

# WHAT MAKES FOR

A  
MULTI-  
YEAR  
STUDY  
LOOKS  
BEYOND  
THE  
LSAT



Jim Block

Sheldon Zedeck and Marjorie Shultz '76 question whether standard law school application steps can predict success in the classroom and as a lawyer.

# GOOD LAWYERING?

Several hours filling in bubbles and writing an essay on the LSAT. Collecting transcripts and letters of recommendation. Agonizing about GPA and the personal statement. Every attorney's career begins the same way: sending off applications to law schools and hoping to receive big envelopes rather than small ones.

In recent years, both law schools and attorneys in practice have begun to question whether these application procedures are adequate to predict success not only in law school but also as a lawyer. Lawyering involves many skills not currently considered in the admission process. A six-year study in three phases, headed by Boalt Professor Marjorie Shultz '76 and Sheldon Zedeck, UC Berkeley professor of psychology, has identified 26 factors that contribute to lawyering effectiveness. The researchers are now developing tests to predict these factors—tests that one day might be administered with the LSAT as part of the admission process.

“Law schools choose the nation's lawyers,” says Shultz. “Entry into the schools whose graduates fill important judicial, political, economic and advocacy roles is the narrowest point in the pipeline. If you asked people whether society should choose those lawyers almost entirely on school smarts and cognitive ability, most people would say no. But to a large extent, that's what happens.”

The LSAT is a cognitive exam that uses multiple-choice questions to measure logical and analytical reasoning skills as well as reading comprehension. The test also includes an essay portion that is not graded but is sent to law schools. In recent years, college ranking systems such as that employed by *U.S. News and World Report* have elevated the importance of the LSAT score, according to Beth Cobb O'Neil, former vice president and associate executive director of the Law School Admission Council (LSAC), makers of the LSAT. “Rankings are very important to students, and *U.S. News* uses [the] average LSAT score as a major factor in such rankings,” O'Neil explains. “Thus schools are more likely to take anyone with a high score.”

The LSAT does not, however, predict success as a lawyer. Rather it predicts law school performance and is only partly effective at that. LSAT scores account for roughly 25 percent of the variance in the grades of first-year students. The applicant's undergraduate grade point average (GPA) also suggests the likelihood of success in the classroom rather than the courtroom. “The numbers tell you one thing but they don't tell you everything,” says Edward Tom, director of admissions at Boalt.

Yet LSAT score and undergraduate GPA are generally the two

most important factors in admission decisions, in part because they're readily available and easy to use. For the class of 2007, Boalt had more than 7,600 applications for 270 seats. In 1961, 776 students applied for a class of the same size. Similar increases in law school applications for a limited number of seats are occurring nationally; LSAT scores and undergraduate GPAs are often used to weed out applicants.

Then there's the issue of diversity. “A lot of data show that whites and some Asian subgroups perform better by a significant degree on school-based, cognitive, paper-and-pencil tests than underrepresented minorities. If we admit mostly on the basis of those criteria, then we tend to admit whites and Asians who excel in school,” says Shultz, who has worked in the area of race policy and justice for the past decade.

Shultz also understands discrimination in admissions and financial aid firsthand. Earlier in her career, she was granted admission but denied a fellowship to pursue a Ph.D. in history because she was female and married. The school strongly encouraged her to earn a master of arts and teaching rather than try for a doctorate. And that's what she did. Only later, after working in the development office of Antioch School of Law and typing her husband's doctoral dissertation on the ethical socialization of law students, did she decide to apply to law school. She graduated from Boalt in 1976 and began teaching there the same year.

In 1998 Shultz was part of the faculty committee (originally chaired by Malcolm Feeley, the Claire Sanders Clements Dean's Chair Professor of Law) that decided additional ways might exist to predict eventual success as a lawyer. To find them, Shultz teamed up with Zedeck, an industrial and organizational psychologist with more than 30 years of experience in selection and assessment in the world of work. Their six-year study composed of three two-year phases has been running since 2001. The LSAC funded phases I and II, which will wrap up this summer. To complete the third phase of their research, Shultz and Zedeck seek \$300,000 in additional funding to pay for test development, data gathering and doctoral student assistance.

In the first phase of their research, Shultz and Zedeck focused on factors that are important to lawyering effectiveness (see sidebar). To create the list, they conducted individual interviews and multiple rounds of focus groups with Boalt lawyers, judges, faculty and students. The researchers also spoke with clients about what was important to them in choosing a lawyer. “We're not looking at typical measures of success such as money earned or verdicts won,”

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Zedeck says. “If you look at the 26 factors, you’ll see that the focus is on behaviors that make for effective lawyering in a variety of contexts.”

Another round of focus groups generated a list of nearly 800 examples that illustrate poor to excellent performance on the 26 factors. More than 2,000 alumni responded to an Internet survey asking them to rate subsets of these items. Using those alumni ratings, Shultz and Zedeck created a set of scales that could be used by an observer to evaluate the effectiveness of an attorney. “Attorneys can recognize what good performance is even if it’s not their area; a tax attorney,” notes Zedeck, “can see effectiveness in a criminal lawyer.”

When Shultz and Zedeck began their work in 2001, they expected that once they identified the lawyering effectiveness factors, they could pull existing tests off the shelf to predict who would be good at those behaviors. They found in the second phase of the project, however, that only three tests—the Hogan Personality Inventory (HPI), the Hogan Motives, Values and Preferences Inventory (MVPI) and the Hogan Development Survey (HDS)—have potential and could be used as is. “All the other tests we’re writing from scratch or adapting from existing tests,” Shultz says. “We’re not sure if we can predict all the factors but we’re trying.”

Some of the newly created tests measure situational and practical judgment. Since the tests are intended for law school applicants, they will not require legal knowledge. Rather they will examine the potential for performing effectively on the 26 factors, based on situations and experiences more familiar to students. A sample question might ask the applicant to take the role of a team leader at a company. Because of frequent employee tardiness, the head of the company has decided that anyone who comes in late will be fired. One of the applicant’s team members, the smartest and hardest worker in the group, arrives five minutes late a few days later. What does the applicant do? Most of the test

questions don’t have a right answer. Formats vary, with some asking for a ranking of the options or for the best and worst choices. Some may even be open-ended questions requiring a sentence or two in the applicant’s own words.

The third phase of the research, slated to begin this fall, involves administering the new tests to practicing lawyers. Their supervisors and peers will then evaluate these lawyers on a subset of the 26 effectiveness characteristics. Researchers can determine the answers that an effective lawyer would choose by comparing ratings of an attorney’s performance on a factor to that same attorney’s answers to questions predicting that characteristic. “We hope that it’s not often obvious what the ‘right’ answer is because the best [one] is based not on general knowledge but on what very good lawyers say they would do in that situation,” Shultz says. “Of the lawyers who rate highly on integrity, what do they select as the best answer to a complex question related to integrity?”

Law schools are not the only entities interested in finding better ways to predict who will succeed in a profession. Administrators of the Medical College Admission Test (MCAT) are trying to develop a tool to measure oral communication skills. A test of situational judgment is under review for inclusion on the Graduate Management Admission Test (GMAT), which prospective MBAs take. “All of these high-stakes testing groups are looking at other ways to measure success in these fields,” says Zedeck. “Although cognitive ability is important, other components are important as well.”

The new tests should not only improve the ability of law schools to identify the applicants most likely to become effective lawyers but also create more diversity in law school classes. This is particularly important in California, where the passage of Proposition 209 in 1996 prohibited voluntary race-or-gender sensitive decisionmaking in admission to public institutions.

## 26 Effectiveness Factors

### Analysis and Reasoning

Creativity/Innovation

Practical Judgment

Researching the Law

Passion and Engagement

Questioning and Interviewing

Influencing and Advocating

Writing

Speaking

Integrity/Honesty

Able to See the World Through the Eyes of Others

Self-Development

Organizing and Managing Others (Staff/Colleagues)

Negotiation Skills

### Networking and Business Development

Building Client Relationship and Providing Advice and Counsel

Organizing and Managing (Own) Work

Developing Relationships

Evaluation, Development and Mentoring

Problem Solving

Stress Management

Fact Finding

Diligence

Listening

Community Involvement and Service

Strategic Planning

Shultz and Zedeck's research will likely improve diversity not through race-conscious evaluation but by using (empirically validated) methods to predict the complex and varied factors that make a lawyer outstanding. "The subtext of Proposition 209 is that we should not be using affirmative action but admitting solely on merit—but no one has defined merit," Tom says. "If Marge's project gets off the ground, it would allow law schools to look at a wider range of factors and to reexamine their own definitions of merit." The research project is also attractive to law firms and other employers of lawyers because it may help employers evaluate their own attorneys. Hiring is currently based mainly on grades, which say little about whether a lawyer will be any good at advising or litigating or whether that attorney will still be with the same firm or organization in five years.

"People have talked for decades about how to define merit in high-stakes decisions. They have argued in theory but no one has had a system that enables them to do it," Shultz says. "If we are

successful in establishing methods that project general lawyering effectiveness or specific tests that predict factors or clusters of factors important to being an outstanding lawyer, then the LSAC or another testing organization could do further work and make these tests available for use by various law schools in ways that suit their priorities and missions."

*[Shultz and Zedeck seek Boalt alumni as volunteers to take a battery of tests and be evaluated for effectiveness by their supervisors and peers. The researchers are working with Boalt and employers so that a participant's time could be considered pro bono work, or eligible to earn continuing education credit. Lawyers or firms interested in participating may email Marjorie Shultz at [m\\_shultz@law.berkeley.edu](mailto:m_shultz@law.berkeley.edu).]*

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[www.lsacnet.org](http://www.lsacnet.org), [www.law.berkeley.edu/faculty/](http://www.law.berkeley.edu/faculty/)

## EXPANDING THE DEFINITION OF MERIT

Law schools not only choose law students, they also choose the nation's lawyers. Despite frequent and heated disputes about admission practices in legal education, that fundamental fact is rarely noted. Legal education is unusually stratified, and schools at the upper end of the hierarchy produce a disproportionate number of the profession's most privileged and influential members. Because a very high percentage of graduates from elite law schools such as Boalt pass the bar, it is the entry into law school rather than bar passage that is the narrow point in the professional pipeline. In that important sense, choosing law students is tantamount to choosing the country's leading attorneys.

Law schools aren't particularly responsive to that gatekeeper role. Most make no organized effort to assess likely *professional* competence; their admission decisions are dominated by narrow criteria intended mainly to predict *academic* performance. This lack of congruity between function and means arguably undermines professional quality and certainly raises questions about justification. Although other professions also rely on academic predictors, they pay attention to assessing professional potential as well. Medical schools explicitly consider whether an applicant will make a good doctor, placing substantial weight on noncognitive abilities such as motivation and human interaction skills. Business schools seek students with work experience in business, evaluating multiple essays to determine clarity of career goals and

placement potential. But law schools, particularly elite law schools, assess applicants mainly on the basis of who will make a good law *student* rather than who will make a good *lawyer*.

Of course, good law students and good lawyers have important things in common, but treating the two roles as co-extensive or interchangeable is inappropriate. Test scores and past grades are arguably the main way to predict students' likely excellence in similar academic endeavors. But practicing lawyers need a much wider range of competencies and commitments.

Another comparison fuels skepticism about current admission practice. Law schools are professional schools. The vast majority of their graduates practice law or take jobs that rely on their legal training. But in making admission decisions, law schools depend more heavily on academic test scores than do many graduate departments. The irony is that most graduate departments train people primarily for academic as opposed to professional careers.

Law school admission practices appraise an even narrower set of qualities than might be generally assumed. The LSAT measures the applicant's ability to read and understand complex materials, analyze facts and relationships, and reason logically. The test allows a probabilistic prediction that one applicant will get better first-year grades than another applicant. Together the LSAT and undergraduate grade point average (UGPA) predict approximately 25 percent of the variance in first-year grades. Much more limited research suggests that LSAT scores correlate with overall law school GPA.

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Some evidence suggests that law schools de facto place even greater weight on LSAT scores than their official policies state. When William Kidder '01 analyzed 1998 admission data for University of California law schools, he found that even a slight shift in LSAT scores dramatically affected applicants' odds of admission. In 1998 applicants to Boalt Hall with GPAs of 3.75+ and 168-173 LSAT scores had an 89 percent chance of admission, but students with the same grades and 162-167 LSAT scores were admitted only 44 percent of the time. At UCLA, applicants with 3.75+ GPAs and 160-164 LSAT scores had a 66 percent chance of admission, but students with the same grades and 155-159 LSAT scores gained admission only 10 percent of the time. Yet these LSAT differences are within the statistical margin of error for comparing two individuals' scores and therefore as a psychometric matter do not warrant the emphasis in admissions results.

These rather startling results could occur unintentionally.

When people face difficult choices and want to make good decisions, numerical



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factors that appear precise and “objective” exert disproportionate influence even when neither logic nor statistics validates that impact. The absence of persuasive alternatives to traditional standardized tests intensifies the effect. “Soft” factors found in personal statements, letters of reference or interviews do play a role—but judgments about them are mostly ad hoc, and particularly when contrasted to LSAT scores, they are primarily subjective and potentially arbitrary.

Disputes over the nature and indicia of “merit” are heated not only in legal education but virtually everywhere that assessment and selection take place. Although some debaters seem to think otherwise, “merit” and “qualification” are not self-defining concepts that can be abstracted from context or purpose. Merit and qualification are not character traits. A person is “meritorious” *in regard to some goal*, or “qualified” *with respect to some purpose*. If we recognize that law schools choose not just students but also future lawyers, predicting lawyer performance as well as academic success should be relevant to admission.

The cognitive skills tested by the LSAT are a start. Those skills not only show a consistent statistical relationship to first-year law school grades but are also important to being a good lawyer. Beyond that, however, no studies even address the prediction of lawyering performance. Employers of lawyers necessarily evaluate them but both the definition and measurement of excellence in

lawyering performance remain difficult. Many would question whether such prediction can be done.

Five years ago, a Boalt faculty committee sought assistance from UC Berkeley psychology professor Sheldon Zedeck, an expert in employment selection and assessment, regarding whether professional capacities could be projected at the time of admission. Eventually we developed a study designed to fill the void of empirically valid predictors beyond the LSAT and UGPA by developing predictors of effective performance as a lawyer. Funded for the past four years by the Law School Admission Council (LSAC), in phase I (2001-03) we investigated what makes a lawyer effective. Before we could identify tests that might predict good lawyering, we had to understand what constitutes good lawyering. In personnel research terms, our first task was to do a “job analysis” to identify the tasks, duties, knowledge, skills and abilities necessary to perform the job.

To conduct that analysis, we worked with five constituencies affiliated with Boalt (alumni, faculty, students, judges and clients), drawing participants from widely varied practice fields and set-

tings, and from different career stages. We held multiple interviews and several rounds of focus groups, asking how do we know that a given lawyer is or is not effective. Stepping away from traditional criteria (income, trials or settlements won, prestigious credentials, positions held), we questioned interviewees about what they would look for if they needed a lawyer for an important task. How could they tell an average lawyer from an outstanding lawyer, an adequate lawyer from one less effective? A key component of the method is to get people thinking in concrete and behavioral terms rather than making judgments based on proxies such as salary or partnership status. Gradually our participants identified 26 factors they believed important to effective lawyering. The factors passed through several iterations of explanation and validation with multiple participating alums.

Even with these factors as guides, measurement of lawyer performance is very difficult. As much as possible, appraisals need to be reliable (consistent among raters), based on adequate and accurate observation and recall, protected from “halo” or other bias effects, and sufficiently varied to allow meaningful distinctions. Research on evaluation systems (e.g., graphic rating scales, employee comparisons, rating checklists) has led many experts to conclude that a system of “behaviorally anchored rating scales” (BARS) best minimizes these problems. Once we had functional agreement about the factors important to lawyer performance, we

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moved next to develop BARS so evaluators could use a common framework to appraise the effectiveness of many individual lawyers.

Developing BARS is time consuming and labor intensive. We convened multiple alumni focus groups in the Bay Area, Los Angeles, and Washington, D.C., to develop specific examples of behaviors that would illustrate high, medium or low effectiveness on each of the 26 factors. For example, one of our factors is practical judgment. We asked practicing lawyers and judges for specific and concrete descriptions of behavior that would show below-average, average or above-average practical judgment in a lawyer. Retaining terminology from group members and requiring specificity in examples increase common understanding and lead to more reliable ratings.

After we finished developing examples, more than 2,000 Boalt alums participated in an online survey assessing levels of effectiveness (scale of 1-5) for those examples. Statistical analysis of the responses allowed us to choose examples with high levels of rating agreement. Next we constructed scales that raters can use to assess the performance of any attorney on a particular effectiveness factor. Together the 26 factors and the performance appraisal scales provide a way to define and measure effective lawyer performance. More simply, we now have a set of materials derived from 2,000 lawyer participant-respondents that tells us what good lawyers should do and how well particular lawyers actually do it.

In phase II (2003 -05) we began the search for tests that could predict the 26 dimensions of performance. We examined a wide array of existing test instruments, choosing some, revising some and writing others from scratch. We and our testing consultants chose questions we think will be predictive of effectiveness. Because the tests will eventually be given to law school applicants, they do not have legal content. Rather, like the LSAT, they aim to predict potential effectiveness.

The final phase of the project (beginning fall 2005) will again involve hundreds of alumni and student volunteers. We will ask participants (as stand-ins for applicants who would be the eventual target group) to take our new tests. The tests include measurements of personality traits (e.g., ambition, interpersonal sensitivity, prudence, stress tolerance, sociability); motives and values (e.g., risk tolerance, competition, service, problem solving, etc.); and tendencies associated with dysfunction and disruption in career progress (e.g., arrogance, excitability, caution).

Other questions will require judgments about practical situational problems related to our effectiveness factors. We are also considering measures of capacity for recognizing and responding to emotions (including nonverbal expressions) and assessments of

self-monitoring behavior. We expect to ask for structured reporting of past accomplishments keyed to our factors, and will also inquire about various biographical experiences.

Participants who take our tests will also be asked to identify a supervisor and a peer familiar with their work, who will be asked to evaluate the participating lawyer's effectiveness on selected factors (using the BARS described above). Once we have a lawyer's scores on our tests and assessments of performance on our scales, we will correlate those scores with other data: UGPA, LSAT score, law school grades, demographic factors. All information will be confidential and kept anonymous immediately after collection. We will then be able to determine which of our tests validly predict eventual effectiveness as rated by supervisors and peers. We would discard tests that were not valid and perhaps gather others into clusters of items showing relevance to particular lawyering performance factors.

At that point, we hope to make recommendations about tests that could be used to predict various aspects of lawyering performance, and to suggest further research about the methods we used. We hope that eventually a body such as the LSAC might adopt and administer this type of test, making scores available to law schools that wish to consider data about projected professional performance along with LSAT data about cognitive skills.

Selecting prospective lawyers on the basis of a broader range of competencies should improve the quality of the profession. In addition, these methods might also increase the racial diversity of law school entrants. Although there is rather consistent disparity between racial groups in performance on academic (school-type) tests, available research shows that job performance by underrepresented minority groups is substantially similar to that of whites. To rely very heavily on a narrow subset of academic skills (in which the performance of racial groups most diverges) while ignoring a broad array of competencies important to professional effectiveness (in which racial groups perform rather similarly) unfairly advantages white applicants. Because we believe consideration of professional competencies is both principled and justified, we are attempting to develop an empirically valid and feasible way to make that possible. We ask all Boalt alumni to assist us in this significant effort to improve the way law students, and lawyers, are chosen.

*Professor of Law Marjorie M. Shultz '76 is a principal investigator with UC Berkeley psychology professor Sheldon Zedeck on this empirical research project.*