

What Makes for Good Lawyering?

A Multi-year Study Looks Beyond the LSAT

By Linley Erin Hall

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," 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 decision-making in admission to public institutions.

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 and Hastings alumni as volunteers to take a battery of tests and be evaluated for effectiveness by their supervisors and peers. Lawyers or firms interested in participating may email Marjorie Shultz at m_shultz@law.berkeley.edu.]

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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

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