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ARTICLE

CAN COMPETENCIES DRIVE CHANGE IN THE LEGAL PROFESSION?

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INTRODUCTION

The “competency movement” may just end up being the stealthy star performer in the reshaping of the legal industry. Competencies are developed through a process that is usually led by respected, trusted, and well-liked people—a great first step in any change management process.¹ In addition, competency development focuses on constructing a framework for developing lawyers today. In doing so, competencies draw on the past, live in the now, and look to the future. Competencies compel firms to not just acknowledge, but really understand how to successfully identify, deploy, retain, retrain, and reward their top performers. They change cultures and behavior in law firms, and this is changing cultures and behavior in law schools too. The competencies movement has responded to the “new normal”² by acknowledging, championing, or leveraging changes taking place

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1. See Jordon Furlong, *Why Lawyers Don’t Innovate*, LAW21 BLOG (Aug. 20, 2013), <http://www.law21.ca/2013/08/why-lawyers-dont-innovate/> (suggesting that these three factors are the key to getting lawyers to innovate and change).

2. The “new normal” is a term that has been used from early 2010 to describe the shift in the way lawyers and law firms delivered legal services pre and post the recent global financial crisis. It appeared in advertisements for Churchill Club’s March 3, 2010 event. *Churchill Breakfast Club: Innovation & Change, a “New Normal” for the Legal Industry?*, CHURCHILL CLUB, http://transition.churchillclub.org/eventDetail.jsp?EVT_ID=853 (last visited June 8, 2014). It was also used in an article discussing this event by Paul Lippe, *Welcome to the Future: Embracing the*

outside law firms and law schools and integrating them within by defining what it is to be a twenty-first century lawyer.

This article begins with a brief overview of the competency movement in Part I. It identifies and analyzes the changes taking place in the legal industry and the impact this change has on law firms and law schools. Part II explores the extent to which these changes are reflected in competencies, provides a starting point for law firms and law schools to develop competencies, and reflects on the benefits that can be drawn from the competency development process. Part III provides a framework for implementing competency models in law firms and law schools, focusing on stages and steps, and processes for organizational, team, and individual change. The article concludes with the suggestion that the competency movement may end up being the standout initiative that provides a common platform for discussion, debate, and eventually the means to reinvent, rethink, and rebuild the legal industry.

I. THE COMPETENCY MOVEMENT

The competency movement is not new. It began in the late 1950s and by the 1970s had evolved into a way to manage on-the-job performance.³ The term “competency” most often refers to the behaviors (sometimes also the skills and knowledge) demonstrated by someone who knows how to do a job well. The level of proficiency in any one competency differs for each person depending on their experience or ability to practice and learn. People who are the most experienced in a job will demonstrate a high level of “mastery” of the competencies required to excel at that job, while those who are less experienced will not demonstrate such competencies as strongly. A competency—accompanied by “descriptors” or explanations of proficiency for each different level of experience—provides an evolving, transparent, and clear guide for individual development, career direction, and performance management. Competencies, therefore, assist in identifying development gaps and, conversely, provide guidance for accelerated development.

People develop competencies at different rates. Some organizations “group” individual competencies in a number of different ways. Most develop core competencies that are applicable to everyone in the organization no matter who they are or what job they do. For example, a company may recognize the need for proficiency in ethics and customer service as a core competency. Organizations may also develop competencies based on job function; for example, attorney competencies would differ from profes-

New Normal, THE AMLAW DAILY (Mar. 19, 2010), <http://amlawdaily.typepad.com/amlawdaily/2010/03/0319future.html>.

3. Susan Manch, *Competencies and Competency Models—An Overview*, in THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS 77, 77–78 (Terri Mottershead ed., 2010).

sional staff competencies. Typical competencies for law firm attorneys are discussed below.

While the competency movement has been alive and well in professional service firms for some time, it did not take root in law firms until the new millennium.⁴ Even then, firms that developed competencies for their attorneys were at the forefront of the movement. By the late-2000s, things had changed significantly.⁵ Perhaps this was the result of the increased professionalization of professional development and human resource roles in law firms. Perhaps it was connected to the increased movement of talent management professionals to law firms from corporate America, where they had a history of working with competencies in performance management. Whatever the catalyst, in the last ten years it has become a movement in law firms—small, medium, and large—that has demanded, encouraged, supported, or anchored attorney talent management strategies, models, frameworks, initiatives, and programs.

Competency development in higher education for the professions has a similar history. The June 2013 U.K. Legal Education and Training Review notes that medicine and accounting programs in the late 1960s and early 1970s spearheaded competencies and learning outcomes in professional education and training.⁶ Common law countries like Australia, Canada, England & Wales, Hong Kong, New Zealand, and Scotland developed legal-skills-based programs, generally taken after completion of a law degree, which led the way in competency or outcome based approaches to education and training. These legal skills programs signaled a change from content- to outcome-focused instruction and from substantive or doctrinal law to legal skills and “soft skills” development. At the same time, assessment in these areas moved from mostly summative to a combination of formative and summative depending on what was being taught, where, why, when, and how.

These developments evolved at the same time as, or in response to, changing requirements of Bar associations. The Bar associations relied on these programs to train students to enter the profession at the standard of a first-year attorney. In these Commonwealth (or former Commonwealth) countries, competencies or learning outcomes have also served other pur-

4. PETER B. SLOAN, FROM CLASSES TO COMPETENCIES, LOCKSTEP TO LEVELS: HOW ONE LAW FIRM DISCARDED LOCKSTEP ASSOCIATE ADVANCEMENT AND REPLACED IT WITH AN ASSOCIATE LEVEL SYSTEM 11–13 (2007).

5. NALP FOUNDATION AND PDC, SURVEY OF LAW FIRM USE OF CORE COMPETENCIES AND BENCHMARKING IN ASSOCIATE COMPENSATION AND ADVANCEMENT STRUCTURES at unnumbered fourth page (2009), available at <http://www.nalpfoundation.org/surveyoflawfirmuseofcorecompetenciesandbenchmarks>.

6. LEGAL EDUCATION AND TRAINING REVIEW, SETTING STANDARDS: THE FUTURE OF LEGAL SERVICES EDUCATION AND TRAINING REGULATION IN ENGLAND AND WALES FINAL REPORT 120 (2013), available at <http://www.lettr.org.uk/wp-content/uploads/LETR-Report.pdf> [hereinafter LETR].

poses. They have provided the basis for accrediting prior experience and/or certificated learning in higher education as well as acting as a benchmark for continuing professional development.⁷ In these countries, the focus on competency-based learning outcomes has multifaceted application and is emerging as the dominant approach in legal education.

Legal education in the United States has been slower to respond.⁸ But there has been movement in adopting an outcome-based approach. Two important and contemporaneous reports on legal education—*Best Practices for Legal Education: A Vision and a Road Map* and The Carnegie Foundation’s *Educating Lawyers: Preparation for the Profession of Law*—recommend outcome-based measures.⁹ In response, the American Bar Association (A.B.A.) created a special committee to examine outcome-based measures. The committee recommended reframing the A.B.A. accreditation standards to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures.¹⁰ The A.B.A. Standards Review Committee took this a step further and, as part of their proposed changes to the accreditation standards, has recommended that law schools articulate the outcomes they intend their students to achieve.¹¹ Proposed revisions to Standard 302 are at the center of the changes to outcomes¹² and follow in the long tradition of emphasizing the need for an increased focus on legal and soft skills.¹³ In the most recent draft, law schools are required to include learning outcomes that equate to “entry level practitioners” in respect to:

7. *Id.* at 119.

8. See also AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, DRAFT REPORT AND RECOMMENDATIONS 2–3 (2013), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/task_force_on_legealeducation_draft_report_september2013.authcheckdam.pdf (calling for an even greater shift by law schools towards practical legal education in the U.S. as a key conclusion) [hereinafter ABA TASK FORCE].

9. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 93–94 (2007); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 8–9 (2007).

10. LETR, *supra* note 6, at 128; CATHERINE L. CARPENTER ET AL., REPORT OF THE OUTCOMES MEASURES COMMITTEE 55 (2008), available at <http://apps.americanbar.org/legealed/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>.

11. ABA TASK FORCE, *supra* note 8, at 24–25.

12. See AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMPREHENSIVE REVIEW OF THE ABA STANDARDS FOR APPROVAL OF LAW SCHOOL MATTERS FOR NOTICE AND COMMENT 27 (2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_revisions/20130906_notice_comment_chs_1_3_4_s203b_s603d.authcheckdam.pdf [hereinafter ABA COMPREHENSIVE REVIEW].

13. See STUCKEY, *supra* note 9; SULLIVAN, *supra* note 9; AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legealed/publications/onlinepubs/maccrate.html>.

1. knowledge and understanding of substantive law, legal theory and procedure;
2. the professional skills of:
 - a. legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal context; and
 - b. the exercise of professional judgment consistent with the values of the legal profession and professional duties to society, including recognizing and resolving ethical and other professional dilemmas;
3. a depth in and breadth of other professional skills sufficient for effective, responsible, and ethical participation in the legal profession; and
4. knowledge, understanding, and appreciation of the following values:
 - a. ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;
 - b. the legal profession's values of justice, fairness, candor, honesty, integrity, professionalism, respect for diversity, and respect for the rule of law; and
 - c. responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them.¹⁴

While this important move towards a learning outcomes approach is late in coming and may not be at the level of a true competency approach, it is nonetheless a step in the right direction. At this point it is worth noting that the terms “competencies” and “student learning outcomes” are often used interchangeably; but they are different. Competencies function at a higher level.¹⁵ Learning outcomes are about acquiring skills and knowledge. But a competency requires students to process learning in a way that enables them to apply that skill and knowledge in a variety of situations and to a variety of tasks.¹⁶ Competencies require law schools to develop curricula and assessments where students can demonstrate learning and mastery of practical legal skills and abilities progressively. This is best achieved where legal skills are embedded into subjects or courses throughout a program in addition to complimentary work experience opportunities. As such, in the United States there has not been a competency movement in legal education comparable to what has been seen in law firms. The interchange-

14. ABA COMPREHENSIVE REVIEW, *supra* note 12, at 27–28.

15. REBECCA KLEIN-COLLINS, COUNCIL FOR ADULT AND EXPERIENTIAL LEARNING, COMPETENCY-BASED DEGREE PROGRAMS IN THE U.S.: POSTSECONDARY CREDENTIALS FOR MEASURABLE STUDENT LEARNING AND PERFORMANCE 9 (2012), available at http://www.cael.org/pdfs/2012_CompetencyBasedPrograms [hereinafter CAEL].

16. *Id.*

able use of terms “competency” and “student learning outcome” is one reason why the recent Final Report of the U.K.’s *Legal Education and Training Review* sought to create “clarity and consistency” by adopting the following definitions:

- ‘Competence’ (generic term): An ability to perform the tasks and roles of a lawyer to (at least) a minimum standard of effectiveness.
- A ‘Competence’ or ‘Competency’ (specific term): A sub-category or component of *competence*, defined in terms of a task to be performed or attribute to be demonstrated. These may be defined at a comparatively high level of abstraction . . . or with a considerable degree of task-based detail
- A ‘Learning Outcome’ or ‘Outcome’: The expected result of a learning process defined in terms of scope (what is to be known, understood, and/or demonstrated). This will often be attached to a [National Quality Framework] level or other ‘marker’ describing the expected level of performance.
- A ‘Standard’: A means of assuring or measuring the level of performance in a component competence. This may involve a statement of measurement against predetermined criteria or by reference to, e.g., a collaborative process (such as that used in medical assessment) that determines the characteristics of a ‘good enough’ performance.¹⁷

The definitions noted above do not incorporate all common terminology in this area. Another term often used in law firms is “benchmarks.” Benchmarks are essentially legal skills acquired through tasks, which become more complex as an attorney’s experience grows.¹⁸ These are practice-area specific and operate on the basis that the more often the task is performed, the more proficient the attorney will become. For example, a typical general litigation benchmark might require that a junior litigator be able to “assist in preparing fact witnesses for depositions,” while a mid-level litigator must be able to “take a fact witness deposition” and a senior litigator “take an expert deposition.”

In law firms, competencies and benchmarks are at the center of attorney career development frameworks. They pair expected competency and benchmark development outcomes, usually through the same hierarchy of experience levels (e.g., junior, mid-level, and senior associates). Based on this model, a junior attorney who develops quickly should be able to move to the next level irrespective of his or her number of years of experience in the first level. Alternatively, an attorney who takes a little more time to master the expected competencies and benchmarks may not advance as quickly. There are many factors that can influence the speed of advance-

17. LETR, *supra* note 6, at 119.

18. Manch, *supra* note 3, at 77–82.

ment in a law firm that uses this type of model for attorney career development. The key to career progression in this model is the opportunity to work on matters and gain the requisite experience that leads to advancement. The model also assumes that the attorney will receive continuous feedback and guidance from supervisors that support and advocate a plan based on good work choices and behavior amplification or modification as required.¹⁹

Regardless of the terminology, and to ensure the discussion is not lost to it, Richard Susskind has posed what is readily recognized and often now repeated as the core and critical first question for law schools and law firms: “What are we training [teaching] [our] young lawyers to become?”²⁰ Most of us would probably agree with the A.B.A.’s *Task Force on the Future of Legal Education* that the main purpose of law school is to prepare students to provide law-related service. As the *Task Force* explained, this means more than a sole focus on doctrinal instruction and has increasingly required law schools to enhance “skills training, experiential learning, and the development of practice-related competencies”²¹ in their graduates.

Many law schools have responded with extracurricular experiential learning opportunities, such as clinics, externships, and ramped up partnerships with law firms for student internships. In fact, “[t]hirteen of the nation’s top 25 law schools now have a faculty administrator, other than the academic dean, charged with overseeing clinics and experiential learning.”²² Some law schools are working on identifying trends in the profession, determining how these resonate in their marketplace, designing programs that expose students to twenty-first century legal practice.²³ In doing so, they are changing the content of programs and the way law is taught. To date, however, only a few schools have attempted a comprehensive reworking of their curriculum and mapped this to competencies.²⁴ Nevertheless, these new initiatives are encouraging and necessary because reform is coming and it seems likely that all schools will be compelled to embrace a competency-based approach in their programs in the not-too-distant future. For example, the *State Bar of California Task Force on Admissions Regulation Reform* has identified a new competency requirement:

19. *Id.*

20. RICHARD SUSSKIND, TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 135 (2013).

21. ABA TASK FORCE, *supra* note 8, at 2–3.

22. Press Release, Univ. of Conn., Chill Named Assoc. Dean for Clinical and Experiential Educ. (Sept. 18, 2013), available at <http://www.law.uconn.edu/about/press-room/chill-named-associate-dean-clinical-and-experiential-education>.

23. SUSSKIND, *supra* note 20, at 138–39.

24. See, e.g., THE THOMAS M. COOLEY LAW SCHOOL, CREATING A CULTURE OF PROFESSIONALISM IN LAW SCHOOL: THE THOMAS M. COOLEY LAW SCHOOL EXPERIENCE, available at http://www.cooley.edu/about/_docs/publications/theplan.pdf; *Stanford Law School Advances New Model for Legal Education*, STANFORD LAW SCHOOL, <http://blogs.law.stanford.edu/newsfeed/2012/02/13/stanford-law-school-advances-new-model-for-legal-education/> (last visited June 8, 2014).

“competencies not covered by doctrinal learning, including problem solving, exercising good judgment[,] client relations, time management, communication, and ability to see and understand opposing points of view.”²⁵ California is moving beyond discussing a new competency model; they are proposing reforms to the standards for entering practice that will include an additional fifteen units of practice-based, experiential training prior to admission.²⁶

Sometimes proactive and other times reactive, the competency movement has been pivotal to interpreting, understanding, and implementing the changes taking place in the legal profession and, more broadly, the legal industry. This paper next focuses on those changes and how they have been captured in competencies.

II. THE CHANGING LEGAL LANDSCAPE

Much has been written about the core drivers for change in the profession: technology, liberalization or deregulation (legal work being done by lawyers and non-lawyers), globalization, and the demand for increased efficiency in delivery of legal services.²⁷ The impact of this change has been widespread, profound, and not limited to law firms. As clients have demanded a wider variety of services and service delivery models from their law firms, law schools have felt the effect from law students and law firms. Law firms and law schools are intricately connected. They are part of the same pipeline of talent for the legal industry and part of the same continuum of knowledge, skills, and competencies. Changes in law firms are increasingly being mirrored in law schools and, as discussed below, these changes are being captured in, or as, competencies. While there are some differences in emphasis between these competencies, as illustrated in Table 1 Typical Law Firm Competencies versus Typical Law School Competencies below, there are also many similarities.

TABLE 1: TYPICAL LAW FIRM COMPETENCIES VERSUS TYPICAL LAW SCHOOL COMPETENCIES

| Typical Law Firm Competencies | Typical Law School Competencies |
|---|---|
| <ul style="list-style-type: none"> • Legal writing and research • Legal knowledge • Leadership • Ethics and professional responsibility • Problem solving • Community service | <ul style="list-style-type: none"> • Legal writing and research • Legal knowledge • Leadership • Ethics and professional responsibility • Problem solving • Team building |

25. STATE BAR OF CALIFORNIA, TASK FORCE ON ADMISSIONS REGULATION REFORM PHASE I FINAL REPORT 10 (2013), available at [http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_\(FINAL_AS_APPROVED_6_11_13\)_062413.pdf](http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_(FINAL_AS_APPROVED_6_11_13)_062413.pdf).

26. *Id.* at 1.

27. SUSSKIND, *supra* note 20, at 3–14.

| | |
|---|---|
| <ul style="list-style-type: none"> • Project Management • Team building • Client service • Relationship building • Self-awareness • Adaptability • Resilience • Innovation • Communication • Ownership and accountability | <ul style="list-style-type: none"> • Self-awareness • Adaptability • Resilience • Communication • Ownership and accountability |
|---|---|

A. *Changes in Law Firms Mirrored in Law Schools and Competencies*

The seven changes discussed below are by no means the only changes taking place in law firms and law schools. These are, however, the more significant changes and their impact is undeniable, unshakable, and irreversible. These changes have resulted in different ways to deliver legal services, different legal services, and different professions providing these services. Who and what is needed in the legal industry today is not the same as in recent years. In terms of law firm talent management, or law school curriculum, the discussion of acquired legal knowledge, skills, and competencies has moved us well beyond the question referred to earlier and posed by Susskind: “What are we training [teaching] [our] young lawyers to become?”²⁸ The question has now become: “Are we preparing lawyers for 21st century practice and what competencies are we using to guide us?” This inextricable link between change, impact, and competencies is discussed in the context of the seven changes that have been highlighted below.

1. *Globalization*

Globalized trade and globalized knowledge, especially via the internet, have fundamentally changed law firms and law schools. It is hard to imagine a major U.S. law firm that does not currently work with multi-national or international clients. Likewise, there are few U.S. law schools that cater only to domestic students. The shift towards globalization has spawned a trend in multi-national business and consequently increased demand for law firms with a multi-national presence as well as lawyers with multi-jurisdictional legal knowledge, cultural sensitivity, legal education, and admission to practice. While it is possible to practice local law in another country as a registered foreign lawyer,²⁹ or after satisfying local knowledge and practice

28. *Id.* at 135.

29. For example, an Australian lawyer living in Hong Kong but admitted in and holding a current Australian practicing certificate, could practice Australian law in Hong Kong if registered in Hong Kong as an Australian foreign lawyer. The same lawyer would not be permitted to practice Hong Kong law in that country unless admitted to practice in Hong Kong. *See Information for Registration as a Foreign Lawyer*, THE LAW SOCIETY OF HONG KONG, http://www.hklawsoc.org.hk/pub_e/admission/oversea.asp (last visited June 8, 2014).

requirements or exams, to be admitted in another country, this falls well short of a “one-stop-shop” admission to global legal practice. It also does not touch on the need for well-developed competencies in adaptability and cultural sensitivity for those attorneys who will work with multi-national clients or multi-national teams locally or on secondment outside their home country.

Globalization has changed the way some law firms and law schools are structured. Some law firms have answered the call for multi-national presence through international expansion, merger, or acquisition of firms in many different countries, thereby retaining local knowledge and combining it with a global platform from which to service their multi-national clients. In most cases, however, these firms do not share global profits or losses, despite having global practice group leaders and industry teams, and promoting their ability to provide seamless global legal advice and representation. For example, firms adopting the favored Swiss *verein* global business model do not share income or pool profits, nor do they share commercial or professional liabilities.³⁰ This structure allows a collection of law firms, “organized under different corporate or partnership structures in different countries . . . [to] present itself internationally as a single organization without complying with [the] regulations and tax codes of each country in which the *verein* operates.”³¹

Law schools have approached the call to globalization differently. Most have sought to enhance international knowledge transfer and exchange through the tried and true system of institutional academic and student exchanges, partnerships, or affiliation agreements.³² Other universities or their faculties have taken this a step further by establishing small campuses, programs, or parts of programs in campuses overseas.³³ While these arrangements have seldom given way to institutional global merger or affiliations, they have provided the foundation for an increasingly vocal call to action for the internationalization of legal education. While a single global

30. See Nick Jarrett-Kerr & Ed Wesemann, *Enter the Swiss Verein: 21st-Century Global Platform or just the Latest Fad?*, *EDGE INT’L REV.*, Fall 2012, at 26, 28, <http://www.edge.ai/Edge-International-2053018.html>.

31. *Id.* at 28.

32. The exception to the rule here seems to be Laureate Education (www.laureate.net), which partners or purchases higher education institutions. It is a for-profit company. See Elizabeth Redden & Paul Fain, *Laureate’s Growing Global Network of Institutions*, *INSIDE HIGHER ED*, <http://www.insidehighered.com/news/2013/10/10/laureates-growing-global-network-institutions> (last visited June 8, 2014).

33. See, for example, *NYU Law Abroad*, NYU LAW, <http://www.law.nyu.edu/global/globalopportunities/nyulawabroad> (last visited June 8, 2014), for information regarding the NYU Law Abroad Program, which encourages 14–25 third year JD students to spend their Spring semester “immersed in the law and legal culture of another part of the world through an academic program designed and administered by the law school. The program is designed to help students develop global fluency sensitivity to different legal cultures and contexts, linguistic ability, and the flexibility to work effectively across jurisdictions.”

legal curriculum allowing for simultaneous multi-jurisdictional or global admission is still a long way from being realized, things are changing. Law schools in North America, Europe, Asia, and Australia have taken steps to “internationaliz[e] legal education.”³⁴ Other recent initiatives provide additional evidence of change.

On September 26, 2013, the International Association of Law Schools at its inaugural Global Law Deans’ Forum in Singapore adopted the Singapore Declaration on Global Standards and Outcomes of a Legal Education (the Declaration).³⁵ The Declaration provides a set of principles outlining global standards in the regulation of: legal education and internal law school governance; admission standards for students; evaluation of students; recruitment, evaluation, advancement and retention of law faculty; curriculum; and access to physical, technological, and administrative legal resources. It also details outcomes for legal education including the knowledge, skills, and values expected of a law graduate.³⁶

There is an immediate and real need for attorneys to understand and work effectively in a globalized marketplace. This requires proficiency in areas like inter-personal communication, emotional intelligence, empathy, resilience, and cultural sensitivity. While these skills come easily to some, they do not come easily to all. Those law firms and law schools³⁷ that have identified these skills as important, have also developed mission statements, values, competencies, and the learning opportunities for their attorneys and law students that acknowledge, enhance and, in some cases, mandate the demonstration of them. While these initiatives may not all look the same, they all have the common objective of minimizing the opportunity for miscommunication and conflict across, within, and outside the global work place.

34. Vai Io Lo, *Before Competition and Beyond Complacency—The Internationalisation of Legal Education in Australia*, 22 *LEGAL EDUC. REV.* 3, 4 (2012); See also OFFICE OF LEARNING AND TEACHING, DEPARTMENT OF INDUSTRY, INNOVATION, SCIENCE, RESEARCH AND TERTIARY EDUCATION, *INTERNATIONALISING THE AUSTRALIAN LAW CURRICULUM FOR ENHANCED GLOBAL LEGAL PRACTICE FINAL REPORT* (2012) (outlining a plan for internationalizing legal education in Australia) available at <http://www.olt.gov.au/resource-internationalising-australian-law-curriculum-enhanced-global-legal-practice-2012>; Vai Io Lo, *The Internationalisation of Legal Education: A Road Increasingly Travelled*, in *THE INTERNATIONALISATION OF LAW: LEGISLATING, DECISION-MAKING, PRACTICE AND EDUCATION* 117 (Mary Hiscock & William van Caenegem eds., 2010) (providing a general overview of internationalization of legal education).

35. INTERNATIONAL ASSOCIATION OF LAW SCHOOLS, *SINGAPORE DECLARATION ON GLOBAL STANDARDS AND OUTCOMES OF A LEGAL EDUCATION* (2013), available at <http://www.ialsnet.org/wordpress/wp-content/uploads/2013/09/Singapore-Declaration-2013.pdf>.

36. *Id.*

37. Taking cultural competency training as an example, see Michelle Ramost-Burkhardt, *Do You See What I See? How a Lack of Cultural Competency May Be Affecting Your Bottom Line*, THE JURY EXPERT, <http://www.thejuryexpert.com/2013/05/do-you-see-what-i-see-how-a-lack-of-cultural-competency-may-be-affecting-your-bottom-line/> (last visited June 8, 2014) (discussing the importance of this training in law firms and law schools).

2. Leadership

Leadership in law firms has changed. Leading a law firm is a full-time and critical job. Gone are the days when a firm can be effectively or efficiently led by senior attorneys who lead while also running their busy practices. Law firm leaders need to be visionary and shape the future of their firms. They have to focus on the long term and not just the short term. They understand the need for succession planning and that change and innovation are the only way to create a legacy. They need to know their business, know their clients' businesses, identify trends, and innovate before hundreds of their competitors do the same thing. Great leaders also need to be outstanding relationship builders. They need to be in constant contact with the firm's clients and staff. We are, after all, living in the age of social media,³⁸ which has created and entrenched a more personal connection between us, but is also outside the comfort zone of many Baby Boomer law firm leaders.

Great law firm leaders must do more than simply manage. Such leaders must leverage opportunities for collaboration, listen, and strive for consensus, but also be willing to make unpopular decisions. They are not preoccupied, but are "present." They have an understanding of the sort of people needed to lead and manage their firm and employ them, motivate them, and facilitate their collective experience, knowledge, skills, and competencies for the benefit of the firm. Such leaders may or may not be lawyers. These sorts of leaders may emerge by happenstance, but in many leading law firms now, they are proactively identified and groomed for leadership.³⁹ Let's face it, it has to be this way because the pace and sophistication of today's legal services marketplace cannot support a hit-or-miss or leadership-by-default selection process. The great rainmakers or the great matter managers may not necessarily be great law firm leaders. Leaders need to draw on some of the same skills, but they also need to be able to do a lot more.

Law school leadership has also changed. Great deans today are visionaries and also need to possess the same skills and competencies as law firm leaders. They too need to know about the changes in their industry, higher

38. Some examples include TWITTER, FACEBOOK, and LINKEDIN.

39. Caroline M. McKay, *Harvard Law School Partners with Millbank*, THE HARVARD CRIMSON, Feb. 16, 2011, <http://www.thecrimson.com/article/2011/2/16/law-school-program-nanda/>. Millbank Tweed has collaborated with Harvard Law School from 2011 to provide law and management training to its third through seventh year associates. The training is taught on campus by Harvard Business School and Law School faculty together with Millbank Tweed partners. See also Alina Dizik, *Law Firms Embrace Business School 101*, WALL ST. J., May 20, 2009, <http://online.wsj.com/news/articles/SB124277243918636539>, for a discussion of law firm partnerships with Northeastern University, IMD (Switzerland), IE Business School (Madrid) and dedicated law firm public programs at Harvard, George Washington University, and Georgetown.

education,⁴⁰ and the legal market. More particularly, they must also ensure their law schools retain or capture market share, however that market is changing, by translating market intelligence into the development of, and different delivery methods for, new or redesigned programs, courses, or curricula.⁴¹ They also need to know that it is not enough to make changes in isolation and must therefore place great importance on building relationships with the legal community so their students can gain critical work experience and on-the-job skills. Producing work-ready graduates for twenty-first century practice should be the goal of every law school. And if the curriculum does not meet market demand, or if graduates cannot use what they learn, then law school becomes very unattractive.

Great law firm leaders and great deans need specialist management teams. The volume and complexity of law firms and law schools makes it impossible for leadership to be a solitary pursuit. These same factors have had influence beyond leadership and management. They are increasingly driving a move towards a more expansive corporate mindset. Law schools and law firms have the same profitability challenges that make them vulnerable, *i.e.*, a limited number of income streams and high levels of recurring expense in the form of overhead costs. As will be discussed later, advances in technology have increased this vulnerability but have also provided the opportunity to change business and staffing models to minimize overhead costs. While this challenge is, on its own, daunting, it is also just the tip of the iceberg for many law firms and law schools. Embedded in this “law as a profession” versus “law as a business” debate is a struggle to find an equilibrium between preserving the best traditions of an honorable vocation with the need to survive in a world that is driven by efficiency and lower-cost alternatives.

These are not easy matters to reconcile. They require leadership skills that include outstanding people management and great fiscal knowhow. Just as rainmakers and matter managers are not always great law firm leaders, neither are great researchers or teachers automatically great deans or associate deans (ADs). Being a great researcher or a great teacher may not make someone a great fundraiser or relationship builder, nor does it necessarily translate into the sort of business acumen required to run a multi-million

40. See ERNST & YOUNG, UNIVERSITY OF THE FUTURE: A THOUSAND YEAR OLD INDUSTRY ON THE CUSP OF PROFOUND CHANGE (2012), available at [http://www.ey.com/Publication/vwLUAssets/University_of_the_future/\\$FILE/University_of_the_future_2012.pdf](http://www.ey.com/Publication/vwLUAssets/University_of_the_future/$FILE/University_of_the_future_2012.pdf) (discussing how the dominant university model in Australia will need to be replaced in 10–15 years with a more integrated education model where universities will be forced to create leaner business models to compete for staff and funding).

41. See, *e.g.*, Mary Ann Toman-Miller, *Law School Pioneers New Curriculum*, STANFORD LAW SCHOOL, Feb. 21, 2012, <http://www.law.stanford.edu/news/law-school-pioneers-new-curriculum> (discussing the ongoing debate about shortening law school and the newly designed law school curricula at Stanford Law School); Peter Lattman, *Obama Says Law School Should be Two, Not Three, Years*, N.Y. TIMES, Aug. 23, 2013, <http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/>.

dollar law school. Law faculty, Law deans and ADs will increasingly need to be identified early, groomed for leadership through the university and faculty committee structure, trained in management and leadership, and proactively encouraged to take on a leadership role. Whether it is on the list of priority areas or not, succession planning is of critical importance for many law schools right now. There is a need for a more professional, structured, proactive, strategic, and targeted approach to identifying and retaining innovative people (academics and non-academics) who are committed to change.⁴²

These challenges for law schools have been apparent to and prioritized in talent management and business planning initiatives for some time in law firms. The move from part-time to full-time professional leadership and management has been one of the most pronounced changes in law firms in the last five to ten years. Business schools have been approached to develop and provide management training courses and programs in collaboration with law firms on an exclusive, customized basis or through focused public courses.⁴³ Hand-in-hand with this change has been the movement away from partner to professional manager in lead support functions. Human Resources (HR), Professional Development/Talent Management, Information Technology (IT), Marketing & Business Development, Finance, Diversity & Inclusion, Pro Bono—these areas are less frequently led by partners on a part-time basis in favor of senior, seasoned professionals who fill these roles at the Director or Chief Executive level.⁴⁴

Law schools still have some way to go on this front. Deans and ADs at most universities are not required to undertake management training. There are few senior administrative personnel at the faculty level, and if these positions do exist, they are often at a central or university-wide level. The increasing pressures and more sophisticated level of higher education management,⁴⁵ the growing debt levels in law schools, and the emerging trend towards mergers of law schools and universities,⁴⁶ all require knowledge,

42. See MARSHALL GOLDSMITH, WHAT GOT YOU HERE WON'T GET YOU THERE: HOW SUCCESSFUL PEOPLE BECOME EVEN MORE SUCCESSFUL 32 (2007).

43. See Dizik, *supra* note 39; Karen Sloan, *Wharton School Opens its Doors to Penn Law Students*, NAT'L L.J. (Mar. 3, 2013), <http://www.nationallawjournal.com/id=1202590750867> (discussing new offerings for law students to acquire these skills while still at law school, not through the more traditional route of a joint MBA/JD program or other business programs but as a customized partnership between a law school and business school which in this case was the University of Pennsylvania Law School and The Wharton School).

44. Silvia Coulter, *New Faces of the Future Firm*, PRACTICE INNOVATIONS (Jan. 2011), <http://info.legalsolutions.thomsonreuters.com/signup/newsletters/practice-innovations/2011-jan/article3.aspx>.

45. See ERNST & YOUNG, *supra* note 40, at 7.

46. For law schools, see, for example, Hannah Schroer, *Rutgers-Newark, Rutgers-Camden Law Schools to Merge*, THE DAILY TARGUM, Mar. 7, 2013, http://www.dailytargum.com/news/rutgers-newark-rutgers-camden-law-schools-to-merge/article_4d350010-86da-11e2-b15d-0019bb30f31a.html (discussing the recent mergers of Rutgers Camden and Newark Law Schools, Charleston School of Law and The College of Charleston, and Texas A&M and Texas Wesleyan

skills, and competencies not previously demanded of law school leaders. Times have changed and these changes provide a stark reminder that good leadership and management is always important but is *the* difference between failure and survival in hard times.

Given this discussion, it is not surprising that law firms have consistently identified leadership as a partnership-track competency for associates; this has spawned training programs and coaching support that focus on leadership development.⁴⁷ Leadership has become an area of focus in legal skills programs, clinical assessments, and dedicated programs at law schools.⁴⁸ It has also been identified as a key area of instruction for new and emerging law and business school combined curricula and degrees.⁴⁹ In law firms and in law schools, the demand for leadership skills is increasingly being reflected and developed through competencies and learning outcomes.

3. Value

Another change that has taken place in law firms and law schools is how they add and define value. While doing away with the billable hour is not a new topic of discussion in the legal profession, rejecting it as the primary means by which to measure value is new. In the last five years, spurred on by the rise of alternative fee arrangements (AFAs), a different and more robust discussion has emerged.⁵⁰ AFAs come in many forms and the profession has many examples of successful collaborations on AFAs.⁵¹ The most common AFAs are fixed fees, capped fees (fees with an upper limit), value added billing (based on the value the lawyer's input has ad-

Law School); Paul Bowers, *Charleston School of Law Directors Staying out of CofC Merger Talks*, CHARLESTON CITY PAPER, THE BATTERY, Aug. 21, 2013, <http://www.charlestoncitypaper.com/TheBattery/archives/2013/08/21/charleston-school-of-law-directors-staying-out-of-cofc-merger-talks>; Miriam Rozen, *ABA Ruling Expected on Texas A&M—Texas Wesleyan Law School Merger*, TEXAS LAWYER BLOG (Aug. 9, 2013), http://texaslawyer.typepad.com/texas_lawyer_blog/2013/08/aba-ruling-expected-on-texas-am-texas-wesleyan-law-school-merger.html.

47. Susan Saltonstall Duncan, *One Firm's Approach: Bingham's Partner Leadership Development Program*, INFOCUS (Sept. 1, 2013), <http://rainmakingoasis.com/index.php/insights/blog/entry/one-firm-s-approach-bingham-s-partner-leadership-development-program>.

48. Santa Clara Law School has run leadership courses and roundtables for many years. See *Leadership Education Roundtable V: Teaching Leadership Competencies in Law School and in the Profession: Why it Matters*, SANTA CLARA UNIV. (Mar. 22, 2013), <http://law.scu.edu/leadership/>.

49. See, e.g., Peter Lattman, *Doctoroffs to Give University of Chicago Law School \$5 Million*, N.Y. TIMES, Oct. 2, 2013, http://dealbook.nytimes.com/2013/10/02/doctoroffs-to-give-5-million-to-university-of-chicago-law-school/?_r=0 (discussing the recent \$5 million donation to the University of Chicago Law School to develop a program combining law and business classes).

50. The U.S. Association of Corporate Counsel as part of its Value Challenge initiative, launched in 2008, evaluates law firms on their ability to meet enumerated "key value levers." *ACC Value Challenge*, ASSOCIATION OF CORPORATE COUNSEL, <http://www.acc.com/valuechallenge> (last visited June 8, 2014).

51. Susan Saltonstall Duncan, *Client Service and Value Innovations*, LAW PRAC., Nov.–Dec. 2012, at 30, 31–36.

ded), or charging on the basis of “time and cost saved.”⁵² While AFAs may not have fundamentally changed the way lawyers work, they have shifted conversations about fees from numbers alone to a longer list of topics including: can non-lawyers do the work instead of lawyers, and how should we measure costs, budgets, efficiency, and value for money?⁵³ These discussions require transparency, agreement on deliverables, and good faith negotiations.⁵⁴ Such discussions also involve a whole range of people whose jobs did not exist until recently.

For example, lawyers now find themselves negotiating and reaching agreements on their fees with a procurement officer in their client organization instead of corporate counsel. Practice Managers or AFA specialists (there are many variations on this title) in law firms calculate whether or not an AFA is financially viable for the firm. IT or project management technologists provide advice on the use of project management and case management technologies as well as the extent to which these technologies will make information and knowledge accessible to the client. These interactions involve lawyer skills that extend way beyond a good estimate of how many hours will be spent on a matter at a standard hourly billable rate working with a favored associate. They have moved into the realm of sophisticated, technical, multi-disciplinary team discussions that may, in-and-of-themselves result in new technologies. Susskind points to Rulefinder, an online risk management tool that provides information about rules and practices in international shareholding disclosures, developed by Allen & Overy and six of its banking clients, as an example of this level of collaboration.⁵⁵

Legal services that add value differ significantly from those that just add cost. While a fee can be assigned to them, it is not an accurate measure of the many intangible—though arguably more important—things with which they are inextricably connected. These intangibles have found their way into law firm competencies and law school learning outcomes: communication skills, understanding the professional work setting, handling conflict, respect for clients, client service, problem solving, teamwork, collaboration, risk management, efficiency, supervision, delegation, relationship building, emotional intelligence, and empathy.⁵⁶

Students at law schools, like clients of law firms, understand they have to pay for a service and are willing to pay a high price for great quality, but only if there is not a lower cost, comparable alternative available. Just like

52. SUSSKIND, *supra* note 20, at 18.

53. Jim Hassett & Jonathan Groner, *How Legal Project Management Is Changing the Way Services Are Marketed*, BLOOMBERG LAW (Oct. 1, 2013), <http://about.bloomberglaw.com/practitioner-contributions/how-legal-project-management-is-changing-the-way-services-are-marketed/>.

54. SUSSKIND, *supra* note 20, at 18–22. *See also* Stephanie Francis Ward, *15 Fairly New Legal Jobs and 6 More You May See Soon*, ABA JOURNAL (Sept. 30, 2013), http://www.abajournal.com/legalrebels/article/what_new_legal_services_jobs_have_emerged_in_the_last_five_years.

55. SUSSKIND, *supra* note 20, at 22.

56. *Id.*

law firm clients, law school students are increasingly sophisticated buyers of services and are demanding value for money. For students, value is something more than fees or the cost of tuition. Law students want to leverage technology-based learning so they can learn on their own time, not when the lecture or tutorial or seminar is run on campus. They want feedback and access to their teachers. Law students also want jobs and they want to be productive in these jobs when they join their employer of choice. They also want to be able to freely choose among different types of jobs and new positions emerging in the legal industry. Susskind has identified a number of these emerging opportunities:

- Legal Knowledge Engineer (computer based knowledge)
- Legal Technologist (combines IT skills with legal training)
- Legal Hybrid (a lawyer with other formally acquired skills like organizational development)
- Legal Process Analyst
- Legal Fees Analyst (AFA deals)
- Legal Project Manager
- Online Dispute Resolution Practitioner
- Legal Management Consultant
- Legal Risk Manager⁵⁷

Simply put, twenty-first century student demands can only be met by law schools if there is ongoing, significant investment in technology, a greater emphasis on teaching, and a focus on the teaching of legal skills. As tuition skyrockets and student debt loads increase, law schools face a crisis of perceived quality. One model for improving quality is competency-based education.⁵⁸

As discussed earlier, the focus on teaching skills in law schools has been the subject of debate, division, and derision. While there is not and probably should never be a “one size fits all” definitive curriculum for all law schools,⁵⁹ there is an emerging consensus that experiential learning for every law student is essential.⁶⁰ This move towards including “practical” skills into a once exclusively “doctrinal” curriculum has prompted a number of other changes in law schools and more broadly within universities. The number of universities where retention and promotion of academic staff is based solely or mostly on research output are decreasing in favor of a broader recognition of teaching excellence. Funding for universities, previously based mostly on collective research output in highly theoretical areas, is broadening to include and elevate applied and practice-based

57. *Id.* at 109–18.

58. CAEL, *supra* note 15, at 4.

59. See ABA TASK FORCE, *supra* note 8, at 2–3, for recommendations for increased heterogeneity in law schools.

60. See *id.* for recommendations relating to an increased focus on the development of skills, experiential learning, and practice-related competencies in law schools.

research. Academic success viewed only through the lens of research output is becoming less prevalent.

The current debate between law schools and the ABA about the length of time required to obtain a Juris Doctor is, in essence, a debate about injecting law school curricula with a solid dose (about 33 percent) of legal skills related courses.⁶¹ It follows that this debate is also about the depth and breadth of the practical experience of law school professors and tenure.⁶² While this national debate continues in the United States, the incremental changes taking place in individual law schools provide anecdotal evidence that teaching practical skills has become an essential part of legal education in the country.⁶³ An example of these changes is the increasing number of contract-based part-time adjuncts employed for their up-to-date practical skills. Emphasis is placed on what and how these attorneys teach so they combine “real world” experience and context delivered via a multimedia platform. Put more simply, there is a discernable and increasing importance being placed on clinical programs, externships, internships, and a consequent rise in stature of clinical professors and adjuncts in these law schools. Outside the United States, in places like Australia, Canada, Hong Kong, New Zealand, and the United Kingdom to name just a few,⁶⁴ the battle to introduce practical skills into legal education has already been fought and won.

Despite the progress made in incorporating more practical experience into law school, there is still much that remains to be done:

- Few law schools actively encourage work experience in jobs other than those of a practicing attorney, and yet as discussed earlier, the number of different jobs requiring different knowledge, skills, and competencies is increasing. Current ABA accreditation standards

61. See Dylan Matthews, *Obama Thinks Law School Should be Two Years. The British Think it Should be One*, WASH. POST, Aug. 27, 2013, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/08/27/obama-thinks-law-school-should-be-two-years-the-british-think-it-should-be-one/>; Statement by Stephen Gillers of New York University School of Law to ABA Task Force on the Future of Legal Education (Mar. 5, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/032013_stephen_gillers_rev_comment.authcheckdam.pdf; Daniel B. Rodriguez, *Make Law Schools Earn a Third Year*, N.Y. TIMES, Jan. 17, 2013, http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html?_r=0.

62. See Karen Sloan, *ABA Panel Favors Dropping Law School Tenure Requirement*, THE NAT'L L.J. (Aug. 12, 2013), <http://www.nationallawjournal.com/id=1202614832071> (summarizing recent discussion on this subject by the ABA's Council of the Section of the Legal Education and Admissions to the Bar) [hereinafter *ABA Tenure Panel*]. For a recent article in these areas, see Dawinder Sidhu, *Get Rid of Tenure in Law Schools*, USA TODAY, Aug. 25, 2013, <http://www.usatoday.com/story/opinion/2013/08/25/law-school-tuition-column/2678487/>.

63. Refer again to discussions in Matthews, *supra* note 61, and *ABA Tenure Panel*, *supra* note 62.

64. See recent review and summary of these and other countries in LETR, *supra* note 6, at 118–74.

may not permit law schools to make changes to curricula to accommodate these alternate career paths.⁶⁵

- Some law schools have developed, and others are developing, customized programs for emerging new professions.⁶⁶ In the past, these have been offered under the umbrella of executive education initiatives. There will be increasing opportunities in these areas. Programs aimed at the new and emerging non-lawyer market, especially if offered online or in blended learning mode, have the potential to provide alternate income for law schools to fill the gap left by decreasing enrollments in traditional JD programs.
- While some law schools have invested in e-courts for their advocacy and mooted courses/programs and incorporated online negotiations into their alternative dispute resolution classes, few have gone as far as integrating instruction on the use of technology-based practice support systems, such as case, litigation, transactional, and project management systems.⁶⁷

It would therefore seem that the value of law schools may increasingly depend not only on how well they teach and integrate practical skills into their curriculum, but also how much they customize these offerings for the many different jobs available in the legal marketplace.⁶⁸

Closer partnerships between law schools and law firms that encourage collaboration in curriculum development and support seamless transition will continue to play an essential role in developing future professionals.⁶⁹ Competencies can provide a framework for discussing the continuum of development needed. Schools that partner in this way will be better able to produce a pipeline of competent, practice ready graduates. These law school and law firm relationships will result in real value for law students by increasing the students' likelihood of securing a meaningful job when they graduate.

4. *Services and Technology*

Technology has profoundly changed the legal industry. It has fueled an in-depth analysis of what lawyers do, how they do it, and what they charge

65. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2012–2013 24 (2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf.

66. See Karen Sloan, *Law for Laymen*, NAT'L L.J. (May 20, 2013), <http://www.nationallawjournal.com/id=1202600625077>.

67. For example, Georgetown Law School requires students to develop legal diagnostic or document assembly systems. See LETR, *supra* note 6, at 25.

68. The broader framework to license all legal service providers, not just lawyers, was a key recommendation of the ABA TASK FORCE, *supra* note 8, at 3. See also Marilyn Astin Tarlton, *The LLLT and the Power of Positive Thinking*, ATTORNEY AT WORK (Oct. 1, 2013), <http://www.attorneyatwork.com/lllt-and-the-power-of-positive-thinking/>.

69. See generally ERNST & YOUNG, *supra* note 40, at 24 (discussing the need for collaboration between Australian universities and the workforce).

for doing it. It has made legal information and knowledge more accessible, cheaper, and no longer the exclusive purview of lawyers. Commoditized (free or low cost online legal services), packaged (distilled and collected expertise in a system that clients can use), systemized (computer based checklists or procedure manuals that support workflow systems) and standardized (standard templates or precedents) work can be done competently by corporate counsel or matter specialists in India or China or at a low cost location in Europe.⁷⁰ If law firms are involved, they have to offer competitive pricing for this type of work or partner with non-law firm providers who can.⁷¹ Arguably only the most complex legal advice and advocacy have been immune to these changes. But, as Susskind has observed, the move to alternative dispute resolution such as negotiation and mediation versus litigation is negating that immunity daily.⁷² Likewise, where these alternate means of resolving disputes are made readily accessible via the Internet or telephone, the threat becomes more pronounced due to the availability of low-cost options. In this brave new world, attorneys who are not tech savvy will not be attractive to law firms.⁷³

Technology has opened the doors to infinite service possibilities. Susskind has identified fifteen new sources of legal services.⁷⁴ Most of these can be grouped together and need not operate in isolation. Of these, the most written about is the Legal Process Outsourcer (LPO). LPOs are third party legal service providers. These specialist service providers started off as alternatives for commoditized work, such as document review, legal research, and due diligence, but they have quickly moved into the packaged, systemized, and standardized work areas too. The leading providers of these services are no longer just overseas or divorced from the profession, they are also in the United States, owned by U.S. firms and entities, and are an integral part of project teams.⁷⁵

Some law firms have also embraced technology and used it to fundamentally change the way they deliver legal services. These firms have de-

70. See SUSSKIND, *supra* note 20, at 23–28.

71. See *id.* at 33–49 (identifying fifteen different ways that have emerged for sourcing legal work to date).

72. *Id.* at 47.

73. A recent article in *LAWYERS WEEKLY* reported on a Thomson Reuters survey that found Australian legal practices were losing an estimated AUD 51,000 in charge out rates per partner each month because fee earners were not using new technologies efficiently. Brigid O. Gorman, *Firms Manually Losing Money*, *LAWYERS WEEKLY*, Oct. 4, 2013, <http://www.lawyersweekly.com.au/news/firms-manually-losing-money> (“The top reasons for respondents failing to adopt new technologies were a greater trust in ‘traditional’ methods (43%) and technophobia (32%)”).

74. SUSSKIND, *supra* note 20, at 33–38.

75. See, e.g., Press Release, Thomson Reuters Acquires Pangea3 (Nov. 19, 2010), <http://www.pangea3.com/thomson-reuters-acquires-pangea3.html> (announcing Pangea3 and Thomson Reuters merger). For other examples, see the services offered by U.S.- and U.K.-based LPO INTEGREGON, <http://www.integreon.com/solutions/legal-solutions.html> (last visited June 9, 2014) and the depth and breadth of low cost legal documents offered by LEGALZOOM, <http://www.legalzoom.com> (last visited June 9, 2014).

veloped customized technology platforms through which they interact and deliver services to their clients. This has fostered new and different business and staffing models within traditional law firms. One such example is U.S.-based Clearspire,⁷⁶ which was launched in October 2011 via a “proprietary web-enabled IT platform.”⁷⁷ Attorneys and clients connect online through Clearspire, and the platform encourages ongoing transparency, communication, and collaboration. The Clearspire team mostly works remotely, but the firm also has office space where attorneys and clients can meet. Attorneys are encouraged to pursue business opportunities, but professional support staff does most of the sales and marketing work.⁷⁸

While the achievements of Clearspire are significant and laudable, they may pale in comparison with what is likely to emerge from the U.K. The Legal Services Act of 2007 has fundamentally changed the delivery of legal services in England and Wales.⁷⁹ The Act permits, amongst other things, the establishment of alternative business structures (ABSs) in which non-lawyers can invest, become owners, and run legal businesses. Licensing of ABSs by the Solicitors Regulation Authority began in March 2012.⁸⁰ ABSs can offer multiple services, including legal services, to clients from one location. QualitySolicitors, a grouping of U.K. law firms, offers legal services from more than two hundred locations, including the retail outlets of WH Smith.⁸¹ Law firms can also be floated on the stock exchange. The evolution of ABSs in the U.K. is leading the way in “disruptive” legal service delivery.⁸² ABSs are much more than a variation on old themes, they are ground breaking.

The ABA established the Commission on Ethics 20/20 in late 2009 to “perform a thorough review of the ABA Model Rules of Professional Conduct and the U.S. system of lawyer regulation in the context of advances in technology and global legal practice developments.”⁸³ The commission

76. Patrick Lamb, *Client Service and Value Innovations: 5 Firms Take Bold Approaches*, LAW PRAC., Nov.–Dec. 2012, at 41, 44–45; see also CLEARSPIRE, <http://www.clearspire.com> (last visited June 9, 2014).

77. Lamb, *supra* note 76, at 44.

78. *Id.*

79. See Legal Services Act, 2007, c. 29 (U.K.), available at http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf.

80. ABS—Two Years of Applications SOLICITORS REGULATION AUTHORITY, <http://www.sra.org.uk/sra/news/press/two-years-abs-applications.page> (Jan. 3, 2014). There were 218 registered ABSs as of January 3, 2014. *Id.*

81. SUSSKIND, *supra* note 20, at 7. See also QUALITYSOLICITORS, <http://www.qualitysolicitors.com> (last visited June 9, 2014).

82. Clayton M. Christensen, Dina Wang & Derek van Bever, *Consulting on the Cusp of Disruption*, HARV. BUS. REV., Oct. 2013, at 106, 110. For a general discussion about innovation, disruption and its application to the service sector see Clayton M. Christensen & Scott D. Anthony, *Cheaper, Faster, Easier: Disruption in the Service Sector*, STRATEGY & INNOVATION, Jan.–Feb. 2004, at 3.

83. ABA Commission on Ethics 20/20, ABA, http://www.americanbar.org/groups/profession/ala_responsibility/aba_commission_on_ethics_20_20.html (last visited June 9, 2014).

continues to grapple with the issue of ABSs. It would seem that the speed with which U.S. law firms will change their service delivery model—and thus their ability to make wholesale change—will continue to be influenced by regulators and Bar associations for some time. Some green shoots of innovation are nonetheless evident. These include the emergence of a new profession, the Limited License Legal Technician (LLLT), recently introduced in Washington and soon to be introduced in California, New York, and Georgia. Such changes may be a sign of more innovation to come. Although the type and scope of work to be handled by the LLLTs has not been decided, it has been suggested that they could provide a low-cost alternative for clients in areas like small claims or where clients require assistance with matters like name and gender changes, uncontested divorces, restraining orders, or criminal record expungements.⁸⁴

The law school service delivery model has also been impacted by technology. Who had heard of Massive Open Online Courses (MOOCs) a few years ago?⁸⁵ Now the Coursera website—one of the leading MOOC providers—shows that more than five million students can take any one of 461 courses from over ninety-one universities anywhere in the world for free, while sitting in their pajamas at home.⁸⁶ This number increases daily. Knowledge, including legal knowledge, is not just accessible, it's gone viral! Gone are the days when taking a course online was frowned upon or dismissed as content-poor. University knowledge has been commoditized, packaged, systemized, and standardized. It's also free. However, MOOCs are not without their problems. Currently more students start MOOCs than complete them.⁸⁷ Also, it is not easy to transfer credits earned through MOOCs—not all universities recognize MOOC completion certificates.⁸⁸

However, it is also not all doom and gloom for MOOCs. The content and delivery platform provides not only new ways to teach and learn, but also new opportunities to incorporate technology-enhanced courses and content into more traditional teaching and learning models and outcomes. This has increased opportunities for corporate-university education partnerships between corporations and universities. It has delivered HARVARDs, or Highly Accessible and Rigorous, Very Affordable and Recognized De-

84. See Tarlton, *supra* note 68.

85. "MOOC" stands for Massive Open Online Courses, which is a course offered free, online, for everyone, everywhere. It is readily accessible and encourages interactive participation. Massive Open Online Course, WIKIPEDIA, http://en.wikipedia.org/wiki/Massive_open_online_course (last visited June 9, 2014).

86. See COURSEERA, <http://www.coursera.org> (last visited June 9, 2014). See also other MOOC websites: UDACITY, <http://www.udacity.com> (last visited June 9, 2014); EDX, <http://www.edx.org> (last visited June 9, 2014).

87. Geoff Sharrock, *From MOOCs to HARVARDs: Will Online Go Mainstream?*, THE CONVERSATION (Oct. 15, 2013), <http://theconversation.com/from-moocs-to-harvards-will-online-go-mainstream-18093>.

88. *Id.*

degrees.⁸⁹ The HARVARD model overcomes, for now, the non-credit or degree earning drawback of a MOOC; but this will be easily discarded once employers accept MOOC credits as university-based education equivalents.⁹⁰

For law schools, there are real opportunities to embrace and leverage this new generation technology. This technology can simulate legal skills (like mediation and negotiation) that were once only available through in-person or blended learning.⁹¹ It can also support online lectures, one-on-one tutorials, and virtual supervision.⁹² Students can practice their skills in virtual law firms.⁹³

Just as retail outlets compete with online shopping,⁹⁴ so also is campus-based education competing with online learning. The frequency of campus visits by students is decreasing in favor of learning using mobile technology while sitting at home, in a cafe, lunchroom, etc.⁹⁵ Advances in learning technologies have changed the approach to learning. Where students previously front loaded knowledge just in case they would need it later, they now learn what they need to know when they need to know it.⁹⁶ Furthermore, when students attend an in-person class they expect it to add value beyond what can be accessed online. Curriculum innovation involves more than changing content or demonstrating new legal technologies; it is about incorporating technology into every aspect of the course or program, from planning through to delivery. Law professors lacking familiarity with practice-based technologies, unable to work with technology in the classroom, or without the skills to deliver courses online, will increasingly find themselves either unable to meet student expectations, or co-teaching with adjunct professors who have the necessary skills. In this way law professors must be as tech-savvy as practitioners if they are to remain relevant in the new legal economy.

Fortunately, co-teaching that utilizes such technological advances could bring about unprecedented opportunity for collaboration, discourse,

89. *Id.*

90. A recent GALLUP poll found Americans rated online education as the best for value and options but were still concerned about the format, rigor of testing and grading, quality of instructors and felt these courses had less credibility with employers. Linda Saad, Brandon Busteded & Mitchell Ogisi, *In U.S., Online Education Rated Best for Value and Options*, GALLUP (Oct. 15, 2013), <http://www.gallup.com/poll/165425/online-education-rated-best-value-options.aspx>.

91. "Blended learning" is defined in the Macmillian Dictionary as "a method of learning which uses a combination of different resources, especially a mixture of classroom sessions and online learning materials." MACMILLIAN DICTIONARY, <http://www.macmillandictionary.com/buzzword/entries/blended-learning.html> (last visited June 9, 2014).

92. SUSSKIND, *supra* note 20, at 145.

93. *Id.*

94. See DELOITTE LLP, *THE CHANGING FACE OF RETAIL 2* (2011), available at <http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Industries/Consumer%20Business/uk-cb-store-of-the-future-report.pdf>.

95. See ERNST & YOUNG, *supra* note 40, at 4.

96. LETR, *supra* note 6, at 26–27.

debate, and mutual understanding between law schools and law firms. Such collaborative teaching has the potential to foster or enhance complimentary speaking opportunities between institutions, academics, and practitioners, applied research opportunities, and advances in legal practice, education, and knowledge dissemination. This higher level of comprehensive, mutually-beneficial cooperation between law schools and law firms remains largely untapped.

Law firm competencies reflect the demand for new legal services, new technologies, and new ways to do things. Such competencies include problem-solving, thought leadership, innovation, entrepreneurship, cultural competency, and resilience. Lawyers who think outside-the-box and understand changing market demands have such competencies. Such lawyers are not intimidated when ideas fail, but rather pick themselves up and try again. They are leaders who foster and encourage different approaches and ideas from all sources—from senior partners to junior administrative staff—because making a law firm operate successfully is a team effort. Such leaders recognize that no single group of people has a monopoly on good ideas. Most importantly, law firms embracing such competencies enable changes in law firm culture and governance structures—these are the places where respect and integrity, knowledge sharing, experience sharing, continuous improvement, and the ability to adapt quickly and change are celebrated.

Many of these same competencies have been identified as critical learning outcomes in law schools, with the exception of innovation and entrepreneurship.⁹⁷ Whether these competencies are developed through closer ties to business schools,⁹⁸ or in recognition that law firms are businesses too,⁹⁹ or because they will help students develop skills to embrace change, they need to be prioritized now. Law schools need to be at the forefront of this change, leading and not protesting. They should push their local Bar associations and regulators to embrace the sorts of creative courses, programs, and changes to curricula that not only encourage innovation and entrepreneurship, but also demonstrate it. If the recent *Draft Report and Recommendations of the ABA Taskforce on the Future of Legal Education* is any indication, it seems there will be plenty of support if law schools and legal course providers decide to innovate.¹⁰⁰

97. *See id.* at 37.

98. *See* Peter Lattman, *supra* note 49. *See also*, for example, the many joint JD/MBA programs offered in the U.S. such as Santa Clara University, Harvard, Pace University, and the University of Calgary, to name just a few.

99. Dizik, *supra* note 39.

100. ABA TASK FORCE, *supra* note 8, at 1–3. The key recommendations of the Task Force encouraged a reconsideration of the status quo and focused the need for change in the following areas: pricing and funding of legal education, the system of and standards relating to law school accreditation, the need for the accreditation system to better facilitate innovation in law schools and programs of legal education, the need for law schools to further shift the balance between doctrinal instruction and students being prepared for the delivery of legal services “in favor of developing the competencies required by people who will deliver services to clients,” and increas-

As Mehran Mehregany has recently observed, an organization cannot innovate unless its people are up to date in their areas of specialization and they are given training in innovation.¹⁰¹ Mehregany also observes that investment in this type of education will not be made or sustained unless senior management buys into what professional development and HR specialists refer to as “strategic talent management.”¹⁰² Senior management must understand and accept the inextricable link between, on the one hand, an employee’s knowledge, skill, competency, and ability to innovate, and on the other hand, the organization’s ability to achieve business performance goals and sustained competitive advantage. Put more simply, people really are an organization’s greatest asset.

5. Market Demands

The basics of business have not changed—revenue minus expenses still equals profit; but the competition for work and customer expectations have changed. Law firms are still making money but not necessarily with the same clients, in the same way, or with the same margins.¹⁰³ The consolidation of corporate advice panels, the growth of legal departments, new players in the market like LPOs, a high number of law firm mergers,¹⁰⁴ AFAs, and an increasing number of ways by which satisfaction with performance can be measured,¹⁰⁵ are evidence not only of the drive towards increased efficiency and transparency but also of just how much the market has changed.

Law firms have captured these market demands in competencies focused on project management, team management, and client relationship management. Law schools have similarly identified these as key competencies.

ing access to legal advice by permitting non-lawyers to provide this advice in a limited number of areas and licensing lawyers “whose preparation for practice may have been other than the traditional four years of college plus three years of classroom-based law school education.”

101. Mehran Mehregany, *If You Want Innovation, You Have to Invest in People*, HARV. BUS. REV. BLOG NETWORK (Oct. 3, 2013), <http://blogs.hbr.org/2013/10/if-you-want-innovation-invest-in-people/>.

102. See Terri Mottershead, *The Business Case for Talent Management in Law Firms—Are People Really Our Greatest Asset?*, in THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS, *supra* note 3, at 21–54.

103. CITIBANK & HILDEBRANDT CONSULTING, 2013 CLIENT ADVISORY 1 (2013), available at http://hildebrandtconsult.com/uploads/Citi_Hildebrandt_2013_Client_Advisory.pdf.

104. Altman Weil Merger Line, *Law Firm Merger Boom Continues into Third Quarter of 2013* (Oct. 2, 2013), http://www.altmanweil.com/index.cfm/fa/r.resource_detail/oid/a2d6b3b7-319d-4956-8fb0-082800063dc7/resource/Law_Firm_Merger_Boom_Continues_into_Third_Quarter_of_2013.cfm.

105. See, e.g., ACC Value Challenge, ASSOCIATION OF CORPORATE COUNSEL, <http://www.acc.com/valuechallenge/> (last visited June 9, 2014) (“an initiative to reconnect the value and cost of legal services”).

6. *Changes in Business Models*

Law firm business models are not all the same. One size no longer fits all, if it ever did. Firms need a clear strategy and business plan focused on key clients and markets; the plan should be revisited frequently for adjustment and improvement. A firm's business model must also be closely aligned to its staffing model. A low-margin, high-volume practice is not staffed in the same way as a high-margin, low-volume practice, at least not if the firm strives for longevity.¹⁰⁶ This is not to suggest that the full-service firm has no place in the modern legal market; rather, a full-service firm's delivery model needs to match its staffing model for the market. The problem for many firms, highlighted during the global financial crisis, has been realizing this too late or being reluctant to take the steps needed to change.¹⁰⁷

Not all law school business models are the same. Too many law schools have lacked the discipline or failed to see the need to develop and implement strategic business plans, confident instead that the market would continue to provide them with students willing to pay full tuition prices. That has changed. As discussed earlier, law schools are weathering record declines in student enrollment numbers. Many are in the process or will very likely need to seriously consider staff redundancies. They have not planned for this day and have not developed high yielding, sustained alternate income streams to provide for it.¹⁰⁸

Law firms that recognize the need for an understanding of business models, focus on developing competencies in their attorneys such as strategic thinking and fiscal fluency. The development of these competencies and learning outcomes are similarly needed in law schools and in curricula for law students.

7. *Changes in Staffing Models*

Law firm staffing models have changed. A single linear career path from associate to partner has given way to a more realistic career matrix comprised of interchangeable associate, counsel, and partner roles.¹⁰⁹ Partnership is also no longer the ultimate career ambition for all law students. Contract lawyering has proven to be a viable alternative incentive for some attorneys, partly because this model provides more certainty in working hours, less travel, and allows greater focus on discrete projects or in distinct

106. See THOMAS DELONG, JOHN J. GABARRO & ROB LEES, WHEN PROFESSIONALS HAVE TO LEAD: A NEW MODEL FOR HIGH PERFORMANCE 102–19 (2007).

107. Kent M. Zimmermann, *Spotlight Stymies Law Firms from Making Necessary Business Moves*, NAT'L L.J., Oct. 7, 2013 at 27, available at <http://www.nationallawjournal.com/id=1202622097356>.

108. See ERNST & YOUNG, *supra* note 40, at 12.

109. Laura Saklad, *Alternative Models for Law Firm Careers*, in THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS, *supra* note 3, at 213–28.

practice areas.¹¹⁰ As discussed earlier, alternative career paths may include leadership and management positions. These include taking up C-suite (Chief) or other positions in support functions (e.g., HR, talent management, diversity and inclusion, pro bono, and work assignment), taking on and specializing in practice management roles, and specializing in AFA management roles. Such alternative roles may also include time out of the firm on a secondment to a client or to an interstate or international office. The legal industry is no longer limited to a single profession. Each of these career paths, albeit at different stages of evolution, are professions in their own right, the only common factor being experience in legal practice and perhaps a law degree.

The evolution of alternative career paths in law firms has been driven by market demands. Legal practice has become more complex, requiring higher levels of practice area specialization. Law firm management has also become more complex as it supports the evolution of full-time leaders and specializations in law firms. The mix of alternative careers in any one firm is therefore a reflection of the talent needed by the firm to deliver effective and efficient services at the highest quality to its clients—one size does not fit all for either business or staffing models in a law firm. These models must complement one another for a firm to achieve profitability targets.

As discussed earlier, law school staffing models have changed too. The market demands are still evolving but staffing models seem to be moving toward a mix of academic staff comprised of tenured professors, contract professors, and adjunct faculty. University central administration roles have become more specialized and moved beyond the broad categories of general administration, career services, and counseling, to dedicated functions focused on recruitment, student retention, marketing, industry and professional outreach, teaching and learning, research, and IT, to name just a few.

The impact of these staffing changes on competencies in law firms and law schools is still evolving. While most firms have developed different competencies for broad groups of employees, such as lawyers and administration staff, more specific competencies should still be developed for specific roles within each group. Interestingly, competencies for the more junior to mid-level roles in each group have tended to be better defined than those for the more senior roles. On the other hand, administrative positions tend to lack the sort of clearly defined career progression that is found in law partner or law professor career paths.

Perhaps one of the key takeaways from all of this is that whether you are, or aspire to be, a leader of a law firm or a law school, being *really* good at people management, financial management, client management, and self-

110. See Carroll Welch, *Don't Put Down Staff Attorneys!*, THE CAREERIST, Oct. 14, 2013, <http://thecareerist.typepad.com/thecareerist/2013/10/proud-to-be-a-staff-attorney.html>.

management has to be at the top of the list of core competencies. Competencies in cross-functional team management, remote team management, and cultural competency must also be prioritized as globalization increases, introducing multi-disciplinary and multi-cultural colleagues. Furthermore, consensus building, multiple stakeholder engagement, building buy-in, identifying and adding value, creating and generating goodwill, and managing change should be prioritized. It is therefore not surprising that these competencies have now been identified and are increasingly finding their way into law firms and learning outcomes in law schools too.

B. Emerging Core Competencies

From the many competencies identified in the preceding discussion, it is possible to discern a common set of law firm and law school core competencies and these are listed, together with an explanatory commentary, in Table 2: Common Law Firm and Law School Competencies below. They also readily support learning outcomes and are all essential to the success of the twenty-first century legal practitioner.¹¹¹

TABLE 2: COMMON LAW FIRM AND LAW SCHOOL COMPETENCIES

| Core Competency | Commentary |
|---|---|
| Legal knowledge | This is the ticket for entry into the profession and a continuing expectation for the rest of the person's career whether or not your state mandates it. Law is a knowledge-based industry in a knowledge-based economy—keeping up to date is the only way the job can get done. Knowledge will be increasingly delivered free, online, and “just in time.” |
| Ethics and professional responsibility | Law is a profession built on trust and confidence—these are the pillars upon which ethics and professional responsibility rest. These things will not change, even as the legal industry splinters into multiple professions. |
| Leadership | Leadership that encourages diversity, inclusion, and collaboration is the key to longevity in twenty-first century law firms and law schools. Demonstration of these key attributes should be “make or break” promotion criteria for every law firm and law school based on assessment by the prospective leader's followers. |

111. See Neil W. Hamilton, Verna Monson & Jerome M. Organ, *Encouraging Each Student's Personal Responsibility for Core Competencies Including Professionalism*, THE PROFESSIONAL LAWYER (forthcoming), Oct. 21, 2012, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2167055&download=yes (reviewing and discussing the core competencies of critical thinking and judgment, service orientation with clients, working with others, communications, and virtues and dispositions).

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| Working with people ¹¹² | If people are the greatest resource, then every organization needs to put effective work practices and the prioritization of people management at the core of their competencies. Although aspects of this competency fall into leadership, relationship building, and emotional intelligence, this competency focuses on listening, interpersonal communication, working with diversity, mentoring, coaching, sponsorship, career guidance, team building, team contribution, and engagement of people. Without the right people doing the right thing at the right time, law firm and law school success is more about good luck than good measure. |
| Problem solving | Lawyers are problem solvers. Legal advice and representation solves problems. Problems get solved only when legal advisors listen, understand their clients' business, understand their clients' risks, provide viable (commercial) alternatives, and add more value than a cheaper and more accessible technology based solution. |
| Innovation, adaptability, flexibility | Organizations do not innovate; people innovate. Legal practice has moved to the far right of the business life cycle—it is a mature industry in decline. Innovation, adaptability, and flexibility should be the new success triangle and the leading criteria for recruitment and promotion in every law firm and law school. |
| Relationship building and collaboration | We live in the age of social media—it is a revolution of sharing, oversharing, and being connected anytime and anywhere. Wanting to connect, being connected, and knowing how to connect should be key recruitment and promotion criteria in every law firm and law school. |
| Emotional intelligence | Every one of the five components of emotional intelligence are essential attributes for every attorney: <i>Self-awareness</i> —knowing one's strengths, weaknesses, drives, values, and impact on others <i>Self-regulation</i> —controlling or redirecting disruptive impulses and moods <i>Motivation</i> —relishing achievement for its own sake <i>Empathy</i> —understanding other people's emotional makeup <i>Social skill</i> —building rapport with others to move them in desired directions." ¹¹³ |
| Cultural competency | Globalization, multi-national clients, and a multi-cultural workforce make this competency essential. |
| Project management | The demand for efficiency in practice cannot be met in the absence of great technology-based project management skills. |
| Business acumen | Changes in legal service delivery models have made them more business-like. The entry of third party non-lawyers into the legal services space has changed the law firm business model and attorney-client conversations from billable time to added value. You cannot add value if you do not know how your client's business operates and you cannot make a profit if you do not know how your own business operates. |

112. *Id.*113. Daniel Goleman, *What Makes A Leader*, HARV. BUS. REV., Jan. 2004, at 1.

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| Resilience and well being | Legal practice is demanding and stressful. The ability to achieve work-life balance, manage well-being, and be resilient in the face of continuous change and mounting deadlines will continue to be a critical survival skill for every attorney. |
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III. COMPETENCY DEVELOPMENT: THE PROCESS OF CHANGE

As is evident from earlier discussions, competencies provide clarity, transparency, guidance, and definition around what it is to be successful in a plethora of different positions in twenty-first century legal practice. It would be easy to stop the acknowledgements there, for getting to this point is in itself significant. But if we did not dig a little deeper, we might miss perhaps the most important contribution resulting from an increased focus on competencies; that is, providing a framework of stages, steps, and processes for organizational, team, and individual change. Change is not easy. Most people do not like it and do what they can, at least initially, to resist it. It is uncomfortable, frustrating, and annoying. Yet the process for developing competencies is a process of change.

Competency-led change requires law firms and law schools to look critically at what they do well, and not so well. It forces them to identify and leverage points of market differentiation. It challenges them to focus on their strengths. It drives people to debate and discuss what makes them great and to listen to all points of view. It seeks to identify top performers early and retain them, because without them, firms and schools cannot be at the cutting edge. And, it requires them to capture all of this in just a few words, defined as competencies. Competency development also provides law firms and law schools with an opportunity to review, rethink, rebuild, and implement ways to continually improve efficiency, effectiveness, and fairness. This process of developing competencies has therefore led to significant and unintended positive outcomes for many law firms and law schools. The benefits for organizations derived from competency-led change include:

- Thinking strategically, planning and looking to the future
- Seeking feedback from all stakeholders (internal and external) about performance to accurately benchmark against competitors
- Defining who they are and what they aspire to be
- Critically examining what is working and what is not
- Accepting the need to be different and do things differently
- Creating buy-in and consensus developed as a product of listening, debating, discussing, and agreeing to outcomes
- Articulating market differentiators and competitive advantage
- Identifying, retaining, retraining, and rewarding top performers
- Thoughtful and constructive change in culture, behavior, and a whole lot of others things too!
- Continuously improving, adapting, and learning

A. *Competency Development in Law Firms*

The overriding consideration when developing competencies in a law firm is to remember there is value in the process as well as the outcome. The checklist below in Table 3 is a quick guide to the major stages in competency development for associates; the process is similar but there are also differences if a firm is developing competencies for partners:

TABLE 3: LAW FIRM COMPETENCY DEVELOPMENT CHECKLIST

| Stage # | Stage Name | Explanation |
|---------|--|---|
| 1 | Obtain senior management support. | It will need to be visible in every place and every way you communicate this project. If senior management has not bought into all of this, nobody else will either. |
| 2 | Make sure you have the resources to complete the job. | This process is going to take time and money. Start only if you can finish or do not start it at all. |
| 3 | Assemble your working party. | Make sure it is representative of all influencers and stakeholders both inside and outside the firm. The chair of this working party needs to be someone who is well-respected, trusted, and able to cash in political capital if necessary. The chair and the whole working party need to be able to sustain their conviction, commitment, and passion for the project for as long as it takes to complete. It is essential that everyone stays on the project and disseminates the same message. This group may not meet often but when they do, it should be a full house. |
| 4 | Assemble your project team. | This will be a sub-group of your working party. These will be the people who will “do.” If you can keep this group within four to six people, that is ideal. |
| 5 | Identify from the outset what your competencies will drive in the firm. | Career development? Compensation and promotion? You have to start with the end in mind. |
| 6 | Agree that this project is going to take some time. | This is a process of change. Rome was not built in a day and your competencies will not be either. Depending on how you will use your competencies and when you start the process, this could take twelve months to two years, and maybe even more. |
| 7 | Put together your project plan. | Without a roadmap, you will lose sight of the road ahead and your destination. |

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| 8 | Interview, identify, and engage your consultants. | If you are going to use consultants, bring them in as soon as you have your basic project management structure in place. Don't bring them in late. Also have a project plan in place so you know exactly what you need them to focus on—time is money and, remember, this is your time and your money! |
| 9 | Put together your communication plan (for inside and outside the firm). | You can <i>never</i> communicate too much or through too many different channels—use all types of media at your disposal. Develop the key messages and make them the mantra of everyone engaged with or on the project. The communication plan is often overlooked in these projects. This is a big mistake that is often later regretted. The project will most likely result in organizational, team, and individual change. People are generally uncomfortable with change and will become anxious either because they do not know what is going on or because they do and feel things are moving too slowly. Your clients are going to know something is going on—tell them and involve them. If you want your legal services to best serve your clients, then ask the clients what they want. Communicate often—transparency builds trust and confidence in the process, the leaders of the process and builds buy-in for, and eventually acceptance of, the outcome. |
| 10 | Develop your competencies. | This is going to involve identifying attorney representatives in all the groups for whom you will develop competencies—junior, mid, and senior associates; partners; different practice groups; and different offices. Diversity and inclusion is critical and if you do not pay sufficient attention to it, you may end up justifying the status quo when your intention was to change it. The project must be driven by involving your top performers and understanding how and why they perform as they do. You will need to be thorough and open to input and feedback in a number of different ways such as focus groups, surveys, and one-on-one behavioral interviews. You will also need to seek input from supervisors, peers, support staff, and clients. This should take time and it should also involve some pre-project work to identify trends and hypotheses from performance reviews, exit interviews, external surveys, etc. These competencies will be how you define, recognize, and reward success at your firm. |

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| 11 | Draft your competencies. | Get the first draft together and seek additional feedback on the draft from the working group and all those you consulted in step ten. This draft should not only identify the competencies, but also should provide a rating scale with descriptors for each level of “mastery.” The nomenclature for the rating scale should avoid words that can provoke negative reaction like “underperforming.” You can send a message without de-motivating. |
| 12 | Finalize and verify your competencies. | You are now getting close to implementation. Conduct one final round of reviews, seek feedback, and make sure that the competencies resonate, and then you are ready to launch. |
| 13 | Make sure your competency progression matches and aligns with your benchmarks. | If you have developed practice area specific benchmarks then the progression through these benchmarks should match and align with progression through your competencies. For example, if the time anticipated for mastery of a competency for a junior attorney is one to three years, then mastery of a benchmark for a junior attorney in every practice area should not be one to five years. |
| 14 | Roll-out. | This should involve a lot of tailored communications for all your different stakeholders. You need to create user friendly and readily accessible media for all the different users, supervisors, and associates. You need to mix up the information sources between in-person, online, and social media. This is where you leverage your champions and have them deliver the message so there is a better chance of minimizing detractors. |
| 15 | Remember that competencies can be interpreted differently in different places. | If your competencies are intended for global roll-out, the process noted above needs to happen in each country. Competencies in one place may not work in another. If your competencies do not reflect cultural and business norms, they will not be used. |
| 16 | Develop Metrics. | You need to know if your competency-based development model is working. Identify five to ten key metrics that will help you in measuring the successful implementation of the model and its impact on individual, team, and firm performance. |

Remember that competencies reflect change. You need to continuously review and update your competencies to match changes in the industry. The core competencies discussed earlier would not have appeared or been as

prominent in law firms fifteen years ago. Check every few years that your competencies are still relevant and update as required.

B. Competency Development in Law Schools

As with law firms, competency development in law schools can provide many positive outcomes derived from both the process and the deliverables. A competency framework like that detailed in Table 4 below can be used in traditional course-based curricula and it can also be used as a tool to disrupt a traditional curriculum in new and innovative ways.¹¹⁴

TABLE 4: LAW SCHOOL COMPETENCY DEVELOPMENT FRAMEWORK

| Stage # | Stage Name | Explanation |
|---------|---|---|
| 1 | Lay the Groundwork. | You start with the end in mind by articulating your objectives and scope. What is your purpose in creating the framework? How you plan to use it will impact whom you involve in preparing it and how you determine its scope. |
| 2 | Ensure strong leadership and vision. | You will need the support of the dean and key faculty leaders as well as key committees such as those dealing with curriculum and academic affairs. These leaders and committees will be essential to creating an institutional culture that is open to change and engaged in the process. You must also be able to articulate your vision to others in order to build consensus and support as you move forward. |
| 3 | Create a competency team. | Include people from all areas of the law school, including deans, faculty, program administrators, and students. |

114. CAEL, *supra* note 15, at 4; *see also* CARPENTER, *supra* note 10, at 25. The authors are aware of and Sandee Magliozzi was part of a competency development process undertaken by Santa Clara Law School (SCLS) in 2012–2013. This process was similar to the one outlined in Table 4 Law School Competency Development Framework and was lead at SCLS by its Curriculum Committee. The Committee developed and adopted a competency model that included competencies covered in doctrinal classes and practice-based competencies identified by the California State Bar Association. The key benefits of the process identified by SCLS were: providing SCLS with an alternative framework through which it could view and progress change; assisting SCLS in articulating learning goals for students; providing a way to systemically review curricula; supporting and guiding students in tracking their skills development; identifying clearly for each student the importance of individual professional development; and providing a basis for ongoing conversations and communications with prospective employers regarding expectations of graduates.

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| 4 | Identify competencies. | This will require you to draw on the past, live in the now, and look to the future. You will need to determine the resources and tools available, utilizing existing competency lists from law firms, bar associations, best practices, or lawyer effectiveness factors. You can use experts, observe top performers, interview successful practitioners, or analyze work. You can conduct your own research on the competencies required. |
| 5 | Draft an interim competency model. | Group behaviors and skill sets into competencies and then create sub-groups or performance factors. Identify and name the competencies and describe the behavioral elements—those distinct observable behaviors that would be exhibited by a student who has mastered the performance factor. Create levels or stages in the desired competencies and align these to law school goals and legal practice. |
| 6 | Finalize the competency model. | Test the model with key stakeholders, including faculty, students, alumni, and legal employers. |
| 7 | Map the curriculum to the competency framework. | Curriculum-mapping is a process of identifying where individual courses and the curriculum as a whole are linked to the full range of competencies. It can empower faculty to gain a more comprehensive understanding about the scope and sequence of what is being taught, how it can best be delivered, and how competency development is linked from the beginning to end. This is done through subjects, courses, and programs and should therefore pervade an entire program. |
| 8 | Develop learning outcomes within the competency model and discuss mastery. | A competency model helps shift a law school conversation from teaching to learning by making it easier to articulate what students can, will, or should be able to do as measured by learning outcomes. |
| 9 | Communicate the model to faculty, students, alumni, and legal employers. | To be useful, the framework needs to be understandable, visible, easily accessible, and useable, with common messages tailored to specific audiences. |
| 10 | Integrate and implement. | Create an implementation plan based on your original goals and phase integration into manageable pieces based on your available resources. Keep it simple, create policies and practices that support competencies, and provide coaching and training. |

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| 11 | Evaluate and assess. | Develop assessment tools. Some form of assessment is important for the effectiveness of a competency framework in ensuring it prepares graduates for practice. Find ways to demonstrate that competence has been obtained beyond the mere preparation to pass a bar exam. |
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CONCLUSION

This article poses the proverbial question: which came first, the chicken or the egg? In this context, did competencies drive change in law firms and law schools or did change in the profession drive the development of competencies? Maybe it has been a little of both. The legal profession was long overdue for a significant change. The global financial crisis created a “perfect storm” that fueled demand and urgency for change. The evolution of talent management in law firms and the link between it and law firm success built the platform for change. The competency movement filled in the rest by providing a framework for discussion and a pathway for change.

For as much as the competency movement is a product of these times, it is also much, much more. Grand scale initiatives, the ones that shake things up and result in sustained change, only really make a difference where the rubber meets the road. Accreditation bodies, law societies, and bar associations will not bring about that sort of change on their own. They may issue mandates that compel, but mandates do not capture hearts and minds. Competencies have provided the means to take big changes and break them into the sort of bite-size pieces that law firms, law schools, attorneys, and law students can understand. They have provided the agenda for conversations—some old, some new, some borrowed, and all true—about the future of a profession in transition. Competencies have changed the way we think, the way we relate to each other, what we do and how we do it, they have allowed the profession to ReInvent Law,¹¹⁵ RethinkLaw,¹¹⁶ and rebuild law. In our view, this makes competency models the unsung heroes of the “new normal” and it makes the competency movement the standout initiative of the decade.

115. The ReInvent Law Laboratory is a think tank that suggests law, technology, design, and delivery are the four pillars of innovation that will save the legal industry. REINVENT LAW LABORATORY, <http://reinventlaw.com> (last visited June 9, 2014).

116. RethinkLaw is a think tank that “is on a mission to provoke thought and drive innovation in the business of law—leading to greater efficiency and positive change for the benefit of clients, firms and lawyers alike.” RETHINKLAW, <http://www.rethinklaw.org> (last visited June 9, 2014).