U. S. Secretary of Education with:
    a) any study, evaluation, or statistical report that agency prepares or causes to prepare,
    b) test questions and answers for tests given to more than 5,000 subjects per year,
    c) rules for converting raw scores into final scores,
    d) copy of any contract for services between a test agency that develops or produces test and another that sponsors or administers it.
  o Within 120 days of close of each test year, file with U. S. Secretary of Education:
    a) number of times test was taken,
    b) number of subjects taking it once, twice, or more,
    c) total fees for each test, refunds, and number of fee waivers or reductions,
    d) total revenue for each program, and expenses of agency.
Table 4
SUMMARY OF MAJOR REQUIREMENTS OF STATE LAW AND PROPOSED FEDERAL LEGISLATION CONCERNING TEST DISCLOSURE

- For admissions data assembly or score reporting services must file:
  a) number of registrants,
  b) total revenue,
  c) expenses.

Required Disclosure to Test Taker

- For test given to more than 5,000 individuals and upon request, test agency must provide:
  a) test questions and answers and answer sheet,
  b) raw test score

- At time of registration, agency must provide:
  a) purpose of test, uses, content,
  b) explanation of score interpretation, standard error, correlations between scores and grades,
  c) average score by income group,
  d) effects of test preparation courses,
  e) form and time of score reporting,
  f) promises of covenants made with subject about scoring,
  g) property interest of subject in test results,
  h) policies on storage, disposal and future use by agency,
  i) special services for handicapped.

- Delay of test score must be reported to test subject.

Special Provisions

- U. S. Secretary of Education must report to Congress on the relationship between scores and income, race, sex, ethnic, and handicapped status, and on success of test preparation courses;

- Information provided to test subject must also be provided to any institution receiving score report.

- Prohibits release of a test score without authorization of test subject.

Penalty

- Civil penalty of not more than $2,000 for each violation.

Rule-making Authority

- U. S. Secretary of Education.
Table 4
SUMMARY OF MAJOR REQUIREMENTS OF STATE LAW AND PROPOSED FEDERAL LEGISLATION CONCERNING TEST DISCLOSURE

H. R. 1312

Tests to Which Legislation Specifically Applies

o Any aptitude of achievement tests, written or oral, used for:
  a) postsecondary admissions selection,
  b) admission into any occupation.

Tests Specifically Excluded: None

Disclosure to Federal Agency: None

Required Disclosure to Test Taker

o Prohibits use of admission or occupational tests unless test agency provides test taker with information on:
  a) the test's characteristics, content, and uses,
  b) test error and reliability,
  c) score, ranking, score required for admission to institutions of higher education or occupation, reliability of test, and manner of score distribution,
  d) the applicant's rights to obtain test results.

Special Provisions

o Prohibits grading achievement tests based on relative distribution of scores of other test subjects.

Penalty

o Provides for judicial relief in U. S. District Courts.

Rule-making Authority

o Not specified.
Requirements of California Law

In brief summary, the California law as originally enacted in the form of Senate Bill (S. B.) 2005, does not require that "secure" tests (tests still in use) be filed with the state or returned to students. Instead it requires that test sponsors file annually facsimile tests with the California Post-secondary Education Commission. The law additionally requires that information related to the purposes, interpretation and scoring of a standardized admissions test be made available to students and institutions of higher education, and further provides that certain administrative and financial information, and technical data concerning the psychometric properties of a test, be filed annually with the state postsecondary education commission.

In 1981 Senate Bill (S. B.) 101 added a new section to the law requiring for undergraduate admissions tests only (i.e. ACT and SAT), that test takers be provided the opportunity to request that tests be returned for not fewer than one-half of regular (Saturday) test administrations. For Saturday Sabbath observers, the law requires that at least one non-Saturday test administration be disclosed annually. As an alternative to this requirement, the law allows the test sponsor to provide a test taker with the opportunity to review a test and test-related materials upon request, and requires that test review facilities be provided throughout the state by the test sponsor. Thus, S. B. 101 expanded the law by providing for limited disclosure of undergraduate tests but without imposing this requirement on other tests affected by the law. For other tests, the requirement that facsimile tests be filed with the state remains in effect.

Finally, a recent attempt to expand the scope of existing law has been vetoed by the Governor. Senate Bill 735, introduced and passed by the legislature in 1983, would have established procedures which test sponsors must follow in cases where a test taker is suspected of a test irregularity
(e.g. cheating, collusion, or falsifying information). The bill provided for creation of a test agency review panel in such cases, required that certain information about the student's administrative options be provided to test takers and provided for the right of judicial review by a test taker. Additionally, S. B. 735 would have expanded the amount of test-related information that must be filed with the postsecondary education commission, and would have required the commission to report annually a summary of data collected under the law's requirements to the Governor, legislature, Superintendent of Public Instruction and college and university governing boards.

As enacted, S. B. 735 would have applied to virtually every kind of standardized test used in postsecondary education including, aptitude, achievement, and placement tests. However, the bill's test disclosure provisions--requiring limited disclosure of the ACT and SAT and public filing of sample tests for other test sponsors--would not have been changed by S. B. 735. Governor Deukmejian, taking action that surprised both proponents and opponents to the bill, vetoed the measure on September 27, 1983 on the grounds that the bill was unnecessary and cumbersome in its requirements.21

Implementation of California Law

To date there have been few, if any, real operational or legal problems associated with compliance with California law. However, the recent veto of S. B. 735 opens the prospect of new legislation being favorably considered in 1984 (As of March 1984, two bills governing admissions and placement tests have been introduced--S. B. 1758 sponsored by Senator Torres, and A. B. 3581 sponsored by Assemblyman Richard Alatorre. The Senate bill is modeled after S. B. 735, while A. B. 3581 would prohibit schools and colleges from engaging in certain test use practices). There are several reasons which help to explain the relative ease with which the California law has been implemented.
First, the law as originally enacted stopped short of requiring unlimited disclosure of tests in active use, and thus averted some of the dislocations experienced in New York State. The law, by requiring instead that sample or facsimile tests be filed with the state, did not have the effect of forcing test sponsors to revise testing schedules or to produce new tests to replace those tests that would have been made public by a test disclosure requirement for tests still in use.

Additionally, test sponsors have not found especially burdensome the data filing requirements of law. Information required to be filed with the state, such as information about the psychometric qualities and purposes of the tests and financial and other administrative information, is readily available in most instances. Also, information supplied to test takers including scoring information and explanations about a test's scope and usage have been routinely available to test takers, schools and colleges through existing publications and test registration materials. Thus, test agencies have not had to prepare new information materials.

The law's expansion in 1981 to provide for limited test disclosure of the ACT and SAT has not caused major problems either. As originally drafted, S. B. 101 would have provided for broader test disclosure by requiring that postsecondary admissions tests, including those tests used for graduate and professional school admissions, be disclosed immediately after their administration. However, the bill's primary sponsor, Senator Milton Marks (R-San Francisco) recognized that including in the bill's test disclosure provisions graduate and professional tests, such as the MCAT sponsored by the AAMC, which had already challenged the lawfulness of the New York statute, could undermine favorable consideration of the bill. Furthermore, the sponsor perceived that providing for unlimited, as opposed to some type of limited, test disclosure, would cause some tests to be withdrawn from the state, and would seriously
threaten the bill's chances for passage. Accordingly, the bill was amended several times as it moved through the legislature to apply finally only to the SAT and ACT, and then requiring that one-half, but not all, of the "regularly" scheduled (Saturday) tests for each testing program be disclosed annually. The College Board, sponsor of the SAT, already had in place a national test disclosure program providing for disclosure of more than one-half of its Saturday offerings of the SAT. And ACT adopted a similar policy prior to the law's implementation in 1982. The law, then, does not require a level of test disclosure for the SAT or ACT beyond that already in place nationally. The law was written clearly to accommodate the concerns of proponents and opponents with the goal of enacting legislation, but without upsetting the status quo regarding test disclosure. Neither the College Board nor ACT have elected to follow the test review facility option instead of providing for test disclosure, as the law allows.

Recently-vetoed S. B. 735 would not have expanded the law's requirements governing test disclosure. However, it would have amended the law as it governs the kinds of information required to be filed with the state and test takers. Significantly, the bill would have expanded greatly the scope of the law by specifying administrative procedures which must be used in reporting test scores to students, particularly in cases related to testing irregularities such as cheating. Specifically, the bill provided that the test sponsor create a review panel to investigate suspected testing irregularities; provide formal notification to test takers about the facts surrounding the investigation and the disposition of reporting a test taker's test score; and describe to the test taker the options available regarding cancellation or validation of a test score in such cases. The bill further would have required a test sponsor to notify a test taker about a delay in reporting a test score and the reasons for such a delay, if the score was to be delayed more than 10 days
beyond the time period specified in test registration materials. These provisions, applying to postsecondary aptitude, achievement and placement tests, were significant because it was the first time that legislation was proposed to govern a student's "due process" rights in cases related to score reporting and test security investigations. In this respect, California S. B. 735 went far beyond the requirements of New York State law.

S. B. 735 was prompted by an ETS investigation of several Mexican-American students from Los Angeles Garfield High School who took the College Board Calculus Advanced Placement Test in 1982. An investigation was initiated by ETS, which handles test security investigations for the College Board, because of atypical similarities in the students' responses on the test. The incident received a substantial amount of press attention, especially in California and in the Spanish-speaking community, where individuals such as Senator Art Torres, sponsor of S. B. 735, believed strongly that the students' rights had not been properly protected by the ETS' administrative procedures applied during the investigation.22

As introduced, S. B. 735 would have provided for unlimited test disclosure for many postsecondary admissions tests not covered under the existing New York and California laws. However, the bill's sponsor discarded the legislation's sweeping test disclosure provisions in order to garner legislative support for its provisions governing score reporting and test security investigations. Test agencies, especially ETS, found these latter provisions difficult to oppose partly because of the emotional ethnic aspect of the Garfield High School case, but also because the bill, in many respects, simply codified procedures that ETS and other test agencies were already following.23

In summary, there have not been major compliance problems or litigation associated with the California law, which is not nearly as demanding as the New York law in its test disclosure provisions. However, S. B. 735, had it
been signed into law by the Governor, would have broadened the scope of existing law by establishing procedures to protect students' legal rights related to score reporting and test security investigations. Regarding the latter provision, if S. B. 735 had been signed into law, the law would have governed not only postsecondary admissions tests, but placement tests as well. These tests typically have been explicitly exempted from legislation considered elsewhere. It remains to be seen if the legislature will enact another bill in 1984. Because S. B. 735 passed the legislature unanimously in 1983, similar legislation could be enacted again and could become law, if the governor's objections can be removed. The demonstrated pragmatism of the California legislature, which has been extremely flexible in accommodating the diverse concerns of the testing and educational communities without sacrificing the goal of enacting law to regulate testing, may indicate that additional law will be enacted soon--law that will provide limited benefits to test takers without placing substantial new burdens on test sponsors.

Requirements of New York State Law

The difficulty of writing a statute to regulate previously virgin territory is clearly illustrated by experience in New York State, the first state to enact a law requiring full and immediate disclosure of postsecondary admissions tests. The law has changed substantially from its original form as adopted in 1979. S. B. 5200-A which took effect in January 1980 was unique and significant by requiring that any postsecondary admission test given in New York State, excluding credit-by-examination and placement tests, be filed with the Commissioner of Education within 30 days after test scores were released. It required further that the test agency return to a test taker upon request a copy of the test questions, correct answer key, scoring instructions and a copy of the test takers' answer sheet. The only postsecondary education
tests explicitly exempt from this provision were College Board Achievement Tests and GRE Advanced Tests. In addition to providing for immediate disclosure of test questions and answers the law, in its original form, required that a test agency's studies pertaining to a test be filed with the state. It required also that information about a test's purposes, its use and relevance to other socio-economic and academic factors, score retention and reporting procedures, and a test taker's property rights, be provided to students, schools and colleges. And it prohibited a test agency from releasing a test score without the authorization of the test taker.

Several of these provisions, particularly the requirements regarding test disclosure and filing of research studies, posed immediate problems for test agencies, especially given the short six-month's lead time for adjusting testing services to meet the law's requirements. Before the law went into effect, 20 of 26 test sponsors affected by the new statute announced that their tests would no longer be offered in New York State. Furthermore, legal actions challenging the law were filed by the College Board and Association of American Medical Colleges. In order to remedy some of these early problems associated with the new law Senator Kenneth LaValle, who had sponsored S. B. 5200-A, introduced and was successful in passing S. B. 9142-A. This bill substantively amended the law after it had been in effect only six months.

S. B. 9142-A provided relief for many test sponsors that had announced withdrawal of tests by exempting certain "low volume" tests (test offered to fewer than 2,000 students annually) from immediate disclosure. The bill instead required that such tests be filed with the state only once every three years. This amendment also allowed any test agency to delay for three years disclosure of any "test form" (a particular version of a test) given to fewer than 5,000 test takers annually, or not more than five percent of the total number of individuals taking that test annually. These amendments, too, had
the effect of allowing certain "low volume" testing provided at special times to special groups of students, such as the handicapped, to continue in the state. Significantly, S. B. 9142-A added the requirement that a form of each of the College Board Achievement Tests and GRE Advanced Tests be filed with the state once every three years. Previously, these tests were explicitly exempt from the law's coverage.

Concerning definitional problems, S. B. 9142-A clarified that the law applied only to tests offered within the territorial boundaries of New York State. In other words, its provisions could not apply to a student who took an admissions test outside of the state but who applied to a college within the state. The bill also specifically excluded tests designed and used for non-admission purposes, such as placement tests. Furthermore, the amendment clarified language concerning the types of research reports that a test agency was responsible for filing with the state, thereby making this requirement less onerous, and less likely to infringe upon a student's or an institution's privacy or proprietary rights. Finally, the amended law created a Consumer Advisory Committee to advise the legislature on implementation of the testing law.

During the same time that S. B. 9142-A was being considered, A. B. 8479-A was enacted to amend the testing law. This amendment required that special test administration dates (Sunday) provided for reasons of religious observance, be offered as frequently as regular (Saturday) test administrations, and that at least one such test offering be disclosed annually. The purpose of this amendment was to ensure that Saturday Sabbath observers had the opportunity to take a test an equal number of times as other test takers, and that such individuals had at least one opportunity to request that a test be returned. An immediate reaction by test sponsors to S. B. 5200-A had been to limit the number of times a test would be given in order to conserve the number of tests
that the agency would have to disclose. An unfortunate effect of that policy was to reduce dramatically the number of these special test administrations.

In 1981 two substantive amendments and one technical amendment to the law were enacted. S. B. 3571 simply changed a section number reference, while S. B. 6335 explicitly exempted from the law's coverage any test designed to evaluate manual skills or physical abilities. This latter provision was enacted specifically to exempt certain parts of the Dental Admissions Test (DAT) from the law's requirements so that this test would continue to be offered in the state. Additionally, S. B. 10125 extended the life of the Consumer Advisory Committee to August 1983 from August 1982. The Committee met several times during 1982 but expired in 1983 without filing publicly any formal recommendations.

The most recent change in New York State Testing Law occurred during the summer of 1983. S. B. 6038-A, again sponsored by Senator LaValle, extended from once every three years to once every five or eight years (depending on test volume) the required filing time for College Board Achievement Tests and GRE Advanced Tests. This amendment allows the College Board to continue its Achievement Test offerings in the state, and allows the GRE Board to reinstate several of its tests in New York. The GRE Board had withdrawn 14 of its 20 Advanced tests from the state in 1980, and the College Board announced late in 1982 that it would withdraw in 1983 nine of its 14 Achievement tests from the state. Both test sponsors maintained that the practice of disclosing these subject-matter achievement tests -- many taken by very few students, in some cases fewer than 100, and which have a useful life of a decade or more -- was educationally and economically unsound, and threatened the ability to maintain offering these tests nationally.

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Legal Challenges

Two legal challenges to the New York law have been filed—one by the College Board challenging the extraterritorial application of the law, and one by the Association of American Medical Colleges challenging the law's application to the MCAT on copyright and Constitutional grounds. The College Board's complaint was settled by amendments to the law and subsequent regulatory interpretation without a judicial decision, while the AAMC suit is still pending in 1984.

The College Board's complaint (The College Entrance Examination Board v. Abrams, New York State Supreme Court, Index No. 608-80, 1979) was initiated in 1979. New York's Commissioner of Education, who is charged with preparing regulations to implement the law, declared that its provisions apply "whether the test is administered in New York State or the results of the test are provided to institutions located within the State." This interpretation would have required application of the law's provisions not only to tests given in the state, but also to tests given elsewhere when the score reports were sent to colleges and universities in New York. The College Board's challenge rested primarily on the grounds that New York State sought to exercise legal authority outside of its boundaries, in violation of the "commerce clause" (Article I, Section 8, Clause 3) and the "due process clause" (First and Fourteenth Amendments) of the United States Constitution. The College Board did not pursue the case and the court did not make a formal finding on the merits of the Board's complaint because the legislature, by enacting S. B. 9142-A, amended the law to clarify that it did not have extraterritorial application.

The AAMC won a preliminary injunction in Federal District Court in 1979 enjoining the law's application to the MCAT. Accordingly, this test continues to be offered in New York State; but the AAMC is not required to comply with the
provisions of testing law. The court has not yet made a final decision on the substantive merits of the AAMC case, but in granting the preliminary injunction the court did find that there was sufficient evidence of "irreparable injury" to the AAMC to bar enforcement of the law. Specifically, the AAMC's challenge holds that the law conflicts with several provisions of Federal Copyright Law by violating the association's exclusive right to authorize publication of documents created by the association. It argues also that such governmental action represents seizure of property without "due process" in violation of both copyright law, and several provisions of the U. S. Constitution.28

Effect of New York State Law on Test Agencies and Students

The immediate effect of the New York law, documented by Education Commissioner Gordon Ambach's "Initial Impact Report," was to create several dislocations. In addition to litigation initiated by the College Board and AAMC, the majority of test sponsors affected by the law (20 of 26) announced that they would withdraw testing services from the state. Most of the tests reported to have been withdrawn, however, were specialized tests in professional allied health fields and were offered to relatively few individuals. Some of the better known admissions tests that were to have been withdrawn included the DAT, the MCAT and the Miller Analogies Tests, and GRE Advanced Tests. While most of the tests which were actually withdrawn from the state have been reinstated as a result of amendments to the law, a few low-volume tests still are not offered. The Miller Analogies Test sponsored by the Psychological Corporation, remains the most prominent postsecondary test not currently being offered in the state.29

Generally, the most widely-used standardized admissions tests including the ACT, SAT, GMAT, GRE and LSAT continue to be offered in New York, but some are
available on a less frequent schedule and, in some cases, with the imposition of higher fees for test takers. For example, during the first full testing year following the law's enactment (1980-81) the number of SAT administrations were reduced from 14 to 8; ACT offerings dropped from 9 to 6 times; the GMAT administrations were reduced from 8 to 7; and the GRE was cut back from 11 to 6 administrations. The College Board implemented a $1.75 surcharge for the SAT to cover additional costs associated with reporting and publication requirements of the law. After the law's first year of enforcement, test fees for some major test sponsors increased by as much as $11.00 in the case of the GMAT and $6.00 for the GRE. It would not be appropriate, however, to attribute the entire amount of increase in test fees directly to the cost of complying with the law. In most cases test fees were raised nationally, not just in New York State. And factors such as inflation, changes in test program administration and acceleration of new test development probably accounted more for some fee increases than did provisions of the New York law alone.

The reduction in the number of test offerings, especially so-called "special administrations" to serve the needs of special groups of students who could not take a test on a regularly scheduled date, and test fee increases sparked heated debate. Proponents of the law charged that these responses were deliberate tactical efforts on the part of test sponsors to undermine the law's effectiveness. But test sponsors responded that the law's inflexibility on test disclosure (especially before the 1980 amendments), and its information reporting and publication provisions forced them to limit the number of test offerings which otherwise would be disclosed. Furthermore test sponsors argued that they needed to recoup legitimate costs associated with complying with the law in order to protect their ability to maintain a national testing program without disadvantaging students outside of New York. Even though some students have been inconvenienced by the reduction of the frequency of test
offerings in the state, it appears that most New York State students continue to have adequate opportunities to take the tests. The number of individuals taking the major admissions tests has not changed significantly; accordingly, it appears that the current level of test administrations is adequate to meet institutions' and students' needs.

The relative calm that has settled within the state regarding continuation of tests has not been without major adjustments on the part of the state and test sponsors, however. First, as discussed previously the law has been amended several times to accommodate the special problems of several testing programs, especially those offered to relatively few individuals. Changes, too, have been made in Department of Education regulations clarifying the kinds of data that test sponsors must file with the state. Additionally, test sponsors have substantially increased new test production to expand the number of tests available in order to replace those tests which cannot be reused once they are disclosed. The number of new SATs developed annually has increased to 10 from 7, and GRE and GMAT production has doubled to four new tests from two annually. The LSAC, for example, at some risk, used the New York situation as an occasion to revamp fundamentally its test development and equating procedures, to speed up production of new tests and to provide for test disclosure nationally.

Regarding the highly contested principal provision of the law--test disclosure--initial student reaction to being able to request the return of copies of test questions and answers was mixed at best, and somewhat disappointing and embarrassing to the law's proponents. The only strong demand for the test return service provided for by the law came from students taking the LSAT. Roughly 60 percent of LSAT candidates requested copies of their tests during 1980-81, before LSAC adopted an automatic test-return policy. The LSAC recognizing that "test disclosure is a service law school test takers desire,
and for which they are willing to pay," adopted for 1981-82 an automatic test return service for all test takers nationally. By comparison, student demand for return of the SAT fell from roughly five percent during the law's first six months of operation in 1980 to about three percent during 1980-81. Early demand for the ACT was less than one percent of all test takers in the state. Similarly, few students' taking graduate-level admissions tests requested that tests be returned to them. During 1980-81, the first full testing year under the law's requirements, fewer than three percent of all GMAT candidates and roughly four percent of GRE candidates requested that copies of their tests be returned (GRE test question booklets may be requested by anyone, not just to test takers; accordingly, this percentage is not directly comparable to other request rates).

Perhaps even more troublesome to the law's proponents is some limited evidence that the law may benefit, counter to its purpose, advantaged rather than disadvantaged students. For some major admissions test sponsors (ACT, SAT, GRE), test disclosure requestors disproportionately are white, from high-income homes and much better prepared academically than the general test-taking population. Thus, some test sponsors argue that, if the law provides benefits at all, it clearly further aids economically and educationally advantaged students, without providing palpable help to disadvantaged students.

Proponents of the law counter argue that some test sponsors, such as the College Board, have purposely made it difficult for test takers to obtain disclosed tests by not adopting an automatic test return procedure. Instead, a test taker is required to request by mail on a preprinted form that the test sponsor return test questions and answers. Proponents also point out that test takers are required to pay a separate fee for this service, which helps to discourage students from requesting that a test be returned. However, the large differences in demand for test return between the LSAT and other tests
(before the LSAC adopted an automatic test return policy) suggest that other factors, such as the perceived importance of a particular test in the selection process, the special interests of certain groups of test takers, and the number of students who plan to take a test more than once—and not just test-return procedures or the fee—also influence demand for the test return option. The LSAC adopted an automatic test return policy, principally because of high demand for its tests. Conversely, request rates for other tests have remained relatively stable and have not approached the level of demand experienced for return of the LSAT. After several years of students' awareness about test disclosure, it is unlikely that the test return procedure or fees fully explains the relatively limited utilization of test disclosure for most tests.

The New York law requires that a substantial amount of test-related information including actual tests be filed with the state. It is significant to note that there have been only a handful of inquiries made to the Department of Education about such materials. In February 1983 the department reported that since the summer of 1981 only four individuals had requested to inspect public documents filed by test sponsors. This experience is strikingly similar to public interest in using materials filed under California law.

Using ETS administered tests as an example, test disclosure has not had a dramatic effect on the number of inquiries or challenges to test items. During 1981–82, the first year of national test disclosure for the SAT, only five inquiries were made by test takers following the disclosure of over 700 test items on five tests. For the ETS administered GMAT, GRE, PSAT, and SAT over 7,000 test items have been disclosed on 48 different tests since 1980; and of these, two were challenged successfully as a result of test disclosure. One 1980 PSAT/NMSQT faulty test item resulted in changing 250,000 test scores nationally; and one SAT item administered in New York in October 1980 was found to be in error and resulted in revised scores for about 22,000 students. One
other SAT and one Achievement Test question that were successfully challenged by students in 1982 resulted in some revised scores; however, these errors were not identified as a result of test disclosure. Typically in these cases, rescoring of the SAT as the result of one flawed test item resulted in score changes of 10-20 points on a score scale of 200-800 points. Also, one LSAT test item was found to be in error during 1980-81 as a result an inquiry from a test taker. Rescoring of the February 21, 1981 LSAT resulted in score changes of not more than six points on a scale of 200-800 points.

The observations that relatively few test takers have availed themselves of the opportunity to request test return service, and that few test items have been challenged and found to have been faulty since enactment of the New York law, do not necessarily support the conclusion that the law is not needed. Conversely, absence of wider use of the information provided for by the law, and the absence of evidence of systematic errors by test agencies, may help to support test sponsors' contention that an adequate amount of information about tests was available prior to enactment of the law.

National Test Return Policies

Perhaps the most important consequence of the New York law has been its establishing a de facto national standard for test disclosure. Test sponsors, by complying with the New York State law, as a practical matter cannot argue in other state legislatures that it is impossible to provide a similar test return service in those states. In other words, if test disclosure is feasible in New York it is feasible elsewhere.

Table 5 summarizes the national test return policies for six major admissions tests. The Law School Admissions Council, Graduate Record Examination Board and Graduate Management Admissions Council provided for a national test return service beginning in 1980-81. The College Board and American College
Testing Program followed suit with national test return policies in 1981-82 and 1982-83, respectively. The Association of American Medical Colleges, sponsor of the MCAT, remains as the only major admissions test sponsor without a test return policy. In effect, the national test return services parallel those established in New York State. Typically, each test sponsor offers the test return option on the same number of occasions and at the same time as for tests disclosed under New York law. Table 5 also indicates the number of test return dates as compared to the total number of "regularly scheduled" test dates. These dates include special test offerings for students who cannot take tests on major (Saturday) test days, for religious reasons. Very few test takers take a test on one of these special dates. Thus, test sponsors have set aside the most popular, not the least popular test dates, for test disclosure. For the SAT, for example, test return service is provided on four of six major test dates nationally. Over 80 percent of all students taking the SAT, take the test on these four dates. The GMAT and LSAT are disclosed nationally on each of four major test administration dates. The GRE is disclosed on three of five major test dates, while the ACT is disclosed on three out of five major test dates, nationally. The number of "major" test administrations and the corresponding number of "major" test disclosure dates are shown in parenthesis.
Table 5  TEST RETURN POLICIES OF SIX POSTSECONDARY ADMISSIONS TESTS 1982-1983

<table>
<thead>
<tr>
<th></th>
<th>SAT New York</th>
<th>Others</th>
<th>ACT New York</th>
<th>Others</th>
<th>GRE New York</th>
<th>Others</th>
<th>GMAT All States</th>
<th>LSAT All States</th>
<th>MCAT New York</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Times Test Offered*</td>
<td>8 (4) 12 (6)**</td>
<td>8 (4) 10 (5)</td>
<td>6 (3) 10 (5)</td>
<td>8 (4) 7 (4) 4 (2) 4 (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic Fee for Test</td>
<td>$11.00 $10.50</td>
<td>$11.50 $9.50</td>
<td>$27.00 $27.00</td>
<td>$30.00 $38.00 $45.00 $45.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. of Times Question and*</td>
<td>5 (4) 5 (4)</td>
<td>5 (4) 4 (3)</td>
<td>4 (3) 4 (3)</td>
<td>5 (4) 4 (4)</td>
<td>not available</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Answer for Test Returned</td>
<td>o Fee for Test Return Questions Only</td>
<td>$6.50 $6.50</td>
<td>$4.00 $4.00</td>
<td>$3.00 $3.00 $8.00</td>
<td>Included in Test Fee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time Restriction on Test Return Request</td>
<td>5 months 6 months 6 months</td>
<td>120 days</td>
<td>90 days 90 days no limit no limit</td>
<td></td>
<td>None (Sent automatically with score report)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Test Return Request Form</td>
<td>In Registration Booklet At Test Center or write ACT Sent with Score Report Sent with Score Report</td>
<td></td>
<td></td>
<td></td>
<td>not available</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Items Included in Return</td>
<td>o Test Questions o Correct Answers o Copy of Individual Answer Sheet o Raw Scores o Scoring Instructions</td>
<td>Yes Yes Yes Yes Yes</td>
<td>Yes Yes Yes Yes Yes</td>
<td>Yes Yes Yes Yes Yes</td>
<td>not available</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Score Verification Service (All but questions returned) o Fee</td>
<td>Available for all Tests where Q &amp; A Service is not available not available not available not available not available</td>
<td>$5.50 $5.50</td>
<td></td>
<td></td>
<td>not available</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hand Rescoring Available o Fee</td>
<td>Yes $8.00 $25.00 $5.00 Yes Yes</td>
<td>Free Free Free</td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Regularly scheduled test dates including special test dates for days of religious observance. The number of "major" test dates (dates on which most students take the test) and corresponding "major" test-return dates are shown in parenthesis.

**14 (7) for California, Florida, Georgia, Illinois, North Carolina, and Texas.

Again, except for the LSAT, tests are returned to test takers upon request and for a fee separate from that for the test fee itself. Instructions about ordering copies of test questions and answers after a given test administration are typically provided to the test taker at the time of registering for the test, or when score reports are received. In the case of each of the testing programs not providing an automatic test-return service, the fee for requesting test return service is less than the test fee itself.

After three full academic years of experience with national test return policy, student demand for this option remains very low. Table 6 indicates the approximate percentage of the test taking population nationally that chooses to request test-return service for six admissions tests. It should be noted that the GRE test booklet is sent to anyone who requests it, not just to test takers. Accordingly, the GRE request percentage may be somewhat inflated.

<table>
<thead>
<tr>
<th>Test</th>
<th>Admissions Use</th>
<th>Total Number of Test Takers*</th>
<th>% Requesting Test Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>Undergraduate</td>
<td>580,000</td>
<td>3.7%</td>
</tr>
<tr>
<td>SAT</td>
<td>Undergraduate</td>
<td>1,145,000</td>
<td>1.9</td>
</tr>
<tr>
<td>GRE**</td>
<td>Graduate</td>
<td>165,000</td>
<td>2.7</td>
</tr>
<tr>
<td>GMAT</td>
<td>Graduate Mgt/Bus</td>
<td>204,000</td>
<td>2.1</td>
</tr>
<tr>
<td>LSAT</td>
<td>Law School</td>
<td>111,000</td>
<td>Automatic Return</td>
</tr>
<tr>
<td>MCAT</td>
<td>Medical School</td>
<td>50,000</td>
<td>No Return Provided</td>
</tr>
</tbody>
</table>

*Individuals who took the test on dates on which tests were disclosed. 
**GRE returns test-question books to anyone requesting such service, not just test takers.

[Source: American College Testing Program (ACT) and Educational Testing Service (SAT, GRE, GMAT), Law School Admission Council (LSAT), Association American Medical College (MCAT)]
In some instances the percentage of those students using the test return service has actually declined slightly rather than risen. One explanation for this phenomenon, other than the waning of excitement about the new policy, may be the fact that many tests are now published and available to students (often at no cost) for review and practice purposes. Thus, a student interested in obtaining a test to practice before taking an actual test has ample opportunity to do so. Nearly 100 different versions of an actual ACT, SAT, GRE, GMAT, or LSAT have been disclosed since 1980. Roughly 1,000,000 copies of disclosed versions of the SAT alone have been made publicly available to students through the publication of compendia of tests disclosed each year since 1980. A copy of each compendium is provided free to high schools and additional copies are available for a fee to students or schools who them. Other test sponsors also publish compendia of disclosed tests.

Even though some proponents of legislation maintain that students would be better served if test sponsors followed the LSAT example in which tests are automatically returned to test takers, test sponsors maintain that it is unfair to burden all students with higher fees for such a service when so few actually use it. Given the current legislative status quo regarding test disclosure, it seems unlikely that test agencies will revise their current test return practices, without a change in the prevailing national legislative mood to prescribe procedures for returning tests to students.

In addition to influencing test sponsors to adopt national test disclosure policies, the New York law has had the indirect effect of encouraging test agencies to review carefully practices and procedures related to test development, equating, score reporting, test security, and validity studies. Test agencies' realization that their tests would be open to greater public scrutiny, as well as the need to be responsive to questions raised publicly by elected officials studying the need for testing legislation, have pushed
testing organizations to review thoroughly, and in some cases, to revise procedures to respond to legitimate demands raised by the testing legislation debate. Accordingly, the legislation has had the less visible effect of influencing test agencies to be more introspective about how they produce tests, promote proper test use, and how they provide for broader public input into the test-making process.

IV. Evaluating the Educational, Legal, and Political Consequences of Testing Legislation

The purpose of this section is to evaluate the educational, political, and legal effects of testing legislation, and the adequacy of testing agencies' responses to demands raised by the legislation. It also speculate about the prospects for future legislative activity and offers some observation, based on experience with the legislation, that might help to guide concerned parties in the future.

Immediate Educational Effect of Testing Legislation

The central point of contention regarding testing legislation has been over whether or not it is technically feasible and educationally justifiable for test agencies to publish copies of test questions and answers immediately following a test offering. The enactment of testing law in New York State in 1979 appears to have established a de facto national standard for disclosure of postsecondary standardized admissions tests. Even though no other state, except for California which passed more narrow legislation, has enacted such law, test agencies generally have opted to restrict the number of times that a test is offered in New York State in order to limit the number of times a test
must be disclosed. And they have extended the availability of such limited test disclosure nationally. Accordingly, test takers who take tests outside of New York and California, where test disclosure is mandated by law, are afforded the opportunity to request that test questions and answers be returned without the imposition of law.

Even though test agencies contend that additional law is not needed, it is highly unlikely that their current national test disclosure policies would exist without the enactment of laws in California and New York, and without the widespread consideration of similar legislation in several other states and Congress during the past several years. Although proponents of legislation have not been able to secure unlimited test disclosure—the public release of each and every test offered to test takers—testing legislation has had the effect of pushing testing organizations to provide for public filing of a substantial number of active tests. Because no other state enacted law similar to that of California and New York during the past four years, it appears that legislators nationally are satisfied with the current level of test disclosure provided by most sponsors of postsecondary admissions tests.

It is beyond the scope of this paper to explore technical psychometric factors that have influenced the legislative debate about the feasibility of unlimited test disclosure. However, it should be noted that developing test and measurement theory and technology may significantly influence test agencies' ability to disclose standardized admissions tests. Just as extensive use of standardized tests had to await new technologies not perfected until the 1940s, so too might newer technologies help make the testing process more open—at least in terms of immediate disclosure of test items. Until such new technology to allow for efficient and reliable production of new tests is fully developed, however, it is doubtful that unlimited disclosure of test questions and answers for most types of postsecondary admissions tests will occur.
The feasibility of enacting law to require test disclosure for some admissions tests clearly has been demonstrated in California and in New York State; however, implementation of law, especially in New York, has been difficult, and a serious question about that statute's legality remains. The New York law has not realized the worst fears of opponents to testing legislation -- that the quality and validity of tests would be compromised, or that certain tests would disappear from national use altogether. Test agencies offering the more widely used tests have been creative and flexible enough to comply with the law's requirements without experiencing some of the dire consequences that were predicted. On the other hand, the New York law has produced some real dislocations for students and institutions, such as fewer test offerings and withdrawal of some tests altogether. Many of the problems that the law created, especially regarding unlimited disclosure of certain tests taken by few individuals, have been ameliorated by several subsequent amendments to the law. By enacting amendments that in effect exempt certain tests from immediate disclosure, the New York legislature appears to have settled for a compromise position that recognizes that unlimited disclosure of some tests may not be feasible technically or economically.

Just as some of the fears of opponents have not been justified, so too, some of the goals of proponents of legislation remain unfulfilled. Of course, the most obvious disappointment for proponents of legislation has been the cool reaction of test takers toward the option to request the return of copies of their tests. The low demand for test return has clearly helped to influence some legislatures not to act favorably on legislation. Some critics of test agencies argue that demand for test return service is very low because test agencies make it unnecessarily difficult for students to request such service, and charge a fee for the test return option. However, after examining the test return procedures of test sponsors, it is more likely that current demand
for test question and answer return service reflects accurately the level of student interest in getting back most tests. Because different tests are used for different admissions purposes, and because they are given to different populations of students at different levels of academic preparation, some tests are requested more than others. For example, prospective lawyers taking the LSAT appear to be more interested in getting tests back than are undergraduates taking the ACT or SAT.

One can reasonably infer that for most tests, students are much more interested in seeing copies of test questions and answers prior to taking an actual test, rather than after the fact. With so many tests now available for students to review before taking an actual test, students may be less likely to want to review a test after taking it. In addition to requesting that a test be returned for practice purposes, another reason for wanting actual test questions and answers is to check the accuracy of test scores. In light of relatively low request rates for the test return option, most students do not seem to be concerned about challenging the content of the test or the accuracy of the scores. Even though the fee structure for the test return option may be a discouraging factor, it seems inconsistent to assume that students are very concerned about the test outcome, yet not concerned enough to pay a fee (less than the test fee itself) to obtain test questions and answers to verify their test score. It may take several more years' experience with test disclosure to sort out the complex factors affecting students' use of test disclosure.

Neither the New York nor the California law places in the public domain substantial amounts of new information about most standardized admissions tests. In most instances virtually all of the information about a test's purposes and measurement properties was already publicly available (e.g. in test bulletins) prior to enactment of law. Accordingly, in this regard it is doubtful that the legislation in most instances benefits test takers or test
users significantly beyond providing copies of disclosed tests themselves. Furthermore, even though there have been a few successful challenges to disclosed test items, no systematic pattern of test item bias, ambiguity, or scoring error has emerged. Thus, at least in the short term, proponents' claims have not been justified that test disclosure would uncover many serious flaws in tests that need to be remedied.

Similarly, even though it is still too soon to evaluate conclusively, several years' experience with national test disclosure has not resulted, as proponents of legislation had hoped, in reducing inequities between economically advantaged and disadvantaged students. While testing legislation may help to ensure that all students who take tests have more equal access to test questions and answers to review before and after taking a test, it is doubtful that the legislation will have a substantive effect on the root causes of inequities in educational quality and access to postsecondary opportunity.

Unquestionably, however, testing legislation has had the positive effect of encouraging test makers and sponsors to be more introspective about their testing practices and procedures. Major test agencies have been forced to review carefully procedures related to test development, test item bias review, test validation and scoring. A by-product of such internal review in some cases has been to expand participation in the test review process to include students and a broader ethnic/racial cross section of the lay public. Such activity is healthy and will probably benefit the testing community, test users and test takers in the long run. It is still too early to speculate about the long-run educational effect of testing legislation. There has not been enough experience yet with test disclosure to evaluate its effect on curricula and teaching in the schools.

In conclusion, without implementation of new test-making technology to allow for the efficient production of tests that can be immediately disclosed,
or a major shift in the current legislative status quo on test disclosure as established by New York State testing law, it is doubtful that additional test disclosure is on the horizon for the six major postsecondary admissions tests that have been discussed. It is difficult to envision how state or federal law could require test agencies to provide for more test disclosure than is currently available. The New York law does not preclude Congress from acting, and it does not guarantee that tests will continue to be disclosed nationally. But, it is not immediately evident that additional test disclosure legislation in itself will provide greater benefit to the public. Nearly two years ago the National Academy of Science Committee on Ability Testing concluded that there was little evidence of systematic abuse of authority by testing agencies to compel government regulation; and the committee questioned whether additional state law or a federal law modeled after New York State would improve the testing process. 34 On balance, concerning the efficacy of test disclosure legislation, this conclusion still appears to be supportable.

Legal Consequences of Testing Legislation

In its 1980 study of the need for testing legislation, the Education Commission of the States concluded, tentatively, that testing legislation is not prohibited by existing federal law or Constitutional guarantees. 35 Such a conclusion is still warranted, at least until pending litigation initiated by the Association of American Medical Colleges challenging New York State law reaches final settlement. There continue to be several legal and Constitutional questions surrounding testing legislation that could either overturn existing law or stimulate legislative interest in even broader legislation.

In the case of AAMC v. Carey the AAMC alleges that the New York law violates its "due process" rights as protected under the Fourteenth and Fifth
Amendments by taking private property for public use without just compensation; and violates Federal Copyright Law by compelling reproduction of information which only the AAMC has an exclusive right to authorize. In this case, in which the AAMC has won a preliminary injunction barring the law's application to the MCAT, an important legal provision upon which the defendants will rely is the doctrine of "fair use" under the Copyright Act, which allows the reproduction of copyrighted work under certain conditions without infringing upon the rights of the copyright owner. It remains to be seen how broadly or narrowly the court may rule on this case which has been pending since 1979. A ruling in favor of the AAMC would probably induce other test sponsors to challenge the law on similar grounds, while a ruling in favor of the State of New York would establish an important precedent that would increase the possibility of enacting similar law elsewhere. The only other major legal challenge to the New York law came from the College Board which challenged the law's "extraterritorial" application. This complaint was settled through amendments to the law and a regulatory interpretation, without a judicial ruling. In any event, notwithstanding the outcome of the AAMC suit, currently there appear to be few, if any, legal barriers to other states enacting testing legislation.

Other potential legal arguments against testing legislation have focused on possible violations of the First Amendment rights of institutions and researchers to determine what will be taught and how research may be used, and violations of the Tenth Amendment which has been interpreted as prohibiting the federal government from exercising authority over educational matters which are delegated to the states. Conversely, Congress has enacted important federal law regulating education, including the Family Rights and Privacy Act of 1974 which protects certain student rights. One could argue that Tenth Amendment objections would not be strong enough to prohibit federal intervention to protect an individual's civil or Constitutional rights. However,
these legal arguments have not been tested on test disclosure legislation, and until they are, do not affect the operation of existing testing law. 36

There are several legal precedents related to testing, although not specifically associated with test disclosure legislation, that may influence future legislation and litigation concerning postsecondary admissions tests. In the case of Larry P. v. Riles, use of intelligence tests to classify students in California schools was challenged successfully by plaintiffs as being in violation of a student's Fourteenth Amendment rights to due process and equal protection, as well as in violation of Title VI of the Civil Rights Act of 1964 prohibiting racial discrimination; and also in conflict with Public Law 94-142, the Education of All Handicapped Children Act and Section 504 of the Rehabilitation Act of 1973, which prohibit discriminatory treatment of handicapped students. The case of Debra P. v. Turlington which challenged the State of Florida's use of an exit examination to award a student a high school diploma was litigated on similar grounds. Recently, the U. S. Court of Appeals, 11th Circuit, upheld an earlier ruling favoring the state and allowing the Florida "minimum competency" law to stand.

Such litigation has had no direct bearing to date on legislation requiring disclosure of postsecondary admissions tests. However, the Constitutional and legal grounds upon which these cases were argued may be applied as well to use of postsecondary admissions test. For example, federal regulations adopted to implement Section 504 explicitly prohibit the use of a single test as a sole criterion for evaluating a handicapped student, and further require that tests be validated for specific purposes regarding evaluation of handicapped students. 37 In addition to case law that has accumulated concerning testing of handicapped students 38 some state legislatures have become active in this area. The Commonwealth of Massachusetts enacted H. B. 6421 in 1983 which explicitly prohibits a learning disabled student from being required to take a
standardized admissions test such as the ACT or SAT. The Texas legislature considered but failed to enact similar legislation (H. B. 2094) in 1983. Accordingly, an avenue clearly open to legislators to protect the rights of special groups of students affected by standardized admissions tests is to enact legislation that prohibits certain types of test use. Even though the "truth-in-testing" movement has not been substantively concerned with legal challenges to use intelligence, minimum competency or handicapped testing, it would appear that certain groups of students may have a strong claim under existing federal law and Constitutional rights to access to information concerning the validity of a standardized test used for purposes of classification in postsecondary education.

Two issues that have encouraged interest in testing legislation and which have been the subject of recent litigation include protection of a student's rights in test agency investigations of possible cheating, and use of copyrighted test items by providers of coaching or test preparation courses. Protection of students' "due process" rights when test agencies investigate possible cheating on a test has been the principal concern of California S. B. 735. This bill, the first of its kind nationally, was enacted by the legislature but vetoed by the governor in September 1983. In New Jersey, several students whose SAT scores were questioned in an ETS investigation of alleged cheating, challenged in court the administrative and statistical procedures used by ETS in finding that there was sufficient cause to question their test scores. A New Jersey Superior Court ruled in Denburg v. ETS (C-1715-83) against plaintiffs and in favor of ETS, and upheld the test maker's administrative and statistical procedures as sound and lawful. As a result of this case, New Jersey S. B. 3702, modeled after California S. B. 735, was introduced in 1983 to codify administrative procedures that test agencies must follow in investigations concerning possible cheating and
cancellation of test scores. No action has been taken on this bill however.

In another very recent case concerning use of copyrighted material in test preparation courses, **AAMC v. Multiprep, Inc.** (83-2745 U. S. District Court, Eastern Pennsylvania), the Association of American Medical Colleges has won a temporary restraining order barring Multiprep, a Philadelphia-based test review and preparation firm, from using reproductions of MCAT test items in its coaching courses. AAMC claims that Multiprep has infringed upon its copyright by reproducing actual MCAT test items without authorization.

In summary, it does not appear that existing federal law or Constitutional provisions prohibit federal or state enactment of additional testing legislation. However, there remain several unanswered legal questions, especially regarding several Constitutional rights and Federal Copyright law. The case of **AAMC v. Carey** may help to clarify several of these complex legal questions soon. Existing law and proposed test disclosure legislation do not provide a comprehensive regulatory structure that addresses the broader range of contemporary social and legal issues surrounding tests, such as protection of students' and test agencies' due process rights, protection of civil rights granted by the Constitution and federal law, and protection of test agencies' property rights. Therefore, it is not possible to draw a final conclusion about the legality of prospective legislation that may be broader in scope. As the evolution of the New York law illustrates, enactment of good general law that may be uniformly applied to all test agencies has been a difficult goal to achieve. The law as originally enacted had a differential effect on different types of tests. In order not to penalize students or place an onerous compliance burden on some test sponsors, the New York legislature has made several substantive changes to the law. In California most of the problems associated with the New York law were bypassed by simply enacting law so narrow in scope that it in effect requires nothing new of test agencies.
affected by the statute.

The potential administrative and legal problems associated with writing law that meets the test of universal application and enforcement in this new field should not be underestimated. As a legislative matter, the terrain is so virgin and uncharted that attempts to broaden legislation to regulate post-secondary admissions testing will almost surely lead to missteps and uncertainty that will require judicial intervention. As has been alluded to in this section, even though the intensity of interest in test disclosure legislation has subsided somewhat, there may be growing interest in broadening the scope of legislation to govern how tests may be used in the admissions process, as has been the case in California, Massachusetts, and New Jersey. Interest in regulating different aspects of standardized admissions testing is likely to increase; and as it does, legislation is likely to raise as many legal questions as it attempts to solve.

Adequacy of Test Agencies' Response to Legislation and Emerging Issues Affecting Testing Legislation

In a practical political sense the response of the major postsecondary admissions test sponsors to enactment of law in California and New York requiring test disclosure appears to have been an adequate one. As a result of the New York law, test takers nationally have gained the ability to request that their test questions and answers be returned, and test agencies have managed to structure a politically acceptable policy of providing for test disclosure without disrupting their ability to offer a uniform national testing program. In effect, from the perspective of legislators, it seems, at least for now, that a workable compromise on the test disclosure issue—one accommodating both proponents and opponents of legislation—has been reached. Accordingly, it is doubtful that a heated national legislative debate is
likely to be rekindled immediately on the test disclosure issue alone.

Yet the root causes for consideration of testing legislation remain unresolved, and deep societal concerns remain about the proper use of standardized tests. Even with test disclosure, public uneasiness persists about the use of tests in society. Special interest groups that continue to distrust test agencies include consumer groups who contend test agencies are a powerful but unregulated and unaccountable industry; civil rights advocates who argue that certain tests are inherently discriminatory; and some teachers who believe that tests are misused in evaluating student as well as teacher performance. The tensions that these perceptions reflect are likely to be exacerbated in the near future. There exists the paradox of increasing societal pressure to improve educational quality and opportunity, which stimulates broader use of standardized tests, and growing demand on the other hand for accountability in testing. Because tests are used to help distribute educational opportunities, it is not surprising that social factors that influence greater reliance on tests should also stimulate more concern about how the tests are used.

Interest in testing legislation may indicate that one of the biggest problems facing test agencies is widespread public misperception about the purposes and influence of different postsecondary admissions tests. As the National Academy of Science study indicates, the public generally overestimates the influence of tests in the admissions process, especially at the undergraduate level. For undergraduates, for example, the ACT and SAT do not deter the majority of college applicants from getting into the college of their choice. Additionally, the public tends to attribute to certain tests (to the dismay of test makers) measurement of characteristics that the tests are not intended to measure. For example, the SAT does not measure intelligence, nor does the MCAT measure whether an individual will be a good physician; as the sponsor of each of these tests clearly indicates to test takers

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and test users. Even so, a substantial amount of responsibility for public
misperception that may exist about use of admissions tests must rest with test
agencies and test users rather than with the public. If nothing else, test
agencies' defensive response to the "truth-in-testing" movement reflects their
lack of astuteness in moving assertively to justify to the public many testing
practices. As the Committee on Ability Testing concluded, test agencies were
especially vulnerable to legitimate criticisms raised by testing legislation
because "they have been slow to extend their accountability beyond the
institutional client to encompass the interests of the test taker." 41

A primary reason for the assertion that legislation to regulate testing
probably will broaden in scope to encompass concerns relating to due process
procedures and remedies for test takers where their consumer or civil rights
are affected, is that existing test disclosure law does not address squarely
the central issue of test use. While organizations that produce and sponsor
tests must be accountable for the quality of their product and must ensure
that test takers' rights are fully protected when administering and scoring
tests, principal responsibility for proper use of such tests rests with the
test user—-institutions of higher education. Test agencies do not have the
authority to regulate how an institution uses tests. Responsibility and
liability for use of standardized admissions tests rests, then, with thousands
of individual colleges and universities; and within these institutions
responsibility rests with diverse academic units including the graduate,
undergraduate, and professional colleges that make up the academy.

Legislation to require greater accountability from institutions for how
tests are used would raise complex regulatory problems which might challenge
the fundamental principles upon which the governance of American higher
education is based. Federal or state government intervention into
institutions' independence in establishing admissions standards would be a
radical departure from the historical relationship between government and higher education. No doubt any legislative proposal to regulate institutions directly in their use of tests would meet fierce opposition from institutions on both substantive educational and legal grounds.

On the other hand, public demands for accountability at all levels of education will probably continue to grow; and governments, which provide the bulk of the funds for education, will be expected to play a stronger role in holding educational institutions accountable. To say that uniform national regulation of testing, if desirable, would be difficult to achieve does not mean that it is impossible. For example, one can clearly envision state or federal law prohibiting the use of tests in some situations if certain standards to protect test takers are not being met. Existing federal law and regulation protecting certain rights of handicapped students serves as an example.

As the recent national experience with testing legislation illustrates, it is unlikely that legislatures concerned about accountability in testing will simply rely, in the future, on voluntary self-regulation of testing by institutions, test agencies and professional educational societies. Increased external regulation is likely to be demanded. Some of the issues that exacerbate tensions between defenders of testing and proponents of regulation of testing include:

1. raising postsecondary admissions standards, as several recent reports about the condition of education have recommended, which may bring about greater reliance on tests;\(^\text{42}\)

2. establishing a minimum cut-off score for admission or academic program eligibility;\(^\text{43}\)

3. growing educational concern about the appropriateness of certain types of tests including aptitude and achievement tests;\(^\text{44}\)

4. continuing concern that educationally and economically disadvantaged individuals have about test bias and test misuse;\(^\text{45}\)
5. continuing concern about the value and fairness of test preparation or "coaching" courses for tests, among educationally and economically advantaged as well as disadvantaged individuals; 46

6. using tests in a manner that conflict directly with the interests of certain professional groups such as teachers' unions; 47

7. using tests in a manner that may violate the rights of special groups of individuals such as handicapped students;

8. increasing public awareness about tests and individuals' rights as a result of test disclosure and more openness in testing.

Education is clearly a public function in this country. Within higher education roughly four-fifths of all students are enrolled in public institutions, and local, state, and federal government provide roughly two-thirds of the funds for higher education. Fundamentally, a rationale exists for government intervention in admissions testing to protect the public's interest in gaining access to higher education.

To date, regulation of the testing process has been primarily through professional peer review, which is a typical form of self-regulation within education. Legislators may not now be as comfortable as they have been in the past with such self-regulation. Frederick S. Lane argues cogently that higher education cannot escape increasing politicization and regulation of its activities by depending on the "myths" of self-regulation and special regulatory treatment as viable alternatives to direct government regulation to protect individuals' consumer and civil rights. He holds that such alternatives are not acceptable for other public enterprises and, too, will not be acceptable for higher education when law makers are forced to strike a balance between protecting an individual's rights and the rights of an educational institution. 48 One can extend Lane's reasoning to apply to postsecondary admissions tests. If he is correct that many environmental factors are influencing government to take a more active role in regulating various aspects of higher education, it follows that it is not likely that
admissions testing can escape increased governmental regulation.

It remains to be seen whether the public demand for greater accountability for use of postsecondary admissions tests will be sufficient to warrant direct government intervention in the admissions process. However, if a tide of rising expectations about an increased governmental role does manifest itself legislatively, it is doubtful that legislation stimulated by the "truth-in-testing" movement will serve as a good vehicle. The legislation is too narrow in scope to affect changes in the ways institutions use tests. Except for providing for test disclosure, the legislation provides few protections that are not either already provided by testing organizations as a result of administrative policy, or already protected by existing law governing privacy and civil rights.

Observations to Assist Individuals Affected by Prospective Testing Legislation

Testing legislation represents a major step in the direction of direct regulation of admissions testing. There are several observations that may be offered to assist public policy makers and other concerned parties in future consideration of legislation to regulate testing as follows:

Recommendations to legislators:

1. A central concern will be weighing the consequences of direct governmental regulation of the admissions testing process. Prospective legislation will raise questions about changing fundamentally government's historical relationship with higher education, which law makers will want to evaluate very carefully.

2. Legislators should be cautious about legislative proposals that promise indirectly to remedy problems concerning test use. Test disclosure legislation and legislation regulating test agencies is not likely to have a significant effect on how institutions use admissions tests. It will be difficult to regulate use of tests without regulating institutions and the admissions process directly. Again, the appropriateness of such action should be questioned thoroughly on educational and legal grounds.

3. The "testing industry" is not as monolithic as it may appear. There is a diversity of test agencies offering many different types of tests
used for postsecondary admissions purposes. Accordingly, legislators should not proceed hastily in attempting to enact law. Good general law that protects both the rights of individuals, test agencies and institutions that is uniformly applicable to all tests will not be easy to achieve.

4. Legislators will want to research thoroughly existing federal and state law that intersects with proposed legislation; and they should study carefully experience with testing law in California and New York.

Recommendations to test agencies:

1. Test sponsors and test producers should be more forthcoming in providing the public with easy-to-understand information about the purposes of standardized admissions tests and their uses. Special efforts should be made to disseminate information in a non-traditional and non-technical format to parents of test takers and public policy makers, as well as to students, and school and college administrators.

2. Test agencies should consider additional ways to be accountable for the use and social consequences of testing beyond current self-regulatory mechanisms, such as by providing for ombudsman boards to help oversee the testing process. Broader public representation in all areas of the testing process might also be contemplated.

3. The agencies should consider ways to improve cooperation with other educational agencies and professional associations to provide additional training for test users on the appropriate uses of tests.

Recommendations to test users:

1. Schools, institutions of higher education and state and local authorities should ensure that test takers receive appropriate information about the purposes and measurement properties of tests.

2. These authorities should adhere to professional standards and test agency guidelines concerning test use.

3. Test users, with ultimate responsibility for explaining to test takers how tests are used in admissions process, should provide test takers with more timely and more useful information about how admissions decisions are made and the role of tests in that process.

Recommendations to test takers:

1. Test takers do not always use well the information that they are provided about admissions tests. Test takers should use more effectively the substantial amount of information provided by test agencies and test users about the purposes and uses of admissions tests.
2. Where test takers are represented on admissions committees or on test agency advisory councils, they should work diligently to assist test agencies and users in establishing principles and practices that help to ensure proper test use and appropriate dissemination of information about tests.

V. Summary and Conclusions

Legislation to regulate postsecondary admissions tests by requiring test agencies to file with government copies of tests and to return such tests to students immediately after a test administration -- so-called "truth-in-testing" or "test disclosure" legislation -- has been thoroughly considered by state and federal lawmakers during the past five years. Law has been enacted in only two states: California and New York. The New York law is more comprehensive than that in California because it applies to virtually every type of standardized test used for postsecondary admission. The California law requires test disclosure only for undergraduate admissions tests.

There has been some difficulty with implementing testing legislation, especially in New York State where litigation initiated by the Association of American Medical Colleges challenging the legality and Constitutionality of the statute is pending. Furthermore, the law has been amended substantively several times since 1980, principally to relieve test agencies from certain compliance problems, and thereby to allow some testing programs to continue to be offered which otherwise would not have continued in the state. Certainly, the New York law demonstrates the variable effect legislation has on different testing programs, and the difficulty of enacting law that is uniformly applicable to all tests. This law has not been implemented without significant administrative accommodations by test agencies and to a lesser degree adjustments by institutions and students.
Nevertheless, the New York State statute has set an important precedent by demonstrating that law requiring "limited" test disclosure is feasible for some, if not all testing programs. It is very unlikely that test agencies would have moved as quickly to begin returning tests to students without the law in New York, and the prospect of law being enacted elsewhere. Indeed, the New York law has played a prominent role in influencing test agencies to extend test disclosure practices nationally. This law, then, has established a de facto national legislative compromise on an appropriate level of test disclosure—one that appears to satisfy the competing interests of most test agencies and proponents of legislation. The existing national compromise does not preclude other states or Congress from enacting additional legislation; but it is doubtful that additional test disclosure legislation patterned after the New York and California laws will be beneficial in improving test-use practices. It seems unlikely that there will be a change in the status quo ante regarding national test disclosure unless there is a major change in test-making technology allowing for more rapid and reliable test construction, a judicial ruling in New York on the AAMC's challenge to the law, or a change in the attitude of legislators about the need for additional law.

Efforts to use test disclosure legislation as a vehicle for legislating on broader concerns about testing has developed. In California, concern about test security administrative procedures and test score reporting practices stimulated interest in legislation to amend existing test disclosure law. After being enacted by the legislature, proposed legislation was vetoed by the governor on the grounds that the bill was not needed and was administratively too cumbersome. Similar legislation has been reintroduced in California in 1984. A bill modeled after the vetoed California legislation was introduced in New Jersey in 1983. Additionally, in Massachusetts law was enacted prohibiting colleges from requiring that certain handicapped students take a
standardized admissions test. Similar legislation was considered recently in Texas and Maine.

While the central goal of legislation (test disclosure) is achieved, the latent objectives of testing legislation are more elusive. Existing testing law has had little if any immediate effect on improving the quality of tests or ensuring better use of tests, as proponents had asserted it would. A few errors have been found on disclosed tests, but no systematic pattern of error or bias that might justify additional regulation has been discovered. While the short-run educational benefits of the legislation appear to be limited, it is still too soon to evaluate its long-term effect on test quality and use. The long-term educational effect of public circulation of multiple versions of tests reproduced by the millions for students' review remains to be studied. Upon analysis, the legislation is not likely to influence improvement in the public's or educators' awareness about the proper use of tests because; in large part, it only provides for dissemination of information that has been made available routinely by test agencies. Because the legislation does not focus directly on institutions of higher education which determine how tests are used in the admissions process, it is doubtful that current or prospective legislation requiring additional test disclosure will ameliorate alleged problems concerning test use. Emerging proposals, then, to expand test disclosure legislation are probably of limited value in improving practices of test agencies or test users related to broader concerns about use of admissions tests.

A somewhat surprising outcome of the adoption of national test disclosure policies by test agencies is that relatively few students request that copies of their test questions and answers be returned. In the author's opinion, the small demand for the test-return option probably accurately reflects limited student interest in this option. Other observers assert, however, that
limited student demand for test disclosure reflects an effort on the part of test agencies to keep demand artificially low through burdensome administrative procedures.

In addition to concerns about the educational effect of the legislation, serious legal and Constitutional questions also exist. The Federal District Court prospective ruling on the AAMC case in New York State may help to resolve some questions surrounding the legal efficacy of the law, but many potentially troublesome legal questions about admissions testing will continue to be unresolved. Comprehensive law governing the civil and Constitutional rights of individuals affected by admissions tests, as well as the property and Constitutional rights of test agencies and users, will be difficult to achieve in the short run. Finally, because liability for proper use of tests rests with postsecondary institutions which require the tests, rather than with test makers or test sponsors, comprehensive legislation governing testing cannot be realized without acknowledging that it would require direct government intervention into the admission process -- a step that may not be desirable. Several difficult educational governance and legal questions would have to be resolved for such governmental regulation to be workable nationally. Conversely, the federal and state governments have already demonstrated the feasibility of enacting law protecting the rights of special classes of individuals in the admissions process, as is the case with certain handicapped students. Thus, prospective law prohibiting certain test-use practices that may violate rights of individuals protected by other existing law or Constitutional guarantees seems to be one possible outcome of contemporary interest in testing legislation.

In conclusion, "truth-in-testing" legislation is symptomatic of deeper societal concern about the role of tests in distributing educational opportunity. As the pendulum swings in education between lesser or greater reliance
on testing, so too public perceptions will shift about the need for government intervention. The concerns about postsecondary admissions tests that are manifested through legislation discussed herein are the result of many complex social and educational factors. Legislative interest in testing may grow or recede over time depending on changes in the social-political environment that shapes education policy; but it is doubtful that legislative interest will dissipate entirely, given the high value placed on education in this society and the perceived importance of testing in determining access to educational opportunity.
Notes


3. Standardized tests typically are regulated "voluntarily" through professional organizations such as the American Psychological Association (APA) which establishes standards concerning how tests should be used. The most recent APA standards were established in 1974 and are currently being revised. For a discussion of regulation of test use see Alexandra K. Wignor and Wendell R. Garner, editors, Ability Testing: Uses, Consequences, and Controversies (Washington, D. C.: National Academy Press, 1982), Part I, pp. 20-21; Part II, pp. 70-98.

4. For a contemporary discussion of the social role of testing in addition to Ability Testing, see also Alexander W. Astin, Minorities in American Higher Education (San Francisco: Jossey-Bass Publishers, 1982).


6. These two reports are excellent objective analyses of the "truth-in-testing" issue. The full citation for the ECS study is: Searching for the Truth About "Truth in Testing" Legislation, Report No. 132 (Denver: Education Commission of the States, 1980).


19. The College Entrance Examination Board v. Abrams, November 19, 1979, (This complaint was withdrawn before it was placed on the Court's Calendar, New York State Supreme Court Index No. 608-80).

20. For example, in his November 4, 1981 testimony on H. R. 1662 Philip Reiver, Director of ACT, Washington, D. C., reported that students requesting copies of the ACT in New York State averaged 24.2 (on a scale of 1-36) on the ACT whereas the average score for all students was 19 (See pp. 587-594 of the Committee Print of Hearings on "The Educational Testing Act of 1981."). Similarly a 1980 analysis by The College Board indicated that the median family income for students requesting test-return service was $32,000 compared to $24,000 for non-requestors; one-fourth of all requestors as compared to one-tenth of non-requestors had family incomes above $50,000. Additionally, test-return requestors scored nearly 60 and 80 points higher respectively on the verbal and math sections of the SAT than non-requestors (See The College Board's September 23, 1980 Press Release.).
21. See California Governor Deukmejian's September 27, 1983 veto message on Senate Bill 735.

22. The Garfield High School case sparked an immediate national press reaction, as well as strong community reaction to the incident. See for example, Los Angeles Times "14 Students Retake Test After Scores Are Disputed," (December 7, 1982); and "High-Scoring Hispanic Student Forced to Retake Test," in The San Antonio Light (December 6, 1982). This case received additional national media attention because of the teaching success of one of the high school's teachers, Jaime Escalante. Mr. Escalante's role is described in "Dedicated California Teacher Turns Students Into Calculus Whizzes, Washington Post (December 12, 1982); and "Low-Tech Teaching Blues," Time (December 27, 1982).


24. See New York State Education Commissioner Ambach's "Initial Impact Report."


28. AAMC v. Carey Civil Action 70-CV-730, (U. S. District Court Northern District of New York, filed November 9, 1979). The court may proceed with a formal hearing of the case soon. Based on its preliminary finding in favor of the AAMC, some observers believe that the association has a strong, but certainly not compelling, case.

29. New York State Assistant Commissioner for Higher Education Services David R. Bower indicates as of September 1983 that a few other tests including the Doppelt Mathematical Reasoning Test and Minnesota Engineering Analogies Test also sponsored by the Psychological Association are not longer offered in New York State.


31. National data on test-return requestors from ACT and the College Board continue to parallel data cited in note 20 on the characteristics of early test-return requestors in New York State.

33. See for example, "ETS Standards for Quality and Fairness," Educational Testing Service, 1981. The standards expressed in this document were officially adopted by the ETS Board of Trustees in October 1981. Prior to that time adherence to the standards were a matter of ETS administrative policy but not an official policy of the Board of Trustees.


36. For a succinct discussion of these Constitutional issues refer to Searching for the Truth About "Truth in Testing" Legislation, pp. 33-42. Furthermore, see Patricia Hollander's discussion of "Legal Context of Educational Testing" in Ability Testing, Part II, pp. 195-231. This section discusses in depth the major legal and constitutional standards affecting testing, and relevant case law, including references to Larry P. v. Riles and Debra P. v. Turlington.


39. Dario F. Robertson, "Examining the Examinees: The Trend Toward Truth in Testing" Journal of Law and Education (Vol. 9, No. 2, April, 1980) 167-199. Even though the author is supportive of increased governmental regulation of admissions testing, he concludes that "truth in testing" legislation is not comprehensive enough conceptually to deal with the complex social, educational and legal issues surrounding use of admissions tests. Refer to his discussion of many of the legal issues affected by the legislation.


42. For example, one of the more prominent reports calling for higher college admissions standards is A Nation At Risk, a report to the U. S. Secretary of Education by the national Commission on Excellence in Education, 1983. Concerning the trend to raise college admissions standards, refer to Scott D. Thomson, College Admissions, New Requirements by the State Universities (Reston, VA: National Association of Secondary School Principals, 1982).

43. A contemporary example of controversy stimulated by use of minimum college admission test scores has been adoption of Rule 48 by the National Collegiate Athletic Association in 1983. The rule establishes minimum ACT and SAT scores for eligibility for athletic competition at certain NCAA colleges.
44. The debate over the appropriate use of aptitude and achievement tests is heating up as educators and public officials study ways to improve the public schools. For a discussion of this matter see Ernest L. Boyer, High School A Report on Secondary Education in America (New York: Harper and Row, Publishers, 1983), pp. 132-136; and Christopher Jenks and James Crouse, "Aptitudes vs. Achievement: Should We Replace the SAT?" The Public Interest (No. 63, Spring 1982) 21-35.

45. Civil rights groups such as the NAACP and Mexican American Legal Defense Education Fund (MALDEF) continue to be especially active in this regard. MALDEF, for example, played an important role in stimulating introduction of California Senate Bill 735. Additionally, in November 1983 MALDEF formally petitioned the College Board, ACT and ETS regarding test misuse and prospective remedies.


47. The position of the NEA critical of testing and in favor of "truth-testing" is articulated clearly in: "Measurement and Testing: An NEA Perspective," A research memo of the National Education Association, Washington, D. C., 1980. For a brief discussion of why the NEA has staked out a political position critical of testing see Barbara Lerner's interesting analysis "The War on Testing: David, Goliath and Gallup" The Public Interest (No. 60, Summer 1980) 119-147.

Acknowledgments

As a College Board staff member I am fortunate to have the opportunity to interact closely with proponents and opponents of legislation including legislators and their staffs; staff members of testing organizations; educators and educational administrators; consumer, civil rights, and student advocates; government agency administrators; and lobbyists. To all of these individuals, and especially for students and their parents, I hope that my observations have some value.

The views contained in this paper, however, are mine alone, and do not reflect the opinion or position of the College Board and its Washington Office. Even though I take full responsibility for the accuracy of information presented, I offer special thanks to Marion G. Epstein of the Educational Testing Service for her valuable assistance in providing me with data that assisted in preparing tables related to test return policies for tests administered by ETS. My special thanks, too, go to Susan B. Stine for her help in preparing several of the tables presented in this paper. David R. Bowers of the New York Department of Education, James B. Erdmann of the Association of American Medical Colleges, Lorraine D. Eyde, U.S. Office of Personnel Management, Merritt C. Ludwig of the College Board, Martha B. McGrane of the Law School Admissions Council, and Jacqueline E. Woods of the American College Testing Program also provided information that assisted me in preparing this paper. Many other individuals offered comments that helped to improve the final manuscript.

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Washington, D.C.
March, 1984
APPENDICES

A. New York State Standardized Testing Law  
   (SB 6083 effective 11-2-83)

B. California State Standardized Testing Law
Appendix A

New York State Standardized Testing Law

Section 341

Article 7-A—Standardized Testing [New]

Definitions

341. Background reports.
342-a. Special administrations [New].
343. Notice.
344. Disclosure of test scores.
345. Regulations.
346. Consumer advisory committee.
347. Violations.
348. Severability.

Library References

Schools and School Districts C.J.S. Schools and School Districts § 345.

§ 340. Definitions

As used in this article:
1. “Standardized test” or “test” means any test that is given in New York at the expense of the test subject and designed for use and used in the process of selection for post-secondary or professional school admissions. Such tests shall include, but are not limited to, the Preliminary Scholastic Aptitude Test, Scholastic Aptitude Test, ACT Assessment, Graduate Record Examination, Medical College Admission Test, Law School Admission Test, Dental Admission Testing Program, Graduate Management Admission Test, and Miller Analogies Test. This article shall not apply to any state, federal, or local civil service test, any test used solely for placement, credit-by-examination or other nonadmission purpose or any test developed and administered by an individual school or institution solely for its own purposes or any test, or portion of a test, designed to evaluate manual skills or other physical abilities.
2. “Commissioner” means the commissioner of education of the state of New York.
3. “Test subject” means an individual to whom a test is administered.
4. “Test agency” means any organization, association, corporation, partnership, or individual or person that develops, sponsors or administers a test.

1981 Amendment. Subd. 1. L.1981, c. 291, § 1, eff. June 30, 1981, in sentence beginning “This article” added “or any test, or portion of a test, designed to evaluate manual skills or other physical abilities".
1980 Amendment. Subd. 1. L.1980, c. 813, § 1, eff. June 30, 1980, in sentence beginning “This article” or “in New York” and substituted “and” for “or” following “designed for use” and in sentence beginning “This article shall substituted “any test used solely for placement, credit-by-examination or other nonadmission purpose” for “any test designed and used solely for non-admission placement or credit-by-examination, and solely for its own purposes” for “for its own purposes only”.
Subd. 3. L.1980, c. 813, § 1, eff. June 30, 1980, substituted “means” for “shall mean”.
Subd. 4. L.1980, c. 813, § 1, eff. June 30, 1980, substituted “means” for “shall mean”.

Effective Date. Section effective Jan. 1, 1980, pursuant to L.1979, c. 672, § 2.

§ 341. Background reports

1. Whenever any test agency prepares or causes to have prepared research which is used in any study, evaluation or statistical report pertaining to a test operational after January first, nineteen hundred eighty, such study, evaluation or report shall be filed with the commissioner.

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2. If any reports or other documents submitted pursuant to this section contain information identifiable with any test subject or test user institution, such information shall be deleted prior to filing with the commissioner.

3. All reports or other documents submitted pursuant to this section shall be public records.

Added L1979, c. 672, § 1; amended L1980, c. 813, § 1.

1980 Amendment. Catchline. L. 1980, c. 813, § 1, eff. June 30, 1980, deleted "and statistical data" following "Background reports".

Subd. 1. L1980, c. 813, § 1, eff. June 30, 1980, substituted "or causes to have prepared research which is" for "causes to have prepared or provides the data which are".

Subd. 2. L1980, c. 813, § 1, eff. June 30, 1980, substituted "contain" for "contains", deleted "individual" following "identifiable with any", inserted "or test user information", and substituted "prior to filing with the commissioner" for "or obliterated prior to submission".

Subd. 3. L1980, c. 813, § 1, eff. June 30, 1980, deleted "data," preceding "reports or other".

Effective Date. Section effective Jan. 1, 1980, pursuant to L1979, c. 672, § 2.

§ 342. Disclosure of test contents

1. Within thirty days after the results of any standardized test are released, the test agency shall file or cause to be filed with the commissioner:
   a. a copy of all test questions used in calculating the test subject's raw score;
   b. the corresponding acceptable answers to those questions; and
   c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules.

2. Within ninety days after filing a standardized test pursuant to subdivision one of this section and for a period of not less than ninety days after the offer is made, the test agency shall provide to the test subject the opportunity to secure:
   a. a copy of the test questions used to calculate the test subject's raw score;
   b. a copy of the test subject's answer sheet, or answer record where there is no answer sheet, together with a copy of the correct answer sheet to the same test with questions used to calculate the test subject's raw score so marked; and
   c. a statement of the raw score used to calculate the scores reported to the test subject.

The agency may charge a nominal fee for providing such information, not to exceed the direct cost thereof.

3. a. Notwithstanding subdivisions one and two of this section, a test agency may withhold from disclosure any test forms administered in New York in any given test program to not more than five percent of the anticipated test subjects annually or to not more than five thousand test subjects annually, whichever is less.

b. Prior to the beginning of a test agency's testing year, the test agency shall designate the dates upon which test forms to be filed with the commissioner will be used. The test agency shall inform potential test subjects of these dates.

4. Within three years after the administration in New York of a standardized test form not required to be disclosed under subdivision three of this section the test agency shall file the test form and the corresponding acceptable answers with the commissioner.

5. Subdivisions one, two, three, and four of this section shall not apply to College Board Achievement Tests or GRE Advanced Tests which shall be disclosed pursuant to subdivision six of this section regardless of volume.
6. Notwithstanding other provisions of this section, if a test agency has administered a standardized test to less than two thousand test subjects in New York annually, the test agency shall file with the commissioner at least once every three years:
   a. a copy of all test questions used in calculating the test subject's raw score from one test form administered during that three year period;
   b. the corresponding acceptable answers with the commissioner; and
   c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules.

7. Documents submitted to the commissioner pursuant to this section shall be public records and, in collecting this material, the State Education Department shall be considered an archive under Title 17 § 108 U.S.C.

Added L.1980, c. 813, § 2.

Derivation. Former section 343, added L.1979, c. 672, § 1; repealed L.1980, c. 813, § 2.

Effective Date. Section effective June 30, 1980, pursuant to L.1980, c. 813, § 2.

§ 342-a. Special administrations

1. When regular test administrations are given on days of religious observance which prevent attendance by test subjects at such regular administrations special administrations shall be offered with the same frequency as regular administrations as soon after or before as is possible, at comparable times, places and cost.

2. Provided, however, a test agency shall not be required to offer a greater number of special administrations than were offered during the base year commencing August first, nineteen hundred seventy-eight and ending July thirty-first, nineteen hundred seventy-nine unless the number of regular administrations is increased in any subsequent testing year, in which case the provisions of subdivision one shall apply.

3. No test subject shall by reason of religious belief be denied by a test agency, the opportunity to take a test which shall be disclosed pursuant to subdivisions one and two of section three hundred forty-two of this article during any twelve month period.


1981 Amendment. Subd. 3. L.1981, c. 325, § 1, eff. June 29, 1981, inserted "of section three hundred forty-two of this article".

Effective Date. Section effective July 1, 1980, pursuant to L.1980, c. 814, § 3.

Legislative Intent and Declaration of Purpose. Section 1 of L.1980, c. 814, eff. July 1, 1980, provided: "Legislative intent. In order to provide equal access to standardized tests, special administrations shall be provided to accommodate the needs of those individuals who are unable to attend regular administrations because of a religious observance."

Library References

Schools §164.

C.J.S. Schools and School Districts § 485.

§ 343. Notice

1. Each test agency shall provide, along with the registration form or score report for a test, the following information:
   a. the purposes for which the test is constructed and is intended to be used;
   b. statements designed to provide information for interpreting test results, including but not limited to, explanations of the test score scale, the standard error of measurement of the test, and a list of available correlations between test scores and grades, successful completion of a course, of study and parental income; however, where a range of the correlations of such studies is given, a median correlation must also be provided;
   c. how the test scores will be reported, whether the raw test scores will be converted in any way before being reported to the test subject and whether and how the test agency will use the test score in raw or
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transformed form by itself or together with any other information about the test subject to predict in any way the subject’s future academic performance for any post-secondary educational institution;

d. a complete description of any promises or covenants that the test agency makes to the test subject with regard to accuracy of scoring, timely forwarding of information, policies for notifying test subjects regarding inaccuracies in scoring or score reporting and privacy of information relating to the test subject;

e. whether or not the test scores are the property of the test subject, the time period during which the results will be retained by the test agency, and policies regarding storage, disposal and future use of test score data; and

f. how the test subject may obtain the information required to be disclosed under section three hundred forty-two of this article.

2. Any institution which is a test score recipient shall be provided with the information specified in this section. The test agency shall provide such information prior to or coincident with the first reporting of a test score or scores to a recipient institution. Such institution shall be encouraged to provide interpretive processing by qualified personnel where such personnel are available.

Added L.1960, c. 813, § 2.

Derivation. Former section 342.

Effective Date. Section effective June 30, 1980, pursuant to L.1980, c. 813, § 5.

§ 344. Disclosure of test scores

The score of any test subject shall not be released or disclosed by the test agency to any person, organization, corporation, association, college, university, or governmental agency or subdivision unless specifically authorized by the test subject. A test agency may, however, release all scores received by a test subject on a test to anyone designated by the test subject to receive the current score.

This section shall not be construed to prohibit release of scores and other information in the possession of a test agency for purposes of research leading to studies and reports concerning the tests themselves. Such studies and reports must contain no information identifiable with any individual test subject or user institution unless authorized by that individual or institution.

Added L.1979, c. 672, § 1; amended L.1980, c. 813, § 3.

1980 Amendment. L.1980, c. 813, § 3, eff. June 30, 1980, in sentence beginning “A test agency” deleted “previous” following “however, release all” and in sentence beginning “This section shall” inserted “or user insti-

§ 345. Regulations

The commissioner shall promulgate regulations to implement the provisions of this article.

Added L.1979, c. 672, § 1.

Effective Date. Section effective Jan. 1, 1980, pursuant to L.1979, c. 672, § 2.
§ 346. Consumer advisory committee

There shall be created a temporary committee to advise the legislature and make recommendations about this article. The committee shall consist of six members to be appointed as follows: two shall be appointed by the temporary president of the senate and one by the minority leader of the senate; two shall be appointed by the speaker of the assembly and one by the minority leader of the assembly. The members shall include students and other persons who represent the consumers of standardized admissions test. The committee shall select a chairman from its membership. This committee shall meet at least twice annually and shall expire on the first day of August nineteen hundred eighty-three. The committee members shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties under this article.


Former Section 346. Renumbered section 347.

§ 347. Violations

Any test agency which violates any section of this article shall be liable for a civil penalty of not more than five hundred dollars for each violation.

Formerly § 346, added L1979, c. 672, § 1; renumbered § 347, L1980, c. 813, § 4.

Effective Date. Section effective Jan. 1, 1980, pursuant to L1979, c. 672, § 2.

§ 348. Severability

If any provision of this article shall be declared unconstitutional or invalid, the other provisions shall remain in effect notwithstanding.

Formerly § 347, added L1979, c. 672, § 1; renumbered § 348, L1980, c. 813, § 4.

Effective Date. Section effective Jan. 1, 1980, pursuant to L1979, c. 672, § 2.
STATE OF NEW YORK

6038--A

Cal. No. 1150

1983-1984 Regular Sessions

IN SENATE

April 26, 1983

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the education law, in relation to disclosure of test contents

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision five of section three hundred forty-two of the education law, as added by chapter eight hundred thirteen of the laws of nineteen hundred eighty, is amended to read as follows:

5. Subdivisions one, two, three, and four of this section shall not apply to College Board Achievement Tests or GRE Advanced Tests [which shall be disclosed pursuant to subdivision six of this section regardless of volume]. With respect to such tests, the test agency shall file with the commissioner the following:

a. a copy of all test questions used in calculating the test subject's raw score from one test form administered during the period set forth below;

b. the corresponding acceptable answers; and

c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules, in accordance with the following schedule:

(1) once every five years for such tests administered to five thousand or more test subjects in New York annually, and

(2) once every eight years for such tests administered to fewer than five thousand test subjects in New York annually.

§ 2. This act shall take effect November second, nineteen hundred eighty-three.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted. LBD11022-03-3
CHAPTER 3

Standardized Tests

[Added by Stats 1976 ch 1217 § 2.]

§ 99150. Definitions
§ 99151. Report of closing date of testing year
§ 99152. Filing copies of test with commission
§ 99153. Filing data sufficient to describe psychometric quality of test; Compliance with guidelines of Standards for Educational and Psychological Tests of American Psychological Association
§ 99154. Additional data filed with commission; Submission of financial disclosure information
§ 99155. Effect of separate fee charged test subjects for admissions data assembly services
§ 99156. Information filed considered public record subject to disclosure under California Public Records Act. Rights protected by copyright laws
§ 99157. Information provided subjects prior to test
§ 99157.5. Opportunity for test subject to examine questions and answers
§ 99158. Distribution of information to facilitate interpretation of score. Information provided institution that test subject designates as test score recipient
§ 99159. Submission of test sponsor's national or regional aggregation of data concerning predictive validity of test scores and grades
§ 99160. Civil liability for intentional violation of chapter provisions

§ 99150. Definitions

As used in this chapter:

(a) "Admissions data assembly service" means any summary or report of grades, grade point averages, or standardized test scores of an applicant used by any postsecondary educational institution in its admissions process.

(b) "Commission" means the California Postsecondary Education Commission.

(c) "Secure test" means any test which contains items not available to the public and which, to allow the further use of test items and to protect the validity and reliability of the test, is subject to special security procedures in its publication, distribution, and administration.

(d) "Standardized test" or "test", for purposes of this chapter, means any test administered in California to at least 3,000 individuals during a testing year and which is formally required by institutions of postsecondary education for the purposes of admissions to those institutions. "Standardized test" or "test" does not include a test, or part of a test, which is administered to a selected group of individuals solely for research, pre-test, guidance, counseling, or placement purposes, for credit-by-examination purposes, or for purposes of meeting graduation requirements of secondary schools. Tests
which are administered as supplements or auxiliaries to another test, or which form a specialized component of a test, may be combined for the purposes of this chapter.

(c) "Test subject" means an individual to whom a standardized test is administered and who takes the test at a location in the State of California.

(f) "Test sponsor" means an individual, partnership, corporation, association, company, firm, institution, society, trust, or joint stock company which sponsors a standardized test.

(g) "Testing year" means the 12 calendar months which the test sponsor considers either its operational cycle or its fiscal year.

Added Stats 1978 ch 1217 § 2.

Note—Stats 1978 ch 1217 also provided: § 6. It is the intent of the Legislature that the information disclosure requirements of this act be applicable to the entire testing year ending in 1979.

§ 99151. Report of closing date of testing year

Each test sponsor shall report the closing date of its testing year to the commission by March 31, 1979, or within 90 days after it first becomes a test sponsor, whichever is later.

Each test sponsor shall report any change in the closing date of its testing year within 90 days after the change is made.

Added Stats 1978 ch 1217 § 2.

§ 99152. Filing copies of test with commission

Within 90 days of the close of each testing year, the test sponsor shall file in the office of the commission five copies of the test which is equivalent to that in use in any of the prior three testing years, but that is no longer in use as a secure test, along with the corresponding acceptable answers.

If such a test is not available, then the test sponsor shall file instead a set of test questions which are not derived from a secure test and which are equivalent in content and of sufficient number to represent the secure test fairly, along with corresponding acceptable answers.

Added Stats 1978 ch 1217 § 2.

§ 99153. Filing data sufficient to describe psychometric quality of test: Compliance with guidelines of Standards for Educational and Psychological Tests of American Psychological Association

(a) Within 90 days of the close of each testing year, the test sponsor shall file in the office of the commission standard technical data sufficient to describe the psychometric quality of the test.

For purposes of compliance with this section, it is sufficient to deposit with the commission information conforming to the guidelines specified in the Standards for Educational and Psychological Tests of the American Psychological Association, which were in effect 180 days prior to the testing year, and which are appropriate to the particular test and its uses.

(b) Data, reports or other documents submitted pursuant to this section shall be accompanied by a description of the test, including, but not limited to, the title, purpose or purposes of the test and, when and where the test was administered in the state.

(c) No data, reports or other documents submitted pursuant to this chapter shall contain information in a form identifiable with individuals or particular postsecondary educational institutions.

Added Stats 1978 ch 1217 § 2.

§ 99154. Additional data filed with commission: Submission of financial disclosure information

(a) Within 135 days after the close of the testing year, each test sponsor shall report the following data on test takings, wherever they may occur, to the commission:

(1) The total number of times the test was taken during the testing year.

(2) The number of individuals who have taken the test once, who have taken it twice, and who have taken it more than twice during the testing year.

(3) The number of individuals who registered for, but did not take, the test.

(4) The total amount of fees received from test-takers by the test sponsor for the test for that testing year.

(5) The expenses to the test sponsor of the test, as follows:

(A) Those expenses which are directly attributable to the test.

(B) Those expenses which are indirectly attributable to the test. However, if the test sponsor also sponsors another test or related activities, it shall be sufficient for compliance with provisions of this section for the test sponsor to list indirectly attributable expenses, to the extent that they are identifiable, as they are proportionately related to the test. The test sponsor shall also list expenses indirectly attributable to all activities of the test’s sponsor, including expenses not identifiable as attributable to a test.

(b) The financial disclosure required by this section shall be submitted in sufficient detail to indicate the major categories of revenues and expenses associated with the test. Except as provided in this section, the information for different tests administered by the same test sponsor shall be reported separately and by individual test.

Added Stats 1978 ch 1217 § 2.
§ 99155. Effect of separate fee charged test subjects for admissions data assembly services
If a separate fee is charged test subjects for admissions data assembly services, then the test sponsor shall report information concerning the data assembly services in substantially the same form as would be required for a test under Section 99154.
Added Stats 1978 ch 1217 § 2.

§ 99156. Information filed considered public record subject to disclosure under California Public Records Act; Rights protected by copyright laws
Any information or report required to be made or filed with the commission under this chapter is a public record subject to disclosure under the California Public Records Act, Chapter 3.3 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.
Nothing in this section shall be construed to diminish or authorize the infringement of any rights protected by laws relating to copyright, to the protection of trade secrets, or to other proprietary rights.
Added Stats 1978 ch 1217 § 2.

§ 99157. Information provided subjects prior to test
Each test sponsor shall provide the following information to test subjects prior to the administration of a test:
(a) The purposes for which the test is constructed and is intended to be used.
(b) The subject matters included on such test and the knowledge and skills which the test purports to measure.
(c) The manner in which the test is scored and the relationship of the raw and scaled scores to the skills and knowledge it measures.
(d) The basis upon which such scores will be made available to persons or institutions.
(e) A representative set of sample test items.
Added Stats 1978 ch 1217 § 2.

§ 99157.5. Opportunity for test subject to examine questions and answers
(a) Within 90 days of the release to the test subject of the results of a standardized test as specified in subdivision (c), and upon the request of the test subject, the test sponsor shall provide to the test subject an opportunity to examine operational test questions and answers under closely monitored conditions. The examination shall occur at places to be designated by the test sponsor. Test sponsors shall establish a number of such places geographically designated throughout the state.
Unless authorized by the test sponsor, neither questions nor answers, nor copies of questions or answers, shall be removed from the facility, except by a representative of the test sponsor. Actual costs of an examination of test materials shall be borne by the test subject. During the examination of test materials, the test subject may file with a representative of the test sponsor, and with an educational institution, or institutions, seeking results of the test examined, a written protest to any question or answer.
(b) As an alternative to the procedure described in subdivision (a), and within 90 days of the release of the results of any standardized test to the test subject, and upon request of the test subject, the test sponsor shall make available to the test subject the test materials, including operational test sections (questions), a copy of the test subject's answer sheet or a record of the test subject's response to each question, the test subject's raw scores, a copy of scoring and scaling instructions, a copy of the correct responses, and a copy of the conversion factor or table, or both.
Each test sponsor shall, prior to the administration of a test, give written notification to the test subject of his or her right to request and receive test disclosure as provided in this section, if the request is made within 90 days of the release of the test score to the test subject.
(c) Except for test administrations described in subdivision (d), the test sponsor shall provide to test subjects the test materials specified in subdivisions (a) and (b) for not fewer than 50 percent of regular test administrations, as determined by the test sponsor. If the application of 50 percent results in a number which includes a fraction, the number shall be rounded to the nearest larger whole number.
(d) In order to accommodate test subjects who, because of religion are unable to participate in regular test administrations, the test sponsor shall provide test materials specified in subdivisions (a) and (b) to test subjects of not fewer than one non-Saturday test administration during every 12-month period.
(e) Each test sponsor shall, prior to the administration of a test, give written notification to the test subjects of their right to request and receive test materials as provided in subdivisions (a), (b), and (c), provided that such request has been made within 90 days of the release of the test score to the test subject.
(f) The test sponsors may charge a nominal fee, not to exceed the direct costs thereof, for test materials provided pursuant to this section.
(g) For the purposes of this section only, a "standardized test" or "test" means any test administered in California to at least 3,000 individuals during a testing year and which is designed for and formally required by institutions of postsecondary education in California for the purpose of admission to those institutions for undergraduate studies. The provisions of this section shall not apply to College Board Achievement Tests, or to the test of English as a foreign language.
§ 99158. Distribution of information to facilitate interpretation of score: Information provided institution that test subject designates as test score recipient

In reporting test scores to test subjects, the test sponsor shall provide sufficient explanatory information to facilitate proper interpretation of the score or scores. The information shall be distributed in the following manner:

(a) Test subjects shall be provided with statements designed to provide information for interpreting the scores, including, but not limited to, explanations of:

(1) The test score scale.
(2) The scores and their meanings.
(3) Standard error of measurement of the test.

(b) Any postsecondary education institution or other organization which a test subject designates as a test score recipient shall be provided with all of the information specified in Section 99157 and in subdivision (a) of this section. The test sponsor shall provide such information prior to or coincident with the first reporting of a test score or scores to a recipient during a testing year. Such information shall be provided to the commission prior to or coincident with the first reporting of test scores to any test score recipient during a testing year.

The test sponsor shall provide such information once during a testing year in a manner deemed sufficient to assure access to the information by interested parties.

Added Stats 1978 ch 1217 § 2.

§ 99159. Submission of test sponsor's national or regional aggregation of data concerning predictive validity of test scores and grades

(a) In addition to the information required pursuant to subdivision (b) of Section 99158, the test sponsor shall submit to the parties listed therein and to the commission the test sponsor's most recent national or regional aggregation of data concerning the predictive validity of:

(1) Academic record or grades alone.
(2) Standardized test score alone.

(3) Academic record and test score combined.

(b) The data shall be disseminated pursuant to subdivision (b) of Section 99158.

Added Stats 1978 ch 1217 § 2.

§ 99160. Civil liability for intentional violation of chapter provisions

Any test sponsor who intentionally violates any provision of this chapter shall be liable for a civil penalty not to exceed seven hundred fifty dollars ($750) for each violation.

Added Stats 1978 ch 1217 § 2.