

PRE-COMPETENCIES AS PRECURSORS: ENHANCED ADMISSIONS CRITERIA IN THE AGE OF SEAT-DEPOSIT ANXIETY

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INTRODUCTION

“The first step in any process of redemption involves admitting you have a problem.”¹

Law schools have begun only recently to admit that law student preparedness is a problem. The reluctance to see the problem is exacerbated by its uneven distribution; it does not affect all law schools, and it does not affect all afflicted law schools to the same measure. However, common factors, such as falling bar pass rates² and continuing negative press coverage of law schools,³ have galvanized law school administrations, as well as the American Bar Association (“ABA”),⁴ to admit that law student underpreparedness is a problem that is not going away. Now that the legal academy sees the problem, it is time to propose solutions.

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¹ Chad M. Hanson, *Silence and Structure in the Classroom: From Seminar to Town Meeting Via ‘Post-it’s’*, 9 NAT’L TEACHING & LEARNING F., no. 6, 2000, at 1.

² Erica Moeser, *President’s Page*, 83 B. EXAMINER, Dec. 2014, at 4.

³ See, e.g., Gary Warth, *Trial Raises Questions About San Diego Law School’s Claims on Graduates’ Success*, L.A. TIMES (Mar. 12, 2016, 3:00 AM), <http://www.latimes.com/business/la-fi-law-school-lawsuit-20160311-story.html> [<https://perma.cc/RWD7-32KS>].

⁴ See Memorandum from Scott B. Pagel, Chair, Standards Review Comm. on Report on February 12–13, 2016, SRC Meeting to Hon. Rebecca White Berch, Chair, Council of the Section of Legal Educ. and Admissions to the Bar, at 10–11 (Feb. 22, 2016), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/March2016CouncilOpenSessionMaterials/2016_febbruary_memo_to_council_re_src_meeting.authcheckdam.pdf [<https://perma.cc/RYE6-BA9K>]. The ABA issued this memo after the decision to change Standard 316, regarding bar pass standards, to replace first-year bar pass reporting with a two-year window for ultimate bar pass. *Id.* at 5. The change is the result of findings that a two-year ultimate bar pass rate “is not subject to the idiosyncrasies that can be found with a reliance on the pass rate of first-time takers.” *Id.*

Law schools should start addressing the problem of underpreparedness by adopting pre-competencies in admissions, looking to the medical school model for development and implementation. Pre-competencies would serve as precursors to legal learning; they are the skills and knowledge that provide a foundation for legal analysis, reasoning, and professional development. Although the idea of an additional admissions requirement would strike fear into the hearts of enrollment administrators still struggling to fill seats, adopting more transparent and thorough admissions requirements could potentially enlarge and enrich the applicant pool. By providing undergraduate advisors and students interested in post-graduate options with a framework, pre-competencies would allow potential applicants both to match their strengths to skills developed in law school and law schools to expand their reach while giving students the time to further develop their academic and personal preparedness.

The first step in developing pre-competencies is to discern what skills and knowledge applicants would be required to develop before matriculation. Pre-competencies, much like the core competencies developed by the American Association of Medical Colleges (“AAMC”) for pre-medical students,⁵ should assist undergraduates looking to use their undergraduate education to achieve the necessary foundation for success in law school. For graduates exploring their post-graduate opportunities, pre-competencies could provide a gauge or measure of whether their skill set would be a good fit for legal education. By providing potential applicants with more information about the skills and strengths necessary for law school success, admissions offices could reshape the dialogue about who is “right” for law school. With well-developed pre-competencies, law schools could further curtail the mistaken belief that law school is a default plan for unfocused graduates who are “bad at math” or people who really, really love “Law and Order” reruns. Pre-competencies could also expand the pool of law school applicants by marketing the profession to people who excel in logical thinking and concise writing, and to people with the intellectual maturity to embrace rigorous self-reflection and self-evaluation of their learning.

The lawyer-effectiveness factors developed by Professors Marjorie Shultz and Sheldon Zedeck,⁶ as well as the competencies developed by Northwestern Law School in Plan 2008,⁷ provide an ideal starting place for the development of pre-competencies in admissions. Law schools should adopt a small number of universal pre-competencies reflective of the fundamental skills necessary for

⁵ *Core Competencies for Entering Medical Students*, ASS’N OF AM. MED. COLLS., <https://www.aamc.org/initiatives/admissionsinitiative/competencies/> [https://perma.cc/E4UQ-UD9U] (last visited Aug. 15, 2016).

⁶ Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW. & SOC. INQUIRY 620, 621, 630 tbl.1 (2011).

⁷ Pat Vaughan Tremmel, *Northwestern Announces Accelerated JD, Other Major Initiatives*, NW. NEWS (June 24, 2008), http://www.northwestern.edu/newscenter/stories/2008/06/law_initiatives.html [https://perma.cc/E48Q-859V].

success in law school, but should also develop individual pre-competencies that reflect their mission and identity. Law school partners, such as the Law School Admissions Council (“LSAC”) and Access Group, could invest in additional research and testing of pre-competencies. Both groups are actively engaged in research on legal education, and are ideally placed to research and test the relationship between pre-competencies and law school success. Furthermore, pre-competencies would require measurement tools to help implement the framework in the application process.

In conclusion, pre-competencies could signal to applicants the skills and strengths necessary to become a successful law student. By demystifying law school, admissions offices may enlarge their applicant pool. Most importantly, pre-competencies could help to introduce better-prepared and better-qualified entering classes. Students interested in law school would have clear guidance on what skills they need to develop in order to be a successful applicant and law student. These skills would augment the current admissions process, which places undue weight on the Law School Admission Test (“LSAT”) scores and undergraduate GPA, and provide more granular, specific information to law schools looking to shape an entering class. By providing an improved continuum of information regarding the skills of matriculating students, curriculum committees could better craft first-year classes to provide a better foundation for law student success.

I. LAW STUDENT UNDERPREPAREDNESS AND INCOMPLETE INFORMATION IN ADMISSIONS

Law schools need a new tool to measure student readiness for legal education. Admissions committees have long relied on two primary measures of academic readiness for the legal curriculum: the LSAT and undergraduate grade point average (“UGPA”). These measures are incomplete and inadequate. The LSAT measures cognitive ability, but fails to measure mastery of academic skills. UGPA should provide a measure of mastery of academic skills, but changes to undergraduate education over the last sixty years, and more precipitous changes over that last thirty years, have diminished skills acquisition during the undergraduate years.

Law student underpreparedness begins with inadequate undergraduate education. While undergraduate institutions will contest that the problem begins with them, arguing that the problem begins in K–12 education instead,⁸ significant research has demonstrated that undergraduate learning has declined precipitously over the last sixty years. The work of Richard Arum and Josipa Roksa highlighted some of the problems within undergraduate education.⁹ Using the Collegiate Learning Assessment (“CLA”) to assess a sample of more

⁸ RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* 91 (2011).

⁹ *Id.* at 36.

than 2,300 undergraduate students, Arum and Roksa observed “no statistically significant gains in critical thinking, complex reasoning, and writing skills” in 45 percent of undergraduate students after their first two years—the time during which most learning gains are made.¹⁰ Arum and Roksa’s findings were reaffirmed by the Wabash National Study of Liberal Arts Education, which analyzed data on more than 3,000 students across nineteen colleges.¹¹ Undergraduate students are also studying less than previous generations, as demonstrated by researchers Philip Babcock and Mindy Marks. Babcock and Marks found that class and study time decreased by thirteen hours between 1961 and 2004—from forty hours per week invested in academics, to twenty-seven hours per week.¹²

The decrease in skills acquisition and study time are not reflected in declining UGPAs. To the contrary, the average undergraduate GPA has risen from approximately 2.94 during the 1991–1992 academic year to 3.11 during the 2006–2007 academic year.¹³ Grade inflation, grade compression, and widely varying grading standards across majors and colleges have also greatly undermined the value and significance of UGPA in measuring student learning. Grade inflation has compressed the spectrum of grades awarded to undergraduate students.¹⁴ An A is now an “ordinary” grade amongst undergraduates, instead of a signal of superior understanding and skill.¹⁵ Therefore, while a very low UGPA signals insufficient work ethic, an excellent, or very high, UGPA signals nothing.¹⁶ Widely varying grading standards between majors also undermine the usefulness of UGPA in measuring undergraduate learning. Although, as a group, physical science and engineering majors come to college with better indicators, the grading standards in these fields result in lower UGPAs than students majoring in humanities and business.¹⁷ The lack of standardization in grading practices across majors and colleges, in conjunction with grade inflation and grade compression, reduces the utility and reliability of college transcripts when evaluating applicants for admission. The lack of reliability of UGPA fails to signal to law school curriculum committees what specific

¹⁰ *Id.*

¹¹ *Id.*

¹² Philip Babcock & Mindy Marks, *The Falling Time Cost of College: Evidence from Half a Century of Time Use Data*, 93 REV. ECON. & STAT. 468, 468 (2011).

¹³ See *Recent GPA Trends Nationwide: Four-Year Colleges and Universities*, GRADEINFLATION.COM, <http://www.gradeinflation.com> [<https://perma.cc/U7K8-9RZE>] (last updated Mar. 29, 2016); see also *Nota Bene, Professor Develops Internet Database on Grade Inflation*, 89 ACADEME, May–June 2003, at 9.

¹⁴ Rebecca Flanagan, *The Kids Aren’t Alright: Rethinking the Law Student Skills Deficit*, 2015 BYU EDUC. & L.J. 135, 160 (2015).

¹⁵ Stuart Rojstaczer & Christopher Healy, *Where A is Ordinary: The Evolution of American College and University Grading, 1940–2009*, 114 TCHRS C. REC. 1, 5 (2012).

¹⁶ William Chan et al., *A Signaling Theory of Grade Inflation*, 48 INT’L ECON. REV. 1065, 1066 (2007).

¹⁷ Barbara King, *Changing College Majors: Does it Happen More in STEM and Do Grades Matter?*, 44 J. C. SCI. TEACHING 44, 45 fig.1 (2015).

deficiencies need to be addressed through additional courses in the first year curriculum.

In addition to lower grading standards and decreasing skills acquisition, majors and course selection have changed. This is not a novel trend. Rather, it has evolved over many years; articles lamenting the decline of interest in liberal arts date back several decades, as business majors became ascendant.¹⁸ Historically, liberal arts majors have been “a foundation for future learning in the professions and in scholarly work,”¹⁹ but the past thirty years have seen the decline of liberal arts and humanities, and a corresponding increase in the “practical arts,” such as business, administration, communications, sports, and media fields.²⁰ Business majors focus on “nuts and bolts,” instead of critical thinking and writing skills developed through long essays, skills that are necessary for long-term success.²¹ These newer majors are associated with higher GPAs but “less measurable learning.”²² Political science and English remain top majors for applicants to ABA law schools followed by applied majors in the “practical arts,” such as criminal justice and business.²³ These majors allow undergrads to opt out of challenging classes, such as foreign languages, math, and sciences, which stress logical and analytical thinking. Consequently, students in these fields have the ability to maximize the social experience during college without suffering academically.²⁴

The decline in academic skills acquisition during the undergraduate years parallels a rise in student social orientation. Students rate developing “social sensibilities,” as well as “being likeable and getting along with others” as an “important outcome of college education.”²⁵ Colleges themselves “have embraced a model that . . . encourag[es] social engagement and sociability.”²⁶ Development of complex reasoning, critical thinking, and writing skills in college students is determined by the classes they take, and a large portion of course-

¹⁸ See, e.g., Stephanie Griffith, *Blackboard Notes; Majors Lean to Business Track*, N.Y. TIMES (Aug. 2, 1987), <http://www.nytimes.com/1987/08/02/education/blackboard-notes-majors-lean-to-business-track.html> [<https://perma.cc/UU3S-HFD9>].

¹⁹ Beckie Supiano, *How Liberal-Arts Majors Fare Over the Long Haul*, CHRON. HIGHER EDUC. (Jan. 22, 2014), <http://chronicle.com/article/How-Liberal-Arts-Majors-Fare/144133/> [<https://perma.cc/5U4D-7UJK>].

²⁰ ELIZABETH A. ARMSTRONG & LAURA T. HAMILTON, PAYING FOR THE PARTY: HOW COLLEGE MAINTAINS INEQUALITY 16 (2013).

²¹ Melissa Korn, *Wealth or Waste? Rethinking the Value of a Business Major*, WALL ST. J. (Apr. 5, 2012, 9:32 AM), <http://www.wsj.com/articles/SB10001424052702304072004577323754019227394> [<https://perma.cc/NX8T-FD77>].

²² ARMSTRONG & HAMILTON, *supra* note 20.

²³ *Political Science Remains Top Major for Law School Applicants*, LSAC REP., May 2014, at 10, [http://www.lsac.org/docs/default-source/publications-\(lsac-resources\)/may_2014_report.pdf](http://www.lsac.org/docs/default-source/publications-(lsac-resources)/may_2014_report.pdf) [<https://perma.cc/679S-YDS9>].

²⁴ ARMSTRONG & HAMILTON, *supra* note 20.

²⁵ RICHARD ARUM & JOSIPA ROKSA, ASPIRING ADULTS ADRIFT: TENTATIVE TRANSITIONS OF COLLEGE GRADUATES 46 (2014).

²⁶ *Id.* at 120.

work is chosen on the basis of “easy” majors and electives.²⁷ Therefore, the disproportionate focus on social life comes at the expense of academic challenge and is facilitated by “easy” majors, even at reputable universities.²⁸

Despite the social focus during the undergraduate years, the college experience does not increase cultural competency or expose students to diverse populations. Residence halls are segregated by age, family situation, race, class, ethnicity, nationality, religion, and political views.²⁹ Homogeneity in residential life is “not a coincidence but a consequence of systematic sorting processes.”³⁰ It has been noted that college students’ focus on sociability does not extend to reflective thought and learning about how to work and to communicate with those who are different; “[g]etting along with others thus may often mean getting along with similar others.”³¹ Low levels of social integration on modern college campuses are now a part of the college culture.³²

A. *LSAT as the Primary, Yet Incomplete, Measure for Admissions*

Undergraduate learning, and the utility of UGPAs in admissions, may have decreased, but law schools still have the LSAT to gauge academic readiness for legal education. However, the LSAT is also a very limited measure of academic readiness. The LSAT is “a univariate test designed to measure reasoning ability,” with a strong correlation with test-taking speed.³³ The LSAT is not designed to measure achievement, which is ostensibly measured by UGPA, but is meant to measure aptitude.³⁴ The LSAT was designed to be used in conjunction with other measures of academic readiness; it was never designed to be the sole measure in the admissions process.³⁵ The LSAT scores themselves provide no information about the specific weaknesses of the students. The LSAT is a blunt measure of cognitive ability, and without granular information about specific deficits, law school-curriculum committees are left without guidance on how to shape the first-year curriculum to remediate deficiencies. However, the cen-

²⁷ ARUM & ROKSA, *supra* note 8, at 73; *see also* ARMSTRONG & HAMILTON, *supra* note 20, at 50.

²⁸ ARMSTRONG & HAMILTON, *supra* note 20, at 50.

²⁹ *Id.* at 62.

³⁰ *Id.*

³¹ ARUM & ROKSA, *supra* note 25, at 32–33.

³² *Id.* at 33.

³³ William D. Henderson, *The LSAT, Law School Exams, and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed*, 82 TEX. L. REV. 975, 975 (2004).

³⁴ Phoebe A. Haddon & Deborah W. Post, *Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and a Redefinition of Merit*, 80 ST. JOHN’S L. REV. 41, 55 (2006).

³⁵ *See* LAW SCH. ADMISSIONS COUNCIL, CAUTIONARY POLICIES CONCERNING LSAT SCORES AND RELATED SERVICES (July 2014) (“The LSAT should be used as only one of several criteria for evaluation and should not be given undue weight . . .”).

trality and importance of U.S. News and World Report rankings,³⁶ with its emphasis on LSAT scores, has placed the LSAT at the center of an applicant's admissions file.³⁷ In sum, the LSAT is a very limited measure of cognitive ability, and it was never designed to measure what an applicant learned in college.

Using only two measures to determine readiness leaves admissions committees with very little information on the knowledge and skills of incoming students. Personal statements and letters of recommendation should provide some information on student skills and knowledge, but these measures are given far less weight in the rankings-driven admissions process.³⁸ Although cognitive ability is critical to success in law school,³⁹ it does not provide enough information about a student's baseline skills and knowledge⁴⁰ for law schools to develop a curriculum that addresses incoming students' specific deficiencies.

II. AN EXAMPLE OF PRE-PROFESSIONAL COMPETENCIES: AAMC CORE COMPETENCIES FOR MEDICAL STUDENTS

Pre-competencies are not new to post-graduate admissions. Since the 1970s, medical education has been engaged in the movement to measure graduate education through competency-based training.⁴¹ More recently, the AAMC expanded the competency framework to admissions, adopting a pre-competency framework for pre-medical students seeking admission to medical school.⁴² The development of this framework can provide guidance to the legal academy, assisting in development of a pre-competency framework that reflects the foundational skills and personal strengths essential to success in law school. Medical schools share many of the same concerns as law schools: the need to respond to economic pressures, increasing intellectual and personal demands on practitioners, as well as governmental and regulatory changes, put enormous

³⁶ Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941, 942 (2014).

³⁷ See Courtney G. Lee, *Changing Gears to Meet the "New Normal" in Legal Education*, 53 DUQ. L. REV. 39, 51 (2015).

³⁸ See Paula Lustbader, *Painting Beyond the Numbers: The Art of Providing Inclusive Law School Admission to Ensure Full Representation in the Profession*, 40 CAP. U. L. REV. 71, 86 (2012); see also Haddon & Post, *supra* note 34, at 49.

³⁹ Adam Lamparello, *Legal Education at a Crossroads: A Response to Measuring Merit: The Shultz-Zedeck Research on Law School Admissions*, 61 LOY. L. REV. 235, 260 (2015).

⁴⁰ Debra Moss Curtis, *Beg, Borrow, or Steal: Ten Lessons Law Schools Can Learn from Other Educational Programs in Evaluating Their Curriculums*, 48 U.S.F. L. REV. 349, 364 (2014) ("The disadvantages are, among others, that these assessments usually measure relatively superficial knowledge or learning and are unlikely to match the specific goals and objectives of a program.").

⁴¹ Carol Carraccio et al., *Shifting Paradigms: From Flexner to Competencies*, 77 ACAD. MED. 361, 362 (2002).

⁴² See *Core Competencies for Entering Medical Students*, *supra* note 5.

demands on admissions to select competent and capable applicants ready to enter the profession from the first day of training.⁴³

Beginning in 2010, AAMC “engaged in a multistep, multiyear process to identify personal competencies” while also re-examining the academic competencies necessary for success in medical school.⁴⁴ The competency framework was adopted by the AAMC Group on Student Affairs and Committee on Admissions in 2014.⁴⁵ Although AAMC chose the term “core competencies” to describe the framework,⁴⁶ these competencies serve the same function for pre-medical students as they would serve pre-law students and post-graduate applicants to law school.

The renewed impetus for implementing a competency framework for pre-medical students was manifold—similar to the legal profession, the medical field has seen a dramatic change in the delivery of services, in the needs of patients, and in the demands on practitioners.⁴⁷ Darrell Kirch, the president and chief executive officer of AAMC, articulated the Core Competencies as “set[ting] the stage for the kinds of doctors we produce.”⁴⁸ The Core Competencies signal to applicants that medical education requires “the ability to adapt to changing circumstances, and the resilience to ‘bounce back.’”⁴⁹ In addition, the Core Competencies require students to demonstrate prior to admission that they have the interpersonal skills required to work with diverse, underserved populations, and a commitment to service, reflecting the values of the medical profession.⁵⁰ Academically, the Core Competencies were designed to reflect the need for physicians with “a clear desire to learn”⁵¹ throughout their career, because the “rapidly changing science and the most current evidence base for practice” require life-long learning skills.⁵² In response to these demands, AAMC not only created the Core Competencies but also revised the test required for admission to medical school, the Medical College Admission Test (“MCAT”), to reaffirm the importance of these skills for success in medical school.⁵³ The Core Competencies are reinforced as guidelines for admission

⁴³ Nora V. Demleitner, *Curricular Limitations, Cost Pressures, and Stratification in Legal Education: Are Bold Reforms in Short Supply?*, 44 SETON HALL L. REV. 1014, 1024 (2014).

⁴⁴ Thomas W. Koenig et al., *Core Personal Competencies Important to Entering Students’ Success in Medical School: What Are They and How Could They Be Assessed Early in the Admission Process?*, 88 ACAD. MED. 603, 603 (2013).

⁴⁵ *Core Competencies for Entering Medical Students*, *supra* note 5.

⁴⁶ *Id.*

⁴⁷ Darrell G. Kirch, *A Word from the President: A New Day in Admissions*, ASS’N OF AM. MED. COLLS., https://www.aamc.org/newsroom/reporter/152768/a_word_from_the_president.html [https://perma.cc/3E4R-SGTF] (last visited Sept. 19, 2016).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ ASS’N OF AM. MED. COLLS., CORE COMPETENCIES FOR INTERPROFESSIONAL COLLABORATIVE PRACTICE 29 (2011).

⁵¹ Kirch, *supra* note 47.

⁵² *Id.*

⁵³ *Id.*

through entrance exam testing, signaling to applicants the importance of these skills.

The fifteen Core Competencies for entering medical students are grouped into four broader umbrella categories: interpersonal, intrapersonal, thinking and reasoning, and science.⁵⁴ The first two categories address primarily personal characteristics or skills, while the second two categories address academic skills and cognitive ability. By identifying and articulating personal core competencies, AAMC signals to pre-medical students that success, as a physician, requires more than academic prerequisites and cognitive ability; success requires development of the whole person. The interpersonal competencies address some of the known deficiencies in modern undergraduate education. The inclusion of cultural competence and social skills address the homogeneity and lack of cross-cultural interaction during college. By explicitly telling pre-med students that medical schools look for applicants to “appreciat[e] and respect [] multiple dimensions of diversity . . . and appropriately address[] bias in themselves and others” they are instructing students to expand their education beyond default social programming.⁵⁵ While cognitive ability is a pre-requisite for success in graduate medical education, a physician does not work alone on purely intellectual challenges; medicine is a profession that requires robust social skills and maturity, and, therefore, the Core Competencies focus on skills that cannot be measured in an entrance exam.

The two latter categories of Core Competencies focus on academic achievement and cognitive ability, signaling to students which courses they need to take and what they should be learning during their undergraduate career. These cognitive and academic competencies are measured at multiple points in the pre-medical application process. While the MCAT measures these competencies, the standardized application to medical school requires descriptions of post-secondary courses to explain how the competencies have been met.⁵⁶ The reaffirmation of the Core Competencies through multiple channels signals their importance to medical school applicants and allows them to better prepare for entering the medical field.

While AAMC is still researching how to best measure interpersonal and intrapersonal competencies,⁵⁷ the measurement of the academic skills and cognitive abilities is well-established through required pre-requisite courses as well as the admissions test.⁵⁸ Unlike the LSAT, the MCAT tests not only cognitive

⁵⁴ *Core Competencies for Entering Medical Students*, *supra* note 5.

⁵⁵ *Id.*

⁵⁶ ASS'N OF AM. MED. COLLS., 2017 AMCAS INSTRUCTION MANUAL 35, https://aamc-orange.global.ssl.fastly.net/production/media/filer_public/2c/f6/2cf67566-d486-4eed-a3a3-fd2ffb16bc2/2017_amcas_instruction_manual.pdf [<https://perma.cc/D754-Q3MH>] (last visited Aug. 12, 2016).

⁵⁷ *See generally* Koenig et al., *supra* note 44.

⁵⁸ *See* ASS'N OF AM. MED. COLLS., PRE-MED COURSEWORK WORKSHEET, https://aamc-orange.global.ssl.fastly.net/production/media/filer_public/20/3c/203c5144-f9d0-4b83-a993-

ability but also academic achievement in critical subject matters including biology, chemistry, and psychology.⁵⁹ While it is unlikely that the LSAT will incorporate specific academic questions into the existing test, law school admissions could develop alternative means to measure specific academic skills, which are currently untested.

III. DEVELOPING PRE-COMPETENCIES FOR LAW SCHOOL ADMISSIONS

Although more work needs to be done before law schools can adopt a core competency framework for law school admissions, the competencies that have been developed by Northwestern Law School under Plan 2008, and the lawyer-effectiveness factors developed by Marjorie Shultz and Sheldon Zedeck, provide law schools with a starting point. Northwestern Law School's competencies are already in use, and their utility is ready to be measured by partner organizations. The lawyer-effectiveness factors developed by Shultz and Zedeck were created for the explicit purpose of measuring skills not currently assessed by LSAT or UGPA. Further study and development of these tools could help law schools develop a pre-competency framework that provides pre-law students and graduates exploring post-graduate options with a guide to success, while simultaneously providing law schools with better-prepared students.

A. *Law Effectiveness Factors*

For the past ten years, Professors Marjorie Shultz and Sheldon Zedeck have been examining the factors that lead to success as a practicing attorney, in conjunction with "the challenge of creating admission[s] criteria."⁶⁰ The twenty-six lawyer-effectiveness factors developed by Shultz and Zedeck provide a comprehensive summary of all areas of pre-law competencies, with a specific focus on factors that provide balanced and race neutral admissions criteria.⁶¹ The factors were developed as an alternative measure for law school admissions, and reflect years of development and testing, through a research grant from LSAC.⁶² Although the lawyer-effectiveness factors were designed to be measured using pre-admission tests, they could be adapted by law schools for use as core competencies in admissions.

Shultz and Zedeck grouped the twenty-six factors into eight umbrella categories: intellectual and cognitive, research and information gathering, communications, planning and organizing, conflict resolution, client and business rela-

2a41d322f7b5/progress_report.pdf [https://perma.cc/6YTR-BQA9] (last visited Aug. 7, 2016).

⁵⁹ *Id.*; see also *MCAT FAQ*, ASS'N OF AM. MED. COLLS., <https://students-residents.aamc.org/applying-medical-school/faq/mcat-faqs/> [https://perma.cc/9HRP-D4GV] (last visited Aug. 7, 2016).

⁶⁰ Shultz & Zedeck, *supra* note 6, at 621.

⁶¹ *Id.*

⁶² See *id.* at 620.

tions, working with others, and character.⁶³ While the LSAT still ostensibly measures intellectual and cognitive abilities, the lawyer-effectiveness factors within this category—analysis and reasoning, creativity and innovation, problem solving, and practical judgment—provide more guidance to students looking to understand what factors lead to success beyond the LSAT. The research and communications categories include enough specificity to guide undergraduate students in selecting undergraduate courses that strengthen these skills. Four of the umbrella categories—conflict resolution, client and business relations, working with others, and character—are similar to the interpersonal and intrapersonal competencies identified by the AAMC for pre-medical students. These categories guide students to seek experiences that will help them work with others outside their social, religious, ethnic, and racial classes, and to self-monitor and self-evaluate throughout their education in order to reflect on their learning.

The comprehensive nature of the lawyer-effectiveness factors provides a broad range of options for law schools looking to develop core competencies for admission that reflect their individual mission. Similar to the pre-medical core competencies, law schools might want to simplify the eight umbrella categories into three or four broad categories that can enable students to better prepare for legal education without overwhelming them with additional requirements.

While the diversity of skills included in the lawyer-effectiveness factors may be most easily measured using situational judgment tests, there has been little will amongst law schools or the LSAC to add a test to the law school admissions process.⁶⁴ The work of Shultz and Zedeck should not go to waste—pre-competencies can bridge the gap between the current pre-law model, which provides little guidance to students, and a more comprehensive test-based system.

B. Northwestern Plan 2008

Northwestern Law School's Plan 2008 specifically addresses the need for the so-called foundational competencies, some of which are measured during the admissions process. With the help of an outside consulting group, Plan 2008 was developed over a period of two years, through extensive research of industry trends, employment data, and empirical analysis of existing literature on legal education.⁶⁵ The resulting report identified “a discrete set of abilities and traits” that graduates need for career success, and called for selection of

⁶³ *Id.* at 632 n.5.

⁶⁴ Despite the work of Professor Shultz and Zedeck, no law school has adopted any tests in conjunction with their work.

⁶⁵ David E. Van Zandt, *Foundational Competencies: Innovation in Legal Education*, 61 RUTGERS L. REV. 1127, 1128 (2009).

these traits in the admissions process.⁶⁶ Plan 2008 recognized that graduates must now prepare for “multi-job careers” that require more than cognitive ability; graduates must have the personal traits to transition between different types of employers and settings.⁶⁷ Northwestern was ahead of the ABA in anticipating the new skills law students must develop in an evolving legal landscape, which requires them to cultivate more complex skills during law school, and these new skills require law students to have different competencies at admission.

Similar to the four broad umbrella categories used by the AAMC Core Competencies, Plan 2008 identified six general categories of foundational competencies: teamwork, communication, basic quantitative abilities, strategic understanding, project management and leadership, and globalization.⁶⁸ Each broad category of competency includes four to seven discrete skills, not all of which need to be demonstrated during the admissions process. Applicants should demonstrate pre-admission competence in: presentation skills, clear exposition, strategic understanding of business decisions, basic quantitative understanding in accounting, finance, and statistics; teamwork, cross cultural sensitivity, time management, project management, and team leadership; and a constellation of personal traits such as intelligence, maturity, judgment, work ethic, initiative, innovation, and a positive attitude.⁶⁹

The foundational competencies in Plan 2008 are as important for their limitations as they are for their broad applicability. The foundational competencies were developed as part of the Northwestern strategic plan, and they focus on the specific skills that relate to the unique mission and applicant pool of Northwestern Law School. Northwestern Law School attracts applicants with extraordinarily strong indicators of cognitive ability. At the time Plan 2008 was developed, their incoming class had the fourth highest median LSAT among ABA-accredited law schools.⁷⁰ However, the cognitive ability of the students there speaks to the need to develop an additional measure of law school readiness in the application process. Even among the most cognitively gifted applicant pool, Northwestern Law School did not have enough information on the other strengths of the applicants to discern their ability to master the skills necessary to succeed in the modern legal community. Northwestern Law School’s strive to develop additional criteria speaks to the need for a greater continuum of information on all incoming law students.

⁶⁶ Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 GER. L.J. 717, 743 (2009).

⁶⁷ Tremmel, *supra* note 7.

⁶⁸ Van Zandt, *supra* note 65, at 1137–40.

⁶⁹ *See id.*

⁷⁰ NW. LAW, PLAN 2008, at 1, 8 (2008) (“We must focus on what we can do effectively and where we have a comparative advantage over other fora and ways of learning.”).

IV. DEVELOPING UNIVERSAL LAW SCHOOL PRE-COMPETENCIES

The process of developing a set of universal, core pre-competencies should begin with the collaboration between law schools, the accrediting body, ABA, and organizations, such as LSAC, that would be critical to disseminating the pre-competencies to students exploring post-graduate options in law. Using the existing frameworks developed by Professors Shultz and Zedeck, as well as by Northwestern Law School, law schools could begin by focusing on those specific skills and knowledge, which are necessary for success, but are not currently tested by the LSAT or measured by UGPA. The universal pre-competencies should be short in number and condensed from the frameworks provided by Northwestern Law School and Professors Shultz and Zedeck, to prevent applicants from feeling overwhelmed by the required skills and knowledge, while providing them with guidance on how to master them. Additionally, law schools should be given the freedom to develop their own pre-competencies that reflect their mission. The Shultz and Zedeck lawyer-effectiveness factors include eight umbrella categories and provide a helpful basic framework,⁷¹ but many of these categories would be better defined by the individual law school's missions. As stated earlier, Northwestern Law School's foundational competencies, or abilities, include six umbrella categories, but those include the skills and knowledge unique to Northwestern Law School's mission.⁷²

The universal pre-competencies can be grouped into two umbrella categories, personal readiness and academic preparedness. Similar to the pre-medical core competencies, each broad umbrella category should include individual pre-competencies and a short narrative, which defines the individual pre-competency, provides context, and gives applicants suggestions to achieve the skill or develop the knowledge before applying to law school.⁷³ The narrative component of each pre-competency is vital to effectiveness of the framework. Skills without context will not help applicants understand the importance of mastering the skills to law school success, nor will they understand how to develop the pre-competencies before applying.

The first umbrella category, personal readiness, overlaps with the broad personal competencies identified by Northwestern Law School⁷⁴ and the character skills identified by Shultz and Zedeck.⁷⁵ An informal survey of academic support program ("ASP") professionals, who work with law students at academic risk at matriculation and students in academic jeopardy due to poor grades, placed strong emphasis on the importance of personal readiness.⁷⁶ The

⁷¹ Shultz & Zedeck, *supra* note 6, at 632 n.5.

⁷² NW. LAW, *supra* note 70, at 9–11.

⁷³ Koenig et al., *supra* note 44; *Core Competencies for Entering Medical Students*, *supra* note 5.

⁷⁴ NW. LAW, *supra* note 70, at 11.

⁷⁵ Shultz & Zedeck, *supra* note 6, at 626.

⁷⁶ New York Academic Support Workshop, at Brooklyn Law School (Apr. 15, 2016) (notes on file with author).

ASP professionals noted that many academic deficiencies can be remedied during law school if students have resilience or grit, maturity or emotional intelligence, and self-reflection to draw upon when faced with academic struggles.⁷⁷ The suggestions by professionals engaged with law students at academic risk reflect the personal attributes they see missing from students who cannot overcome academic issues. These students perseverate on mistakes, fail to take personal responsibility for their successes and failures, and avoid the difficult task of reflecting on how to improve when faced with the threat of dismissal.⁷⁸

Most applicants would assume they have the personal readiness to tackle law school, and therefore, the narrative and context accompanying the pre-competencies will be critical. Grit, defined as “perseverance and passion for long-term goals,”⁷⁹ and resilience, defined as “helping a person . . . to tap into . . . [a] full range of resources for getting through critical moments, which could be challenging life experiences or circumstances.”⁸⁰ The context and examples should be written to help applicants understand that grit and resilience are not about getting an “A-” in second grade and then an “A” in third grade; grit and resilience mean focusing on success after significant setbacks.

Similarly, maturity and emotional intelligence must be given context. Both concepts have many meanings, and the pre-competency definition should focus on the “attitude that acknowledges the legitimacy of emotions and their relevance to our actions, interactions, and decisions” and the ability “to regulate one’s moods and keep distress from swamping the ability to think.”⁸¹ Emotional intelligence is not important only to academic success in law school; as law schools adopt curriculum requirements accentuating experiential learning,⁸² incoming law students need the foundational ability to work with clients, some of whom may be in emotional distress. Emotional intelligence should include empathy, which is an essential skill for dealing with clients.⁸³ Empathy, like most skills and traits associated with emotional intelligence and maturity, cannot be taught once students reach law school; empathy, emotional intelligence, and maturity are traits that must be gained through life experience. If a law school

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Angela L. Duckworth et al., *Grit: Perseverance and Passion for Long-Term Goals*, 92 J. PERSONALITY & SOC. PSYCHOL. 1087, 1087 (2007).

⁸⁰ Susan L. Brooks, *Using a Communication Perspective to Teach Relational Lawyering*, 15 NEV. L.J. 477, 494 (2015).

⁸¹ Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL’Y & L. 1173, 1178 (1999) (quoting DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE 34 (1997)).

⁸² See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014–2015, STANDARD 303, at 16 (2014), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf [<https://perma.cc/6X93-M9ZN>].

⁸³ Ian Gallacher, *Thinking Like Nonlawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 LEGAL COMM. & RHETORIC 109, 110 (2011); see also Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering*, 87 NEB. L. REV. 1, 3 (2008).

applicant has not developed those traits before matriculation, they will struggle to gain them within the extrinsic, rewards-driven atmosphere of law school.⁸⁴

Lastly, entering law students need to be able to reflect on their emotions as well as on their learning. Self-reflection is a part of the self-regulated learning cycle, critical to learning in law school.⁸⁵ Students should come to law school with the ability to differentiate between what they know and what they need to learn, to evaluate their own learning and adjust their strategies accordingly.⁸⁶ Students in academic distress often fail to distinguish between what they do know and what they need to know, and they do not have the emotional maturity to tackle their distress when this failure results in a low grade. Grit, or resilience, works with emotional intelligence and self-reflection, so students can handle academic and personal setbacks, cope with their emotions when faced with difficult situations, and evaluate their learning to achieve success in the future.

While ASP professionals stress the importance of personal readiness because of their work with students in academic jeopardy, ideally, all students should be ready to tackle the academic challenges of law school. Universal pre-competencies as used by other academic disciplines reflect the need for more information on the academic preparedness of applicants, and they would assist students interested in law by providing concrete, achievable steps to prepare for law school academics. Some very basic academic skills go untested on the LSAT, and current undergraduate transcripts do not inform law schools of the extent of learning in these areas. Writing skills, fundamental to the success of law students, remain the essential tool in practicing attorney's toolbox.⁸⁷ The widespread use of Core Grammar for Lawyers, an online grammar diagnostic, suggests that many law schools struggle with the under-preparedness of incoming students for the rigors of law school writing instruction.⁸⁸ Despite the fact that most legal scholars and educators would agree that writing skills are "among the most important skills that law students must acquire before beginning their legal careers,"⁸⁹ criticism of the poor writing skills of incoming law students remains widespread.⁹⁰ Law schools can shape the pre-competencies to

⁸⁴ See Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 122 (2002).

⁸⁵ Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 454 (2003).

⁸⁶ See *id.* at 470–71.

⁸⁷ See Ted Becker, *If I Had a Hammer: Can Shepardizing, Synthesis, and Other Tools of Legal Writing Help Build Hope for Law Students?*, 48 DUQ. L. REV. 325, 328 (2010), for further discussion of the "toolbox" metaphor in legal writing.

⁸⁸ CAROLINA ACAD. PRESS, 2014 LAW CATALOG (2014), <http://www.cap-press.com/lc2014.pdf> [<https://perma.cc/XG2Y-B8ZQ>].

⁸⁹ Lamparello, *supra* note 39, at 270–71.

⁹⁰ See generally James Etienne Viator, *Legal Education's Perfect Storm: Law Students' Poor Writing and Legal Analysis Skills Collide with Dismal Employment Prospects, Creat-*

recommend pre-law students take five or more courses during their college career that require expository papers longer than twenty pages. Additionally, the pre-competency narrative can designate courses that require multiple drafts of writing assignments and instructor feedback before final submission for a grade.

General communication skills are not explicitly taught in many undergraduate courses and majors, but they are critical to academic and professional success in the law.⁹¹ Both Northwestern Law School and Professors Shultz and Zedeck have an umbrella category for communication skills, stressing their importance to successful lawyering. At the very least, applicants need to know how to communicate appropriately with their future colleagues (their current peers), as well as with their superiors. Communication skills gain additional weight in light of the research suggesting the homogeneity of undergraduate life, in contrast with the mix of cultures, ethnicities, and races of future clients.⁹² Applicants should be able to listen to and understand people outside of their socioeconomic and cultural background, follow and give clear directions, and be aware of how cross-cultural misunderstandings can complicate their work.⁹³

Lastly, and probably the most controversial, universal pre-competency would combine basic financial literacy with fundamental numeracy. This suggested pre-competency is the most controversial, and potentially the most difficult to implement, because of law schools' reputation as a home for smart people who are "bad at math."⁹⁴ During an era of seat-deposit anxiety, admissions professionals fear that dispelling the myth that law students can avoid math would diminish already-anemic applications. But this fear does more harm than good; many math courses, such as ones in logic, can help develop students' analytical skills, which are critical to law school academic success.⁹⁵ Additionally, the idea that law school is the place for people who are "bad at math" discourages students who are good at math and logic, students who would be ideal going into the fields of tax, bankruptcy, and intellectual property.⁹⁶ The myth that law school should be a bastion for the math-phobic is not good for the profession; as Judge Posner recently noted, that myth is "increasingly concerning, because of the extraordinary rate of scientific and other technological advances

ing the Urgent Need to Reconfigure the First-Year Curriculum, 61 CATH. U. L. REV. 735 (2012).

⁹¹ Jane Korn, *Teaching Talking: Oral Communication Skills in a Law Course*, 54 J. LEGAL EDUC. 588, 588–89 (2004).

⁹² See generally ARMSTRONG & HAMILTON, *supra* note 20, at 62.

⁹³ Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 541 (2012); see also Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 33–34 (2001).

⁹⁴ Lisa Milot, *Illuminating Innumeracy*, 63 CASE W. RES. L. REV. 769, 771 (2013).

⁹⁵ See generally Patricia Sayre, "Socrates is Mortal": *Formal Logic and the Pre-Law Undergraduate*, 73 NOTRE DAME L. REV. 689 (1998).

⁹⁶ Milot, *supra* note 94, at 769–70.

that figure increasingly in litigation.”⁹⁷ Lawyers need basic numeracy skills not only to understand science and technology involved in litigation, but also to manage their practice.⁹⁸ Basic financial literacy, which is built on a foundation of basic numeracy, is critical for any lawyer who intends to work in business or with business.⁹⁹ Asking applicants to take courses in statistics, accounting or basic finance, and math for business would not only better prepare students for the challenges that practitioners face, but might also encourage students who thought that law school was only about arguing to take a look at law school as a post-graduate option.

V. FURTHER RESEARCH NEEDED: LSAC AND ACCESS GROUP

The above-discussed frameworks are only the beginning of the process. Law schools and their partner institutions, specifically LSAC and Access Group, would want to invest in continued research and testing of the broad competencies, which should be incorporated in all law school admissions, as well as the specific competencies reflective of individual law schools. Access Group, with its recent acquisition of Bill Henderson’s Lawyer Metrics company, has expanded its reach into research projects to help law schools adapt to the evolving legal economy.¹⁰⁰ Its research grants are the ideal method to study pre-competencies.¹⁰¹

LSAC is already an active partner in pre-law and law student research; more resources devoted to studying pre-competencies would further its research goals.¹⁰² LSAC was the original sponsor of the work of Shultz and Zedeck, and it may be amenable to research into how a pre-competency framework can be incorporated into the broader admissions process.¹⁰³

⁹⁷ Debra Cassens Weiss, *Posner: Lawyers Bad at Math Are an Increasing Concern; Inmate’s Blood-Pressure Suit Shows Why*, A.B.A. J. (Oct. 29, 2013, 12:51 PM), http://www.abajournal.com/news/article/posner_math_block_lawyers_an_increasing_concern_inmates_blood-pressure_suit [https://perma.cc/GMD8-ZGCX].

⁹⁸ See generally Eric C. Chaffee, *Answering the Call to Reinvent Legal Education: The Need to Incorporate Practical Business and Transactional Skills Training into the Curricula of America’s Law Schools*, 20 STAN. J. L., BUS. & FIN. 121 (2014).

⁹⁹ See *id.* at 153 (“[A]ll law school graduates should have a basic level of financial literacy. Law students should be able to understand how businesses raise capital and how to read a balance sheet.”).

¹⁰⁰ Debra Cassens Weiss, *Law School Nonprofit Buys Bill Henderson’s Lawyer Metrics Company*, A.B.A. J. (Dec. 21, 2015, 3:40 PM), http://www.abajournal.com/news/article/law_school_nonprofit_buys_bill_hendersons_lawyer_metrics_company/ [https://perma.cc/Z3AS-3ZXY].

¹⁰¹ *Grants Overview*, ACCESS GRP., <https://www.accessgroup.org/research/grants-overview> [https://perma.cc/TS87-YML3] (last visited Aug. 1, 2016).

¹⁰² *LSAT Technical Reports*, LSAC, <http://www.lsac.org/lisacresources/research/all> [https://perma.cc/GM5Z-W9G9] (last visited Aug. 1, 2016).

¹⁰³ Kristen Holmquist et al., *Measuring Merit: The Shultz-Zedeck Research on Law School Admissions*, 63 J. LEGAL EDUC. 565, 565 (2014).

CONCLUSION: SOLVING THE UNDERPREPAREDNESS PROBLEM AT THE SOURCE

Future law students and law schools share a mutual goal—to ensure the success of graduates as practicing attorneys. This goal is threatened by decreasing skill levels of incoming law students. Contrary to the instincts of admissions and enrollment professionals, undergraduates would welcome a transparent, straightforward framework to post-graduate success. Despite the fact that 81 percent of college students express an interest in graduate education, recent generations of college students have been described by sociologists as “motivated but directionless.”¹⁰⁴ By providing direction to motivated students, law schools can potentially expand their applicant pool during a time of seat-deposit anxiety. By asking motivated students to prepare for the academic challenges of the “cognitive apprenticeship,” law schools can expect better-prepared incoming students.¹⁰⁵ The merger of pre-law student goals with the requirements for law school success serves to benefit all constituencies.

¹⁰⁴ ARUM & ROKSA, *supra* note 8, at 75.

¹⁰⁵ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 28, 192 (2007).