Chapter 5

SUCCESSFUL LAWYER SKILLS AND BEHAVIORS

WILLIAM D. HENDERSON

I. Overview

It would be nice if science would deliver a definitive list of skills and behaviors that resulted in lawyer success. The law schools could teach it, employers would hire for it, and clients and society would be better off. Alas, this is unlikely to happen. The first stumbling block is our inability to agree on an adequate definition of success. Is the yardstick for success income or fame? Alternatively, is success the result of justice advanced through brilliant advocacy, or can it flow from justice delayed through mastery of procedure, thus pleasing the client who benefits from the delay? Or perhaps true success occurs outside the limelight and is derived from the admiration and respect of one's peers and clients, or some internal scorecard that connects lawyers

to the rest of humanity. Suffice it to say, even if all stakeholders agreed on a single measure of success, these issues raise difficult problems of measurement.

Rather than select one definition of success and invite the usual lawyer skepticism, this chapter works backward and identifies examples that suggest that success—however it might be defined—requires something more than high cognitive ability as measured by standardized test scores or academic achievement. As simple and obvious as this statement might sound, it is fundamentally at odds with how lawyers are hired out of law school. Whether it is white shoe law firms hiring associates, federal judges hiring clerks, federal agencies or elite public interest organizations hiring staffers, or the legal academy hiring professors, law school pedigree and grades—common proxies for intelligence—reign supreme. Ironically, as important as intelligence is for hiring, it is all too often the absence of various non-cognitive factors that cause lawyers to be fired (e.g., inability to relate to clients or colleagues, lack of drive or passion) or hit a permanent plateau (e.g., inability to effectively supervise or delegate legal work, lack of a professional network).

The core message of this chapter, supported by ample social science and empirical evidence, is that highly effective lawyers draw upon a diverse array of skills and abilities that are seldom taught, measured, or discussed during law school. One of the major implications of this analysis is that the heavy emphasis placed on academic credentials by elite legal employers, such as large law firms, is misplaced. As discussed below, these practices are largely the relics of a bygone area that persist long after their original business purpose has evaporated. For new and aspiring attorneys who may lack the cognitive markers to make the cut for these seemingly elite institutions, the encouraging word is that the markers themselves have precious little ability to predict future performance as a lawyer.

This chapter also has clear implications for legal education. Since the advent of the *U.S. News & World Report* rankings, law school admissions have adopted a near-exclusive focus on LSAT scores and undergraduate GPA, ignoring a wide range of relevant information that signals other significant life accomplishments. This systemic mis-weighing of ability, or future ability, creates a counterproductive expectations gap that negatively affects law students' belief in what they can accomplish in their legal careers. This "capping" of expectations also undercuts the perceived value of innovation

in legal education, as the overemphasis on elite credentials arguably holds its greatest sway among the legal professoriate (Sullivan et al., 2007). The flipside of the overemphasis on academic markers is an underestimation of the true power of excellent teaching, training, intensive practice, feedback, and coaching to create truly outstanding advocates, counselors, and problem solvers. This is an opportunity for all stakeholders—students, employers, and law schools—to make a giant leap forward for the benefit of the legal profession and society as a whole.

II. Intelligence Versus Other Factors in Determining Lawyer Effectiveness

George E.P. Box, a renowned statistician, once wrote that "all models are wrong but some are useful" (Box 1979, p. 2). Figure 1 summarizes a simple model of lawyer performance. It may be wrong, but it has the virtue of being clear.

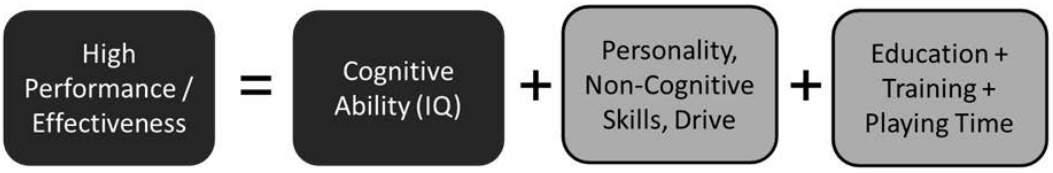

Figure 1

According to the model in Figure 1, high performance as a lawyer depends upon a confluence of three factors: intelligence/cognitive ability; motivation, drive, personality, and various non-cognitive abilities (e.g., "people skills"); and the quality of education and playing time a lawyer received to practice and develop her craft.

Regarding the first factor, practicing law requires an accumulation of legal knowledge and the ability to formulate appropriate legal solutions. This requires some reasonable quantum of cognitive ability. For reasons of lawyer competence, state bar examinations set the minimum cut-off. Scores on the LSAT, which measures verbal reasoning ability (Henderson, 2004), are consistently and meaningfully correlated with scores on the bar exam, even after controlling for law school grades (see, e.g., Wightman, 1998, pp. 37–54).

Thus, higher levels of cognitive ability clearly help law school graduates acquire sufficient legal knowledge to pass the bar exam, though an important caveat is warranted. When LSAT and law school grades are placed in the same statistical model, law school grades are a much stronger predictor of bar passage than LSAT scores. This strongly suggests that effort or drive, apart from cognitive ability, is a key prerequisite for acquiring the knowledge necessary to pass the bar (Wightman, 1998)— presumably, the more drive and effort, the better.

The basic empirical facts on cognitive ability and bar passage need to be acknowledged. Yet, these same facts also raise a far more fundamental question: If a law student has the requisite minimum threshold of intelligence needed to enter the profession, what is the relative tradeoff (to an employer or client) of the three factors presented in Figure 1? Stated more concretely, would it be wise for an employer to trade five or ten LSAT points for higher levels of motivation, a more suitable personality, or excellent legal skills obtained through intensive practice with a great mentor?

These tradeoffs, though often ignored or undervalued by legal employers at the time of entry-level hiring, are very real. According to the late Arthur Jensen, an eminent educational psychologist who devoted his career to the study of intelligence, differences in IQ are useful and valid for predicting the ability to progress from one educational level to the next. According to Jensen, an IQ of 115 (one standard deviation above average) is the approximate cutoff for the ability to complete "an accredited four-year college with grades that would qualify for admission to a professional school or graduate school" (Jensen 1980, p. 113). This amounts to roughly one in six adults. Jensen observed that beyond this threshold, "IQ differences in this upper part of the scale . . . are generally of lesser importance for success in the popular sense than are certain traits of personality and character" (*Id.*).

A vivid example of this observation is Richard Feynman, who won the 1965 Nobel Prize in Physics. In the 1980s, Feynman told the story of his trip home from the Nobel ceremonies in Stockholm. Feynman decided to stop by his high school in Far Rockaway, Queens and look up his grades and IQ score. "My grades were not as good as I remembered," Feynman reminisced, "and my IQ was 124 or 126, considered just above average." His

wife Gweneth reported his delight, "He said to win a Nobel prize was no big deal, but to win it with an IQ of 124, now that was something" (Faber, 1985).

If, beyond a certain threshold of intelligence, personality and character are critical determinants of professional accomplishment and success, another distinguishing factor might be creativity. Yet, there is no useful academic proxy for creative ability. Similar to Jensen's observations, academic researchers have found that "the association between intelligence [as measured by cognitive ability tests] and creativity is very weak for both child and adult samples." In fact, the correlation tends to become negligible for populations that are above-average in intelligence (Simonton, 2008, pp. 681–82). Another academic study documented the experience of Louis Terman, an early believer in the power of IQ to predict great accomplishment later in life. Terman assembled a group of 1,500 young children based on high IQ scores and conducted a longitudinal study that tracked their future professional success. Although many in the sample achieved professional prominence, none won a Nobel Prize. Yet, William Shockley and Luis Alvarez were two youngsters who applied for admission to the Terman's elite program but were excluded because they were below the IQ cutoff. Both went on to win the Nobel Prize (Winner, 1996; Hulbert, 2005).

III. Labor Markets and Law Schools

It is worth noting that the reputations of the nation's leading law schools were established long before the first LSAT was administered. In the early part of 20th century, a small number of university-based law schools (primarily those in the Ivy League, but a handful of others schools) began to differentiate themselves based on the case method, scholarly faculty, and admission criteria that required undergraduate study. Relative to other law schools, these innovations produced a better-trained law graduate. Thus, during the early 20th century, these schools became the preferred recruiting grounds for the small number of legal employers with large corporate clients.

The firm history of Cravath Swaine & Moore, a leading New York City corporate firm (Swaine 1948), provides a vivid example of this practice. As of 1948, the firm had employed a total of 454 law school graduates. Of this total, 67.7% attended Harvard (128), Columbia (124), or Yale (54), with the remainder allocated to "other law schools of high repute, such as Pennsylvania,

Cornell, Virginia, Michigan and Chicago" (Swaine 2 n.2, 1948). These law school graduates became the core input of the "Cravath system," which was a sophisticated training methodology designed to produce, over a period of years, first-rate partner-level lawyers.

The primary business purpose for privileging the national law schools was not the high aptitude scores required for admissions—the LSAT was not administered for the first time until 1948. Rather, these schools only admitted students with an undergraduate education, and "Cravath believed that disciplined minds are more likely to be found among college graduates than among men lacking in formal education" (Swaine, 1948). In a talk given at Harvard Law School in 1920, Cravath told students that a successful "lawyer of affairs" (i.e., a corporate lawyer) required "the fundamental qualities of good health, ordinary honesty, a sound education and normal intelligence. . . . Brilliant intellectual powers are not essential."

The allegiance to top students at national law schools was not limited to the east coast corporate bar. In the 1920s in Cleveland, the law firm of Jones Day demanded law review credentials of Harvard Law School graduates as a condition of being hired (Scheler, 2000). Thirty years later in nearby Detroit, sociologist Jack Ladinsky surveyed lawyers in the city's metropolitan area and found that 73 percent of all lawyers working in a law firm—i.e., a partnership of two or more lawyers—attended one of five law schools: Harvard, Yale, Columbia, Michigan, or Chicago (Ladinsky, 1963). Regional law school graduates, in contrast, overwhelmingly worked as solo practitioners.

When the LSAT was finally introduced in 1948, the vast majority of national law schools were among the early adopters (Johnson, Olsen & Winterbottom 1955). One of the most striking features of the early years was relatively large proportion of students in the traditional applicant profile who had very low scores. The original LSAT was scaled on a 200 to 800 point scale, with a mean of 500 and standard deviation of 100. For the 1948 academic year, 45% of the incoming class at the University of Pennsylvania Law School (116 out 265) scored below 475 nationally (a total of 18 law schools participated), a proportion that decreased in future years as the test's strong predictive validity changed admissions practices. Similarly, among incoming law students at UC Berkeley who enrolled between 1950 and 1953, 35 percent scored below the 50th percentile. For Harvard Law School, two-thirds

of students admitted between 1949 and 1954 scored below 600. During the sample period, 7.2 percent of all entering students flunked out of Harvard Law, with a disproportionately large number toward the lower end of the LSAT scale. Thus, Harvard Law, like many other schools, moved toward the implementation of LSAT cutoffs (*Id.* at 94).

By the late 1950s, the influence of the ABA and the Association of American Law Schools effectively universalized the educational features of the national law schools (Stevens 1983). The rise of the great public law schools and federal loan programs also improved access to legal education by making it available to students who formerly could not afford to take three years out of the labor force. By mid-century, these changes in U.S. legal education enabled a large swath of first-generation college graduates to attend law school, thus expanding the talent pipeline. With the advent of accreditation standards, the quality of pre-law preparation and law school instruction was improved and made more uniform.

Although these were significant, broad-based innovations in legal education, they had markedly little effect on the hiring patterns of the large and growing corporate bar. By this time, elite educational credentials had become an engrained part of the firms' identity and culture (Henderson 2009). Further, corporate law firms were about to enter a period of astonishing growth and economic prosperity (Galanter & Palay, 1993; Galanter & Henderson, 2008; Henderson, 2011). With the supply of elite graduates far in excess of demand, why tinker with the model? Thus, for the next several decades, long after the condition for the original business logic had evaporated, the nation's leading law firms continued to ply their traditional credentials-based recruitment model. Albeit, this model was gradually modified to include top academic students at regional law schools as the supply of national law school graduates gradually became inadequate to keep up large law firm growth (Heinz et al., 2006). This credentials-based labor market cast a very long shadow on the incentive structure of the entire legal education hierarchy.

IV. The Impact of the U.S. News & World Report Rankings

If a labor market continues to provide a large reward to a discrete number of law schools for innovations that occurred several decades earlier, despite widespread adoption of those practices at virtually all other law schools,

new and more timely innovations in legal education will grind to a halt. This is, unfortunately, an accurate description of the current state of U.S. legal education. (At the time of this writing, the bleak employment numbers and declining volume of law school applicants were starting to bring this sector back to the life (Henderson, 2013), but the scale of promising new initiatives is tiny relative to the magnitude of the underlying problems.)

The stagnant incentive structure of legal education has been further compounded by the advent of the annual *U.S. News & World Report* law school rankings. Since the magazine began ranking all law schools in the mid-1990s, law schools have devoted enormous time and resources toward increasing their relative standing (Sauder, Espeland & Nelson, 2009). Competition is thus largely defined by the various input factors that comprise the magazine's composite score. These input factors include reputation scores among academics and practicing lawyers (40%), educational resources, such as faculty-student ratio, student scholarship funds, and size of library (15%), employment and bar passage rates (20%), and student quality based on undergraduate GPA, LSAT scores, and admissions selectivity (25%).

Among the input factors, the 25% allocated to student quality is subject to immense strategizing because, in theory, these input statistics can be directly influenced through a school's admissions policies. The strategy is straightforward: aggressively market the school to prospective students and allocate limited scholarship dollars to optimize median undergraduate GPAs and LSAT scores (Henderson & Morriss, 2006). As the logic has spread through the law school hierarchy, it has produced a self-fulfilling prophecy. According to a 1998 report prepared by the Association for American Law Schools, "90% of the overall differences in ranks among schools can be explained solely by the median LSAT score of their entering classes" (Klein & Hamilton, 1998). Indeed, over the last two decades, institutional pressures for higher rankings have fundamentally altered admissions practices. In order to preserve or increase rankings, admission resources and merit scholarship dollars are deployed toward the goal of achieving the highest possible median LSAT and UGPA scores. This pattern can be observed in Figure 2, which compared the median LSAT of the top 50 ranked law schools in 1994 with the top 50 ranked in 2012.

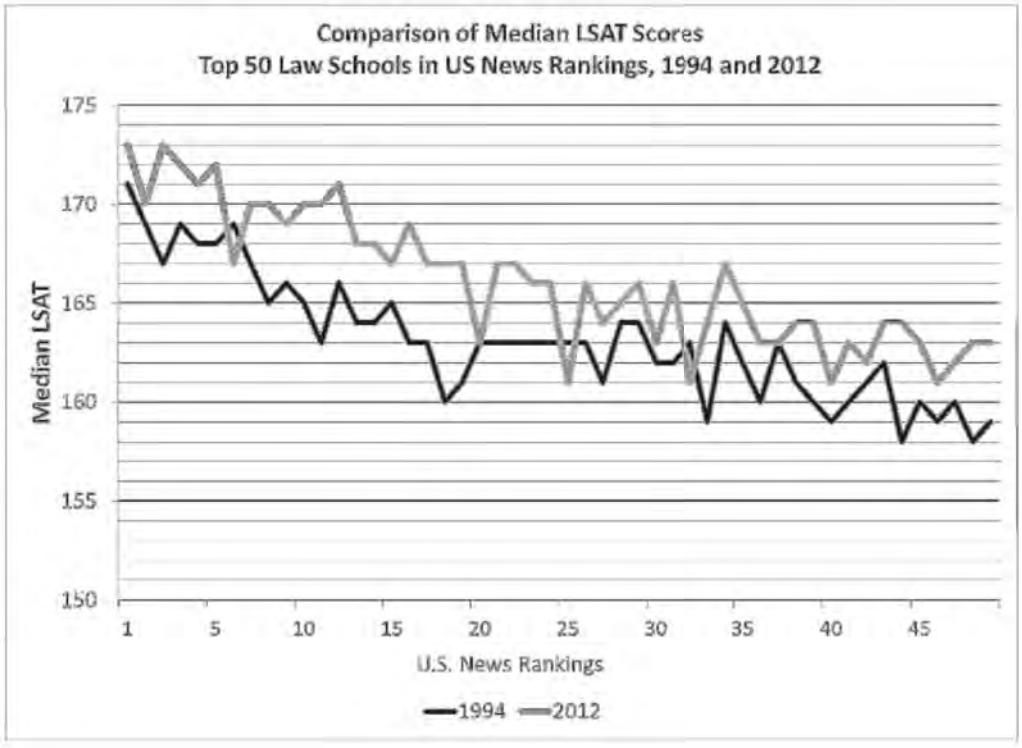

Figure 2

Over the nearly two decade period covered in Figure 2, the median LSAT scores increased an average of 3.1 points. Remarkably, this increase was spread relatively evenly across all top 50 law schools despite the fact that the applicant volume was smaller in 2012 by over 10,000 prospective students (89,600 in the fall of 1993 versus 78,800 in the fall of 2011). Comparable increases can be observed with undergraduate GPAs (Henderson, 2010).

The consequence of placing such heavy weight on numerical credentials is that there is precious little room to consider other relevant factors, such as the rigor of an undergraduate major, work experience, letters of recommendation, personal accomplishment, or diversity. In essence, law school admissions have largely become a sterile, mechanical process based on two numbers, LSAT and undergraduate GPA.

V. Empirical Evidence of Successful Lawyer Behavior

The emphasis on LSAT and undergraduate grades has fundamentally reshaped legal education. Yet, are these measures of academic ability the best measures

of lawyering potential? A recent study by Professors Marjorie Schulz and Sheldon Zedeck at the University of California at Berkeley suggests that the answer is no. (Schulz & Zedeck, 2008). Drawing upon the methodology of industrial and organizational psychology, the researchers identified a set of twenty-six distinctive lawyer effectiveness factors (see Figure 3). Behaviorally anchored rating scales (BARS) were then created to measure lawyer effectiveness on a 1 to 5 scale, with increments defined by specific, concrete examples of lawyer behaviors. The next step was to use the BARS to obtain peer and supervisor evaluations on over 1100 law alumni of UC Berkeley and UC Hastings and approximately 200 UC Berkeley law students. In turn, these measurements of lawyer effectiveness were correlated with participants' undergraduate GPA, LSAT scores, and 1L grades.

Figure 3. Schultz & Zedeck 26 Lawyer Effectiveness Factors

Intellectual & Cognitive Analysis and Reasoning Creativity & Innovation Problem Solving Practical Judgment	**Conflict Resolution** Negotiation Skills Able to See the World Through the Eyes of Others
Research & Information Gathering Researching the Law Fact Finding Questioning & Interviewing	**Client/Business Relations: Entrepreneurship** Networking and Business Development Providing Advice & Counsel & Building Relationships with Clients
Communications Influencing and Advocating Writing Speaking Listening	**Working with Others** Developing Relationships within the Legal Profession Evaluation, Development, and Mentoring
Planning and Organization Strategic Planning Organizing/Managing One's Own Work Organizing/Managing Others (Staff/ Colleagues)	**Character** Passion and Engagement Diligence Integrity/Honesty Stress Management Community Involvement and Service Self-Development

Consistent with the thesis of this chapter, the results of the Shultz-Zedeck study suggest that academic factors are profoundly under-inclusive of future lawyering potential. Among the law school graduates in the sample, factors such as Analysis & Reasoning, Researching the Law, Writing, and Problem Solving showed modest, positive correlations with grades and LSAT scores (between 0.10 and 0.15, $p > .05$). Yet, some correlations with effectiveness factors were negative. For example, LSAT scores and first year grades were negatively correlated at statistically significant levels with Networking (-.122) and Community Service (-.96). In the student sample, undergraduate GPA was positively correlated with no effectiveness factors but negatively associated with Practical Judgment (-.169), Seeing the World through the Eyes of Others (-.170), Developing Relationships (-.195), Integrity (-.189) and Community Service (-.152). Similarly, LSAT scores were positively correlated with Analysis and Reasoning (.254), Creativity (.190), Problem Solving (.243), Influence and Advocacy (.148), and Writing (.259), but negatively associated with Networking (-.195).

A second part of the Shultz-Zedeck study correlated the BARS scores with established, off-the-shelf personality assessments. For example, on the Hogan Personality Inventory (HPI), the Adjustment construct measures emotional stability and steadiness under pressure. In the alumni sample, the HPI Adjustment scores were positively correlated at statistically significant levels with 22 of the 26 effectiveness factors (ranging from .072 to .220) and negatively correlated with none. Similarly, the HPI Prudence scale measures self-control and conscientiousness. Scores on Prudence were correlated with 18 effectiveness factors (ranging from .071 to .189) and negatively correlated with none. Another factor included in the study was the HPI Ambition scale, which measures achievement and leadership orientation. Scores on Ambition were positively correlated with 14 effectiveness factors (ranging from .076 to .239) and negatively correlated with none.

The poor correlation between lawyer performance and academic predictors and law school prestige can also be observed in the outcomes of the leading student trial court tournaments. If high LSAT and undergraduate grades are meaningful predictors of lawyer ability, we would expect to see top-ranked law schools dominating these competitions. But, in fact, we observe no such relationship.

For example, one of the most prestigious and longest running is the Texas Young Lawyers Association's National Trial Competition (NTC), which is an invitation-only event based on the results of fourteen regional competitions. Since the NTC's founding in 1975, the school with the most wins (5) has been Stetson University College of Law. Stetson is currently rated #109 in *U.S. News & World Report* rankings. Two schools have won four times: Northwestern (#12) and Baylor (#54). And three schools have won three times each: Temple (#56), Chicago-Kent (#68) and Loyola University-Los Angeles (#68). Harvard won once (in 1976), but so did unranked California-Western (in 1987). Similar results emerge from other high-profile skills competitions. Since the founding of the National Institute for Trial Advocacy's (NITA) Tournament of Champions in 1989, Stetson and Temple have won five and four times respectively. The American Association for Justice (AAJ), which is comprised of practicing trial lawyers, runs the Student Trial Advocacy Competition. Since 2004, the top winners have been Baylor, Stetson, and Samford University, which as of 2013 were all ranked in the second and third tiers of *U.S. News & World Report*.

In the national trial advocacy competitions, the efficacy and quality of student courtroom legal work are blind-graded by panels of accomplished trial lawyers. The results raise two interconnected questions. First, the large number of non-elite schools in the winner's circle suggests that marginally higher academic credentials are not particularly useful for predicting trial performance—arguably the quintessential lawyer skill set. Second, the prevalence of a handful of repeat winners across the broad spectrum of the legal education (Stetson, Temple, Northwestern, Baylor, Chicago-Kent, Samford) suggests that the quality of coaching is a key explanatory factor. This is entirely consistent with the model set forth in Figure 1 above—not only does intelligence matter, but so do things like motivation, drive, and the quality of experience, training, and practice time available to the student or junior lawyer.

Ironically, the excessive weight given to pedigree can also be observed in the hiring and promotion patterns of large law firms. For example, each year the *National Law Journal* compiles data on the number of associates hired and partners promoted based on law school attended for the 250 largest law firms. In 2011, 53.7% of entry-level associates hired attended a law school

ranked in the top 14 by *U.S. News and World Report* (the top 14 cut-off is significant because no school inside the top 14 has ever fallen out—these are the perceived national law schools). Yet, only 29.4% of the lawyers promoted to partner attended these same elite schools. This is an enormous skew that favors the long-term promotion prospects of the regional law school graduates. Stated more concretely, for every 5.4 graduates from elite law schools, one elite graduate is promoted to partner. For all other law schools, that corresponding statistic is 1.95. Further, even when the analysis is limited to the top 50 based on profitability, there remains a large, persistent disparity that favors regional law graduates. Among the 50 most profitable firms, there are 4.9 top 14 associates hired for every top 14 lawyer promoted to partner, compared to regional law schools, where the ratio of associates hired to partners promoted is only 1.9 (Henderson, 2012).

What explains this large disparity? A simple explanation is that the national law schools are overfished. Specifically, many aspiring government lawyers, public interest advocates, and non-profit executives are lured into large, elite law firms because they possess the requisite pedigree and the starting salaries are so high. Indeed, the After the JD Study, a major longitudinal study of law graduates sponsored by the American Bar Foundation found that lawyers from elite law schools were, as a group, the least satisfied with large firm practice and were the most likely to leave (Dinovitzer & Garth, 2009). Indeed, it is probably very hard to stick around for partnership when one's personality, motivations, and values are pulling in a different direction. When a law firm is making astronomical sums of money from a conservative business model, it can afford to ignore the data in order to retain hiring policies that have become integral to the firms' own self-image. But in an increasingly competitive legal marketplace, at least some employers are likely to revisit basic assumptions on recruitment that are nearly 100 years old.

VI. Conclusion

It is time for legal education and the legal profession to think seriously about the skills and behaviors that produce great lawyers. The reason is simple: The world needs more of them. The evidence assembled in this chapter suggests that the raw inputs are in plentiful supply—a large number of students throughout the law school hierarchy possess the requisite intelligence,

personality, drive, and character. All that is missing is, one, a first-rate education taught by professors who truly believe in the students' potential, and two, a chance to develop as lawyers through intensive practice and first-rate mentorship. For most promising law graduates, astronomical salaries are neither expected nor required. Remarkably, a large portion of the profession is blind to this opportunity. Why?

In his 2011 book, *Thinking, Fast and Slow*, the Nobel Laureate Daniel Kahneman, discusses his lifelong research on cognitive biases. One of the most prevalent is what Kahneman refers to as the availability heuristic. Rather than undertake the rigor of gathering relevant and reliable data to answer difficult questions, the human mind naturally gravitates to information that appears relevant and has the virtue of being readily available (Kahneman, 2011, pp. 129–36). In many respects, the availability heuristic explains the disproportionate weight many lawyers give to various markers of academic achievement, intelligence and law school prestige. Lawyers and law professors can easily construct a narrative around the utility and reliability of these measures, particularly if the narrative is supportive of one's own self-image. Yet, the narrative is largely an illusion—an illusion that is stifling the profession's ability to adapt to changing times. It is time to collect and analyze the relevant data and use the findings to make more great lawyers.

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WILLIAM D. HENDERSON is Professor of Law at the Indiana University Maurer School of Law, where he teaches courses on the legal profession, project management, business law, and law firm economics. His research, which focuses on the empirical analysis of the legal profession and legal education, has been published in leading law journals and leading publications for practicing lawyers.